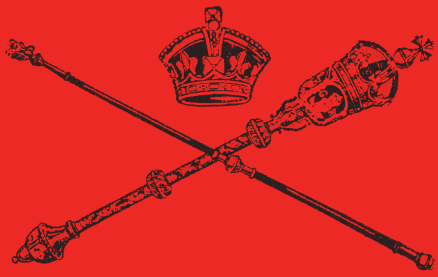

The Table

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CONTENTS

EDITORIAL

This edition of *The Table* sees a welcome return to Colin Lee's series on Archibald Milman, this time considering the passage of the legislation giving effect to the 1894 Budget through the House of Commons, and the procedural issues that arose. Sir William Harcourt, Chancellor of the Exchequer, introduced the Budget. As Leader of the House of Commons alongside his chancellorship, Harcourt took the opportunity to undertake reforms (in particular to death duties) in spite of resistance from his Prime Minister (Lord Rosebery, the penultimate Prime Minister to lead a government from the Lords). At a fractious time, the advice of Milman was sought and relied upon, and procedure used (as well as its limitations found) to assist Harcourt in securing victory with the Budget. The article considers Milman's relationships with his fellow clerks and Harcourt, giving light to the challenge (familiar to many) of separating personal opinion from the advice being given.

David Wilson, Clerk of the House of Representatives in New Zealand, writes about the party voting system in the House, an unusual system by Westminster-derived procedural standards. Under this system, questions are usually resolved by a question by a single member, typically a whip, who casts all a party's votes collectively. Introduced in 1995, the system has come under repeated review and David sets out the considerations that have been given to reform.

Next, Tom Wilson, Registrar of Lords' Interests in the House of Lords, provides an insight into the workings of the Lord Speaker's Committee on the size of the House. The Lord Speaker's Committee was the first of its kind, and is the latest attempt at tackling the challenge of reform to the House of Lords. As clerk to the Committee, Tom reflects on the difficulties of trying to address a problem many have tried to tackle in the past, as well as the opportunities arising from not being a formal select committee and bound to the procedures of the House. The Lord Speaker's Committee reported in December 2017, and given that the recommendations require support from members of the House, as well as the Prime Minister, we must wait to see if the report leads to any change in the way the House is appointed and constituted. I look forward to a sequel to the article in future editions of *The Table*.

Mark Egan, Greffier of the States of Jersey, provides a case study on the conduct of a minister that has been nearly a decade in the making. The Assembly has been faced with the issue of a minister having been found to have misled both the Assembly (in 2008) and the Independent Jersey Care Inquiry.

The Privileges and Procedures Committee was tasked with considering how to respond to that minister's conduct, who was still a Deputy, and the chairman of the Public Accounts Committee. Mark considers the unusual circumstances of this incident, and the implications for the Assembly moving forwards.

The final article is courtesy of Paul Bristow, Adviser to the Secondary Legislation Scrutiny Committee in the House of Lords, who takes us through the 2015 Strathclyde Review and its outcome. The review was commissioned by the Government and undertaken by Lord Strathclyde, a former Leader of the House. It was tasked with examining how elected Governments could have their ability to secure their business in Parliament protected, with particular regard to the House of Commons' primacy on financial matters and secondary legislation. It arose following the House agreeing to motions calling for the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 (secondary legislation laid under the affirmative procedure) to be deferred until the Government had taken various steps to analyse and mitigate their impact. The Review set out to prevent such a 'constitutional crisis' occurring again. Paul sets out what has happened since the Review reported in December 2015.

This edition also includes the usual interesting updates from jurisdictions and a comparative study on the circumstances involved in dissolving legislatures, considering who has the power to dissolve a parliament or legislature, in what circumstances a legislature can be dissolved and whether any conventions or practices apply to dissolution.

Nicolas Besly announced in the previous issue that it would be his last as editor, following the publication of nine editions of *The Table*. I trust you will all share my sincere thanks to Nicolas for his work and dedication. I have enjoyed editing my first edition of *The Table*, and I am grateful to all those who have contributed articles and updates from across the Commonwealth. I look forward to future editions, and hope to be able to follow in my predecessor's footsteps in continuing to ensure that *The Table* is a valuable and interesting forum for the exchange of views and experiences across parliaments.

MEMBERS OF THE SOCIETY

Australia

House of Representatives

Robyn McClelland, Clerk Assistant (Committees) retired on 17 February 2017.

Queensland Parliament

Leanne Clare, First Clerk Assistant (Procedure) retired in December 2017.

Amanda Honeyman commenced as First Clerk Assistant (Procedure) in January 2018.

Victoria Legislative Council

Andrew Young, Clerk of the Legislative Council, became Acting Clerk of the Parliaments following the retirement of **Ray Purdey**, Clerk of the Legislative Assembly and Clerk of the Parliaments.

Western Australia Legislative Council

Dr Colin Huntly resigned as Clerk Assistant (Procedure) in January 2017. **Suzanne Veletta** rotated from the position of Clerk Assistant (Committees) to Clerk Assistant (Procedure) in January 2017. **Christine Kain** commenced as Clerk Assistant (Committees) in July 2017.

Canada

House of Commons

Charles Robert was appointed Clerk of the House of Commons on 20 June 2017, replacing **Marc Bosc**, Acting Clerk of the House since August 2014.

André Gagnon was confirmed as Deputy Clerk (Procedure), having been acting in the role since 2014.

Michel Patrice was appointed to the new position of Deputy Clerk (Administration) on 21 August 2017.

Pierre Rodrigue was appointed the Senior Principal Clerk of the new Parliamentary Information Directorate on 4 July 2017.

Senate

Charles Robert, former Clerk of the Senate and Clerk of the Parliaments was appointed Clerk of the House of Commons in July 2017. **Nicole Proulx**, who was previously Chief Corporate Services Officer, was appointed Interim Clerk of the Senate and Clerk of the Parliaments. Ms. Proulx retired in January 2018, and **Richard Denis**, from the House of Commons (where he served as the Deputy Law Clerk and Parliamentary Counsel), was appointed as Interim Clerk of the Senate and Clerk of the Parliaments and Chief Legislative Services Officer on 31 January 2018.

Michel Patrice, the Senate Law Clerk and Parliamentary Counsel, left the Senate in August 2017, taking the position of Deputy Clerk of Administration at the House of Commons.

Prince Edward Island Legislative Assembly

Marian Johnston retired from the services of the Legislative Assembly of Prince Edward Island on 31 December 2017 (appointed Clerk Assistant and

Clerk of Committees on 15 November 2001). Recently, she served as Chief Electoral Officer (Acting) for Prince Edward Island Elections from June–November 2017. She served on the executive of the Association of Clerks-at-the-Table in Canada from 2010–2013, and as President in 2012.

Quebec National Assembly

On 18 May 2017, the National Assembly appointed **Ariane Mignolet** as Ethics Commissioner, whose role is to oversee and ensure compliance with the National Assembly's code of ethics and conduct. Ms. Mignolet has previously occupied a number of positions in the Assembly's parliamentary affairs sector, including those of Parliamentary Procedure Adviser, Director of the Assembly Secretariat, Director of Parliamentary Procedure, Director of Parliamentary Procedure and Parliamentary Affairs and, as of 2011, Director General of Legal and Parliamentary Affairs.

François Arsenault, who was Director of Parliamentary Proceedings, was appointed Director General for Parliamentary Affairs. **Siegfried Peters**, who was Coordinator of the Parliamentary Affairs Division, was appointed Director of Legal and Legislative Affairs and Parliamentary Procedure.

Yukon Legislative Assembly

On 14 December 2017, **Floyd McCormick** notified the Speaker of the Legislative Assembly and the Members' Services Board of his intention to retire as Clerk of the Legislative Assembly. Mr. McCormick's last day in the office will be Friday 3 May2019.

Cyprus House of Representatives

Socrates Socratous became Acting Secretary-General on 1 March 2018.

India

Lok Sabha

Following the retirement of **Anoop Mishra**, **Snehlata Shrivastava** became Secretary General of the Lok Sabha on 1 November 2017.

Rajya Sabha

Desh Deepak Verma became the Secretary-General of the Rajya Sabha on 1 September 2017.

United Kingdom

House of Commons

John Sweetman CB TD (31 October 1930–25 March 2017) was a Clerk in the House of Commons for some 40 years. He will be remembered by many

Commonwealth colleagues from his time as Head of the Overseas Office in the 1980s, and particularly in Canada—he had the rare honour, which he greatly valued, of being elected as a member of the Association of Canadian Clerks at the Table. After his retirement from the House, as Clerk of Committees, in 1995, John maintained his interest in international parliamentary cooperation, travelling to many countries to advise on parliamentary procedures and processes.

John Sweetman was born in London and educated at Cardinal Vaughan School and St Catharine's College, Cambridge, where he gained a degree in law. He also rowed for the college and, as a committed and life-long Roman Catholic, was an active member of the Newman Society. Before university he spent two years in Gibraltar on National Service with the Royal Artillery. His military association continued with service in the Territorial Army until 1965. He was awarded the Territorial Decoration, of which he was justly very proud.

After graduating he joined the House of Commons service in 1956 (allegedly because he had heard that jobs there offered three months paid leave in the summer). John worked in the various procedural offices and was later involved in establishing the new system of departmental select committees introduced in 1979. He served as a Clerk at the Table for many years, including as Clerk of the Overseas Office and Clerk Assistant, before moving to his final role as Clerk of Committees. John was appointed a Companion of the Order of the Bath in 1991.

John's combination of amiability, diplomacy and willingness to speak directly won the trust and respect of Members. He was great company, enjoying the buzz of Westminster's bars - especially the Strangers' Bar, where the legendary "Breakfast Club", of which he was a co-founder with the Opposition Deputy Chief Whip Walter Harrison, used to meet. There was more than this to a natural conviviality: this kind of engagement with Members helped him keep in touch with their thinking and also helped ensure that Members realised that Clerks (not just John himself) were human and sensible, and could be dealt with as equals. His bonhomie was legendary, not only throughout Westminster, but also among the many parliamentarians he met during his long and distinguished career. His mischievous sense of humour was matched with an amazingly astute brain, which could get to the heart of people's problems, be they personal, social or procedural. His decisions were always measured, speedy and direct - and usually correct.

John was enormous fun to work with and to work for, with indecipherable handwriting, a booming voice and a hearty laugh. His generosity was legendary—colleagues recall that there was always a small, but well-stocked, fridge in his office. John was a loyal member of the Garrick Club for many years, where he regularly entertained his friends, and his popularity spanned

both Houses. He was a good listener, very approachable and considerate in the giving of his time to staff and Members alike, and making whoever he was talking to feel, at any given moment, that they were his top priority. He enjoyed immensely meeting visitors from overseas, moving easily from giving them sound procedural advice one minute to talking about cricket the next.

John is survived by his second wife, Celia, and their two sons, and by two children from his first marriage to Sue.

House of Lords

Sir David Beamish, Clerk of the Parliaments, retired on 15 April 2017. **Ed Ollard**, formerly Clerk Assistant, was appointed his successor. Sir David joined the House of Lords administration in 1974, and held many roles, including being seconded to the Cabinet Office as Private Secretary to the Leader of the House and Government Chief Whip from 1983–86; Clerk of Committees and Clerk of the Overseas Office from 1995–2002; Reading Clerk from 2003–07 and Clerk Assistant from 2007–11.

Simon Burton was appointed Clerk Assistant, and **Jake Vaughan** was appointed Reading Clerk.

Brendan Keith, Registrar of Lords' Interests, retired in April 2017. His successor as Registrar is **Tom Wilson**.

Michael Addison John Wheeler-Booth KCB, formerly Clerk of the Parliaments, was born on 25 February 1934 and died peacefully at home on 26 March 2018, aged 84.

Sir Michael devoted most of his working life to the service of the House of Lords in a career spanning 37 years, becoming a Clerk in 1960 and rising to be Clerk of the Parliaments (head of the administration and chief procedural adviser) from 1991 to 1997. In retirement he continued to undertake public service and enjoyed a second career as a senior member of Magdalen College, Oxford, where he had been an undergraduate.

He entered the service of a House composed overwhelmingly of hereditary members, and left just before legislation was introduced to exclude all but 92 of them. A House which was relatively passive on his arrival was, by any measure, extremely active and far more influential by the time he came to leave it.

He had risen to prominence early in his career, being seconded to government service in 1965 as Private Secretary to the Leader of the House and Government Chief Whip where his role was to manage the Labour government's business in the House and to advise it on all aspects of Lords procedure. When in 1967 the inter-party conference on Lords Reform was set up by the Wilson government, Wheeler-Booth was an obvious choice to be one of its two secretaries. Richard Crossman, who chaired the conference, thought highly of him. The legislation embodying the conference's recommendations failed to pass the Commons

in 1969, talked out at committee stage by an alliance of members from both right and left wings led by Enoch Powell and Michael Foot. Thirty years later, Wheeler-Booth was to return to the issue of Lords reform when, by then retired from the service of the House, he was made a member of the Royal Commission set up in 1999 under the chairmanship of Lord Wakeham. Courageously, the Commission recommended that an element of the House should be elected but despite the efforts of the Coalition government in 2012 there was to be no further progress on major reform in Wheeler-Booth's lifetime.

Returning to parliamentary service in 1969, his capacity for innovative thinking came to the fore once again at the time of the United Kingdom's accession to the EEC (now EU), when both Houses had to consider how to scrutinise legislation emanating from Brussels. Wheeler-Booth was clerk to the committee chaired by Lord Maybray-King, former Commons Speaker, entrusted with this task for the Lords. The terms of reference, structure and working methods of the resulting Select Committee on the European Communities and its sub-committees (initially five, soon increased to seven) were largely his brainchild and he was its first clerk from 1973 to 1983. Its scrutiny reports were widely admired in other jurisdictions and the EU Commission. His work with this committee leaves a lasting legacy, for he showed that the House of Lords was well suited to investigative committee work, drawing on the experience of life and hereditary peers alike—something which is now taken for granted but which then simply did not happen. Later, as Clerk of the Parliaments, one of his first acts was to propose the appointment of a committee (chaired by the late Earl Jellicoe) which reviewed the committee work of the House and led to a significant expansion of the use of investigative committees. As Clerk of the Parliaments he devoted himself to improving the efficiency and effectiveness of the House and it was on his watch that major reforms to financial administration and employment of staff were carried through in the 1990s. He was knighted in 1994.

Michael Wheeler-Booth was born in 1934, the son of the Revd Addison Wheeler and Angela Wheeler-Booth (née Blakeney-Booth). His parents divorced when he was eight years old and he was brought up by his mother—to whom he was devoted, and next to whose grave he is now buried in Holywell Cemetery, Oxford. Educated at Leighton Park School, he won an exhibition to Magdalen College, Oxford which he took up after national service as a midshipman in the RNVR, serving in the Mediterranean Fleet—an experience he thoroughly enjoyed and often recalled with affection. He took his degree in Modern History.

From his earliest days he showed care for the well-being of others, both friends and colleagues. He was a convivial and a generous host, equally comfortable in entertaining junior colleagues or his political masters. At the time of his

retirement, Roy Jenkins (Lord Jenkins of Hillhead) described him as "a figure of youth, gaiety and flair". He loved opera, surrounded himself with books (they were still being found in his old office over ten years after he had left it) and had a prodigious memory for the Journals of the House of Lords—gained from his two tours of duty as Clerk of the Journals in the early 1970s and late 1980s. He wore, lightly, a slightly academic approach to his work, becoming one of the early members of the Study of Parliament Group, its chairman from 1984 to 1987 and its president from 2004 to 2009. In 1989 he contributed the House of Lords chapter to *Parliament*, by Prof JAG Griffith and Michael Ryle.

An energetic man—he was a strong swimmer whether in the sea or at the Lansdowne Club—he brought this energy to his work and to his expectations of others. He positively spawned activity, both for himself and for his colleagues. Experiencing declining mobility in his last few years, he retained his mental agility and interest in the concerns of others.

In 1982 he married Emily Smith, later the author of several children's books and at that time a lawyer with the Dairy Trade Federation, whom he had first encountered after she had given evidence to one of his sub-committees. He threw himself with enthusiasm into family life with Emily and their three children (Kate, a vet, Charlotte, who works in banking, and Freddie, an engineer) and grandchildren, retiring finally to Sandford St Martin in Oxfordshire where he had long owned a house.

Retirement when it came in 1997 did not come easily to him, neither was it welcomed. Fortunately other opportunities quickly presented themselves—both academic and practical. In 1998–99 he served as a member of the Commission on the Welsh National Assembly Standing Orders, thus beginning a lasting involvement with Welsh devolution which was enjoyable for him and profitable for Wales. His conviction that Wales needed to be bolder in shaping its own constitutional future started then, and found fruition in his membership of the Commission chaired by Lord Richard that reported in 2004 on the deficiencies of the Welsh devolution settlement. The incongruity of Michael Wheeler-Booth walking up Merthyr Tydfil High Street in a Panama hat on his way to a Richard Commission meeting is etched in several memories, but this quintessential Englishman provided a challenge that Wales needed. Up until his death, he interested himself in Welsh affairs and remained an exacting, but always supportive, friend of many active in Welsh political development.

Alongside his work in Wales and with the Wakeham Commission came, providentially, an opportunity to engage with the academic world as Waynflete Lecturer and subsequently Special Lecturer in Politics at Magdalen College from 1998 to 2009. In this capacity he organised an annual series of seminars, open to undergraduates and graduates alike, to which he invited the great and the good to speak. They were very popular. His beloved Magdalen made him

an Honorary Fellow in 2003 and his funeral service took place in Magdalen College Chapel on 12 April.

National Assembly for Wales

Dame Claire Clancy, Clerk and Chief Executive of the National Assembly, retired in April 2017. The new Clerk and Chief Executive, **Manon Antoniazzi,** was welcomed to the Assembly in Plenary session on 2 May 2017.

Zambia National Assembly

Doris K K Mwinga retired as Clerk of the National Assembly on 18 May 2017. **Cecilia Nsenduluka-Mbewe** was appointed as her successor.

Cecilia Sikatele was appointed Deputy Clerk (Administration) on 7 December 2017

ARCHIBALD MILMAN AND THE 1894 FINANCE BILL

COLIN LEE

Principal Clerk, UK House of Commons[1]

Introduction

The procedures of the House of Commons for authorising taxation and expenditure have for several centuries maintained a distinct character. As the eighteenth century Clerk of the House John Hatsell noted, the House of Commons have imposed a series of "rules and restrictions upon themselves" in order "that they may not, by sudden and hasty votes, incur expenses, or be induced to approve of measures, which might entail heavy and lasting burthens upon themselves and their posterity".[2] This article examines the pressures placed on these rules and restrictions by the legislation to give effect to one of the most significant and far-reaching Budgets of the Victorian era, that introduced by Sir William Harcourt, the Chancellor of the Exchequer, on Monday 16 April 1894. It considers this episode in part from the perspective, and through the writings, of Archibald Milman, Clerk Assistant of the House of Commons at the time.

The 1894 Budget has been considered in depth by historians, most notably in the work of Professor Martin Daunton relating to the development of that Budget and its wider significance.[3] This account centres on the passage of the legislation to give effect to the measures of that Budget and the procedural issues that arose. In doing so, it also seeks to shed light on Milman's relationship with his fellow Clerks, most notably William Ferguson-Davie, Clerk of Public Bills at the time, and with politicians, most notably Harcourt as Leader of the House of Commons as well as Chancellor of the Exchequer.

The sources available on the passage of the 1894 Finance Bill are exceptionally rich and varied. The published records of debate can be supplemented by

[1] The author is indebted to Sir William McKay and Professor Geoffrey Wood for comments on an earlier draft of this article.

[2] J Hatsell, *Precedents of Proceedings in the House of Commons under Separate Titles with Observations* (4 vols, 1818 edition), III.176

[3] M J Daunton, "The Political Economy of Death Duties: Harcourt's Budget of 1894", in N Harte and R Quinault, eds, *Land and Society in Britain, 1700–1914: Essays in Honour of F M L Thompson* (Manchester, 1996), pp 137–181; M Daunton, *Trusting Leviathan: The Politics of Taxation in Britain 1799–1914* (Cambridge, 2001), especially ch 8. See also B Mallet, *British Budgets 1887–88 to 1912–13* (London, 1913), pp 77–94; A G Gardiner, *The Life of Sir William Harcourt* (2 vols, London, 1923), II.280–303; D Brooks, *The Destruction of Lord Rosebery: From the Diary of Sir Edward Hamilton 1894–95* (Gloucester, 1986), pp 13–36.

newspaper accounts and the parliamentary sketches of Henry Lucy.[4] The papers of Sir William Harcourt in the Bodleian Library include letters and memoranda relating to the Budget as well as correspondence with Milman on this and other matters from the same period. The official papers of Edward Hamilton, Head of the Finance Division of the Treasury, cover several aspects of the Budget and the Finance Bill.[5] Inland Revenue papers of the time include several early drafts of the Bill.[6] Papers prepared by Milman and by Ferguson-Davie, and some exchanges between them, are held in the House of Common Journal Office.[7] Insight into the preparation of the Budget and the passage of the Finance Bill is available from two fascinating diaries: the first is that of Lewis Harcourt, the Chancellor's son, private secretary and in effect political adviser;[8] the second is Hamilton's.[9]

"We, in this office, know nothing": the rules on Budget Bills prior to 1894

The procedural rules relating to Budget Bills and their founding resolutions posed a number of difficulties. The procedural restrictions on taxation measures were of long-standing and were seen of great importance, but proved not as restrictive in practice as might have been expected. As early as 1667, the House had adopted a rule that proposals for "any public aid or charge upon the people" had first to be considered in a Committee of the whole House, a rule seen as "wise and prudent" by Hatsell and a "strict … practice, without any exception" by Erskine May.[10] Each session from the eighteenth century, two Committees of the whole House were established—"the one for considering the quantum of the supply granted to the Crown for the purposes of the state; and the other, to

4 The online Historic Hansard is very patchy for 1894, and original volumes have been consulted as necessary. References to *The Times* are via The Times Digital Archive. All other newspapers have been accessed via the British Newspaper Archive. All articles without a year given are from 1894. H W Lucy, *A Diary of the Home Rule Parliament 1892–1895* (London, 1896) (hereafter Lucy, *Home Rule*).

5 The National Archives (hereafter TNA), T 168/25 and T 168/31

6 TNA, IR 63/2, Papers on Death Duties, and IR 63/3, Finance Bill & Act 1894

7 House of Commons, Papers of the Clerk of the Journals (hereafter PCJ), Miscellaneous Precedents and Memoranda on Procedure (hereafter Memoranda), Volume I, fos 50–67v and Volume 4, fos 213–15

8 Bodleian Library (hereafter Bodl.,), Harcourt MS 404–409, Lewis Harcourt diaries, March to July 1894. All references are given with the date (without year) and page reference.

9 There are two published versions of the diary: D Brooks, ed, *The Destruction of Lord Rosebery: From the Diary of Sir Edward Hamilton, 1894–1895* (London, 1996) and D W R Bahlmann, ed, *The Diary of Sir Edward Walter Hamilton 1885–1906* (Hull, 1993). The earlier edition is fuller for the events covered in this article. References to the diary appear in the form HD, followed by the date (with no year given where the reference is to 1894) and page references as appropriate from the two published editions in the form "Br" and "Ba" followed by a page number.

10 Hatsell, *Precedents*, III.166, 176–77; *Treatise* (1st Edition, 1844), p 274

find out ways and means for raising that supply".[11] The amount to be raised by taxes in the Committee of Ways & Means for the service of a particular financial year was not to exceed the sum to be granted in the Committee of Supply, and thus the Committee of Ways & Means was not to consider taxes "which are not to be supplied towards the service of the year", although taxes for one year could be extended "prospectively for subsequent years".[12] Originally, new taxes were considered in a separate Committee of the whole House, but the rule about prospective use, when coupled with use for the service of the year, meant that that distinction had largely ceased by the late nineteenth century.[13] The core procedural purpose of the Budget was to demonstrate that the taxes raised were necessary to meet the planned expenditure of the year.[14] Measures for the reduction or abolition of a tax did not need the authority of a resolution of the Committee of Ways & Means, but for convenience, and since they invariably formed part of the core purpose just described, those resolutions usually extended to include reductions and repeals.[15]

Prior to 1860, the assumption was that more than one Bill would give effect to the resolutions. As May put it, the resolutions "form the groundwork of *bills* for accomplishing the financial objects proposed by the minister".[16] In that year, the House of Lords rejected a Paper Duties Repeal Bill.[17] The Commons responded, in May's words, "judiciously … not by vain remonstrances, but by an assertion of its paramount authority in the imposition and repeal of taxes, at once dignified and practical". At the heart of the response was the decision, first given effect in 1861, to embody all tax measures for the service of the year in a single Bill so that they were able "to repel the recent encroachments of the Lords, and to vindicate their own financial ascendancy".[18] This decision did not go uncontested in its early years, but the practice of a single Customs and Inland Revenue Bill soon ceased to be a matter of controversy.[19]

There was a clear prohibition of the inclusion of non-financial matter within such a Bill, and both Hatsell and May had been fierce in their opposition to

11 Hatsell, *Precedents*, III.193
12 Hatsell, *Precedents*, III.196–99; *Treatise* (1st Edition), p 336
13 Hatsell, *Precedents*, III.199; *Treatise* (1st Edition), pp 335–36
14 *Treatise* (1st Edition), p 331
15 Hatsell, *Precedents*, III.200–01; *Treatise* (1st Edition), p 333
16 *Treatise* (1st Edition), p 331; emphasis added
17 For accounts of the circumstances, see S Buxton, *Finance and Politics: A Historical Study, 1783–1885* (2 vols, London, 1888), II.210–14; Daunton, *Trusting Leviathan*, pp 169–71; C Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (Cambridge, 2009), pp 62–63
18 *Treatise* (5th Edition, 1863), pp 543–44. See also Stebbings, *Victorian Taxpayer*, pp 63–64
19 A Todd, *On Parliamentary Government in England* (2 vols, 2nd Edition, 1887), I.812–15

such "tacking".[20] But the limitations on financial matters themselves were not hard and fast. As Ferguson-Davie put it, "Speaking generally, the Budget bill … embodies the resolutions which have been voted in Committee of Ways & Means, and agreed to by the House. I know of no limitation to the provisions of this bill, beyond that the financial arrangements contained in it must be for the financial year, and must be covered by the resolutions."[21] From 1863, soon after the move to a single Budget Bill, the founding resolutions for the Bill included a motion about the Amendment of the Law—"That it is expedient to amend the law as to the Customs and Inland Revenue"—as a result of which, as the Public Bill Office affirmed in 1891, "all amendments for the reduction of any tax whatever are in order".[22]

The challenges of interpretation were compounded by the fact that Clerks, along with the House, received little notice of the content of the resolutions. Ferguson-Davie noted that "We, in this office, know nothing of the Budget proposals before they are disclosed in Committee, and cannot therefore be answerable if in some instances resolutions are submitted to the Committee of Ways & Means which we do not consider ought properly to form part of the Ways & Means resolutions, and which are subsequently embodied in the Budget bill, or form separate bills".[23] These problems were to prove acute faced with the measures proposed in Harcourt's 1894 Budget.

"The labouring oar": Harcourt's path to the leadership of the Commons

Sir William Harcourt was the pre–eminent Liberal politician of his generation and at the age of 65 in early 1894 he was near his political zenith. It was his misfortune to remain in the shadow of William Gladstone until the older man's retirement as Prime Minister in the spring of 1894 at the age of 84 and then to find that circumstances conspired to enable the premiership to skip a generation to the 46-year old Archibald Primrose, the fifth Earl of Rosebery. Harcourt had entered the House in 1868, served as Home Secretary in Gladstone's second government from 1880 to 1885 and Chancellor in the short-lived third administration of 1886. In the subsequent years of Opposition, he proved a

20 Hatsell, *Precedents*, III.221–22; *Treatise* (1st Edition), pp 323–24

21 TNA, T 168/31, Letter from Ferguson-Davie to Hamilton, 3 April 1894

22 On the evolution of the resolution, see CJ (1863–64) 185 and CJ (1873) 177. For the quotation from the Public Bill Office ruling of 1891, with the approval of the Chairman and Ways & Means, see PCJ, Memoranda, Vol 4, fos 50–53, Memorandum on Budget Bills: Amendments moved on various stages of Budget Bills, Francis Jenkinson, Second Clerk Assistant, 20 May 1897.

23 TNA, T 168/31, Letter from Ferguson-Davie to Hamilton, 3 April 1894

capable deputy to Gladstone.[24]

With the 1893 Session dominated by the Irish Home Rule Bill, Harcourt's 1893 Budget was somewhat anti–climactic—"before the smallest audience for many years gathered on a similar occasion"—with insufficient parliamentary time available for major reforms, although he did increase the rate of income tax by a penny.[25] Harcourt did little to disguise his sense of distance from the development of the Home Rule Bill, and he had a major falling out with John Morley, the Chief Secretary to Ireland, over the financial provisions.[26]

Gladstone had defied initial expectations that he might step down following the rejection of the Irish Home Rule by the House of Lords, but formally notified the Queen of his intention to resign on 27 February 1894 so that her Private Secretary could take soundings on the nomination of a successor.[27] There was an expectation within the Liberal Party in the country that Harcourt would be chosen. Harcourt thought his trump card against Rosebery would be "the great difficulties and objections which stood in the way of a Prime Minister in the Liberal Party in the House of Lords" and the support for that position which he expected to receive from Morley as the Gladstonian standard bearer.[28] Harcourt prepared a paper arguing that "the House of Commons makes and unmakes a Govt. and has a right to expect that its chief representative should be directly within its sphere of influence and personally accountable to it".[29] He soon found that this argument cut little ice with his colleagues. All of Gladstone's other senior colleagues, including Morley, proved willing to rally to Rosebery. Backbench MPs were also disappointed by Harcourt's 1893 Budget, so that, although some Radicals opposed a premier in the Lords, the assessment of Hamilton, who was Rosebery's closest friend, was that "the bulk of the Liberals of varied shades were all for Rosebery".[30]

Faced with losing out on the premiership, Harcourt sought to set conditions on being Leader of the House of Commons under Rosebery.[31] Hamilton's

[24] The only biography is A G Gardiner, *The Life of Sir William Harcourt* (2 vols, London, 1923). There is an excellent character sketch in R Jenkins, *The Chancellors* (London, 1998), pp 37–65. On his qualities acting as Leader of the Opposition in Gladstone's absence, see Lucy, *Home Rule*, p 86.

[25] Lucy, *Home Rule*, pp 115–17. The reform of the death duties was considered in 1893, but not pursued: see TNA, T 168/31, Memorandum on Death Duties, 6 March 1893. This was a joint memorandum agreed between the Inland Revenue and Sir Henry Jenkyns: TNA, IR 63/2, p 254.

[26] Gardiner, *Harcourt*, II.218–25.

[27] H C G Matthew, *Gladstone 1809–1898* (Oxford, 1997), pp 600–07

[28] Bodl., Harcourt MS 224, fos 22–22v, Memorandum by Harcourt, 2 March 1894

[29] *Ibid*, fos 23–26, Memorandum by Harcourt, 2 March 1894

[30] Gardiner, *Harcourt*, II.258–75; Brooks, *Destruction*, pp 2–5; HD, 22 Feb (Br 111, Ba 241–42), 25 Feb (Br 111–12, Ba 243), 1 March (Br 112–13)

[31] Bodl., Harcourt MS 224, fos 22–22v, Memorandum by Harcourt, 2 March 1894; Bodl., Harcourt MS 224, fos 23–26, Memorandum by Harcourt, 2 March 1894

assessment of Harcourt's conditions was that they were "very stiff" and would make Harcourt "*de facto* Prime Minister". Rosebery told Hamilton that he would decline the Premiership on such terms.[32] Rosebery then accepted the commission to form a government, forcing Harcourt into a corner acknowledged by Harcourt in a rather self–pitying memorandum:

> "I think it will be recognised that the labouring oar and the port of danger will be in the House of Commons. How far I can succeed in so difficult a task for which I sincerely feel very unequal must depend upon the support that I can look for from the united action in the Cabinet and from the party in the House of Commons".[33]

Despite his protestations, Harcourt assumed the leadership of the Commons alongside the chancellorship.

"I have consulted the authorities": Milman and Harcourt's leadership

Milman had cultivated Harcourt before he assumed the leadership. He sent Harcourt a copy of his memorandum on reforms to improve the working of the closure and to limit the abusive multiplication of amendments to bills in June 1893.[34] This memorandum was also sent to Morley,[35] but Milman was perhaps more hopeful of engagement with Harcourt. In early January 1894, Milman looked to Harcourt to support his ideas for limiting the length of the debate on the Address, sending him a paper on the subject "which I drew some years ago".[36] Milman proposed according priority to the amendment to the Address of the largest Opposition party and concluding the debate on the Address, which had taken 10 days in 1893 and 16 days in 1887, after only three days.[37] Having assumed the leadership, Harcourt soon found himself in need of Milman's advice.

At the opening of the session, they were both caught up in a row about the ballot for Private Members' Bills. The Speaker on his own authority had seemingly directed that Members ought to indicate the Bill they wished to support at the time they entered the ballot. The Irish Nationalist Thomas Sexton, who the previous year had felt that he had suffered an insult at Milman's

32 HD, 21 Feb (Br 110, Ba 240)

33 Bodl., Harcourt MS 224, fos 31–32, Memorandum from Harcourt, 3 March 1894

34 Bodl., Harcourt MS 190, fos 6–7, copy of memorandum. On the preparation of this and other memoranda by Milman, see C Lee, "Archibald Milman and the 1893 Irish Home Rule Bill", *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments*, Volume 84 (2016), pp 28–63 (hereafter "1893 Irish Home Rule Bill"), pp 33–34.

35 C Lee, "1893 Irish Home Rule Bill", p 44

36 Bodl. Harcourt MS 190, fos 31–31v, Milman to Harcourt, 4 January 1894

37 Bodl. Harcourt MS 190, fo 123

hands,[38] approached Milman at the Table to enter his name in the ballot for Private Members' Bills. Milman then informed him, in Sexton's words, "that I should add to my name the title of the Bill I proposed to introduce". Sexton argued that Milman's treatment of him and other Irish Members "would have the effect of depriving us of the chance of the Ballot this year". In the Speaker's absence through ill health, Harcourt initially sought to defend the change,[39] but the next day Harcourt and Milman decided on a different approach, as Harcourt's son recorded:

> "Milman … came to luncheon and talked over the question of the Private Members balloting and he and Chex [Harcourt] arranged the resolution for this afternoon which practically throws over the Speaker's announcement."[40]

The solution agreed by Harcourt and Milman was outlined to the House that afternoon, Harcourt explained that "having had the advantage of the advice and assistance of the authorities of the House", he proposed "that we should recur to the old Rule, or rather to the existing Rule, and that the Member who goes to the Ballot need not give his Motion or the name of his Bill beforehand".[41] By this means, and with Milman's assistance, the matter "was amicably settled".[42]

This procedural squall was soon over-shadowed by a larger political problem. On the same evening as the argument in the Commons over the ballot, Lord Rosebery made what Lewis Harcourt saw as "a very bad and foolish blunder" in the Lords. The new premier expressed himself "in entire accord" with Lord Salisbury's statement that "before Irish Home Rule is conceded by the Imperial Parliament England, as the predominant Member of the partnership of the Three Kingdoms, will have to be convinced of its justice and equity".[43] Harcourt was "very exercised" by this statement, which his son thought would do "immense harm and be seized on by the Irish & Tories as meaning the abandonment of H.R. for this Parliament".[44]

The next day, Morley "tried to explain away Rosebery's blunder of last night but with very indifferent success".[45] The radical Henry Labouchère then moved an amendment to the Address calling for the powers of the Lords to reject Bills to be curbed. Harcourt opposed the amendment, which went far beyond Government policy, but after he sat down no-one else rose to speak so that the House proceeded to a division in a thin House and the amendment was passed

38 C Lee, "1893 Irish Home Rule Bill", pp 49–56
39 HC Deb, 12 March 1894, cols 129–36
40 Bodl., Harcourt MS 405, 13 March, p 88
41 HC Deb, 13 March 1894, cols 156–63
42 Bodl., Harcourt MS 405, 13 March, p 89
43 *Ibid*, 13 March, p 86; HL Deb, 12 March 1894, col 32
44 HD, 13 March (Br 122, Ba 251); Bodl. Harcourt MS 405, 13 March, p 86
45 Bodl., Harcourt MS 405, 13 March, p 89

by two votes, with far more Liberal backbenchers voting for the amendment than with the Government.[46] Lewis Harcourt was "wildly delighted" by the result,[47] but his father was, perhaps unsurprisingly, "rather grave".[48] He had suffered a defeat on the motion on the Address in response to the Queen's speech within his first week as leader. The Commons Cabinet Ministers met in Harcourt's office that evening and decided to ask the House to vote down the Address and move it in an alternative form. It appears that Milman was either present at the meeting or available, because Lewis Harcourt recorded that "they had Milman in consultation and he is to draft before tomorrow morning the new form of address with verbal alterations to put it in order".[49] These alterations were to overcome the rule of the House that no question "shall be offered that is substantially the same as one on which their judgement has already been expressed in the same session".[50]

Lewis Harcourt visited Milman the next morning "and got from him the form he approves for the new address" which Harcourt was to move.[51] Milman had written to Harcourt confirming the solution was possible: "I enclose a variation on the Motion for an Address which will make the question technically a different one from that negatived."[52] Harcourt made a statement to the House, again making clear his reliance on Milman's advice—"I have consulted the authorities of the House as to the method in which it is possible to deal with the situation in which we find ourselves"—and outlining the proposal to vote down the amended Address and then move the new plan in variant form. Arthur Balfour, as Leader of the Unionist Opposition, had some fun at the Government's expense, but the new motion was later moved and agreed with little debate.[53]

The "ruin of the country": the making of the 1894 Budget

The 1880s and early 1890s had seen a sharp rise in public expenditure, and Gladstone's retirement had been precipitated in particular by his concerns at increasing naval expenditure, which Harcourt had initially resisted but to which he then consented. Gladstone was convinced that increases of the kind

46 HC Deb, 13 March 1894, cols 163–208; Lucy, *Home Rule*, pp 318–19; Bodl., Harcourt MS 405, 14 March, p 97

47 Bodl., Harcourt MS 405, 13 March, pp 90–91; Bodl., Harcourt MS 406, 15 March, p 16

48 Bodl., Harcourt MS 405, 13 March, pp 90–91

49 *Ibid*, 13 March, pp 91–4

50 *Treatise* (10th Edition, 1893), p 286

51 Bodl., Harcourt MS 405, 14 March, p 98

52 Bodl., Harcourt MS 224, fos 72–73, Milman to Harcourt, 15 [*recte* 14] March 1894

53 HC Deb, 14 March 1894, cols 257–63, 294–95

envisaged would endanger "sound finance" and entail "unjust taxation".[54] The increase in spending created a gap between proposed expenditure and revenue on current policy of £4.5 million which Harcourt had to fill.[55]

To ensure a balanced Budget, Harcourt focused on four measures. The first of these was not a tax change, but a set of reforms relating to the financing of naval expenditure explored in the next section of this article. The other three were tax measures. One of these was a substantial increase in alcohol duties, designed to yield £1.4 million.[56] The other two measures within his sights related to income tax and death duties. These were altogether more radical in nature, laying the foundations of a recognisably modern, progressive tax system.[57] At their heart lay the idea of graduation, the seemingly simple proposition that those with greater amounts subject to a tax should not just pay more for that reason, but should also pay a higher rate of taxation.

Liberal support for graduated taxation was growing, and the case was clearly set out in a letter from 94 Liberal MPs to Harcourt on 12 January 1894, which argued that "the principle of adjusting the burden of taxation according to the ability to bear it is flagrantly violated in our present fiscal arrangements".[58] This theme was taken up by Harcourt in his Budget, when he was to say that "the guiding principle of taxation is that the liability should be imposed where it shall be least heavily felt".[59] Harcourt secured a progressive element to income tax changes, by increasing the rate of income tax by a further penny from seven pence to eight pence—estimated to yield almost £1.8 million—but using nearly £1.3 million of the additional income to create abatements and reliefs, especially for taxpayers with smaller incomes so that the burden fell "more lightly on the humbler incomes".[60]

His main reforms, however, centred on death duties. Graduation was one element of this package, but which also relied upon equalising the differential treatment of personal property—referred to as "personalty"—and land—"realty"—the latter of which was felt by many Liberals to be cosseted by the

[54] Matthew, *Gladstone*, pp 600–07; Gardiner, *Harcourt*, II.244–57; P Smith, 'Ruling the Waves: Government, the Service and the Cost of Naval Supremacy, 1885–99', in P Smith, ed, *Government and the Armed Forces in Britain 1856–1990* (London, 1996), pp 21–52, at pp 38–47; HD, 22 February (Ba 241). Hamilton's assessment was that "were it not for Mr G.'s strong feeling anent the increase of the Navy I am sure he would not be going now": HD, 20 Feb (Br 110, Ba 240).

[55] HC Deb, 16 April 1894, col 479

[56] HD, 1 April (Br 128; Ba 256)

[57] Daunton, *Trusting Leviathan*, p 323

[58] Daunton, "Political Economy", pp 150–152, 155–56; Daunton, *Trusting Leviathan*, pp 238–44, 46, citing Bodl., Harcourt MS 122, fos. 21–27, Letter from Liberal MPs to Harcourt, 12 January 1894.

[59] HC Deb, 16 April 1894, col 507

[60] HD, 1 April (Br 128, Ba 256); HC Deb, 16 April 1894, cols 499–502; HC Deb, 10 May 1894, col 900

complex system of death duties as they then stood. Harcourt's proposals caused conflict in the Cabinet, not least with Rosebery, who confided to Hamilton that he feared that they would "alarm people considerably, and scare away from the party the few wealthy men left".[61] Hamilton recorded that Rosebery "thinks that the Government will probably come to grief over the Budget; and that Harcourt will wish to retire in any case after it, if by any chance it should be carried".[62] Harcourt faced continued resistance from Rosebery and other Cabinet ministers on the scale of graduation, Rosebery arguing that the proposals could lead to an unfortunate cleavage between "the classes and masses".[63] Harcourt was "much amused at the high Tory line taken" by Rosebery. Each then backed down, Rosebery withdrawing his objections on the principle of graduation, and Harcourt subsequently removing the highest rates of duty.[64] Relations between Prime Minister and Chancellor of the Exchequer were, however, fractured almost beyond repair. They did not have a single bilateral meeting about the Budget and Finance Bill before the Bill's passage in the Commons was concluded, and only conversed in Cabinet.[65] On the day of the Budget, Rosebery's assessment was that Harcourt's Budget would be "the ruin of the country, by breaking up big properties & driving away capital".[66]

The initial reception of the Budget confounded Rosebery's fears. Although the speech was "rather long", lasting over two and a half hours, it "was listened to most attentively by a very crowded house"[67] It was admired for the quality of its exposition, but also for the measures themselves.[68] The most immediate adverse reaction was to the increases in alcohol duties, which Harcourt allayed by announcing that those increases would only be for a year, rather than having permanent effect, which won over wavering Irish support.[69] The Opposition

61 Bodl., Harcourt MS 406, 15 March, pp 13–14; HD, 15 March (Br 124, Ba 252); Bodl., Harcourt MS 406, 23 March, pp 60–61; HD, 28 March (Br 127, Ba 253)

62 HD, 29 March (Br, 127, Ba 254)

63 TNA, T 168/31, Memorandum of 2 April 1894, printed 3 April (also available at Bodl., Harcourt MS 122, fos 128-129); Bodl., Harcourt MS 406, 2 April, pp 89, 91; HD, 2 April (Br, 128-29, Ba 257); Bodl., Harcourt MS 406, 3 April, p 93; Bodl., Harcourt MS 407, 4 April, p 2; HD, 3 April (Br 129, Ba 257); HD, 4 April (Br 130, Ba 258)

64 TNA, T 168/31, Memorandum of 2 April 1894, printed 3 April (also available at Bodl., Harcourt MS 122, fos 128–129); Bodl., Harcourt MS 406, 2 April, pp 89, 91; HD, 2 April (Br, 128–29, Ba 257); Bodl., Harcourt MS 406, 3 April, p 93; Bodl., Harcourt MS 407, 4 April, p 2; HD, 3 April (Br 129, Ba 257); HD, 4 April (Br 130, Ba 258); Bodl., Harcourt MS 407, 5 April, p 10; HD, 7 and 8 April (Br 131, Ba 258)

65 HD, 12 July (Br 155, Ba 270)

66 HD, 16 April (Br 133, Ba 260)

67 HD, 15 April (Br 133, Ba 259); Bodl., Harcourt MS 407, 16 April, p 48

68 Bodl., Harcourt MS 407, 16 April, p 48

69 *Ibid*, 17 April, p 52; HD, 8 May (Br 139); Bodl., Harcourt MS 407, 19 April, p 62; HC Deb, 8 May 1894, col 627

took the then unprecedented step of opposing the Budget Bill by supporting a backbench reasoned amendment on second reading, but the Bill was approved with a majority of 14.[70] This led opponents of the Bill to a new strategy, focused on fighting the Bill in its detail, probing points of weakness and preventing other legislation from being proceeded with.[71] This approach was to contribute to the acute procedural problems posed by the proposals to give effect to the Budget measures.

The "abominable machinery" and the scope of a Budget Bill

The first procedural dispute related not to its most high-profile elements, but to the proposal to dismantle part of Harcourt's fiscal inheritance from his Unionist predecessor Goschen. In 1889, the Government had adopted the two-power standard, a commitment to maintain the strength of the Navy equal to the combined strength of any two other navies. That commitment gave rise to a massive shipbuilding programme, given legislative effect through a Naval Defence Bill, which provided for the programme to be funded not through the Estimates, but by borrowing £10 million with the principal to be paid in instalments up to 1896 as a direct charge on the Consolidated Fund akin to the national debt, with only the interest being paid from the annual Navy Estimate.[72]

Hamilton was horrified at this "great constitutional innovation", which he viewed as "mortgaging a part of the taxes too far ahead for expenditure of a kind over which Parliament likes to have annual control".[73] Hamilton's Gladstonian concern about fiscal orthodoxy was soon taken up by Gladstone himself, who saw it as a fundamental departure from the principle that the expenditure of a year should be met from the revenue of that year, with the spending subject to scrutiny as a part of the annual estimates.[74] Harcourt's dislike of the measure was just as great, accentuated by the accusation, in his words, that the "this Bill was specially constructed in order that security might be taken against me in the future", in other words as a safeguard against future spending reductions if he were again Chancellor of the Exchequer.[75]

The extent of Gladstone's profound opposition to the measure was made clear in a speech he gave at Hastings on 17 March 1891. May, like Hatsell before him, had viewed annual control over expenditure as at the foundation

70 HC Deb, 10 May 1894, cols 884, 901; HD, 7 May (Br 139)
71 HD, 17 April (Br 134, Ba 260), 19 April (Br 134)
72 P Smith, 'Ruling the Waves', *passim.*
73 Daunton, "Political Economy", p 149. See also HD, 15 February 1889 (Ba 91)
74 HC Deb, 4 April 1889, cols 1622–31
75 HC Deb, 17 May 1889, col 425

of English liberties.[76] Gladstone was influenced by May's writings, especially his *Constitutional History*,[77] and he echoed May in arguing that the system of financial control "is a powerful leverage by which English liberty has been gradually acquired". He suggested that "if the House of Commons can by any possibility lose the power of the control of grants of public money, depend upon it your very liberty will be worth very little in comparison". He argued that the 1889 Act struck at the heart of that system of control, "taking out of the hands of the Parliament of the future the power of determining what the public charge of these years is to be". His speech had been met with cheers and laughter, but these turned to hisses and shouts of "Shame" when he made his final criticism, that repeal would require the consent of the Upper House, so that the Commons "cannot diminish it by a single farthing without the sound Tory majority that rules the House of Lords".[78]

In the circumstances, it can hardly have come as a surprise to Hamilton to be told by Harcourt after the 1892 General Election, even before he was formally appointed as Chancellor of the Exchequer, that one of his priorities would be "a repeal of all Goschen's acts for special loans".[79] The change was considered for the 1893 Budget, but not included, in part because Parliamentary Counsel Sir Henry Jenkyns told Hamilton it would need a separate Bill.[80] However, it became a central component of the 1894 Budget, not least because it achieved financial purity and deficit reduction at the same time. Almost half of the reduction in the deficit of £4.5 million was associated with the repeal of the Naval Defence Act and a related measure, the Imperial Defence Act 1888.[81] On 1 April 1894 a draft Bill, probably prepared by Jenkyns, was supplied which effectively repealed the Naval and Imperial Defence Acts and provided for the outstanding principal to be paid from the old and new Sinking Funds, with the interest being paid as if it were part of the national debt.[82] If this was pursued as a separate Bill, it gave rise to two problems: it would entail additional parliamentary time; and it would make Harcourt's Budget package hostage to a veto by the House of Lords,

76 C Lee, "May on Money: Supply Proceedings and the Functions of a Legislature", in Evans, ed, *Essays on the History of Parliamentary Procedure*, pp 171–87, at p 172

77 W R McKay, "A Sycophant of Real Ability: The Career of Thomas Erskine May", in Evans, ed, *Essays on the History of Parliamentary Procedure*, pp 21–32, at p 28

78 "Mr Gladstone at Hastings", *The Times*, 18 March 1891, p 11. On this speech and its importance, see also Daunton, *Trusting Leviathan*, pp 70–71, 75.

79 Gardiner, II.200

80 TNA, T 168/25, Miscellaneous Memoranda, 1891–1895, Hamilton to Harcourt, 30 August 1892; TNA, T 168/25, Hamilton to Harcourt, 11 October 1892

81 HD, 15 March (Br 124, Ba 252), 1 April (Br 128; Ba 256)

82 TNA T 168/31, Imperial and Naval Defence Loans, Memorandum, 1 April 1894, and draft Bill, 17 March 1894

with its sound Tory majority to which Gladstone had referred at Hastings. At this point, Harcourt seemingly decided that he wanted instead to include the measure within the single Budget bill. This immediately gave rise to the question of whether the measure belonged within that bill, a matter which was to lead to a series of exchanges between officials, Harcourt and Clerks in the ensuing weeks and was then debated on the floor of the House.

On 2 April, Hamilton wrote to Ferguson-Davie seeking his views on the inclusion of the provisions about naval financing within the Budget Bill. Replying the next day, Ferguson-Davie protested mildly about the limited information he had been given about the proposed alteration. He stated the general limitations cited earlier and he went on to say:

> "If therefore the resolution amending the Imperial and Naval Defence Acts is one that ought to be moved in Committee of Ways & Means and has been agreed to on the report of that Committee, and forms part of the financial scheme of the year, I see no objection, on the ground of order, to its being included in the Budget bill."

This was then made subject to the caveat that the amendment would have to come into force in the current financial year, not subsequently.[83] In a marginal note, Hamilton confirmed that the provisions would come into force in the present financial year, "but the finance of other years will be also affected".[84]

The correspondence also raised for the first time the question of the short and long titles of the Bill. Since the switch in 1861 to a single Budget bill as the norm, that bill had almost invariably been given the title Customs and Inland Revenue Bill. The new provisions clearly did not relate to the levying of taxes by either authority. Hamilton therefore suggested a new short title, presumably of Finance Bill. Ferguson-Davie did not approve: "I think it would be highly inconvenient to discontinue the well-recognised short title of Customs and Inland Revenue", suggesting instead some additional words in the short title and additions to the long title. He nevertheless considered these to be "minor points which can be settled later on".[85] Perhaps mindful of concerns about tacking and the scope of Budget bills, the Government went in search of precedents and approached for Milman for information, almost certainly on Pitt's 1787 Consolidation Bill. On 9 April 1894, Milman wrote to Harcourt's private secretary indicating that he had not been hopeful of success in finding copies "as the great fire of 1834 destroyed a great many of our records", but he was able to report he had found the bill Harcourt wished to see: "We have it in three forms as amended in Committee, on recommitment and on Report", and

[83] TNA, T 168/31, Letter from Ferguson-Davie to Hamilton, 3 April 1894.
[84] *Ibid*.
[85] *Ibid*.

had left it for him to inspect.[86]

On 12 April, Ferguson-Davie wrote a memorandum for the Speaker and senior colleagues describing the proposals. He acknowledged that the measures brought income into the Exchequer during the current financial year so that, "although a separate bill might have been, according to the usual practice, introduced", the resolution would be "properly submitted in Committee of Ways & Means, and there seems to be no breach of order in all its provisions being embraced in the Budget bill".[87] Harcourt spoke to the Speaker about the matter on Friday evening, but Milman did not know what had been said in that conversation, and so he wrote to Harcourt on Saturday to provide his own reassurance, setting out "the grounds on which I considered the course proposed to be taken by the Government did not raise a point of Order". Milman wrote:

> "It is clearly for the convenience of the House that the whole scheme for meeting the charges of the year should be submitted as a whole at one and the same time to the same Committee. Now all Motions for raising taxation for the year must be first considered in Ways & Means. Consequently it often happens that Resolutions to repeal taxes are passed in Ways & Means as part of the Budget scheme although a resolution and previous consideration in Committee is not necessary to repeal a Tax but only to impose one … Your arrangements for the Sinking Fund and Suez Canal Shares are not taxation and need not originate in Committee. But it cannot be out of order to consider any subject of importance first in Committee [of Ways & Means] … and as part of the Budget it is convenient that the whole should be considered together."

Milman noted a precedent of 27 May 1861 when an Instruction was moved to divide the Customs and Inland Revenue Bill into more than one Bill, but acknowledged that it "found little support".[88]

Harcourt replied on Sunday 15 April. He wrote that he was "much obliged to you for your note" and confirmed that "I had a word with the Speaker on Friday night and understood that he was satisfied on the subject of the Resolution". Harcourt rehearsed some of the debates that had taken placed in 1861 about a single Budget Bill and noted that "the great precedent relied upon was Mr Pitt's Budget Bill of 1787 which included in one Bill 1 The grants of duties 2 the Treaty of Commerce with France, 3 the provisions with reference to the

[86] Bodl., Harcourt MS 190, fos 52–53, Milman to Guillemard, 9 April 1894

[87] PCJ, Memoranda, Volume 1, fos 64–65v, Memorandum as to the proposed alteration of the Imperial & Naval Defence Acts, 12 April 1894

[88] Bodl., Harcourt MS 224, fos 88–89v, Milman to Harcourt, 14 April 1894

National debt."[89] He cited Lord John Russell's defence of the approach in 1861: "These different matters all form part of one arrangement, and tend to one end—namely, the settlement of the finance of the year."[90] He then added in own hand: "I would be grateful if you would show this to the Speaker and Ferguson-Davie".[91]

With Harcourt confident that precedent and the House authorities were on his side, he was able the next day to make his Budget announcement. He first renewed his attack on the improper mortgages, but then explained that to liquidate them he would not use the annual Estimates, but would instead appropriate the new Sinking Fund (established in the 1870s to pay down the National Debt), as well as the Suez Canal dividends, so that these reforms together would reduce the deficit to be met from taxation, previously stated at £4.5 million, by almost £2.4 million.[92] According to Lucy, "This quite unexpected and startling disclosure of the secret of the Budget led to a buzz of conversation which interrupted for several moments the interesting story".[93]

At a stroke, Harcourt had reduced the prospective increase in the burden of taxation by more than half. It is small wonder that Goschen, in his response to the Budget, immediately fastened upon this element, noting the irony that "the sublime appeal to virtue ended" with a raid on a Sinking Fund to meet new debts.[94] When Goschen renewed his attack on 23 April, Harcourt responded that he only been forced into this measure because Goschen had "invented the, financially speaking, abominable machinery of the Naval Defence Act and hid from the world that he had borrowed £5,000,000 of money and had left it as a debt to those who came after him to pay".[95]

In his Budget statement, Harcourt made clear that the measures would be included "in the Budget Bill".[96] When the Finance Bill was brought in, questions were raised about the novel short title. Harcourt defended his innovation, which reflected the fact that "it contains all the provisions relating to the finance of the year, as well as those relating to Customs and Inland Revenue".[97] During the second reading debate, it was suggested that the provisions to reduce the deficit had been tacked on the Bill, representing "a fatal blot" on the Bill which should

89 PCJ, Memoranda, Vol 4, fos 213–15, Harcourt to Milman, 15 April 1894

90 HC Deb, 13 May 1861, col 2023

91 PCJ, Memoranda, Vol 4, fos 213–15. A copy of the letter is available, without the postscript in Harcourt's hand, at Bodl., Harcourt MS 122, fos 142–144v

92 HC Deb, 16 April 1894, cols 482–84

93 Lucy, *Home Rule*, p 342

94 HC Deb, 16 April 1894, col 510

95 *Ibid*, 23 April 1894, cols 1128, 1142

96 *Ibid*, 16 April 1894, col 483

97 *Ibid*, 30 April 1894, col 1683

have been included in a separate measure.[98]

Milman prepared a memorandum expressing his own unease about the approach. He began by rehearsing at length the arguments that had been used against Pitt's Consolidation Bill, from the debate on an Instruction for dividing the Bill in two moved on 21 March 1787. He also quoted the arguments for and against a single Bill from the debates in 1861. He showed that a Speaker's ruling from 1861 had been key to his advice to Harcourt. First, the Speaker had affirmed that resolutions in Committee of Ways & Means could "go beyond the services of the year", provided that they related in part to the services of the year. Second, the ruling had "established that it was a question of convenience and policy, and not a point of order, whether any separate tax or fiscal provision might be applicable beyond the current year". Milman described the basis for the change to both the short and long titles flowing from Harcourt's decision, but made clear his dissatisfaction with it: "The difficulty and inconvenience that so often arises by departing from established usage (which is nothing but the result and recognition of the teaching of long experience) at once became manifest". He regretted the "incongruity" of the provisions in the Bill relating to the Imperial and Defence Acts, which changes to the titles only served to highlight. He also acknowledged the strength of the Government's case:

> "On the other hand these objects were not only intimately connected with but indeed were an essential part of the Financial arrangement recommended to Parliament by the Government of the Queen and the propriety and convenience of submitting the whole scheme simultaneously to the same Committee were so great that the House might fairly insist on such a course being pursued and therefore it was not for the Speaker to stop it".

It remained open for the House to debate the matter of policy, as it had in 1787 and 1861, on a motion for an instruction to divide the Bill in two. There also remained limits which might need to be enforced in the future:

> "Cases might arise where the incompatibility of extensive and important branches of the Financial arrangements of the year with the introductory words of a Ways & Means Bill might be so glaring as to call for the intervention of the Chair on the point of Order, and the law of Parliament might be infringed by tacking on questions of general policy to matters of taxation, but until such a case arises precedent sanctions the whole Financial scheme being submitted to the House in the manner deemed most desirable by the responsible Government." [99]

Commenting on Milman's memorandum, Ferguson-Davie broadly agreed

[98] *Ibid*, 7 May 1894, cols 534–35, 541–42

[99] PCJ, Memoranda, Vol 1, fos 55–57v, Memorandum on the Practice relating to Budget and other Taxation Bills, April 1894

with it, but suggested it had perhaps underplayed the novelty of the provision "which sanctions expenditure whereas the *raison d'etre* of the Budget bill is to deal with raising money to meet expenditure". He remained of the view that it would have been "more consistent with precedent" to include the measure within a separate Bill, and mentioned that he had pointed out the desirability of a different short title.[100]

Milman's memorandum had indicated that, while the inclusion of the measure within a single Bill was not a matter of order, it was a proper matter for debate on a motion for an instruction to empower the Committee on the Bill to divide it in two, and such a motion was accordingly moved by the Liberal Unionist Sir John Lubbock before the start of proceedings in Committee. Lubbock's motion had been "drafted with the full concurrence of the Unionist leaders".[101] In the view of the Unionist press, it was intended to "checkmate" Harcourt's attempt to prevent the House of Lords having a say on the matter.[102] There were Unionist hopes that the motion might be successful.[103] Lubbock's speech bore a startling resemblance to Milman's memorandum, utilising the same precedents from the same sources and advancing the same arguments.[104] Harcourt's response drew upon the very precedents from the debates of 1787, 1860 and 1861 that he had cited in his letter to Milman and, as in the 1860s, made it clear that he viewed his own case as a defence of the Commons, since to divide the Bill in two "would imperil the financial supremacy of the House of Commons".[105] Goschen argued that the Budget bill should only be about taxation, and that the measure was not part of the financial arrangements of the year.[106] Nevertheless, the Government won the vote comfortably, with a majority of 40, significantly in excess of that at second reading.[107]

"A great injustice": the death duties, the scope of resolutions and the Crown initiative

Notwithstanding the financial significance of the reforms of the machinery for naval financing, the main political and legislative focus was on the reforms of death duties. The existing death duties were a byword for complexity, with Gladstone having once remarked that "reform of the Death Duties would take

100 PCJ, Memoranda, Vol 1, fos 64–64v, Ferguson-Davie to Milman, 2 May 1894
101 *Gloucester Citizen*, 24 May, p 3
102 *Manchester Courier and Lancashire General Advertiser*, 24 May, p 5
103 *Derby Daily Telegraph*, 25 May, p 2
104 HC Deb, 24 May 1894, cols 1203–06
105 HC Deb, 24 May 1894, cols 1207–12
106 *Ibid*, cols 1212–15
107 *Ibid*, col 1218; *Derby Daily Telegraph*, 25 May, p 2

up a whole Session".[108] Harcourt's reforms were based on three principles—aggregation, equalisation and graduation.[109] The principle of aggregation was that the estate would be charged at the time of death: "The State takes its share first" because "the title of the State to a share of the accumulated property of the deceased is an anterior title to that of the interest to be taken by those who are to share it."[110] It flowed from this that "the duty was payable on the whole estate without regard to the number of children amongst whom it was divided".[111] The second principle was that of equalisation, to "place exactly the same charge on every sort of property, of whatever kind it may be".[112] The third principle, intimately connected to the first two,[113] was that of graduation, with estates of greater value paying at a higher rate, with the scale reaching eight per cent at £1 million.

The legislative challenge to give effect to Harcourt's reforms was enormous. The Bill had gone through several drafts prepared by the Inland Revenue in January and February.[114] Jenkyns thought that the draft he saw on 6 March was "much too long".[115] On 9 March, Lewis Harcourt recorded that Jenkyns was "picking holes with great gusto".[116] His changes were conveyed to the Inland Revenue at a meeting chaired by Harcourt on 16 March.[117] They refused to accept many of the changes. As Hamilton noted:

> "Unfortunately the legal authorities of Somerset House are in conflict with Jenkyns about the form of the Bill. They regard it from an administrative point of view: he from a Parliamentary point of view … Jenkyns thinks the Bill as drawn will not be 'passable'."[118]

With some reluctance, Harcourt came to the conclusion that he would have to "defer to the Inland Revenue people".[119] On 31 March, Harcourt conceded that their draft would be used, provided that they could shorten it to makes its parliamentary passage easier, which they promised to do.[120] The published Bill suggested that the Inland Revenue's promises to condense the Bill had hardly

108 HD, 17 April (Br 134, Ba 260)
109 HC Deb, 28 May 1894, col 1475
110 *Ibid*, 16 April 1894, cols 489–90
111 *Ibid*, 7 May 1894, col 519
112 *Ibid*, 16 April 1894, col 494. See also *ibid*, col 489.
113 *Ibid*, 8 May 1894, col 646
114 TNA, IR 63/3, draft Clauses on Death Duties of 31 January and 15 February 1894
115 Bodl., Harcourt MS 405, 6 March, p 15
116 *Ibid*, 9 March, pp 46–47
117 Bodl., Harcourt MS 122, fos 92–95, Notes of Conference on Death Duties, 16 March 1894; TNA, IR 63/2, pp 254–59, draft Clauses on Death Duties, 27 March 1894, at p 254
118 HD, 1 April (Ba 256–57)
119 *Ibid*
120 Bodl. Harcourt MS 406, 31 March, p 83

been met. The death duty provisions accounted for 20 Clauses, compared with 23 in early March, and a parliamentary price was to be paid for their length and complexity.[121]

The first Member to begin extracting that price was Thomas Gibson Bowles. He had first been elected to the House in 1892, but even prior to his election he was recognised as being "well versed in parliamentary law and procedure".[122] Hamilton was to describe him "an extremely sharp little Parliamentary ferret".[123] Bowles was the illegitimate son of the Liberal politician Thomas Milner Gibson, who had secured him a position at the age of 19 as a clerk in the Legacy and Succession Duty Office. He served there for nine years and learned enough to prove of immense value during proceedings on the Finance Bill.[124] He knew from personal experience that "probably no branch of taxation was more difficult and complex than that of the Succession and Death Duties".[125] Soon after the Budget, he began asking questions about the death duty provisions, and particularly about the relationship between the proposed new Estate Duty and continuing liability for Succession Duty.[126] On Wednesday 23 May, the Government received notice from the Speaker that Bowles had discovered that the founding resolutions for the Bill did not cover the provisions relating to the Succession Duty. This caused a "great fright", with there being an initial assumption that the Bill could not be proceeded with in Committee. However, the Speaker concluded that the Bill could be proceeded with if an additional resolution were moved.[127] When Bowles raised his point of order the next day, the Speaker confirmed that the original founding resolution did not cover the provisions of Clause 15, but indicated that it would be sufficient for a new resolution to be passed before that Clause was reached, citing a precedent from 1881. Harcourt acknowledged an "oversight" in that the provisions increased the charge in some cases, even though the rate was unaltered, and agreed to bring forward the necessary additional resolution.[128] This was then done on a subsequent day.[129]

In Milman's view, this was not the only case where the Bill as published went beyond the terms of the founding resolutions. The resolution for the new Estate

121 Finance Bill, HC Bill 190 of Session 1894

122 L E Naylor, *The Irrepressible Victorian: The Story of Thomas Gibson Bowles* (London, 1965), p 130

123 HD, 23 May (Br 144)

124 Naylor, *Irrepressible Victorian*, p 12.

125 HC Deb, 10 May 1894, col 830

126 Naylor, *Irrepressible Victorian*, pp 132–33

127 Bodl., Harcourt MS 408, 23 May, pp 63–64; HD, 23 May (Br 144)

128 HC Deb, 24 May 1894, cols 1200–03

129 HC Deb, 21 June 1894, cols 1649–50

duty allowed for it to be levied on the principal value of the estate at death, but Clause 5(4) of the Bill allowed for the duty also to be levied on income received by the estate between death and settlement of the account.[130] When this matter was raised in debate, the temporary Chairman ruled that it was not covered by the Budget resolution, leading the Government to concede an amendment proposed to the Bill by Sir Richard Webster, the former Unionist Attorney General.[131] Milman clearly considered this an improvement, but he also believed that a "substantial injustice" remained: although the income received between death and settlement of the account was no longer taxable, provision remained for interest to be charged on the principal for the period between death and settlement. This was not remedied when the relevant provision was again considered on report. The Solicitor General, Richard Reid, did little to disguise the Government's dismay at the temporary Chair's original ruling, saying that "they were all considerably put out" about it and that "it disarranged the scheme of the Bill altogether" and instead came forward with a proposal to increase the interest charged to recoup the lost revenue.[132] He nevertheless defended the provisions for charging three per cent interest, which in Milman's view amounted to "a novel tax not authorised in Ways & Means". Milman was, however, unable to pursue the matter because "no objection was taken on the point of order".[133]

If Milman's private views of the Bill were apparent in relation to this matter, they were made even clearer in his record of the dispute that arose about the orderliness of a series of amendments tabled by Sir John Lubbock for consideration on the first day in Committee, an episode which sheds light on the interpretation of the rule relating to the 'Crown initiative'. Lubbock tabled a series of amendments which were designed to reverse the effect of one of the core principles of the Budget measures—aggregation—and to lessen the effect of another—graduation—by providing that the new Estate duty would be payable by the beneficiaries according to the amount they received, and not by the executors on the whole amount, so that a person inheriting one tenth of an estate of £100,000 would pay a three per cent charge rather than a six per cent charge.[134] The lead amendment was the first on the paper, and would have enabled the Bill's opponents to go to the heart of the measure immediately.

130 A Milman, *A Selection from the Decisions from the Chair, Illustrative of the Procedure of the House, drawn mainly from the Session of 1894* (Printed, London, 1895, not published) (hereafter *Decisions*), p 41

131 HC Deb, 12 June 1894, cols 982–83

132 *Ibid*, 12 July 1894, cols 1522–26

133 *Decisions*, pp 42–43

134 *Ibid*, p 34

However, the Chairman of Ways & Means, John William Mellor, ruled that the lead amendment was "out of order", because it would "be equivalent to an increase of Legacy Duty".[135] According to Milman, "This decision took the Opposition by surprise, and caused great disappointment".[136] As was common at this time, the Opposition responded with a dilatory motion, reflecting its dismay at what Balfour referred to as "the unexpected ruling made from the Chair", and proceeded to dispute the Chairman's judgement while denying that they were doing so. Harcourt denounced it as "the worse instance with which I have ever been acquainted" of wasting time and "of defying the authority of the Chair". He had no doubt that the amendment had been properly ruled out of order: "the ABC of Order in this House would show such a proposal to be out of Order". This clearly riled the Opposition, leading Lubbock to make clear why the Opposition had been so surprised by the ruling:

> "He must tell the right hon. Gentleman [Harcourt] that before putting down the Amendment he consulted the recognised authorities on Parliamentary procedure who gave him to understand that it was in Order."[137]

Any doubt that the "recognised authorities" he referred to were Milman is removed by the paper which Milman prepared almost immediately afterwards,[138] and the letter he then received on the matter from Ferguson-Davie.[139]

Milman's note began by describing the provisions of the Bill for aggregation in the Bill which, in his view, "created a great injustice", whereby multiple children among whom a single estate was divided paid the same rate as a single beneficiary. Milman had little time for the principle that lay at the heart of Harcourt's reforms, dismissing the claim that the dead person paid the tax as:

> "throwing dust in the eyes of the Committee. The corpus diminished by the tax was divided among the recipients according to the terms of the will. The imposition of the tax caused them to receive less than they would have received had the tax not been imposed. They were the only persons hit by the tax. They paid it all. It was a ridiculous legal fiction to say they did not."[140]

Ferguson-Davie's response picked up on Milman's antipathy to the measure:

> "You are mistaken in thinking we differ on the merits of this point, because I am as strongly in favour of, and possibly have as great an interest in, the sweep of Sir John's proposal as yourself."[141]

135 HC Deb, 24 May 1894, col 1219

136 *Decisions*, p 36

137 HC Deb, 24 May 1894, cols 1219–24

138 The note prepared is in PCJ, Memoranda, vol 1, fos 70–71. The draft was unaltered in substance in the version published in *Decisions*, and that version is referred to hereafter because it is more accessible.

139 PCJ, Memoranda, vol 1, fos 66–67v, Ferguson-Davie to Milman, 29 May 1894

140 *Decisions*, pp 34, 36

141 PCJ, Memoranda, vol 1, fo 66

He was probably alluding in part to the fecundity which they shared: Milman had six children, while Ferguson-Davie had eight. Ferguson-Davie's interest in the measure was arguably greater, because in 1907, on the death of his elder brother, Ferguson-Davie was to inherit not only a baronetcy but the vast majority of an estate with a value of £172,916.[142]

Milman's memorandum implied that the Chairman's ruling, contradicting the advice he had offered to Lubbock, was based on arguments advanced "on behalf of the Government".[143] In his reply, Ferguson-Davie reported that Mellor had asked to see him and, before going to see the Chairman, Ferguson-Davie had consulted the Solicitor General and an Inland Revenue lawyer. He had asked them both whether the effect of Sir John Lubbock's amendment was to alter Succession Duty, and they had both replied in the affirmative.[144] The dispute between Milman and Lubbock on the one hand, and Ferguson-Davie and the Government on the other, hinged to some degree on whether the effect of the amendments was to reduce Estate Duty or replace it with an increased Legacy Duty. Milman argued that it was an alteration of Estate Duty, "a simple reduction of charge on the subject, and therefore a perfectly regular amendment".[145] Lubbock also maintained that his proposition did not depend upon subsequent decisions about the existing Legacy Duty.[146] For Ferguson-Davie, the amendments would change the Estate duty into a legacy duty, "and would involve an increase of the existing legacy duties" without sanction in the founding resolutions. In his mind, there was no difference between the reason why Lubbock's amendment was out of order and why the Government itself required a further resolution for the increases in the Succession Duty.[147]

Milman himself conceded that Lubbock's proposals had terminological similarities to the existing death duties, but in his view the proposal was in fact "an entirely different and novel tax".[148] This in turn gave rise to the question of whether a new tax could be proposed by way of amendment to the Budget Bill. Nineteenth century practice and procedure gave some leeway in interpretation in respect of the Crown initiative for taxation. The needs of the Crown, as enunciated by Ministers, set an upper limit on the amount that could be raised by way of taxation for the service of the year, but, according to May, "the Crown has no concern in the nature or distribution of the taxes".[149] Non–

142 *Illustrated London News*, 7 September 1907, p 35
143 *Decisions*, p 35
144 PCJ, Memoranda, vol 1, fo 66v
145 *Decisions*, p 34
146 HC Deb, 24 May 1894, col 1219
147 PCJ, Memoranda, vol 1, fos 66–67v
148 *Decisions*, p 38
149 *Treatise* (1st Edition), p 324

Ministerial Members were thus permitted to move motions in the Committee of Ways & Means proposing alternative means of raising the necessary totals as rival propositions to those of Ministers.[150] As another authority observed, this freedom also extended to amendments to the Budget bill:

> "It is perfectly competent to any member, in committee of ways and means, or in committee of the whole House upon the Customs or Inland Revenue Acts, to offer an amendment to a particular rate of duty proposed to be levied, either for the increase or the diminution of the same … And when the House resolves itself into a committee of ways and means to consider of raising the supplies for the service of the current year, it is competent for any member to propose another scheme of taxation of equivalent amount, as a substitute for the government plan."[151]

The 1893 edition of the Treatise also hinted at wiggle room, albeit not in the form of increases to taxes: "No motion may therefore be made to impose a tax, save by the minister of the Crown, *unless such tax be in substitution, by way of equivalent, for taxation at that moment submitted to the consideration of Parliament*; nor can the amount of a tax proposed on behalf of the Crown be augmented, nor any alteration made in the area of imposition".[152]

Milman argued that the "only constitutional limit on the discretion of the Commons is that they must not grant more than the Crown has declared necessary for the public service". In his view, "All other restrictions are imposed by their own positive rules, and are matters of internal regulation". He appeared to admit that the broader powers extended only to Committee of Ways & Means and not to the Committee on the Bill:

> "Under these Rules alternative taxation can be proposed in Ways & Means by any member, e.g. a tea duty instead of a legacy duty, but the contents of the Bill being the reference to the Committee on the Bill, only the taxation included in the Bill can be dealt with therein, and the rate of any distinct tax cannot be raised beyond that authorised in Ways & Means."[153]

However, he went on to argue that there should be some freedom in Committee on the Bill, in view of the shortness of time the House devoted to debates in Committee of Ways & Means and the risks that would arise if the founding resolutions became too prescriptive in nature:

> "If no modification can regularly be proposed in Committee on the Bill on

[150] See the Speaker's ruling of 21 February 1860: "it is competent in a Committee of the Whole House for any hon. Member to move a Resolution so long as it is relevant to the matter referred to the Committee": HC Deb, 21 February 1860, col 1474

[151] A Todd, *On Parliamentary Government*, I.711

[152] *Treatise* (10th Edition), p 533; emphasis added.

[153] *Decisions*, p 39

> the lines of existing taxation on the plea that the particular branch of existing taxation to which the House might wish to assimilate the new taxation had not been sanctioned in Committee of Ways & Means, the power of the House would be seriously hampered in controlling taxation, and an ingenious draughtsman might completely shackle it."[154]

He concluded his critique of the Chairman's ruling as follows: "It is submitted that these considerations were not before the mind of the Chairman when he gave his ruling".[155] Ferguson-Davie had little time for Milman's argument:

> "The bill is founded upon certain resolutions, & must adhere to them. An alternative proposition would have been in order had it been proposed in Committee of Ways & Means, but it was not, in my opinion, in order in Committee on the bill."[156]

In terms of the substantive issue in debate about the effects of the principles underlying Harcourt's reform of the death duties, the Chairman's ruling proved almost academic, as Milman acknowledged.[157] While the debate on the dilatory motion was continuing, Bowles drafted and then submitted a manuscript amendment which was not dissimilar in effect to Lubbock's, which Mellor admitted was orderly despite protesting against the system which allowed such amendments to be submitted without notice.[158] Other debates on the same matter took place on the second and third days in Committee.[159]

The exchange between Milman and Ferguson-Davie is revealing in several ways. First, it hints at the poor relations between Milman and Mellor, already evident in 1893,[160] so that Mellor preferred to seek advice from another clerk. Second, it shows the lively disagreements among clerkly colleagues at that time and their willingness to engage in robust discussions. Third, it demonstrates how Ferguson-Davie's reliance on advice from Government authorities encouraged him towards a narrower interpretation of the freedom available to non–Government Members to challenge Ministerial tax propositions. Fourth, it indicates how the interpretation of the Crown initiative in respect of taxation has changed over time, leading to a broader understanding of the restrictions imposed by the Crown initiative in modern practice.[161]

154 *Ibid*, pp 40–41
155 *Ibid*, p 41
156 PCJ, Memoranda, vol 1, fo 67
157 *Decisions*, pp 36–37
158 HC Deb, 24 May 1894, cols 1240–41, 1250
159 *Ibid*, 28 May 1894, cols 1472–94; *Decisions*, p 37; HC Deb, 29 May 1894, cols 1549–1610
160 See C Lee, "1893 Irish Home Rule Bill", pp 56–61
161 On which see *Treatise* (24th Edition, 2011), p 719.

"Of no legal force": taxation and the authority of resolutions

The proceedings on the 1894 Finance Bill also highlighted one of the incongruities of the Victorian fiscal constitution. Since at least 1830, the practice had developed of levying taxes and duties at the rate set in resolutions of the Committee of Ways & Means, once reported from the Committee, rather than at the rate set by statute law.[162] In 1846, Sir Robert Peel, in proposing reductions in duties on imported food, said that the reduced tariff would come into effect in advance of new legislation, on the understanding that "a bond should be taken in the case of every remittance, providing that the whole amount of duties should be paid in the event of the Bill not receiving the sanction either of the Lords and Commons".[163] In 1848, the Chancellor of the Exchequer explained that this practice also applied to increases in duties,[164] and the Attorney General explained why he considered it permissible:

> "The Attorney General apprehended that a resolution of that House would be recognised by the subsequent passing of the Bill which had been founded upon it. The rule would be this—if the House of Commons resolved that a given duty should be imposed upon goods before they were entered for home consumption, it was fairly to be presumed (and the practice proceeded upon the presumption) that the House would pass a Bill founded upon that resolution; and, as the Bill related to a matter of money, it was not supposed that the other House would interfere with the resolution."

He acknowledged that an action could theoretically be pursued against a Customs official, but any action would be superseded by the passing of the relevant legislation.[165] May, in the second edition of his *Treatise* in 1851, drew upon these recent instances, and acknowledged that giving effect to the imposition or alteration of taxes "in anticipation of a statute" was "remarkable". Although the practice was "customary", he felt it was "obvious that this custom was not strictly legal". It was authorised after the event by statute law, and in the meantime the executive government was acting "upon its own responsibility", in other words bearing the legal risk associated with failure to gain subsequent legal authority for the levying of duties.[166] Moreover, he noted that a decision by the House to reduce a rate of tax compared with that proposed by Ministers during proceedings on a Bill was "not devoid of difficulties (more especially when the treasury have already given effect to the resolutions of the house)".[167]

162 Stebbings, *Victorian Taxpayer*, pp 54–55
163 HC Deb, 9 March 1846, col 784
164 *Ibid*, 29 June 1848, cols 1314–15
165 *Ibid*, col 1316
166 *Treatise* (2nd Edition, 1851), p 406
167 *Ibid*, p 425

The issue arose again in 1860. In response to a query as to whether certain Budget resolutions increasing a charge would have effect, Gladstone stated that resolutions relating to the imposition or removal of Customs duties "for immediate practical purposes … have the force of law when the resolution itself has been adopted".[168] These words were echoed by another Member who stated that "we all know that the passing of Resolutions upon the Customs Acts is, for all practical purposes, an immediate repeal of duties".[169] When, later that year, the Lords rejected the Paper Duties Repeal Bill, the question arose as to whether paper manufacturers had been disadvantaged by making plans that assumed "the finality of the Votes of the House of Commons in providing the Ways & Means for the Service of the Crown". In this particular instance, the Government denied any losses had resulted, but the Member who raised the question also appealed "to the learned Gentleman at the Table (Mr. Erskine May), that in the … next revised edition of his great work on the practice of Parliament, to state whether the conviction commonly entertained by the public out of doors was right or wrong".[170] May declined to alter his wording on this controversial matter.

In 1876, legislation referred to the authority of "any resolution of the House of Commons" as well as statute as the basis for the collection of Customs duties,[171] which was thought to suggest a recognition by Parliament of the increasing force and effect of resolutions.[172] The first edition of May's *Treatise* published after his death, in 1893, removed the admission of illegality, replacing it with the soothing words that "An anticipatory authority is imparted by usage to the resolutions of the House which impose or alter taxation".[173] Hamilton nevertheless prepared a memorandum in February 1894 which acknowledged that a resolution "has not the force of law" and that collection at a higher rate proceeded "at the time without legal authority; but they are subsequently legalised by the Statute."[174]

In the case of the new death duties, this approach briefly raised the spectre of retrospection. One of the existing death duties, Probate Duty, had an inherent element of retrospection: because it was incurred as a charge when probate was issued, Harcourt was advised that it "necessarily extends to deaths happening

168 Letter from Gladstone to Mr Gwyn, 16 February 1860, reprinted in *Morning Advertiser*, 17 February 1860, p 8

169 HC Deb, 17 February 1860, col 1274

170 *Ibid*, 25 August 1860, cols 1827–31

171 Customs Laws Consolidation Act 1876, c 36, section 18

172 Stebbings, *Victorian Taxpayer*, p 56

173 *Treatise* (10th Edition), p 566. See also Todd, *Parliamentary Government*, I.793.

174 TNA, T 168/25, Procedure connected with alterations in Customs and Excise Duties, 23 February 1894

before".[175] An early draft of the bill proposed a commencement date of 1 June for the new death duties.[176] This was then changed so that they applied to persons who died after "the commencement of this Act".[177] However, this was then changed to "the commencement of this Part of this Act", which was to be 31 May.[178] This was not intended as retrospective, but based on the assumption that the Bill would become law by 1 June.[179] Even on Budget day, one of Harcourt's predecessors noted that this was "very unlikely".[180] The potential for retrospection if the date was retained was highlighted by Robert Hanbury on 28 May,[181] and the Government subsequently agreed to an amendment which changed the commencement date for the death duties provisions to 1 August.[182]

The issue of the force of resolutions, however, mattered more in the case of income tax, especially in relation to a Budget which raised the rate of income tax. Harcourt had been advised that "income tax is always made retrospective from the beginning of the financial year in which the Act imposing it is passed".[183] A statute of 1870 had first given authority for the continuation in force of income tax as it applied in one tax year to a subsequent tax year, reflecting an important stage in recognition of its permanence.[184] There was, nevertheless, a sense of anxiety about the absence of continuing authority, both in relation to the period prior to the passage of the Budget resolutions, and that prior to the passage of legislation where the rate of income tax was increased. Sir John Lubbock had raised the matter in 1893, when the Budget was late in April, arguing that "at present taxes are being collected without Parliamentary authority".[185] In urging rapid adoption of the resolution for a higher rate of income tax on 23 April 1894, Harcourt said that "it is of the greatest consequence that the Bill should be brought forward as well as the Income tax resolutions, so that there should be authority from the House to levy the Income Tax at the proposed increased rate".[186] One of Milman's arguments for greater freedom in respect of amendments in Committee on a Budget bill more nearly comparable to that in Committee of Ways & Means was that a sense that substantive changes

175 Bodl., Harcourt MS 122, fo 97, undated Memorandum
176 TNA, IR 63/3, draft Clauses on Death Duties of 31 January and 15 February 1894
177 TNA, IR 63/2, pp 254–59, draft Clauses on Death Duties, 27 March 1894, at p 254
178 TNA IR 63/3, draft Clauses on Stamps, 13 April 1894
179 HC Deb, 16 April 1894, col 498
180 *Ibid*, col 546
181 HC Deb, 28 May 1894, col 1470
182 *Ibid*, 26 June 1894, col 267
183 Bodl., Harcourt MS 122, fo 97, undated Memorandum
184 Income Tax Assessment Act 1870, c 4, section 1; HC Deb, 10 March 1870, col 1731; Stebbings, *Victorian Taxpayer*, p 57. See also Customs and Inland Revenue Act 1890, c 8, section 30.
185 HC Deb, 21 April 1893, col 911. See also HC Deb, 27 April 1893, col 1326.
186 HC Deb, 23 April 1894, col 1107

could only be made in the initial Committee might slow down agreement to the resolutions, with undesirable consequences: "This would be a grave disadvantage to the Treasury when new taxes were to be levied, and would immensely delay the business of the House to the special inconvenience of the responsible Government of the day."[187]

On 28 June 1894, during proceedings on the Finance Bill, another Liberal Unionist, Richard Martin, moved an amendment to provide that income tax at its new rate would only apply from 1 August. He stressed that he did so to call attention to the legal situation:

> "The payment was to be made in pursuance of a Resolution of the House and in accordance with custom, but a Resolution was of no legal force till it had been embodied in a Bill, and till that Bill had passed into an Act ratified by the approval of the House. He thought that the imposition of new and increased taxation by a mere Resolution was a dangerous practice, and he believed that the Income Tax was the only tax which came into operation in this manner as an increased tax."[188]

Harcourt, in reply, acknowledged that "it was perfectly true that until the Budget Bill was passed the actual authority for levying any taxation was incomplete". He defended the approach because "It had always been the practice" and it was "absolutely necessary for the protection of the Revenue".[189] The amendment was withdrawn, and the issue was not pressed further at the time. However, the discussion on that occasion may have stayed with one of the keenest participants in proceedings on the Bill, Thomas Gibson Bowles, because it was he who was to take the legal action which led to the final judgement in 1912 that, in the absence of an Act of Parliament, no taxation could be lawfully levied and "no practice or custom, however prolonged, or however acquiesced in on the part of the subject, can be relied on by the Crown as justifying any infringement of" the provisions of the Bill of Rights. This led directly to the passage of the Provisional Collection of Taxes Act 1913, which first gave statutory effect for a limited period to resolutions of the Committee of Ways & Means varying or renewing taxation.[190]

Conclusions

Harcourt's leadership of the House of Commons began in inauspicious

[187] *Decisions*, p 41

[188] HC Deb, 28 June 1894, col 466

[189] *Ibid*, col 467

[190] Provisional Collection of Taxes Act 1913, c 3, section 1; Stebbings, *Victorian Taxpayer*, pp 57–61 (with citation from Parker J at p 59). See also J Jaconelli, "The 'Bowles Act' – Cornerstone of the Fiscal Constitution", *Cambridge Law Journal*, Vol 69, pp 582–608.

circumstances, in the wake of being passed over for the premiership and with a defeat on the motion relating to the Queen's speech. His Budget represented the means by which he bounced back, reinvigorating the Liberal backbenchers and consolidating his own position. The hopes his party had in the Budget were in a sense disappointed. Although Harcourt was convinced that "we have already the approval of the people of this nation" for his Bill,[191] it did nothing to stop a crushing Election defeat in 1895, with Harcourt losing his own Derby seat. However, the Budget did much to establish the progressive principle in taxation, to change the basis on which fiscal policy was debated thereafter, and to lay the ground for the more radical steps subsequently taken by David Lloyd George.[192]

One of the appeals of radical reforms of death duties to Liberal backbenchers had been that, unlike other radical policies including Irish Home Rule, they were "within the exclusive discretion of the House of Commons and are not liable to be mutilated by the House of Lords".[193] During the Lords proceedings on the 1894 Finance Bill, Lord Salisbury reaffirmed the right of the House of Lords to either amend or reject such Bills, but also explained that such a right would not be exercised in this case because the Lords "has not the power of changing the Executive Government; and to reject a Finance Bill and leave the same Executive Government in its place means to create a deadlock from which there is no escape."[194] By 1909, such wise counsels did not prevail among the majority of the House of Lords. The third signatory of the letter of January 1894 advocating radical fiscal policies which were "not liable to be mutilated by the House of Lords", Lloyd George, was by then Chancellor of the Exchequer and chose an even more frontal assault on the landed classes through the system of taxation, leading to just such a deadlock.

The events of 1894 show Milman in a variety of lights. He emerges as a valued adviser to Harcourt as he responded to the challenges of leadership. Harcourt apparently offered generous appreciation of Milman's advice when he wrote to Milman on the latter's retirement, because Milman thanked Harcourt for "your too flattering recollection of any little services which I was able to render you when in office which were very willingly rendered".[195] Milman was able to provide assurance to Harcourt on some procedural challenges which the Budget faced, while also providing ammunition to opponents of some

191 HC Deb, 17 July 1894, col 273

192 Daunton, *Trusting Leviathan*, pp 322–23 and ch 11

193 Bodl., Harcourt MS 122, fos. 21–27, Letter from Liberal MPs to Harcourt, 12 January 1894, at fo 25

194 HL Deb, 19 July 1894, col 354; HL Deb, 30 July 1894, cols 1222–23

195 Bodl., Harcourt MS 243, fos 70–70v, Milman to Harcourt, 16 January 1902

innovative aspects of the Bill. It is possible to be sympathetic to the aims of his contentions about the scope of a Budget bill and about the rules governing amendments to such a Bill—that, in his words, "The Commons were not to be reduced to a mere Ay or No, like the Lords, to the scheme of taxation submitted to their consideration by the Government"[196]—while also admitting that his approach was at times pushing at the limits of interpretation of practice even at the time. It seems likely that he found it impossible entirely to disconnect his private opinions on the measures in the 1894 Budget from the advice he tendered. He was characteristically forthright and insightful, but not arguably especially creative or even constructive. It would be more in the other aspect of Commons financial procedures, those for authorising expenditure, where such qualities were to be more to the fore.

196 *Decisions*, pp 38–39

PARTY VOTING IN THE NEW ZEALAND HOUSE OF REPRESENTATIVES

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Introduction

One feature of New Zealand's parliamentary system that causes discussion and some surprise is the way that members vote in the House of Representatives. The usual way for a question to be resolved is for a single member, usual a whip, to cast all a party's votes collectively. The more traditional personal votes, where members vote individually by registering their vote in the Ayes or Noes lobbies, still occur occasionally. Party voting is the norm and has accounted for 98 per cent of votes conducted since it was adopted.1 Observers familiar with Westminster-derived parliamentary procedure often view the New Zealand party vote procedure as a quirk of the system. The following examines its origins and operation in the House of Representatives.[2]

The party vote was introduced following the 1995 review of Standing Orders, carried out before the first election under the Mixed Member Proportional (MMP) electoral system. This review was a comprehensive reform of Standing Orders, rather than an incremental improvement on existing procedures. While not all extant procedures were replaced, substantial changes were made to prepare for a parliament likely to contain many more parties than the two that had dominated politics in the 20th Century. The experience in Germany of MMP made it clear that multi-party parliaments, minority governments and proportional sharing of House time were common features of elections under a proportional representation system.

Voting in a two-party parliament

In the largely two-party parliaments that had existed in New Zealand since it entrenched itself in the 1930s, it was expected that Government members would vote with the Ayes on Government matters and Opposition members would vote with the Noes. In a multi-party parliament, such a result was much

[1] Harris and Wilson (2017). *Parliamentary Practice in New Zealand* (4th edition), p.248.

[2] It is unfortunate, and a little confusing, that the term "party vote" applies to two entirely separate processes in New Zealand. In a parliamentary election, a party vote is cast by an elector in favour of a political party. That vote determines the proportion of seats a party will hold in the House. In parliament, a party vote is a method of voting where a single party member exercises the votes of most, or all, of its members in determining a motion before the House.

less certain and so the Standing Orders Committee looked for other ways of registering votes that were efficient, reliable and allowed parties to give voice to their particular views.

In the years prior to the first use of the MMP electoral system in 1996, voting in the House of Representatives had followed a pattern identical to that of the House of Commons. On a question, a vote on the voices would be held. If the result of that vote was accepted then the matter was resolved. However, if a member dissented from the result declared by the Speaker, then a division would be called. Members were called to the Debating Chamber by the ringing of the division bell, and would cast their vote in person by passing through the doors to the Ayes or Noes lobbies and recording their vote with the member serving as teller. Abstentions were recorded by the Clerk.

Options for reform

The Standing Orders Committee examined the procedures of the parliaments of Ireland, Norway, Denmark, The Netherlands and Germany in its consideration of reforms to New Zealand procedure. While those parliaments did not derive their procedure from Westminster, they were all elected under proportional representation systems and their experiences were invaluable to the Committee.[3]

The Committee considered electronic voting as one way of reducing the time spent on voting, particularly in committee of the whole House, where bills were examined in detail, and numerous votes could occur on contentious matters. Each division took five minutes or more to produce a result. Ultimately, though, it opted to recommend the three-level voting system used in the Second Chamber (lower house) of the Netherlands' Parliament:

> "A vote on the voices is able to be taken, but if a party wished to record formally how its members had voted it could request a 'party vote'. Each party's name is called and the representatives in the Chamber responsible for that party's vote, usually the whip, states how many members it has voting for or against the question. The record of the House then shows how a party has voted without all members being required to attend the House to achieve this. The Second Chamber also has provision for a 'personal vote', where each member records how he or she votes… They are requested only when a vote is going to be very close and members wish it to be known how they, as individuals voted."[4]

Such a system was preferred because of the cost of installation and maintenance

[3] Report of the Clerk of the Standing Orders Committee on Matters of Procedure and Related Matters in the Parliaments of Ireland, The Netherlands, Denmark, Norway, Germany as part of the Standing Orders Subcommittee Visit to those Parliaments.

[4] *Report of the Standing Orders Committee on the Review of Standing Orders* (1995) I. 18A, p.28.

of an electronic voting system. It also enabled the multi-party nature of the Parliament to be reflected and allowed for more time to be spent on debate rather than voting. Interestingly, the only other parliament to be elected under MMP, the German Bundestag, uses a show of hands and, if necessary, a division to vote.[5]

Operation of a party vote in the House of Representatives

Under the party vote system, members always initially vote on a question before the House of Representatives by calling "Ayes" or "No" in a voice vote. The Speaker declares the result "on the voices". A voice vote is not a contest of volume between the parties in the House. The winner is not the side that votes loudest. The Speaker determines who is likely to hold the majority of votes and, in most circumstances, will declare the result in favour of the Government.[6] If members are dissatisfied with the voice vote result, they may seek a more formal declaration of positions. In such circumstances, the Speaker directs the Clerk of the House to conduct a party vote. The Clerk stands and calls on each party, in order of size, to cast their votes. The party whip stands in his or her place and says how many votes he or she is casting. Once all parties have voted, any independent members are asked to cast their votes. Finally, if a party has not voted with the total number of votes available to it, the Clerk will ask if there are any other votes. All parties present in the Chamber are expected to vote but, if they fail to do so, no vote is recorded for them. In a parliament elected under proportional representation majorities are usually slender and it is almost unheard of for parties to fail to vote. Once the vote is completed the Clerk totals it and provides it to the Speaker, who declares the result. The entire process takes under two minutes.

Benefits of the current party voting system

Party voting in the New Zealand House of Representatives is fast and certain. Members generally know the result of a vote on a question within a minute or two of the question being put. The fact that members are not required to all be present to cast their vote in person frees them to attend to other parliamentary duties such as select committees, constituent and party work. In a parliament with a relatively small number of members (120 seats), this is a significant benefit.[7]

In recent years, there has been a growing focus on adapting parliamentary

5 Rule 51, Rules of Procedure of the German Bundestag.

6 Harris and Wilson, *Parliamentary Practice in New Zealand* (4th ed), pp.247–248.

7 The current 120 members is the minimum size recommended by the 1986 Report of the Royal Commission on the Electoral System (at p.127), which formed the basis of the current MMP parliament.

practice to make legislatures more family friendly, enabling members to better balance their duties as representatives with family responsibilities. A committee of the Canadian House of Commons considered a range of family-friendly initiatives in 2016, including "absentee" or proxy voting. It made no recommendation on proxy voting but indicated that it may revisit the matter in the future.[8] A 2016 report by Professor Sarah Childs on ways to create a more representative and inclusive UK House of Commons recommended, among other things, that a member on parental leave be able to vote remotely, or by proxy.[9]

Concerns with the party voting system

One of the concerns about party voting is that it removes from members one of their core responsibilities: to vote in person on all questions before the legislature. Even in New Zealand, where the change in voting system was made smoothly, the option of personal voting was retained (it has never been exercised). A party voting system may also reinforce party discipline by making dissent from the party position difficult for members, since it involves revoking an implied proxy. Such an approach is consistent with the MMP electoral system, which recognises the centrality of political parties to the electoral process and to the operation of parliament.[10] It is also consistent with the courts' views of political parties as private entities entitled to regulate their internal affairs, and those of their members, as they choose.[11]

There is no objective way to measure whether indicating a wish to vote separately from one's party is more or less daunting than "crossing the floor" in a personal vote. Both require a public show of dissent and both are likely to incur the displeasure of a member's party. Interestingly, research found that German political parties did not punish their members for deviating from the party line by giving them less promising positions on the party list.[12] Germany's political culture differs from that of New Zealand though. The New Zealand Government has introduced legislation that enables party leaders to expel members from Parliament where the leader "reasonably believes that the member's actions have distorted, and are likely to continue to distort, the

8 The Standing Committee on Procedure and House Affairs. Interim Report on Moving Toward a Modern, Efficient, Inclusive and Family-Friendly Parliament, 42nd Parliament, First Session.

9 S. Childs (2016). *The Good Parliament*, University of Bristol.

10 A. Stockley (2004). What difference does proportional representation make? In *Public Law Review* 121.

11 A. Geddis (2005). The unsettled legal status of political parties in New Zealand, *New Zealand Journal of Public and International Law*, v.3, no. 1 June.

12 B. Kaunder, N. Potrafke, and M. Riem (2017). Do Parties Punish MPs for Voting Against the Party Line? CESifo Working Paper, No. 6503.

proportionality of political party representation in Parliament", which points towards much greater willingness to enforce party discipline and punish errant members.[13]

Proposals for changes to party voting

A review of the operation of the 1995 Standing Orders the following year found "general agreement that the new system of party voting, including the use of proxy votes, has been successful". The review noted that parties used the voting system freely, calling for party votes when they wished, and that there had been "a significant speeding up of the putting of votes".[14]

The 1999 review of Standing Orders considered a proposal to hold personal votes on matters of confidence and all third readings of bills. The change was intended to enhance public confidence in the importance of these votes. However, most members upheld the default use of party votes, considering that there was no sign of a lack of public confidence in this system. The use of party voting was held to "de-politicise" the Speaker's vote because it was always cast on behalf of the Speaker by his or her party, rather than being exercised personally. The review also considered the need to provide for a personal vote following a party vote because there "were few, if any, situations when it appeared it could be used".[15] As a result, no change was made in respect of that matter.

The party voting system continued to operate successfully with no changes recommended. In 2011, the Standing Orders Committee reinforced the requirement that a party vote be called for, if desired, following a voice vote.[16]

The 2017 review of Standing Orders again considered changes to the rule providing for the holding of a personal vote following a party vote. The Standing Orders Committee considered whether the provision could be used to check whether parties had voted correctly in a party vote or whether it should be removed entirely. The Clerk of the House recommended the removal of the ability to hold a personal vote following a party vote, arguing that it was "akin to a transitional provision as the Parliament moved to party voting" and that there was "uncertainty about whether the rule would ever apply".[17] Rulings by Speakers on the matter had made it clear that such a vote was almost impossible

13 Electoral (Integrity) Amendment Bill (2017 6-1)

14 *Report of the Standing Orders Committee on its Review of the Operation Standing Orders* (1996) I. 18B, p. 6.

15 Review of the Operation of the Standing Orders I. 18B, 1999, p. 12.

16 Review of Standing Orders I. 18B, 2011.

17 Clerk of the House of Representatives, advice to the Standing Orders Committee, 26 May 2017, pp. 39-40.

to justify, saying:

> "The fact that the House may, on a party vote, divide rather closely might well be a pattern on every vote throughout a session. It is clearly not intended by the Standing Orders that there should be a personal vote more often than not. Closeness on a party vote is not enough, of itself, for a personal vote unless there is something that might make a material difference. That might arise, for example, out of some elements of confusion."[18]

To date, a personal vote has never been used to clear up confusion arising from a party vote. An error in the final result arising from incorrect adding of votes or an incorrect announcement of the votes is corrected on the authority of the Speaker.[19] An error in the casting of votes by a party is corrected by the leave of the House. When, during a party vote, it is not clear how a vote has been cast, the Speaker or Clerk simply asks the party concerned to clarify its vote. In New Zealand, with parliaments elected under proportional representation, minority government and close margins on most party voting is the norm.

No element of confusion has yet required resolution by a personal vote. If such a vote were held, it would be unlikely to clear up any confusion. Party whips have a standing authority to cast proxy votes during a party vote.[20] No such general authority applies to personal voting, where specific proxies on each question must be authorised by individual members.[21] A 'surprise' personal vote held unexpectedly after a party vote would see whips without proxies to cast votes for their caucus colleagues. It is difficult to imagine that such a procedure would shed any light on a party vote in which there were "some elements of confusion".

In the 51st Parliament (2014–2017), personal votes were held on only two matters. The *Shop Trading Hours Amendment Bill*, which dealt with Easter shop trading hours, a traditional conscience issue in New Zealand, was the subject of personal votes. The Speaker was elected by a personal vote as is always the case when two members are nominated for the position. Every other vote was a party vote. However, personal votes were requested on a number of other bills, as set out in Table 1, below.

18 New Zealand Parliamentary Debates (Hansard) 1996, Vol. 558, p. 41. And 2012, Vol 681, p. 3404.

19 Standing Order 152.

20 Standing Order 154(4),

21 New Zealand Parliamentary Debates (Hansard) 1998, Vol. 574, p. 13392.

Table 1: Bills on which personal votes were requested (but declined)

Stage and name of bill	Decision of presiding officer
3rd reading of the Leave and Employment Protection (6 Months' Paid Leave) Amendment Bill	Declined because there was no vote to be held following 3rd reading debate.
3rd reading of the New Zealand Flag Referendums Amendment Bill	Declined because the result of the vote was not close (109–12) and not in doubt.
3rd reading of the Sale and Supply of Alcohol (Rugby World Cup 2015 Extended Trading Hours) Bill	Declined because the result of the vote was not close and not in doubt.
2nd reading of the Sale and Supply of Alcohol (Rugby World Cup 2015 Extended Trading Hours) Bill	Declined because there was no evidence that the matter was being treated as a conscience issue and a split party vote could be used by members dissenting from their party position.
1st reading of the SuperGold Health Check Bill	Declined because the result of the vote was not in doubt and nor was there any reason to consider the result invalid.
3rd reading of the Housing Restructuring and Tenancy Matters (Social Housing Reform) Amendment Bill, Taxation (Social Housing Reform) Bill, Housing Corporation (Social Housing Reform) Amendment Bill, and the KiwiSaver (HomeStart) Amendment Bill	Declined because it was requested after the bill had received its third reading.
Committee stage of Te Pire mō Te Reo Māori / Māori Language Bill	Declined because it was not a conscience issue and the result was not close (75–45).

Conclusions

New Zealand has operated a successful party voting system in the House of Representatives for 22 years. It is fast, easily understood and delivers certainty. It is well-supported by members of Parliament and has not occasioned negative public comment. Party voting is well-suited to the multi-party environment of a proportionally-elected parliament. Moreover, it provides a flexible system that enable a proportion of members to cast votes even when they are unable to attend the House in person. This flexibility greatly assists members in dealing with parental responsibilities, illness or other personal matters, while preserving the proportionality of the House.

It is time for the voting system to take one more step towards maturity by severing its historic link with personal voting. Personal voting is appropriate for conscience issues, where members are not subject to party discipline. It does not provide a meaningful way of clarifying doubt over the result of a party vote. For that reason, its use as a means of clarification has never been permitted by a presiding officer, despite provision for just such a use in Standing Orders. This is not a case of a provision falling into disuse or being overlooked. Successive presiding officers have determined that circumstances do not warrant its use. It is time to remove the provision from an otherwise well-functioning voting system. A move to use personal votes only on conscience matters and party votes for all other deliberations of the House would show that voting in New Zealand's MMP parliament had truly come of age.

THE LORD SPEAKER'S COMMITTEE ON THE SIZE OF THE HOUSE OF LORDS: A NEW APPROACH TO TURNING THE OIL TANKER

TOM WILSON

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"It so happens that if there is an institution in Great Britain which is not susceptible of any improvement at all, it is the House of Peers!" – Lord Mount in Iolanthe, by Sir William Gilbert and Sir Arthur Sullivan

Background

Notwithstanding the tongue-in-cheek words of W.S. Gilbert, the second chamber of the UK Parliament has a long-standing problem: the inexorable growth in its membership. The combination of membership for life (and, in the past, the ability to pass on membership to sons or just occasionally daughters) and the attractions of political patronage has made this all but inevitable. Indeed, the only major reductions in membership have been brought about by the expulsion of the abbots and priors during the 16th Century dissolution of the monasteries, and the removal of most hereditary peers under the Blair Government in 1999. At the time of writing, the House remains one of the largest legislative bodies in the world with 817 members.

In the eyes of some, the size of the House is only a symptom of a wider problem: that the House is appointed rather than elected. Accordingly, most attempts to reform the House have focused on how to select members, from the report of the Bryce Conference which marks its centenary this year to the Conservative-Liberal Democrat Coalition Government's ill-fated House of Lords Reform Bill of 2012. Experience since the passage of the House of Lords Act 1999 suggests that a more effective way to bring about change in the House of Lords is to proceed by small, incremental steps.

This lesson is exemplified by the success of two recent private members' bills which have succeeded where flagship white papers and bills have failed: the House of Lords Reform Act 2014, which among other things allowed members formally to resign or retire for the first time, and the House of Lords (Expulsion and Suspension) Act 2015 which significantly enhanced the powers available to sanction members for serious misconduct.

Although the 2014 Act helped to increase the outflow of members, the effect was outweighed by former Prime Minister David Cameron's appointment of over 200 new members. Theresa May has exercised more restraint in appointing

members and the size of the House has dropped slightly under her premiership. Experience suggests future changes of government could see further surges of appointments with the membership of the House resuming its upward path. The structural problem remains.

Establishment and work of the Committee

Against this background, pressure has been building in the House to identify other ways of tackling the size of the membership. At the forefront of this push has been the Campaign for an Effective Second Chamber, chaired by experienced parliamentarian Lord Cormack who on 5 December 2016 moved that the size of the House "should be reduced, and methods should be explored by which this could be achieved". In total 61 members spoke—and did so overwhelmingly in favour of the motion, which was agreed without a vote.

In the light of the debate, the Lord Speaker announced that he was setting up a committee to conduct the exploration called for in the motion. An associated written statement by the Senior Deputy Speaker added that the committee would be asked to look at methods of reduction which were "commensurate with [the House's] current role and functions" and to identify "practical and politically viable options that might lead to progress on this issue".

The Lord Speaker's Committee on the size of the House (LSC) was a novelty. There is a history of analogous "leaders' groups" in the House of Lords—informal panels of members selected by the leader of the governing party in the Lords (in consultation with the other leaders) to make recommendations on internal matters such as working practices and governance. In 2011 one such group reported on options for allowing members to leave the House of Lords permanently. That report led to a voluntary retirement scheme, later superseded by the 2014 Act. The initiative this time round was taken by the Lord Speaker, former Cabinet minister Norman Fowler. This marked a new development in the role of Lord Speaker which has only existed in its current form since 2006.

As with leaders' groups, the membership of the Committee was determined in consultation with the party leaders and without the approval of the House. It was restricted to a manageable six members: two Conservatives, two Labour, one Liberal Democrat and one independent crossbencher in the chair. The chairman was Lord Burns, a former Permanent Secretary at HM Treasury and ex-chairman of Santander and Channel 4. He had a long history of chairing inquiries into seemingly insoluble problems, including freedom of information and hunting with dogs. Other members included Lord Wakeham, who chaired the Royal Commission on the Reform of the House of Lords in 1999–2000, and Baroness Taylor of Bolton, chairman of the Lords Constitution Committee.

The status of the LSC—an informal body with high-level backing—meant that it had a measure of latitude in how to conduct its inquiry. Freed from

the constraints of a select committee, the LSC appointed four expert advisers (including former Clerk of the Parliaments Sir David Beamish) rather than the usual one, conducted an informal consultation open to all, held hearings behind closed doors, maintained no formal minutes of proceedings, and published its report in an eye-catching format with colour photographs. On the other hand, this informal status meant that the LSC did not constitute proceedings for the purpose of members' attendance at the House, and the staff supporting the Committee did so in addition to their core roles.

The Committee first met on 16 January 2017 and launched the consultation on 25 January. In April, the Prime Minister called an unexpected general election and Parliament was dissolved on 3 May. Inevitably, this delayed the LSC's work. The final report was eventually published on 31 October, following a total of 22 meetings and nine drafts.

Approach of the Committee

At the start, the Committee decided that for options to be "practical and politically viable", they needed to be achievable without legislation. Passing legislation on the House of Lords is difficult and time-consuming for any government at the best of times, but the Committee felt that it would be nigh on impossible while the whole bandwidth of Government and Parliament alike was being occupied by Brexit. This meant that the Committee would need to rely on the existing powers of the House, which happily had been bolstered considerably since the Leader's Group on Members Leaving the House had reported, thanks to the passage of the 2014 and 2015 Acts.

The decision to avoid legislation also meant that the Committee could not recommend any changes to two of the more unusual and controversial features of the House—the continued presence of 92 hereditary peers and 26 archbishops and bishops of the Church of England—because any such changes would necessitate amendments to primary legislation. Keeping these two groups at their current numbers would have the unintended effect of increasing their representation as a proportion of a smaller House. This concerned the Committee but there seemed to be no way around the issue.

The Committee was also clear that there was no point in proposing a scheme which would secure a one-off reduction in the membership but do nothing to prevent the historic upward trend in numbers from resuming. After the initial reduction, the Committee concluded, it would be necessary to institute a cap which would keep the House at a manageable size for as long as it remained an appointed body. This meant that the Committee was embarking on a larger endeavour than many expected: most debate until that point had focused on the short-term challenge of reducing the current membership.

The "steady state"

The Committee's short-hand for the initial, one-off reduction in members was the "transition", while the period after that was the "steady state". The Committee decided that the first priority was to work out how to maintain a cap during the steady state phase in a way which would be fair and sustainable; the conceptually less complex (if more immediately contentious) matter of the transition would be considered subsequently.

The precise level of the cap was not a matter which detained the Committee for long: they settled on 600 members which reflected the balance of opinion in the consultation and the proposed future size of the House of Commons (which currently has 650 members). The more difficult question was how to maintain a cap on the number of members-for-life without causing the membership to stagnate or the composition to become unrepresentative of the balance of political opinion across the country. Relying on "natural wastage" (i.e. retirement and death) would not work because, on past experience, it would not achieve a high enough turnover of members, and it would have an arbitrary impact on the party balance. The Committee needed to achieve a faster turnover in a way which was equitable to each group.

The Committee identified four broad options: fixed-term membership, a retirement age, removal of those with the lowest attendance or participation rates, and selection of members within parties after each election. The report contains a detailed analysis of the strengths and weaknesses of each proposal, but the Committee decided quickly that the only practicable option was fixed-term membership. Requiring members to retire after a single, non-renewable term of 15 years would provide a predictable and consistent turnover of members, treat each of the party groups equitably, avoid age discrimination, and bring the House into line with legislatures around the globe as well as best practice in the wider public and private sectors. No extensions would be permitted, except for those serving as ministers or as Lords office-holders with fixed-term appointments, who would be able to complete their term in office.

While a fixed-term system would be most appropriately set out in primary legislation, the Committee identified a non-legislative solution. New members would be offered their peerages on the understanding that they would retire after 15 years, and the House's Code of Conduct would require them to sign a formal undertaking to that effect on introduction. The Code would further specify that a breach of such an undertaking would constitute a breach of the rules. In the unlikely event that a member failed to abide by their undertaking, the House's full range of sanctions, up to and including expulsion, would be available for deployment. The Committee had opinions from its legal adviser and two of the most senior lawyer members that this system would be legally and constitutionally appropriate.

For the cap to be maintained without legislation, the Prime Minister—who would continue to be responsible for advising the Queen on new peers—would need to make a voluntary undertaking to limit her appointments to the number of vacancies available.

This system would undoubtedly deliver enough vacancies to refresh the House. The more difficult question was how the Prime Minister should be asked to divide the available appointments between the party groups to achieve fair adjustments to the political balance of the House. At present, Prime Ministers unsurprisingly give the majority of peerages to people of their own party, which results in destabilising swings between the Conservatives and Labour and puts inflationary pressure on the size of the House. For a cap to work, future appointments would need to be more balanced, enabling the composition of the House gradually to change to reflect shifts in political opinion across the country.

In seeking a suitable formula, the Committee spent a considerable amount of time analysing election results back to the 1950s, working out what the impact on the composition of the Lords would have been if new appointments had been based on (a) a party's share of seats in the House of Commons, or (b) a party's share of the national vote.

The first option was problematic because it would replicate the volatile swings and frequent political majorities in the Commons, which the Committee wanted to avoid in the Lords, and disadvantage parties which have a significant share of the national vote but dominate in few if any constituencies. Conversely, the second option would make it too difficult for ruling parties to assert themselves in the Lords, and would disadvantage those parties which only stand in one part of the country (mostly Scotland, Wales or Northern Ireland).

It was at this point that the Chairman and committee staff, knee-deep in hugely complex spreadsheets, determined that taking an average (mean) of the percentage of Commons seats and the percentage of the national vote would largely avoid these problems. Better still, in something of a "eureka" moment, the chairman worked out that this system would historically have resulted in a House with a party composition closely matching what happened in real life over multiple parliaments—but with the crucial difference that it would have done so without constantly inflating the size of the membership.

The "transition"

Only at this point did the Committee turn to the question in which, perhaps, the wider membership of the House was most interested: how to reduce the membership by over a quarter to 600. In the absence of legislation, the reduction would need to take place voluntarily: unlike new members, who could be required to undertake to retire, existing members did not join the House on

that basis and could not be forced to depart.

The quickest and simplest way of getting down to 600 members would be to impose a moratorium on appointments. The problem is that this would freeze the membership in time, allowing neither refreshment nor rebalancing. The Committee took the view that some new appointments would be needed throughout the transition. They recommended that the general approach should be one new appointment for every two departures (through retirement or death) until the target had been reached. After that it would be one-for-one.

After much deliberation about balancing the need for continuity and fairness with the need to make progress in reducing the membership, the Committee recommended that the reduction to 600 should take place over about 11 years. The rate of departures would increase progressively to 250 (with 125 new appointments) over the five year period 2022–2027 and then gradually subside. But the Committee emphasised that the scheme could work equally well at a faster or slower pace, depending on the appetite of the existing members for change.

The final key decision was how to allocate these departure benchmarks between the party groups. The Committee opted for a system of "equal contribution", with each party group reducing its number of existing members at the same rate in proportional terms. In return for meeting these benchmarks, a party group would be entitled to its new appointments calculated as described above. No party group would be asked to increase its departure rate beyond this agreed benchmark, regardless of its electoral performance: only the share of appointments would change. It would be for the party group to work out which members should leave and when, although the Committee did suggest some factors to consider.

The House's response to the report

The House debated the report on 19 December 2017, with 95 members taking part. The great majority of speakers supported the Committee's proposals, including the Leader of the Opposition in the House of Lords, Baroness Smith of Basildon. Responding to an oral question a few weeks later, Cabinet Office minister Lord Young of Cookham said that "by my calculation, only nine out of 95 contributors were opposed to what was in the recommendations" which was "as near consensus as you are ever going to get in this House". The Lord Speaker wrote to the Prime Minister, enclosing a copy of the debate transcript and urging her to "seize this opportunity to make progress".

The Prime Minister's response to the report

On 20 February 2018, the Prime Minister replied to the Lord Speaker with a detailed, four page response to the Committee's report. She agreed that action

should be taken now to reduce the size of the House and that the downward trajectory should be maintained. Addressing her own role in achieving this, she wrote: "I would like to use this letter to make a statement of intent on further appointments over the remainder of this Parliament. I intend to continue with the restraint I have exercised to date and, when making appointments, to allocate them fairly, bearing in mind the results of the last general election and the leadership shown by each party in terms of retirements." This appeared to accept the principles of the Committee's approach, although further detail would be needed.

The Prime Minister's response did not, however, make any reference to the "two-out, one-in" proposal, the optimum target size of the House or the need for a cap. She also stated that the key elements of the "steady state" proposals—most notably the introduction of fixed terms for new members—needed "further careful thought and wider engagement, particularly with the House of Commons" before they could be progressed.

Next steps

In the light of the Prime Minister's letter, the Lord Speaker asked the Committee to reconvene and, together with Lord Burns, he held meetings with each of the party leaders in the Lords and the Convenor of the Crossbench Peers to discuss a possible cross-party action plan. At the time of writing, discussions were continuing about maintaining the recent reductions in the size of the House in line with the report's recommendations, and the Committee was planning a follow-up report setting out progress and possible next steps.

Ultimately, only time will tell whether members of the House are committed to taking the necessary steps to reduce their number, and whether the Prime Minister and her successors are willing to exercise their appointment powers in a way which will enable the House to settle at a smaller size in a way which is fair to all parties. What is certain is that the Committee has provided the players with the tools they need to achieve this goal.

CONDUCT IN THE JERSEY STATES ASSEMBLY

MARK EGAN
Greffier of the States of Jersey

On 2 December 2008 Deputy Andrew Lewis, recently appointed as Jersey's Home Affairs Minister, made a statement to the States Assembly about the suspension of the then chief of police. Although the statement was made in public, the Assembly sat in private session to ask questions about the reasons for the suspension. It was not until 2016 that the transcript of what was said was made public. Before then, there was speculation that Deputy Lewis had asserted that the suspension was due to an adverse report from the Metropolitan Police on how Jersey police had undertaken an investigation into allegations of systemic child abuse in the Island. The suspension was, in any case, controversial because the decision was taken by a minister, as the law then required. It was also claimed by some that the suspension was part of a wider cover-up of the child abuse allegations.

Deputy Lewis lost his seat in 2011 but was re-elected in 2014. By this time the Assembly was in the process of establishing an independent inquiry into child abuse in Jersey, chaired by a QC. The terms of reference of the Independent Jersey Care Inquiry (IJCI) were agreed in 2013 and its hearings began in July 2014. The IJCI was established under Standing Orders which permit the Assembly to create *ad hoc* committees of inquiry but it had all the trappings of a public inquiry and was entirely independent of the States of Jersey, including in terms of its administration.

The IJCI had broad terms of reference in relation to how the authorities in Jersey had cared for children since 1945. Its final report included 46 paragraphs of analysis of the circumstances of the suspension of the police chief. Although it found no evidence of an intention amongst politicians to disrupt the police inquiry into child abuse, it concluded that Deputy Lewis had lied both to the Assembly in 2008 and to the Inquiry. The key statement that the IJCI found to be untrue was Deputy Lewis's assertion that he had seen a report from the Metropolitan Police when he had not done so.

The IJCI report was published on 3 July 2017 and, as well as being headline news in Jersey, attracted national and international attention. The report was debated in the Assembly over two full days on 6 and 7 July. Inevitably, one focus of press discussion and debate in the Assembly was the finding against Deputy Lewis and how the Assembly should respond.

The matter fell within the remit of the Assembly's Privileges and Procedures Committee (PPC). Members' first thought was that the new Commissioner for Standards might launch an investigation, but Paul Kernaghan, the Island's

first Commissioner, had not at that point formally taken up his role. The law governing his role states that only conduct occurring after July 2016 lies within his remit. Therefore, the PPC itself was the only body in a position to investigate the matter, but what would the Committee be examining? The PPC divided over whether the finding of the IJCI was sufficient in itself to demonstrate that Deputy Lewis had breached the code of conduct for elected members, or whether the PPC ought to investigate the suspension of the chief of police in order to reach its own view on the subject.

A public hearing took place on 1 August 2017 at which Deputy Lewis was accompanied by the External Relations Minister, and former Bailiff, Sir Philip Bailhache. The PPC Chairman, Connétable Len Norman, explained the purpose of the hearing in the following terms:

> "We will … be wanting to ascertain whether and when Deputy Lewis recognised that the way in which he had described the document on which the decision to suspend the former Chief of Police had been misleading and had been misconstrued by members. We will be wanting to know what steps, if any, he took to remedy this situation."

The Committee's report was published on 18 August 2017. It concluded that Deputy Lewis had breached the code of conduct by "failing to maintain the integrity" of the States of Jersey. The report focused on the various opportunities which Deputy Lewis had missed to clarify his remarks from 2008 and to correct the record when the transcript was finally published:

> "Instead of resolving the matter in 2008, or apologising for not doing so subsequently, Deputy Lewis has chosen to robustly defend and justify his actions; question why the Law Officers did not step in to correct his mistake; provide e-mail exchanges to intimate he was not party to the machinations of civil servants behind the scenes; blame pressure of work and his lack of familiarity or experience in his role; question the motives, political or otherwise, of those who have sought to raise this issue over the intervening years; and, most recently, to claim that the way in which he was treated by the IJCI was 'unjust'.
>
> Indeed Deputy Lewis, even during the hearing, did not appear to the Committee to accept that he had made a mistake and continued to robustly defend his actions: "What I have done is use the wrong language to describe a report and some Members have clearly been misled by that.".
>
> At no point, until the release of a media statement after the hearing, did Deputy Lewis say unequivocally that he was sorry. This statement was not circulated to States Members.
>
> When, in the hearing, it was highlighted that, during the in-Committee debate on 7 July 2017, he had said: "the Assembly deserves an apology from me", he admitted he had forgotten he had said that, and then stated: "… well

> there's an apology. I had not realised I'd said that ... I think that is almost an apology … I think that's the sort of similes one would use if they were making an apology.". This is not acceptable and it is not honourable."

The Committee put forward a 'vote of censure' in relation to Deputy Lewis which was debated on 12 September 2017. Although there are no formal consequences of a vote of censure, it was thought that Deputy Lewis might step down as chair of the Public Accounts Committee if the motion was carried. The debate was a long and difficult experience: the motion was adopted by 29 votes to 16. Deputy Lewis subsequently resigned his position but otherwise continued as an active member of the Assembly. He chose not to contest his seat at the election in May 2018.

Conclusions

Four main thoughts strike me in relation to this episode. Firstly, it is normally the case that standards committees or commissioners receive allegations of poor conduct and then investigate them before a conclusion is reached and published. On this occasion, another committee chose to investigate a possible lapse of behaviour and published its conclusions without notice to anyone, not least Deputy Lewis. It was unclear how the PPC should respond. Did the IJCI report constitute an allegation that Deputy Lewis had lied or was it now a fact that he had done so?

Secondly, was this a breach of privilege as well as, or instead of, a breach of the code of conduct? John Profumo's lie to the House of Commons in 1963 was dealt with as a breach of privilege but that route was not taken with Deputy Lewis. There were two reasons for this. There is little recent case law for dealing with allegations of lies in parliament as breaches of privilege, and none in Jersey, and Members and the public were much more likely to understand what was happening if the matter was framed in terms of standards rather than the more obscure language of privilege.

However, this case did expose the need for Jersey's code of conduct to be reviewed. The document does not explicitly require Members to be honest in their political dealings and a section entitled 'honesty' is in fact about conflicts of interest. For that reason, the PPC fell back on the catch-all integrity provision.

Since summer 2017 Jersey has had a Commissioner for Standards who investigates alleged breaches of the code (and of the ministerial code) and reports his findings to the PPC. His caseload has included some difficult problems but the PPC has been content on every occasion to accept his judgements. No transgression has been sufficiently serious to require the Assembly to consider censure or suspension so the extent to which the Assembly as a whole would accept the Commissioner's findings and not seek to debate or over-rule them is untested.

THE STRATHCLYDE REVIEW: EFFECTIVE SCRUTINY OF SECONDARY LEGISLATION?

PAUL BRISTOW
Adviser, Secondary Legislation Scrutiny Committee, House of Lords

Tax Credits

In early September 2015, the Government laid the draft Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 ("the Tax Credits Regulations") before UK Parliament. The Tax Credits Regulations were laid under the Tax Credits Act 2002, and were subject to the affirmative procedure, meaning that they required the approval of both Houses before they could be made by the Treasury.

The stated purpose of the Regulations was to help the Government deliver their manifesto commitment to reduce the welfare budget. According to the Government, the changes proposed in the Regulations would result in £4.4 billion in savings in 2016:

- by reducing the threshold at which working tax credits would begin to be withdrawn (from £6,420 to £3,850) and
- by increasing the taper rate (that is, the rate at which tax credits are withdrawn) from 41 per cent to 48 per cent.
- They also reduced the "income disregard" from £5,000 to £2,500 ("the income disregard component").

No Impact Assessment was laid with the Regulations.

The draft Regulations were approved by the House of Commons on 15 September 2015 (by 325 votes to 290). The Commons returned to the issue on 20 October 2015, when an Opposition motion calling on the Government "to reverse its decision to cut tax credits, which is due to come into effect in April 2016" was defeated (by 295 votes to 317).

On 13 October 2015, the Secondary Legislation Scrutiny Committee (SLSC) reported on the draft Tax Credits Regulations. It drew them to the special attention of the House, commenting that the Explanatory Memorandum accompanying the instrument "contained minimal information" and that it had asked the Government for additional information including an explanation why an Impact Assessment had not been published.[1] Prompted by earlier inquiries, the Chancellor of the Exchequer had provided the Committee with an Impact Assessment on 12 October 2015, which the SLSC published on its website.

On 26 October 2015, the House of Lords debated the draft Regulations

[1] 9th Report, Session 2015-16 (HL Paper 38).

on a Government approval motion, along with four amendment motions.[2] The amendment motion by Baroness Manzoor proposed that the House should decline to approve the Regulations: this was disagreed to in a vote. The amendment motion by the Lord Bishop of Portsmouth proposing that the House should express regret about the impact of the Regulations was not considered, because it was pre-empted by votes on the other two amendment motions, by Baroness Meacher and Baroness Hollis of Heigham. These other two motions called for consideration of the Regulations to be deferred until the Government had taken various steps to analyse and mitigate their impact. The House agreed to both of these deferral motions.

On 27 October 2015, the Government announced a review, to be conducted by Lord Strathclyde (a former Chief Whip and Leader of the House), to "examine how to protect the ability of elected Governments to secure their business in Parliament". It would "in particular … consider how to secure the decisive role of the elected House of Commons in relation to its primacy on financial matters and secondary legislation".

Eight weeks later, on 17 December 2015, the report was presented to Parliament: "Strathclyde Review: secondary legislation and the primacy of the House of Commons".[3] It identified three options:

- Option 1: to remove the House of Lords from statutory instrument procedure altogether;
- Option 2: to retain the present role of the House of Lords in relation to statutory instruments; but, in a resolution or in standing orders, the House would set out and recognise the restrictions on how its powers to withhold approval or to annul should be exercised in practice, and would "revert to a position where the veto is left unused";
- Option 3: to create a new procedure—set out in statute—allowing the Lords to invite the Commons "to think again when a disagreement exists and insist on its primacy."

The Review recommended Option 3, on the ground that it would provide the Government with a degree of certainty, while maintaining a simplicity of procedure for the House of Lords that would be consistent with established procedures for other legislation.

The Strathclyde Review was debated in the House of Lords on 13 January 2016.[4] At the conclusion of the debate, the then Leader of the House, the Rt Hon. Baroness Stowell of Beeston, said that the Government would be reflecting on the points raised in the debate and acknowledged that several committees,

[2] HL Deb, 26 October 2015, cols 976-1042.
[3] Cm 9177.
[4] HL Deb, 13 January 2016, cols 273-380.

including the Secondary Legislation Scrutiny Committee (SLSC), would wish to consider the implications of the Strathclyde Review.

Reports by the House of Lords Constitution Committee, and the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC), responding to the Strathclyde Review, were published on 23 March 2016.

The Constitution Committee, in its Report entitled "Delegated Legislation and Parliament",[5] concluded that:

> "the Government should not seek to move forward with proposals based on the Strathclyde Review without proper consideration of the delegated legislation process in its entirety. A six-week review based on informal consultation following highly politicised events in both Houses is not a proper basis for determining constitutional change. The balance of power between Parliament and the Executive lies at the heart of our constitution. There is a strong case for reviewing the operation of delegated legislation, but change must be careful, considered and, importantly, not undertaken in haste or for the wrong reasons."

In its Report,[6] the DPRRC stated that the Review was "based on a misunderstanding about the difference between primary and delegated legislation, and that the relationship central to the Review is between the Executive and Parliament, and not between the two Houses". The Committee noted "the widely-held view that, for good reasons, scrutiny of delegated legislation is undertaken more thoroughly in this House than in the House of Commons. We conclude that, given that the House of Commons is controlled by the Government, the effect of the three Strathclyde options would be to tilt power away from Parliament towards Government."

The SLSC carried out an inquiry into the Review, from January 2016, and published its Report: "Response to the Strathclyde Review: Effective parliamentary scrutiny of secondary legislation" on 14 April 2016.[7] The Committee said that it did not support any of the three options put forward by Lord Strathclyde. It commented that, in the light of reflection "on the Strathclyde options and also the evidence we received, we conclude that there are strong arguments in favour of re-affirming what we consider to be the current convention as set out in the report of the Joint Committee on Conventions of the UK Parliament (under the chairmanship of the Rt Hon. Lord Cunningham of Felling), namely that the Lords should retain its power to reject an instrument but that that power should be used only in exceptional circumstances, and we recommend accordingly."

5 9th Report, Session 2015-16 (HL Paper 116).
6 25th Report, Session 2015-16 (HL Paper 119).
7 32nd Report, Session 2015-16 (HL Paper 128).

The Committee noted that Lord Strathclyde had ended his review with the comment that, to mitigate against excessive use of the proposed procedure under Option 3 (that is, an invitation by the Lords to the Commons to "think again"), it would be right for the Government "to take steps to ensure that bills contain an appropriate level of detail and that too much is not left for implementation by statutory instrument". The Committee said that it "welcome[d] this sentiment and suggest[ed] that if the Government were, in the future, to exercise greater caution in using secondary legislation for significant policy change, then a likely concomitant would be a reduction in challenges to secondary legislation."

On 12 May 2016, the Public Administration and Constitutional Affairs Committee of the House of Commons published a report on "The Strathclyde Review: Statutory Instruments and the power of the House of Lords".[8] The Committee concluded that the Government should not produce legislative proposals aimed at implementing the Review's recommendations. It stated that "[s]uch legislation would be an overreaction and entirely disproportionate to the House of Lords' legitimate exercise of a power that even Lord Strathclyde has admitted is rarely used. The Government's time would be better spent in rethinking the way it relies on secondary legislation for implementing its policy objectives and in building better relations with the other groupings in the House of Lords."

On 17 November 2016, the Leader of the House of Lords, Baroness Evans of Bowes Park, made a statement about the Government's Response to the Review and to the four Select Committee reports.[9] She said that the Government agreed with Lord Strathclyde's conclusion that on statutory instruments, as with primary legislation, the will of the elected House should prevail, and believed that Lord Strathclyde's Option 3 provided a credible means of achieving this:

> "However we do not believe that we need to introduce primary legislation at this time. We recognise the valuable role of the House of Lords in scrutinising SIs, but there is no mechanism for the will of the elected House to prevail when they are considered, as is the case for primary legislation. The Government are therefore reliant on the discipline and self-regulation that this House imposes upon itself. Should that break down, we would have to reflect on this decision."

On 21 December 2016, the Constitution Committee, the DPRRC and the SLSC published a joint response to the Government Response to the Review.[10] The Chairmen of all three Committees had each received a letter of 1 December 2016 from the Rt Hon. David Lidington MP, then Leader of the House of

[8] 8th Report, session 2015-16 (HC Paper 752).
[9] HL Deb, 17 November 2016, col 1359.
[10] SLSC 19th Report, Session 2016-17 (HL Paper 90).

Commons, which enclosed a five-page document setting out the Government's response.

The three Committee Chairmen regretted what they described as "the more minatory tone of the Government's response which states at paragraph 23: '... if the House of Lords puts itself in a position where it seeks to vote against SIs approved by the House of Commons, then Lord Strathclyde's recommendation provides a clear mechanism for the House of Commons to be able to assert its primacy over SIs'. This is contrary to the conclusion of the Joint Committee on Conventions of the UK Parliament, a report which was noted with approval by both Houses of Parliament and which envisaged rejection of instruments in 'exceptional circumstances'."

They referred to what they called the "thinness" of the Government response, noting that the Government had failed to address the core issue taken up by the DPRRC, and also raised by the SLSC, the Constitution Committee and by Lord Strathclyde himself, "that government departments should more effectively ensure that 'bills contain an appropriate level of detail and that too much is not left for implementation by statutory instrument'."

Finally, they also drew attention to "the fundamental error of the Government that, when they asked Lord Strathclyde to consider parliamentary practice and procedure in relation to secondary legislation, they set as his remit the relationship between the two Houses (the "primacy of the House of Commons") rather than the relationship between Parliament and the Executive."

In concluding her statement on 17 November 2016, the Leader of the House of Lords said: "This House has an important role to play in scrutinising and revising legislation, and the Government recognise this. As we will find ourselves considering the legislation resulting from the decision of the British people to leave the European Union, the constructive approach this House has so far shown will be ever more important."

Consideration of that legislation, and in particular of the European Union (Withdrawal) Bill which received Royal Assent at the end of June 2018, has indeed dominated much of the work of the House of Lords in the 2017–19 Session to date. The Government's use of secondary legislation to prepare for the UK's exit from the EU, and the ability of Parliament to scrutinise it, were issues that received a good deal of attention during the Bill's passage. In the period following the 2018 summer recess, both Houses will be dealing intensively with Brexit-related secondary legislation, and this will include the new function of "sifting" proposed negative instruments which is provided for in the European Union (Withdrawal) Act 2018.

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Release of Parliamentary Commission of Inquiry papers

The Parliamentary Commission of Inquiry (the Commission) was established in May 1986 under the Parliamentary Commission of Inquiry Act 1986 (the Act) to inquire into allegations concerning the conduct of then Justice of the High Court of Australia, the Hon Lionel Keith Murphy. Prior to his appointment to the bench, Justice Murphy had served as a Senator and as Attorney-General. Allegations had been made that Justice Murphy had tried to influence court proceedings relating to a Sydney solicitor.

Section 5(1) of the Act required the Commission to inquire, and advise the Parliament, whether any conduct of Justice Murphy had been such as to amount, in its opinion, to 'proved misbehaviour' within the meaning of section 72 of the Australian Constitution. This is one of a limited number of constitutional grounds on which a High Court Justice can be removed from office before the expiry of his or her term.

In September 1986, following Justice Murphy's diagnosis with a terminal illness, the Parliament passed the Parliamentary Commission of Inquiry (Repeal) Act 1986 (the repeal Act), which had the effect of ceasing the Commission and placing its records into the custody of the Presiding Officers of the Parliament. Under the repeal Act, the Commission's records were divided into Class A records (those relating to Justice Murphy's conduct) and Class B records (all other Commonwealth records, including those regarding the interpretation of section 72 of the Constitution). The repeal Act gave the Presiding Officers exclusive possession of the Class A documents of the Commission for 30 years from its commencement.

On 10 October 2016, the Speaker of the House of Representatives made a statement regarding the expiration of the period of exclusive possession of documents of the Commission. The Speaker informed the House that the Presiding Officers had determined that the Clerks of the respective Houses, and other nominees approved by the Presiding Officers, could have access to and examine the records for the purposes of providing advice to assist in responses to requests for access. The examination of records by parliamentary officers had commenced on 29 September 2016 and the Presiding Officers would wait on advice about the contents of the records before determining any arrangements for wider access to them.

On 13 December 2016, the President of the Senate and the Speaker of the House announced that they had authorised the publication of the Class B

records of the Commission, which contained material mostly relating to the interpretation of section 72 of the Constitution.

On 22 June 2017, the Speaker informed Members that the examination of the documents of the Commission had been completed and that he and the President of the Senate had decided to allow the Class A documents to be published. The Speaker explained the process for examining the documents and the reasons for publishing the material. The Speaker also informed the House that the documents would be scanned and published on the Australian Parliament House website on Monday 24 July 2017 at 10am, with a small amount of personal information redacted from the published versions, and advised that those named in the documents, or close relatives or legal representatives, would be informed, where possible, of the publication of the documents.

On 20 July 2017, a media release was issued by the President and Speaker indicating that the undertakings relating to the documents had proved more time-consuming than expected, resulting in a short delay, and that a new date for publication will be advised in the near future.

On 11 September 2017, the Speaker informed the House that, the processes having been completed, the records would be tabled in the respective Houses at 9.30am on Thursday 14 September. The records were presented accordingly and were published soon afterwards on the parliament's website.

Section 44 of the Constitution: by-elections in New England and Bennelong

By-elections for the House of Representatives were held in December 2017 in the divisions of New England and Bennelong following the disqualification of the Hon Barnaby Joyce MP, Deputy Prime Minister, and the resignation of Mr John Alexander OAM MP relating to issues with their citizenship status.

On 14 August, Mr Joyce informed the House that he had received advice from the New Zealand High Commission that he may be a citizen, by descent, of New Zealand. Accordingly, the House resolved to refer the matter to the High Court, sitting as the Court of Disputed Returns. Mr Joyce continued to sit in parliament and to undertake Ministerial duties while the Court considered the matter. The Court delivered its judgment on 27 October and declared Mr Joyce disqualified by reason of section 44(i) of the Australia Constitution.[1] Later that

[1] Section 44 of the Australian Constitution details the reasons someone may be disqualified from acting as either a senator or member of the House of Representatives. Section 44.1 states "[Any person who] is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power [shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives].

day the Speaker issued a writ for a by-election in the Division of New England on 2 December.

On 11 November, Mr Alexander wrote to the Speaker resigning his seat as the Member for Bennelong, having concluded that he could be a British citizen by descent. On 13 November, the Speaker issued a writ for a by-election on 16 December to fill the vacancy in the Division of Bennelong.

Having received advice that they had successfully renounced their citizenship rights to New Zealand and the United Kingdom respectively, Mr Joyce and Mr Alexander were each nominated as candidates for the by-elections in their former seats. Candidates contesting a by-election complete a nomination form and declare their eligibility under section 44 of the Constitution as at that time.

Mr Joyce was successful in the New England by-election and was sworn in as a Member on 6 December, the second last sitting day for 2017. He also returned to the ministry, including his role as Deputy Prime Minister. Mr Alexander was successful in the Bennelong by-election and was sworn in when the House resumed in February 2018.

Establishment of a citizenship register and referral of questions regarding the place of a Member to the High Court, sitting as the Court of Disputed Returns

On 4 December 2017, the House of Representatives agreed to a resolution requiring each Member to provide a statement in relation to citizenship to the Registrar of Members' Interests, by no later than 9am the following day. (A similar resolution regarding a citizenship register for Senators had been agreed to by the Senate during a Senate-only sitting on 13 November.) The statement was to include the Member's declarations as to Australian and foreign citizenship, relevant considerations and evidence, as specified in the resolution. The resolution provided for the Registrar to publish this information on a register, and any alterations or additions, on the parliament's website. The resolution also provided that referral of a Member to the Court of Disputed Returns could be moved without notice by a Minister or the Manager of Opposition Business.

On 6 December, the Manager of Opposition Business, pursuant to the resolution, moved that the House refer certain questions regarding the citizenship of nine Members (including government Members, opposition Members and one non-aligned Member) to the Court of Disputed Returns. Debate ensued and when the question was put, a division was called and the numbers for the 'Ayes' and 'Noes' were equal. The Speaker gave his casting vote with the 'Noes' in accordance with the principle that decisions should not be taken except by a majority.

Immediately following defeat of this motion, the Manager of Opposition

Business moved a further motion, pursuant to the same resolution of the House, to refer certain questions regarding the place of the Member for Batman (Mr Feeney) to the Court of Disputed Returns. The motion was carried on the voices. The following day, the Speaker presented to the House a copy of his letter, and attachments, to the High Court relating to the reference regarding the qualification of Mr Feeney. Mr Feeney subsequently resigned on 1 February 2018, triggering a by-election in the Division of Batman, held on 17 March 2018.

Passage of Marriage Amendment (Definition and Religious Freedoms) Bill

On Monday 4 December 2017 a message from the Senate was reported transmitting for the concurrence of the House of Representatives, the Marriage Amendment (Definition and Religious Freedoms) Bill 2017, a private Senator's bill to legalise same-sex marriage in Australia.

Following the Bill's introduction, the House granted leave for the second reading debate to take place immediately.

Standing Orders were suspended on Tuesday and Wednesday of that week to enable the House to sit beyond its usual sitting hours to debate the Bill and for the Bill to be considered during government business time. The second reading debate concluded on the morning of 7 December, when the Member for Leichhardt (Mr Entsch) summed up the debate. In total, 125 Members contributed to the debate on the second reading of the Bill, which went for over 21 hours.

A second reading amendment moved during the debate by the Member for Warringah (Mr Abbott) was negatived on the voices and the question that the Bill be read a second time was carried on the voices.

The House then proceeded to consider the Bill in detail. Seven Members moved amendments during the consideration in detail stage, all of which were negatived either on the voices or on division. During the detail stage debate, Standing Orders 31 (automatic adjournment of the House) and 33 (limit on business) were suspended for the remainder of the sitting to facilitate the passage of the Bill. The Manager of Opposition Business also withdrew the Matter of Public Importance (that occupies debate for an hour after Question Time) which he had submitted for discussion that day.

At the conclusion of the consideration in detail stage, the Prime Minister was granted leave to move the third reading immediately. He briefly addressed the motion, as did the Leader of the Opposition and the Greens Party Member for Melbourne (Mr Bandt). The question that the Bill be read a third time was put and a division was called. There being only four Members voting with the 'Noes' the Speaker declared the question carried and the Bill was read a third time.

Division retaken after Government loses vote on floor of the House

On 4 December 2017, the House of Representatives considered a message from the Senate regarding a Senate resolution calling on the Government to "accept New Zealand's offer to resettle 150 refugees and negotiate conditions similar to the United States refugee resettlement agreement." The Senate requested the concurrence of the House in the resolution.

The Leader of the House moved that the resolution be disagreed to. During the ensuing debate, the Member for Melbourne (Mr Bandt) moved, as an amendment, that the resolution of the Senate be agreed to. At the conclusion of debate, the question on the amendment was put and passed on division, with 73 'Ayes' and 72 Government Members voting 'No'. The Leader of the House moved immediately that the House divide again in accordance with Standing Order 132 (new division in case of confusion, error or misadventure), as two Government Members had been absent for the division.

The Manager of Opposition Business raised a point of order claiming that there had been no confusion, error or misadventure as required by the Standing Order. The Speaker stated that he did not concur. Following a closure of debate, the motion that the House divide again was carried on division.

Prior to the House dividing again on Mr Bandt's amendment, the Speaker stated that the Members who had missed the vote should explain to the House that they did so through one of the reasons provided in the Standing Orders. The two Government Members each apologised to the House for missing the vote due to misadventure.

The question on the amendment was accordingly put a second time and negatived on division. The question on the original motion—that the resolution be disagreed to—was then carried on division.

Senate

Qualification of senators

Section 44 of the Constitution provides grounds on which persons may be ineligible to stand for election or to continue to sit in either House. These include:

- being an undischarged bankrupt or insolvent;
- owing allegiance to a foreign power or holding foreign citizenship;
- being convicted and under sentence, or awaiting sentence, for an offence carrying a penalty of imprisonment of one year or longer;
- holding an office of profit under the Crown; and
- having a direct or indirect pecuniary interest in an agreement with the public service of the Commonwealth (except in specified circumstances).

Where an issue relating to the qualifications or eligibility of a senator arises, the Senate may refer the matter to the High Court (sitting as the Court of

Disputed Returns) for determination. As noted in last year's contribution, in 2016 two matters were referred to the High Court for determination. In 2017, an unprecedented number of referrals was made.

The table below summarises referrals to the High Court in 2016 and 2017. In total, 12 senators were referred, including the former President of the Senate and two Cabinet ministers.

Referrals of Senators to the High Court, 2016 and 2017			
Senator	Date referred	Constitutional provision	Outcome
Culleton	7 Nov 2016	s 44(ii): conviction for offence 1+ years imprisonment	Disqualified
Day	7 Nov 2016	s 44(v): direct or indirect pecuniary interest with Cth	Disqualified
Canavan	8 Aug 2017	s 44(i): subject or citizen of a foreign power	Not disqualified
Ludlam	8 Aug 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Waters	8 Aug 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Roberts	9 Aug 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Nash	4 Sep 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Xenophon	4 Sep 2017	s 44(i): subject or citizen of a foreign power	Not disqualified
Parry	13 Nov 2017	s 44(i): subject or citizen of a foreign power	TBD (resigned)
Lambie	14 Nov 2017	s 44(i): subject or citizen of a foreign power	TBD (resigned)
Kakoschke-Moore	27 Nov 2017	s 44(i): subject or citizen of a foreign power	TBD (resigned)
Gallagher	6 Dec 2017	s 44(i): subject or citizen of a foreign power	TBD

Bankruptcy, conviction and pecuniary interest

Questions relating to the qualifications of then Senators Culleton and Day to stand for election or to sit in the Senate arose during the latter part of 2016. These questions covered three of the grounds of ineligibility and disqualification described above.

Mr Culleton was prima facie disqualified under section 44(iii) of the Constitution, when a sequestration order—effectively a declaration of bankruptcy—was made against his estate on 23 December 2016. This circumstance was effectively overtaken on 3 February 2017 when the High Court unanimously held that Mr Culleton had been convicted and subject to be sentenced for a disqualifying offence at the time of the 2016 federal election. He was therefore incapable, under section 44(ii) of the Constitution, of being chosen as a senator.

In relation to Mr Day, on 3 April 2017 the High Court held that financial arrangements concerning Senator Day's electorate office rendered his election in July 2016 invalid. The court held that the effect of these complex financial arrangements was that Mr Day had an 'indirect pecuniary interest' in an agreement with the Public Service of the Commonwealth, contrary to section 44(v) of the Constitution.

Foreign citizenship

In 2017 new questions relating to the qualifications of senators arose, this time under section 44(i) of the Constitution which prohibits 'foreign allegiances', and disqualifies any person who 'is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power'.

In July Senators Ludlam and Waters resigned after receiving advice they were dual citizens having each been born overseas: Ludlam in New Zealand, naturalised as an Australian in his teens; Waters born to Australian parents in Canada, returning to Australia when she was a baby. In August Senator Canavan adverted to advice about his circumstances, involving possible Italian citizenship by descent. Uncertainties were also raised about the citizenship status of Senator Roberts who was born in India. Questions relating to the qualifications of the four senators were referred to the High Court, on the initiative of their respective leaders.

At the time of these referrals, there were several debates and questions raised concerning the threshold of evidence which the Senate might expect before contemplating a motion to refer questions about the qualifications of a senator under section 44 to the High Court. The Senate's approach has generally been to ask the court to determine any genuine case where evidence has been put before the Senate indicating that a breach of the constitutional provisions may have occurred.

In September the Senate referred two further senators to the High Court. The Government moved to refer questions concerning Senator Nash who had informed the Senate at the end of the previous sittings of advice concerning her British citizenship, by descent. Senator Xenophon moved his own referral, based on advice about his status as a British Overseas Citizen, acquired courtesy of his father, born in Cyprus when it was a British colony.

In late October the High Court made orders and delivered its judgment on questions concerning the qualification of the six senators (and one member of the House of Representatives) referred to the High Court in August and September. The court held that:

> "Section 44(i) operates to render "incapable of being chosen or of sitting" persons who have the status of subject or citizen of a foreign power. Whether a person has the status of foreign subject or citizen is determined by the law of the foreign power in question. Proof of a candidate's knowledge of his or her foreign citizenship status…is not necessary to bring about the disqualifying operation of s 44(i). A person who, at the time that he or she nominates for election, retains the status of subject or citizen of a foreign power will be disqualified by reason of s 44(i)…"

Applying this construction of section 44(i) to the facts before it, the court held that Senators Nash and Roberts and former Senators Ludlam and Waters were each foreign citizens at the time of their nomination, and so were ineligible to be elected. Senators Canavan and Xenophon were not disqualified. The court held that Senator Canavan was not a citizen of Italy, as he had not taken administrative steps that might have activated a 'potential' citizenship right. Senator Xenophon's recently-unearthed status as a British Overseas Citizen was held to lack the main characteristics of citizenship: the right to entry and the right of abode.

In November Senator Parry, the President of the Senate, received advice from the UK Home Office that he held British citizenship by descent, in contravention of section 44(i) of the Constitution. He resigned his office and his seat in writing to the Governor-General, as provided for by section 17 of the Constitution. On 14 November, Senator Lambie made a statement to the Senate outlining similar circumstances and resigned her place before question time. Both matters were referred to the High Court, in the same manner and form as other recent cases.

In the final sitting fortnight of the year there were two further referrals to the court. Senator Kakoschke-Moore resigned in light of information she had received from British authorities while preparing material for the new citizenship register (see below). Questions relating to the resulting vacancy were referred to the court on 27 November. Similarly, on 6 December, questions relating to the qualification of Senator Gallagher under section 44(i) were referred to

the court, after she made a statement to the Senate about the steps taken to renounce British citizenship in advance of the 2016 election and the lengthy delay in authorities confirming her renunciation.

The focus of these matters is the prohibition on senators and members holding a foreign citizenship from the time they nominate as candidates for election. The question engaged by Senator Gallagher's case is whether a person is eligible to stand for election where the person has taken all necessary steps to renounce, but foreign law—or, possibly, foreign bureaucracy—has not operated to effect a change in status prior to the date of nomination.

Filling vacant positions

When the High Court declares that a Senate candidate has not been validly elected the court generally orders a recount of the ballot papers (a 'special count') to determine the candidate who was validly elected to the place in question. Following special counts, the High Court declared the following candidates elected to newly vacant positions in 2017:

- Senator Georgiou (replacing former Senator Culleton); 10 March 2017
- Senator Gichuhi (replacing former Senator Day); 19 April 2017
- Senator Steele-John (replacing former Senator Ludlam); 10 November 2017
- Senator Bartlett (replacing former Senator Waters); 10 November 2017
- Senator Anning (replacing former Senator Roberts); 10 November 2017
- Senator Molan (replacing former Senator Nash); 22 December 2017

In a further demonstration of the scope of operation of section 44, Senator Molan was declared elected after the High Court found that the candidate first identified in a special count of New South Wales ballots to replace former Senator Nash was incapable of being chosen as she had recently accepted an appointment to the Administrative Appeals Tribunal. The court's reasons confirmed that a Senate election is not concluded if it returns an invalid candidate, but continues until a senator is validly elected. Any disqualification which arises in the meantime—in this case, appointment to an office of profit under the crown, contrary to section 44(iv)—renders the candidate incapable of being chosen.

At the end of 2017 three Senate seats remained vacant following the resignations of former Senators Parry, Lambie and Kakoschke-Moore while cases relating to their qualifications remained outstanding before the High Court. One further case (in relation to Senator Gallagher) remained before the court, although as her case raises an undecided issue (discussed above), Senator Gallagher continues to sit in the Senate.

Election of new President

Under section 17 of the Constitution, when the office of President becomes vacant, the Senate shall 'before proceeding to the despatch of any other business' choose a President. On 13 November (the first sitting day following the resignation of former President Parry), Senator the Hon Scott Ryan was elected President, receiving a majority of votes cast in a ballot of senators held in accordance with Standing Order 7.

Citizenship register

On 13 November, on the motion of the Leader of the Government, the Senate agreed to establish a citizenship register, requiring declarations and documentation from senators in respect of their citizenship status, any previous foreign citizenships held and actions taken to renounce them, birth places of parents and grandparents, and associated details. Statements are required to be provided to the Registrar of Senators' Interests. Initial statements were required by 1 December 2017. The Committee of Senators' Interests has been given oversight of the form of the register and procedures for its maintenance. Knowingly making false statements, failing to provide statements on time, and failing to correct inaccuracies of which senators become aware may be dealt with as serious contempts, and would also no doubt carry a heavy political cost.

Effect of sitting while disqualified

Two questions arise when a person sits in the Senate despite being ineligible to do so. The first is what effect disqualification has on Senate proceedings in which the person took part. As Odgers' Australian Senate Practice notes:

> "The presence in the Senate of a senator found not to have been validly elected or to be disqualified does not invalidate the proceedings of the Senate in which the senator participated."[2]

The second question is whether the person would be required to repay any salary or allowances paid to them as a senator. In previous cases, Attorneys-General advised that those whose elections were declared void were not entitled to retain salary payments made to them, but such debts were, in effect, waived. Under current legislation, unauthorised payments automatically become debts due to the Commonwealth. The decision whether to waive such debts is one for the Government, not the Senate.

Passage of a private senators' bill

Also of significance during the year was the passage of a private senators' bill to

[2] Odgers' Australian Senate Practice (14th Edition, 2016), p.174

allow same-sex marriage. This bill was only the sixteenth private senators' bill to pass both Houses in the Commonwealth Parliament's 117 years.

Events prior to the passage of the bill were unusual. In early August the Government sought to revive its own bill—the Plebiscite (Same-Sex Marriage) Bill 2016—which had been defeated at the second reading stage in November 2016. As noted in Odgers' Australian Senate Practice, a bill can be revived and its consideration resumed by the Senate even if it has been negatived at any stage. While this is not common, Odgers lists a number of precedents.[3]

The government bill would not have amended the law to allow same-sex marriage itself; instead, it would have established the legislative framework for, and authorised federal spending on, a compulsory, in-person vote in a national plebiscite that would ask Australians: 'Should the law be changed to allow same-sex couples to marry?'. The Government's proposal to revive the bill was defeated on 9 August on an equally divided vote (in accordance with section 23 of the Constitution equally divided votes in the Senate are resolved in the negative).

After the Senate declined to further consider the government's plebiscite bill, the government determined that it would rely on existing legislation and funding mechanisms to conduct a voluntary postal survey instead. Given that this option did not involve the passage of authorising legislation, the funding mechanism and legislative authority for the voluntary survey was challenged in the High Court. The challenges were unsuccessful, and the survey went ahead with the results being announced on 15 November (61.6 per cent in favour of changing the law; with a turnout of 79.5 per cent).

The day after the announcement of the survey result, a cross-party private senators' bill—the Marriage Amendment (Definition and Religious Freedoms) Bill 2017—was introduced, debated for several hours and given precedence over all other bills. The bill passed the Senate the following week, with sittings extended to accommodate lengthy debate. The bill was described by its proponents as a compromise arrived at following the report of the Senate Select Committee which examined a government exposure draft bill earlier in the year. A number of technical and consequential amendments were agreed to, but the many substantive amendments which sought to either expand or restrict the bill's operation were rejected. There was substantial opposition to amendments dealing with matters outside the sphere of marriage itself, some of which may be taken up through a broader review of laws connected to religious freedoms. The same amendments met the same fate in the House the following week, and the Act was assented to on 8 December and commenced the following day.

[3] *Ibid*., pp 347–350

Australian Capital Territory Assembly

Referral process for alleged breaches of the code of conduct to the Commissioner for Standards

On 16 February 2017, the Assembly referred to the Standing Committee on Administration and Procedure an inquiry into whether the role of the Commissioner for Standards could be strengthened by streamlining the referrals process for complaints against MLAs. The current procedure is that the Speaker initially examines complaints (assessing whether there is sufficient evidence as to justify investigating the matter and that they are not vexatious, trivial or only for political advantage). On 11 May 2017 the Committee reported to the Assembly recommending that:

> "The Committee recommends that the Speaker and Deputy Speaker be removed from the role of reviewing complaints prior to their possible referral to the Commissioner and that Continuing Resolution 5AA, the protocols, complaint guidelines and the Schedule for the Appointment of the Commissioner be amended accordingly."

On 3 August 2017, the Assembly adopted revised procedures for the referral of allegations of breaches of the Members' code of conduct to the Commissioner for Standards for investigation and report. The revised procedures remove the Speaker (or Deputy Speaker, as the case may be) from the "gatekeeper" role of making an initial decision on whether a matter should be referred to the Commissioner. Under the revised arrangements allegations are to be submitted to the Clerk who will then refer them directly to the Commissioner.

Ordering documents to be tabled and independent legal arbiter process invoked

The 9th Assembly has seen an increase in the number of motions moved requiring the Executive to table documents. On 28 March 2017 an Opposition MLA moved that the Executive table various documents in relation to health data matters pursuant to Standing Order 213A. The motion was agreed to by the Assembly on the voices. On 11 April the Executive provided the documents to the Clerk (the Assembly was not sitting but they were circulated to all MLAs) and were tabled by the Clerk on Tuesday 9 May 2017.

On 11 May, an Opposition MLA moved a motion calling on the Executive to table documents relating to a risk assessment report on infrastructure at the Canberra Hospital, and that motion too was passed on the voices. Subsequently, the Executive claimed executive privilege and the Speaker, in accordance with Standing Order 213A, appointed the Hon Keith Mason AC as an independent legal arbiter. On 16 June 2017 the arbiter provided a report to the Clerk which did not uphold the claim of privilege. Subsequently two members of the Assembly were provided with copies of the documents.

On Tuesday 7 June, an Opposition MLA moved a motion calling on the Executive to table documents relating to public housing steering committee matters, and that motion was passed on the voices. Subsequently the Executive claimed executive privilege and the Speaker appointed the Hon Richard Refshauge SC as an independent legal arbiter. On 12 July 2017 the arbiter provided a report to the Acting Clerk which upheld the claim of privilege.

In September the Speaker successfully moved a motion to make a number of amendments to the standing order relating to the calling for the production of documents (Standing Order 213A). Among them were a requirement for notice to be given to utilise the standing order, the authorization of publication of any documents produced, clarification of timelines, and the ability for Members to make submissions on the matter and for those submissions to be provided to the arbiter.

Code of conduct for Members—Amendment and re-affirmation

In February 2017 the Standing Committee on Administration and Procedure commenced a review of the Assembly's code of conduct for Members. The Committee presented its report in June and on 3 August the report was adopted with a few minor amendments being made to the recommendations. Among the recommendations agreed to was a requirement for MLAs filling casual vacancies to affirm their commitment to the code before making their inaugural speeches. After the revised code was adopted, all Members of the 9th Assembly re-affirmed their commitment to the principles, obligations and aspirations of the code, as required by the code.

Legislative Assembly Legislation Amendment Bill 2017

In September the Speaker introduced a bill to remedy perceived anomalies in a number of Territory laws relating to the Assembly, the Clerk and other officers, and Officers of the Assembly (i.e. the Auditor-General, Electoral Commission and Ombudsman). Among the issues covered were the appointment processes for the Clerk and Officers of the Assembly, the tenure of the Auditor-General, administrative support for the Speaker in relation to Officers of the Assembly, dis-application of a requirement under the Financial Management Act for the Clerk to manage the Office of the Assembly in a way "not inconsistent with the policies of the government", and updates to the Precincts Act to reflect contemporary arrangements. The bill was passed in November.

Members speaking in languages other than English

On 13 September, during debate on a motion on mother languages two Members spoke, briefly, in Korean and Tongan. The Speaker later reminded the Assembly of the practice that speeches should be delivered in English so

as to ensure that all Members could follow the debate. While acknowledging that there were occasions where the use of language other than English was appropriate, she asked that the Chair be provided with a copy of the translation beforehand.

Death of a sitting Member

On 24 October, Mr Steve Doszpot MLA made a valedictory statement to the Assembly advising that it would be his intention to resign as a Member on 5 December. He had been unwell for most of the year and had spent large parts of it on leave from the Assembly. Unfortunately, Mr Doszpot passed away on 25 November and, in doing so, became the first Member of the Assembly to die while in office.

The casual vacancy caused by Mr Doszpot's passing was filled in the usual manner (i.e. on a countback of votes from the previous general election) and has resulted in female representation in the Assembly increasing to 56 per cent. The new Member is expected to be sworn in when the Assembly first meets in 2018.

Motion of no confidence in the Chief Minister

On 25 October, the Leader of the Opposition lodged with the Acting Clerk notice of a motion of no confidence in the Chief Minister. Pursuant to Standing Order 103, the Acting Clerk reported receipt of the notice to the Assembly shortly thereafter.

Motions expressing want of confidence in the Chief Minister are relatively rare (11 instances since self-government in 1989) and given the serious nature of the motion it has been the practice of the Assembly (on all occasions but for one in 1990) to adjourn for the seven clear days before the motion can be debated, as required by the Self-Government Act. However, on this occasion the Government declined to move the procedural motions necessary to amend the sitting pattern, and business continued as usual on the following sittings. The no confidence motion was debated, and negatived, on 2 November.

Independent Integrity Commission

On 31 October, the Select Committee on an Independent Integrity Commission presented its report. The Committee, which was chaired by a Minister, recommended that an ACT anti-corruption and integrity commission be established by the end of 2018. The model proposed is based on similar State models, particularly those in NSW and Victoria, and would be overseen by an Assembly committee.

Senator for the ACT—Procedures for appointment to fill casual vacancy
Continuing Resolution 9 provides for the procedures to be followed by the Assembly in the event of a casual vacancy occurring in relation to an ACT Senator. Given the section 44 eligibility developments which had occurred in the Commonwealth Parliament, and doubts surrounding the citizenship status of the ACT's Senator Gallagher, on 30 November the Assembly resolved to refer Continuing Resolution 9 to the Standing Committee on Administration and Procedure for review and report. The committee is due to report in March 2018.

Prior to the Assembly taking this course of action, a Member had written to the Speaker alleging that the statutory declaration made by Senator Gallagher attesting to her eligibility during the Assembly's 2015 appointment of her to fill the Senate casual vacancy was inaccurate and therefore a possible breach of privilege. The Speaker advised the Assembly on 28 November that she had considered the matter but was not prepared to give precedence to a motion to establish a Privileges Committee to examine the matter. The Member sought leave to move such a motion, but leave was refused.

Private Interests of Members—Amendment of declaration requirements
Continuing Resolution 6 requires Members to declare their private interests, and those of their immediate families, and to update those interests as necessary. The declarations are published on the Assembly's website. Among the amendments made by the Assembly on 30 November on a motion moved by the Speaker were a requirement to notify alterations to interests within 60 days, and for the Clerk to retain declarations for seven years after a Member had ceased membership of the Assembly. Other changes included increasing to $200 the threshold for which gifts need to be declared, a cumulative threshold of $500 for multiple gifts from the same donor, removal of the need to declare frequent flyer points, flight upgrades, superannuation and self-managed super fund (SMSF) entitlements, and hospitality and gifts to be combined in the one declaration.

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

Bill originating in the Legislative Assembly divided in the Legislative Council
On 11 May 2017, the Legislative Council resolved to divide a bill it had received from the Legislative Assembly. The division of a bill is highly unusual and a recent practice, having occurred previously in 2014 and 2000. The bill was the Statute Law (Miscellaneous Provisions) Bill 2017, generally a biannual piece of legislation containing policy changes of a minor and non-controversial nature

that do not warrant the introduction of separate legislation.

In recent times, if Members considered that specific parts of a statute law bill warranted more detailed consideration, the Government agreed to omit those parts from the bill and bring them forward later in separate legislation.

However, in this case when Members of the Legislative Council sought to consider certain provisions of the bill relating to public universities, the Council resolved, on the motion of the Leader of the Government, to instruct the Committee of the Whole to divide the bill into the Statute Law (Miscellaneous Provisions) Bill 2017 and the Universities Legislation Amendment (Planning Agreements) Bill 2017.

The Statute Law Bill was returned to the Assembly without further amendment. The accompanying message advised the Assembly of the action taken by the Council to divide the bill and sought the concurrence of the Assembly in that action.

The Universities Legislation Amendment Bill was considered by the Council the following sitting week. The Council agreed to the bill and communicated this to the Assembly. Following the return of the Universities Bill, the Assembly sent a message to the Council advising that it concurred with the division of the original Statute Law (Miscellaneous Provisions) Bill, and that it agreed to the amendments in the original bill and the proposed new bill, but that the concurrence on this occasion was not to be taken as a precedent.

Aboriginal Languages Bill 2017

The Aboriginal Languages Bill was the first bill of its type in any state in Australia to recognise the importance of Aboriginal languages. The bill was introduced into the Legislative Council on 11 October 2017 by the Minister for Aboriginal Affairs, the Hon. Sarah Mitchell MLC.

Unprecedented or unusual procedures were agreed to by the Council in recognition of the historic significance of the bill. Once the Council had agreed to the initial motion for leave to introduce the bill, the President left the Chair while proceedings took place to commemorate the bill, including a welcome to country and smoking ceremony in the parliamentary forecourt. A message stick ceremony was then held in the Chamber with elders and stakeholders speaking about the significance of Aboriginal languages and the bill. The final speaker handed the message stick to Minister Mitchell and the message stick ceremony participants took seats in the President's Gallery to the left and right of the President.

Upon the President taking the Chair and the House again being in session, the President invited two Aboriginal elders to take chairs on the dais while the bill was being debated. Pursuant to the resolution of the House, Minister Mitchell then invited Dr Ray Kelly, an academic researcher in indigenous languages, to

firstly translate into Dhungutti her acknowledgement of the traditional owners and later to speak to the significance of the bill.

Once the bill had been debated and passed by the Council it was sent to the Legislative Assembly for concurrence, accompanied by the message stick. The message stick was placed on the Table beside the Mace during the bill's passage through the Assembly. The bill was later returned to the Council from the Assembly with the message stick and assented to on 24 October 2017.

New South Wales Legislative Assembly

Electoral Bill 2017

On 17 October 2017 the Electoral Bill 2017 was introduced into the Legislative Assembly. The bill was the product of an extensive review of the Parliamentary Electorates and Elections Act 1912, which incorporated a number of recommendations made by the Joint Standing Committee on Electoral Matters and some reforms requested by the Electoral Commissioner of New South Wales.

The bill updated the State's electoral legislation to reflect contemporary electoral practices, and to simplify, modernise and improve the conduct of elections in New South Wales.

One significant change effected by the Electoral Bill is that the date for the issue of the writs for normal quadrennial elections is now fixed as the Monday following the expiry of the Legislative Assembly. Previously, there was no fixed date and the writs were only required to be issued within four clear days after the Assembly had been allowed to expire by effluxion of time. This change means that the Electoral Commissioner can now publicise the dates for the close of the authorised rolls and the close of nominations in advance of the formal election period.

The bill passed the Parliament on 22 November 2017 and was assented to on 30 November 2017.

New South Wales Legislative Council

Establishment of Selection of Bills and Regulation Committees

At the end of 2017 two new committees were appointed, on a trial basis, for 2018: the Selection of Bills Committee and the Regulation Committee. The committees were appointed in accordance with the recommendations of the Select Committee on the Legislative Council Committee System, which reported in December 2016.

The Selection of Bills Committee will consider all bills introduced into either House and report on whether any bill should be referred to a standing committee for inquiry and report. The Regulation Committee may inquire into and report on any regulation, including the policy or substantive content of a

regulation, and trends or issues that relate to regulations. The committees are to table reports evaluating the effectiveness of the trials by the last sitting day in November 2018.

Greyhound welfare order for papers – the finishing line

The previous edition of *The Table* discussed the significant matter of the return to an order for papers received by the Legislative Council from Greyhound Racing NSW (GRNSW), a statutory body. The return to order was significant because it was the first time the Council had received a return directly from a statutory body, after it had failed to comply with a previous order for papers.

The final part of the story saw the Council grapple with one of the most complicated disputes over documents in a return to order since orders for papers became a regular feature of the work of the Council in the late 1990s.

In November 2016 the Clerk received a written dispute from Dr Mehreen Faruqi MLC of The Greens as to the validity of the claim of privilege over approximately 1,700 documents contained in the return. According to standing order, the Honourable Keith Mason AC QC was appointed as an independent legal arbiter to evaluate and report on the validity of the claim.

While in the process of writing his report, Mr Mason requested that the Clerk provide Dr Faruqi and GRNSW with a memorandum setting out his initial determination, particularly in relation to the documents containing confidential personal information.

Subsequent to reviewing the memorandum, the Clerk arranged a meeting with Dr Faruqi and GRNSW to acknowledge the possibility that the documents may contain information that could put informants at risk of harm, and to facilitate an agreement between Dr Faruqi and GRNSW regarding the style and limit of any necessary redaction to be carried out by GRNSW.

In February 2017 the report of the independent arbiter was made available to members and then tabled in the House. The House resolved that those documents determined by the arbiter not to warrant a claim of privilege be tabled and made available to the public. A selection of documents was tabled the next day.

The House further resolved that as per the arbiter's recommendation, GRNSW should be provided with the opportunity to redact from the remaining documents any information that could put informants at risk of harm, or about individuals who had been the subject of spurious complaints.

Council staff worked with GRNSW to complete this very complicated and arduous process, and the remainder of the disputed documents were tabled on 28 March 2017. This enabled the documents to be made public and referred to during debate on amendments to the Greyhound Racing Bill 2017 that same month.

Privileges Committee inquiry into procedural fairness for inquiry participants

In December 2016 the Select Committee on the Legislative Council Committee System recommended that the Privileges Committee examine the issue of procedural protections for committee witnesses. In response to that recommendation the President of the Legislative Council referred an inquiry to the Privileges Committee on procedures to be observed by Legislative Council committees to provide procedural fairness for inquiry participants. The inquiry provides an opportunity to examine the effectiveness of the practices currently followed by Council committees, assess the need for those practices to be codified in a resolution or order of the House, and learn from the experience of other Parliaments.

The Privileges Committee has since published a discussion paper and received ten submissions, many from other parliaments in Australia and overseas. The Committee will report in 2018.

Children in the Chamber

This year for the first time the House permitted a child onto the floor of the House when the Honourable Courtney Houssos was accompanied by her baby son when she voted in division. Notably this occurred following discussions between members rather than in accordance with the current sessional order, which states that when there is a division the President has the discretion to count the vote of a member caring for a child who is seated in the President's gallery.

No objection was taken to Mrs Houssos bringing Master Houssos into the Chamber. Indeed, as noted by Minister Niall Blair: "It required a lot of discussion at the time, but if we ever wanted someone to go first, we would want the best-behaved baby—and he is the best-behaved baby I have ever come across. The best-behaved person in this House this year has been Arthur Houssos!"

Northern Territory Legislative Assembly

Electronic presentation of documents

Standing Order 141 (6) requires 'On the calling on of the notice to present a bill a Member will present to the Assembly a printed copy of the bill with their signature appended'. It was proposed to Members that this Standing Order is observed by a Member presenting one signed copy of the bill to be given to the Clerks, the Table Office will then, immediately upon presentation by the Member, email the bill to the 25 Members of the Assembly as an attachment so it may be opened and read on their laptops, tablets or other devices.

The Clerks at the Table retain a few hard copies for those Members who

do not wish to read the electronic copy. Members would approach the Table or press the attendant call button for a hard copy if required. This practice was introduced during the August 2017 meetings of the Assembly and was well received by Members and has since been extended all reports tabled by Members, Chairs, Ministers and Madam Speaker, petitions and responses to petitions, the Daily Agenda and Notice Paper, and the Minutes of Proceedings.

This innovation allows the Assembly to meet the changing needs and requirements of Members, and also make a significant reduction of the amount of paper consumed by the Assembly during meeting days.

Queensland Legislative Assembly

Four-year terms

In the last edition of *The Table,* it was reported that the Constitution (Fixed Term Parliament) Amendment Bill, which established fixed four-year term parliaments, received Royal Assent on 5 May 2016. The Act commenced on 25 January 2018, the date of the Governor's proclamation summoning the Legislative Assembly after the general election held on 25 November 2017.

The current 56th Parliament is considered an extraordinary election with the next election to take place in October 2020. Fixed four-year terms will commence with the 57th Parliament.

Electoral district increases and redistribution

With the commencement of the Electoral (Improving Representation) and Other Legislation Amendment Act 2016 (Qld), the number of Queensland electorates increased from 89 to 93 following a redistribution of the Queensland electoral boundaries. The Queensland Redistribution Commission released its final report in May 2017 and no appeals were made during the 21 day appeal period. The 93 electoral district boundaries came into place on 29 October 2017, when the writ was issued for the State General Election.

Challenge and clarification of votes

The Legislative Assembly has party voting for divisions whereby members of the Government or Official Opposition are deemed to be voting with their party unless they advise otherwise. Whips report their party's vote, and the Clerk reports the votes of the minor parties and independents and the Speaker announces the result of the division to the House. Any member may challenge the report of the vote prior to the Speaker announcing the result and the Speaker may direct that the report stands, be corrected or that the matter be resolved by way of personal vote.

On 1 March 2017, a division was called on the second reading question a private members' bill. The question was resolved in the affirmative with

the support of three minor party members and one independent member. Immediately after the Speaker had announced the result of the division, the independent member rose on a matter of privilege, stating that he had made an error in his vote and had intended to vote with the noes. The member confirmed he had voted with the ayes and the Speaker ruled that the vote stood and would not be changed. The bill subsequently failed on the third reading with the independent member voting no.

Members' unfettered right to table documents

In August and September 2017, a member provided a large number of documents to the Clerk under Standing Order 32 for tabling the next sitting day, which included untested allegations against public officials and offended the Standing Orders with respect to imputations on members and potentially sub judice material.

The Speaker reminded members that they should not table in the House material which contains words that if spoken in the House would be out of order or would enliven the rights of other members of parliament to have withdrawn. The Speaker ruled that the material—with further relevant redactions—could be tabled. The Speaker advised the House of his concern regarding members' unfettered right to table documents was open to abuse. Given the frequency and nature of this issue, the Speaker considered that some fetter or accountability on tabling may be necessary and referred the matter to the Committee of the Legislative Assembly for its consideration and invited members to make submissions to that Committee.

South Australia House of Assembly

Electoral boundaries redistribution

In South Australia the Electoral Districts Boundaries Commission undertakes a review of House of Assembly district boundaries after every general election. This process commenced following a successful referendum held in 1991 to amend the Constitution Act 1934 (SA). Since that time adjustments have been made after each election to the electoral districts as a consequence of these boundary reviews.

On 10 March 2017 the Full Court of the Supreme Court dismissed an appeal (5–0) made by the Labor Party against the electoral redistribution undertaken by the Electoral Districts Boundaries Commission in 2016.[4] The Labor Party had argued that: the redistribution had not be made in accordance with the Constitution Act 1934 (SA); the objective of redistribution was achieving an

[4] *Martin v Electoral Districts Boundaries Commission*, (2017) SASCFC 18.

equal number of electors in each electoral district; and that the Commission had erred in finding no evidence that the Liberal Party had failed to place resources effectively in the 2014 election campaign, and this had resulted in the elevation of its two-party preferred vote, without increasing the number of seats won.

The electoral redistribution will be applied at the upcoming 2018 State election.

Removal of 'fairness' provision in the Constitution Act 1934 (SA)

Following the dinner break on the last scheduled sitting day prior to a State election (30 November 2017), the House received the Constitution (One Vote One Value) Amendment Bill from the Legislative Council. The purpose of the Bill was to remove the so-called fairness clause in the Act. The clause related to the process of electoral redistribution, requiring the Electoral Districts Boundaries Commission to ensure that if candidates of a particular group attract more than 50 per cent of the popular vote… they will be elected in sufficient numbers to enable a government to be formed. The clause also included a provision stating that a 'group' of candidates need not necessarily be from the same party, but may also include candidates whose political stance is such that there is reason to believe that they would, if elected in sufficient numbers, be prepared to act in concert to form a government. These clauses were placed in the Act by referendum in 1991.

Since the fairness clause was enacted, the Liberal Party has had a higher state-wide vote in all but one election (2006), but only formed a government on one occasion (1993). A boundary redistribution in 2016 saw the Electoral Districts Boundaries Commission apply the fairness provision, in concert with other redistribution principles in the Act, to re-align Districts nominally in favour of the Liberal Party. The Labor Party challenged the redistribution in the Supreme Court, on the grounds that it offended the principle of 'one vote, one value'. However, the Supreme Court dismissed the appeal and upheld the redistribution.

The Constitution (One Vote One Value) Amendment Bill was a Government Bill introduced into the Legislative Council but heavily amended by a private member in the Council to provide for the removal of the fairness clause. The Government's original approach was to conduct a referendum on the determination of electoral boundaries. The Private Member's amendments represented an alternative approach that negated the need for a referendum.

On the receipt of the Bill, the Government told the House that legal advice had been obtained from the Solicitor General that a referendum was not required to remove the fairness clause from the Act.

Being the last sitting day of the Parliament, the Government was keen to see the Bill passed. It therefore suspended Standing Orders to enable the Bill to

be pass through all stages without delay. Following heated debate in the House lasting over five hours, and including application by the Government of the guillotine to limit debate, (Standing Order 114(a), a practice rarely used in the House) the Bill was passed.

The Governor subsequently assented to the Bill.

While the Liberal Party have indicated they will consider whether to challenge the legality of the amendments following the 2018 State election, some legal commentators have suggested it is arguable that the referendum provisions in the Act do not apply to the fairness clause.

Whistleblowers Protection Act

A bill relating to reform of the Whistleblowers Protection Act, known as the Public Interest Disclosure Bill underwent a protracted Conference of Managers process. The Government sought to obviate the need to seek leave, at the commencement of each day of sitting, for House to continue to sit while the Conference proceeded. The Government moved to suspend Standing Orders to enable the House to continue to sit while the Conference proceeded. However, on the first occasion that the suspension was moved (22 June 2017), the motion lapsed for want of an absolute majority. The Government then immediately moved that the sitting of the House continue during the Conference, reverting to the 'daily motion' practice to avert the adjournment of the House. On 3 August 2017, the Government again moved to suspend Standing Orders to enable the House to continue to sit while the Conference proceeded, and the motion was agreed on this occasion, an absolute majority being achieved.

Victoria Legislative Council

Voluntary Assisted Dying Bill

The second reading of the Voluntary Assisted Dying Bill 2017 commenced in the Legislative Council on Tuesday 31 October, having previously passed the Legislative Assembly. The second reading continued for a total of 13 hours and 48 minutes over the course of Thursday 2 and Friday 3 November. The President of the House contributed to the debate from the Table in his capacity as a member. The House passed the second reading on division with 22 ayes, to 18 noes.

On Tuesday 14 November, the Bill commenced consideration in Committee of the whole. The Bill was considered for 47 hours and 21 minutes over three sitting days (five calendar days). The President sought the leave of the House to contribute to committee stage. Leave was granted, and the President sat in the seat of a member who was absent from the House.

During consideration on clauses 1 to 3, opponents of the Bill moved five separate motions seeking that the Committee direct the Acting President

to report progress and ask leave to sit again, all of which were negatived. Conversely, Ministers moved motions to close debate five times during debate on clauses 1 to 3 on the grounds that debate was repetitious. All five closure motions were passed by the House.

During the Committee stage, the Government declared a number of sitting extensions and sat past midnight into the following day twice (including a 26 hour sitting on 16 November and a 28 hour sitting on 21 November).

During consideration of the Bill on Thursday 16 November, the House continued to sit into the morning of Friday 17 November, following a successful motion to extend the sitting past midnight. At approximately 11am the Leader of the Government proposed that the next day of sitting be Thursday 23 November. The Opposition sought to amend this motion and set the next sitting day for Tuesday 28 November (consistent with the pre-determined sitting calendar). This amendment was defeated. The Government reconsidered its position before a vote was taken on its next sitting day motion and desired to return later the same day (Friday afternoon). As such, the Government allowed their own motion to be defeated. However, at the time of adjournment of the marathon Thursday sitting, the House had already sat past the commencement time for a Friday sitting day. Standing Orders stipulate that a Friday sitting will commence at 9.30am. In the absence of a motion to set another time and date of meeting being agreed to, Standing Order 4.01 required that the next available sitting day become the next day of sitting, which was Tuesday 21 November.

On Wednesday 22 November, the Bill passed the third reading (on division 22 to 18) with 39 amendments, all of which were agreed to by the Legislative Assembly.

Royal Assent to the Bill was given on 5 December 2017.

Deputy President—duties

On Tuesday 17 October, the President informed the House he had received a letter from the Deputy President advising him that he wished to stand aside from the duties of Deputy President. In standing aside, the Deputy President also requested to cease receiving the additional salary and expense allowance for the period he would be inactive.

In respect of the letter, the President made a statement clarifying that the Deputy President had not resigned and as such no election of a Deputy President would take place. The President acknowledged that the House may resolve at any time to take matters into its own hands in relation to any member or elected office-holder of the Chamber. Later the same day, the President notified the House that in light of the Deputy President standing aside, three Acting Presidents would chair Committee of the whole House.

CANADA

House of Commons

Secret ballot vote

On 28 and 29 November 2017, the first-ever secret ballot vote took place on an appeal made by Shiela Malcolmson MP (Nanaimo—Ladysmith) to a decision of the Standing Committee on Procedure and House Affairs that a Private Member's Bill (in the name of Ms Malcolmson) be designated as non-votable. On 23 November 2017, the Speaker reported that he was satisfied that the appeal met the requirements of Standing Order 92 (4) and directed that a vote by secret ballot be held on the motion:

That Bill C-352, An Act to amend the Canada Shipping Act, 2001 and to provide for the development of a national strategy (abandonment of vessels) be declared votable.

On 30 November 2017, at the start of Routine Proceedings, and following two days of voting by Members, the Speaker declared that the motion was negative. Accordingly, the Bill was declared non-votable.

Procedure and House Affairs Committee

On 10 March 2017, Bardish Chagger MP (Waterloo), Leader of the Government in the House of Commons, published a discussion paper on potential reforms to modernise the Standing Orders of the House of Commons. On 21 March, at a meeting of the Standing Committee on Procedure and House Affairs, Scott Simms MP (Coast of Bays—Central—Notre Dame) moved a motion that the Committee undertake a comprehensive review of the Standing Orders of the House and report its findings and recommendations by 2 June 2017. Scott Reid MP (Lanark—Frontenac—Kingston) move an amendment which required any recommendations to be adopted unanimously by all members of the Committee. Debate on the amendment continued for numerous days, with the meeting being suspended overnight, during weekends and during constituency weeks.

On 30 April, Ms Chagger announced in a letter to the House leaders of the opposition parties that the Government would abandon certain proposals but would move forward with those related to omnibus bills, the role of ministers and parliamentary secretaries on committees, prorogation, Parliament's financial oversight over Government spending and a Prime Minister's Question Period.

On 2 May, the meeting of the Standing Committee on Procedure and House Affairs was adjourned, putting an end to the filibuster which had started on 21 Match. On 19 June, Ms Chagger moved a motion in the House to amend the Standing Orders, which included the changes she had outline in her letter of 30 April. The motion was adopted by the House on 20 June.

Senate

New Senate appointment process

Three vacancies were filled by independent senators in 2017. All new senators were selected using the new Senate appointment process, which aims to make the Senate less partisan and more independent. All Canadians meeting the assessment criteria are invited to apply for a seat in the Senate.[5] The Prime Minister then selects individuals from a list of candidates recommended by the Independent Advisory Board for Senate Appointments.

With new appointments, and with senators who have resigned, retired or left their party to sit as independents, standings in the Senate at the end of 2017 included 41 members of the Independent Senators Group (ISG), 33 Conservatives, 15 Independent Liberals and five non-affiliated senators. The ISG, therefore, represented 39 per cent of the 105 seats, or 44 per cent of sitting senators.

Committee membership

On 7 November 2017, a sessional order regarding committee membership was moved by Senator Day (Leader of the Independent Liberals) and, with leave of the Senate, seconded by Senator Smith (Leader of the Opposition), Senator Woo (Facilitator of the ISG) and Senator Harder (Government Representative). The motion had the effect of adjusting the membership of all Senate committees, except the Standing Committee on Ethics and Conflict of Interest for Senators.

A previous order on the subject adopted on7 December 2016 expired on 31 October 2017. The 2016 order had increased the size of most standing Senate committees by three members, in addition to defining how the membership would be divided among the recognised parties and senators who were not members of a party or group.

Under the new order, which took effect at the end of 19 November, the

[5] One must be a minimum of 35 years of age (and less than 75), a citizen of Canada, own real property with a net value of $4,000 in the province for which one is appointed, and have an overall net worth of $4,000 in real and personal property, and a resident of the province for which one is appointed (for a minimum period of two years leading up to the application, unless located elsewhere for education or employment). There are also merit-based criteria, which include non-partisanship, knowledge of the legislative process and Canada's constitution, personal qualities (including adhering to the principles and standards of public life, ethics, and integrity), and demonstrate an ability to make an effective and significant contribution to the work of the Senate, not only in their chosen profession or area of expertise, but the wide range of other issues that come before the Senate. Candidates must also demonstrate one of either a high level of public experience in the legislative process and public service, a lengthy and recognised record of service to one's community, or recognised leadership and achievement in one's profession or field of expertise.

membership of the affected committees was reset to the numbers provided for in the Rules of the Senate. The motion also empowered certain committees to elect two deputy chairs and expanded the number of *ex officio* members to include the leaders and facilitators of all recognised parties and groups (or a deputy). The facilitator of the ISG was also authorised to make membership changes for senators belonging to that group. Following the adoption of a report of the Committee of Selection, committees have since been reconstituted according to proportions similar to the standings in the Senate overall.

As for the Standing Committee on Ethics and Conflict of Interest for Senators, a separate motion was adopted on 7 December 2017, to extend the membership as it existed on 31 October for the rest of the session.

In addition, the Selection Committee presented a report recommending the membership of three other committees, namely the Standing Joint Committee on the Library of Parliament, the Standing Joint Committee for the Scrutiny of Regulations and the Special Senate Committee on the Arctic. The special committee was created further to a motion adopted by the Senate on 27 September 2017. The report of the Selection Committee was adopted on 7 December.

Points of order

During the second quarter of 2017, the Speaker dealt with several points of order. Two rulings were particularly significant. On 13 April, the Speaker ruled on whether amendments to Bill C-6, amending the Citizenship Act, were receivable. After providing background on the issues of principle and relevancy, and how they related to the bill, his ruling was that the amendments were in order and that debate could continue. In reaching his decision the Speaker noted that the Senate is a debating chamber and, unless an amendment is clearly out of order, debate should normally be allowed to continue.

On 14 June 2017, a senator moved a motion of instruction proposing that the Standing Senate Committee on National Finance have power to divide Bill C-44, a budget implementation act. The acceptability of this motion was immediately challenged by the Government Representative in the Senate, on the basis that this action would have the effect of creating a new bill and that an appropriations bill cannot be initiated in the Senate, as it requires a Royal Recommendation. The next day, the Speaker began his ruling by noting that, when it adopted the fifth report of the Standing Committee on Rules, Procedures and the Rights of Parliament dealing with the division of bills in late May, the Senate had confirmed that a process does exist to divide bills in certain circumstances.

The Speaker then reviewed past cases when division had been attempted. In 1988, a similar motion had been ruled out of order because of issues surrounding

the Royal Recommendation, but that decision was overturned. At that time, the House of Commons did not accept the division of the bill, and the Senate did not insist. In 2002, a motion to divide another bill was not challenged and the House of Commons accepted the proposal.

In his ruling, the Speaker then turned to the specific case of Bill C-44. Given the nature of the bill and the proposed division, the Speaker concluded that the adoption of such a motion could effectively lead to two bills, each requiring a Royal Recommendation, originating in the Senate, which is not permissible. Consequently, the motion was ruled out of order. The Speaker's ruling was then appealed and overturned. The actual motion empowering the committee to divide the bill was eventually defeated, at a later sitting, on a tie vote.

British Colombia Legislative Assembly

General election

The provincial general election on 9 May 2017 produced the narrowest outcome in British Columbia's parliamentary history, and the first minority government since 1952. Two new seats had been added as a result of the 2015 electoral distribution, bringing the total number of seats in the Legislative Assembly to 87, with 44 seats needed to form a majority government. The British Columbia Liberal Party won 43 seats, the British Columbia New Democratic Party (NDP) 41 seats, and an apparent balance of power held by three Independent Members affiliated with the British Columbia Green Party.

With a plurality of 43 seats (and a slightly larger share of the popular vote), the incumbent Premier Christy Clark indicated that she would draw on constitutional conventions and ask the Lieutenant Governor to summon the Legislative Assembly in order to "test the confidence of the House."

The unusual election outcome also precipitated a round of inter-party negotiations resulting in a historic Confidence and Supply Agreement publicly signed by the leaders of the NDP and British Columbia Green Party on 30 May 2017—together, they hold a narrow one-seat majority (44/87) in the Legislative Assembly.

First Session of 41st Parliament

The first session of the 41st Parliament opened on 22 June 2017 with the acclamation of former Cabinet Minister Steve Thomson, a Government member, as Speaker, followed by the Speech from the Throne.

On 26 June, the Government introduced two bills: a campaign finance reform bill; and an amending bill to lower the threshold for recognition as a parliamentary party from four members to three. Normally, the motion to move a bill's introduction and first reading is adopted as a routine matter. In the case of the two Government bills, a division was called by the Official Opposition

House Leader. Both bills were defeated by a vote of 44–42, an unprecedented outcome in British Columbia's parliamentary history.

On 28 June, the Leader of the Official Opposition moved an amendment to the Address in Reply, by adding "but Her Honour's present Government does not have the confidence of this House." The following day (29 June), debate on the amendment concluded at 5:30pm when the Speaker put the question on the amendment. The motion carried 44 to 42 with the main opposition party and the three Independent Members voting in favour. The House disposed of the motion for Address in Reply as amended, with the same vote of 44 to 42. The House adjourned and Speaker Thomson resigned immediately, having presided for only five sitting days or eight calendar days: the shortest tenure in British Columbia's parliamentary history.

Following the two lost votes and adjournment on 29 June, the then-Premier met with the Lieutenant Governor and requested dissolution of the House. The Lieutenant Governor declined to grant this request and instead opted to ask John Horgan, Leader of the Official Opposition, to form a government following his assurance that he could do so with the confidence of the Assembly. The Lieutenant Governor's role in supporting a change in government in the province was unheard of—at least in modern times.

Second Session of 41st Parliament

Following the transition to a new minority government, British Columbia's Legislative Assembly reconvened for the opening of the second session on 8 September 2017. The first order of business was the acclamation of a new Speaker, Darryl Plecas, who now sits as an Independent (formerly of the British Columbia Liberal Party).

On 4 October, in accordance with a commitment in the Confidence and Supply Agreement, the new Government introduced Bill 5, Constitution Amendment Act 2017, to reduce the number of Members required for recognition as an official party in the Assembly from four to two. During legislative debate, the interim Official Opposition House Leader raised a point of order regarding the application of Standing Order 18 to Bill 5. Pointing out that under Standing Order 18 a Member is not entitled to vote on a question in which he or she has a direct pecuniary interest, he sought guidance on whether some or all Members would be precluded from participating in the debate and voting on the bill.

In delivering his ruling, on 18 October the Speaker noted that a Member of a recognised political party who serves as leader, House Leader, or whip of that political party is entitled under the Members' Remuneration and Pensions Act to an increase in compensation. With the amendments in Bill 5, the three Independents affiliated with the British Columbia Green Party would receive official party status and therefore be entitled to this increased compensation if

they accepted responsibilities for these positions. The Speaker also noted that Members should not be prevented from voting on rules that directly or indirectly affect their compensation, as "… these decisions are expressions of the basic right held by parliaments that a House must be allowed to govern itself." As such, the Speaker ruled that no Member was prevented from participating in debate and voting on Bill 5. Since the passage of the Constitution Amendment Act 2017, the British Columbia Green Party, which holds the balance of power in the Assembly, is now recognised as an official parliamentary party and represented on the Assembly's management board.

Manitoba Legislative Assembly

Assembly accessibility renovations

Since 1920 the Manitoba Legislative Assembly has been housed in the Legislative Building. The Legislative Building and Assembly Chamber were designed to provide important symbolism and a grand future for the province according to artistic conventions of the day. This design included having the desks of Members of the Legislative Assembly (MLA) configured into a horseshoe shape to better foster discussion and minimise antagonism, as well as having five different levels and tiers for the Chamber. While this design contributed to a unique Assembly Chamber, it did not provide for accessibility.

The Chamber as originally constructed would prevent free movement of wheelchairs throughout the Chamber and would not provide for any MLA or legislative staff in a wheelchair to have a seat or access the floor of the Chamber or the Speaker's dais.

In 2015, Accommodation Services of the Department of Finance began to work in conjunction with the Legislative Assembly to find a solution to these problems. A committee of people with a background accessibility issues, as well as representatives from the disabled community, joined with representatives from various Assembly and Government Offices to suggest ideas. Initially a platform lift was considered along with some retrofitting of desks, but it became readily apparent this idea was problematic, as it would not provide a dignified or discrete solution and could be prone to mechanical failure. Short consideration was given to the idea of adding an additional desk in a fourth row to provide an accessible MLA desk but this was quickly rejected. Yet a further challenge for the project was the critical need to incorporate the historic character and design of the Chamber.

Ultimately, the Committee decided the best solution would be to raise the lowest levels of the floor in order to install a ramp to provide access to the floor of the Chamber. In addition, desks in the third row were raised to be flush with the floor entry level so that an MLA in a wheelchair could sit there. With the raising of the lowest levels and ramp installation, the first row of desks would

also be accessible, and to guarantee this, the desks in this row were moved inward in order to provide a proper wheelchair turning radius. The outcome of this now means that MLAs on either the Government or Opposition side of the House could be seated in the front row, and could therefore be fully participating members of the provincial cabinet or in Official Opposition leadership roles. The Speaker's dais and Clerks' Table would also be accessible to wheelchairs, meaning that the Speaker and Table Officers could be seated in their allocated seats and perform their duties on behalf of the Assembly even if using wheelchair or other mobility devices.

The main construction started in June 2017 as soon as the Legislative Assembly rose for the summer, and was completed by the time of the Legislative session resuming in October 2017. In addition to these modifications, a new Hansard sound system and wiring was installed, as well as the provision of audio speakers at the desk of every MLA.

The solution has integrated seamlessly into the existing design of the Chamber. If one did not know renovations were done in the summer of 2017, it would be easy to assume that the Chamber has always looked this way.

Ontario Legislative Assembly

Weekend sitting

The Legislative Assembly of Ontario sat a rare weekend sitting from 17 to 19 November 2017, to consider "back to work" legislation in the form of Bill 178, an Act to resolve the labour dispute between the College Employer Council and the Ontario Public Service Employees Union.

Following the adjournment of the Legislature at its regular time on Thursday afternoon, it was deemed necessary by the Government to recall the Legislature. Under Standing Order 10(a), the Speaker is permitted to recall the Legislature if "the public interest requires the House to meet at an earlier time". Accordingly, the Legislature reconvened at 3pm on Friday 17 November 2017.

Recall under Standing Order 10(a) also requires that the Legislature "transact its business as if it had been duly adjourned to that time". Accordingly, the Legislature conducted Routine Proceedings, and saw several Committees report items that were to be reported on the Monday. The Minister of Labour introduced Bill 178.

Following the introduction of Bill 178 on the Friday, unanimous consent was sought to authorize the Legislature to proceed through all stages of consideration of the Bill that day. The unanimous consent was not granted. Unanimous consent was also sought for the Legislature to sit from 1pm to 6pm on Saturday and Sunday to consider Government business. Unanimous consent in this instance was granted. The House then adjourned after sitting for 21 minutes.

The Legislature resumed on Saturday 18 November 2017 at 1pm with the Speaker in the Chair. Following Routine Proceedings, debate began on Second Reading of Bill 178. Each party, including one independent Member spoke to the Bill. When no other members rose to debate the bill, the question was then put and on a recorded division, the Bill carried 37–18. The Government House Leader sought unanimous consent to proceed directly to Third Reading debate, but it was not granted. The Legislature adjourned after sitting for 1 hour and 16 minutes.

The Legislature resumed on Sunday 19 November 2017 at 1pm with the Deputy Speaker in the Chair. Following Routine Proceedings debate began on Third Reading of Bill 178. Following comments from all three parties, the Bill carried on a recorded division of 39–18. The House adjourned having sat for 37 minutes. The Bill received Royal Assent by the Lieutenant Governor in her office that same day.

Prince Edward Island Legislative Assembly

Budget confidentiality

On Friday 17 November 2017, the Minister of Finance, the Honourable Allen Roach, presented the 2018–2019 Capital Budget Estimates to the Legislative Assembly. First, a ministerial statement was delivered, followed by the tabling of the document, making the document an official record of the House and available to the public.

Under the order of business called "Statements by Ministers", the Minister proceeded with a longer than usual statement (approximately 20 minutes). In accordance with Rule 24(2) of the Rules of the Legislative Assembly of Prince Edward Island, following a Statement by Minister, "one member from the Official Opposition may ask for explanation or comment for a period of time not to exceed the length of the ministerial statement. In addition, one member of each of the other recognised opposition parties in the House may ask for explanation or comment for a period of time not to exceed one-half of the length of the ministerial statement". Following the ministerial statement, one member of the official opposition and one member of the third party responded to the statement (for approximately 15 minutes in total). From the start of the Minister's statement, to the tabling of the document, over 35 minutes passed.

The presentation of the estimates of revenue and expenditures, which are presented during the spring sitting of the Legislative Assembly, follows a strict process to ensure budget confidentiality (including press briefings and media lock-ups). For the capital estimates process, no such process is in place. However, the convention of budget confidentiality is observed (the budget shall be presented to the Legislative Assembly first). During the ministerial statement on the capital estimates, two official Twitter accounts associated with the

Government, the Liberal Party of Prince Edward Island and the Prince Edward Island Liberal Caucus, were releasing details of the budget. After the ministerial statement and responses, and prior to the tabling of the document, Mr Steven Myers (of the Official Opposition) rose on a point of order, asserting that these entities were "tweeting" details of the budget prior to the presentation of the budget and requested that the Speaker review if such actions were consistent with the Rules of the Legislative Assembly.

On Tuesday 21 November 2017, Mr Myers rose again, this time on a matter of privilege, and asserted that the privileges of all Members of the Legislative Assembly had been violated by a breach of budget confidentiality, when local newspaper advertisements bought by the Liberal Party referenced details of the capital budget (asserting that the adverts must have been placed to the local newspaper a day prior to the presentation of the capital budget to ensure being printed in the weekend edition of the local newspaper). Mr. Matthew MacKay (of the Official Opposition) also rose on a point of order that day regarding a Government announcement being made outside the Legislative Chamber when the House was in session.

On Wednesday 22 November 2017, the Speaker ruled on all three matters. On the matter of privilege, the Speaker cited the following parliamentary authorities: House of Commons Procedure and Practice, Parliamentary Privilege in Canada, Beauchesne's Rules and Forms of the House of Commons of Canada, and Parliamentary Practice in New Zealand: all of which essentially state that budget secrecy is not a matter of privilege. While constrained by the limitations of the above noted authorities on the matter of privilege, the Speaker proceeded to make comment on all three matters raised in the previous days, and made the following remarks:

> "There is a disturbing trend that I feel, as your Speaker, that I must address. On numerous occasions, Speakers have reminded successive Governments that major announcements ought to be made in the House, not outside of it, when the Legislative Assembly is in session. This is done out of respect for our provincial parliament collectively and all members individually… the foregoing chain of events, lack of careful due process and disrespect to this House is troubling… I wish to remind government, as have many Speakers past, that it is customary that major government initiatives and announcements, when the House is in session are, out of respect for the Legislative Assembly and its Members, made in the Legislative Assembly. This included budgets and any major government initiative. There is no rule to this effect Honourable Members. It is custom, practice and an expectation of the House that this fundamental show of respect is observed. Government has been repeatedly reminded of it, yet almost every session of the legislature, there is an example of this disrespect… and it is troubling. If Members, in

> the conduct of your serious responsibilities on behalf of Prince Edward Islands do not have respect for each other and this parliament, you cannot realistically expect those outside this place to show any respect for the work you conduct here on their behalf."

During his remarks, the Speaker outlined a number of matters that should be reviewed to ensure the dignity and respect for the Legislative Assembly place during the budget process in maintained.

In a year end interview, Hon. H. Wade MacLauchlan, Premier of Prince Edward Island, said that the next capital estimates release would be similar to that of the operating budget, which includes more stringent measures to ensure confidentiality (which will apply to everyone that has access to the budget prior to its formal presentation in the Legislative Assembly):

> "There are various steps that are built in there to ensure that any of the documents are released in a timely fashion… there are lockups for those who need to have briefings or have access to the documents in advance of the presentation of the budget."

CYPRUS HOUSE OF REPRESENTATIVES

The House passed legislation to establish a National Health System, which will be rolled out by 1 June 2020.

For the first time, statements of financial interests by the Republic of Cyprus' high-ranking officials (the President of the Republic, the President of the House of Representatives, Ministers, MPs and MEPs) have been made public, within 2017.

STATES OF GUERNSEY

In June 2017 the States of Deliberation agreed to hold a multi-option referendum on the method of electing People's Deputies to it. The States agreed to introduce the electoral system which is the most favoured in the referendum provided that the number of persons voting in the referendum is at least 40 per cent of those persons inscribed on the Electoral Roll who are eligible to vote on the day of the referendum. It further agreed in the event that turnout at the referendum is less than 40 per cent, the States' Assembly and Constitution Committee should within three months of the date of the referendum submit a policy letter to the States setting out any recommendations for reform to the electoral system which it considers necessary, having considered the results of the referendum.

The referendum will be held in October 2018 using preferential and transferrable voting.

GUYANA NATIONAL ASSEMBLY

Behaviour in the Chamber

At the 79th Sitting of the National Assembly, during consideration of the Annual Estimates of Expenditure for 2018, the Hon. Member Juan Edghill attempted to raise a question after the time allotted for questions had expired. The Speaker did not allow the question to be asked and reminded the Hon. Member, and the Assembly in general, of his statement that at the expiry of the time allotted, he will put the question.

The procedures on time for consideration of each Agency were discussed and agreed to during a meeting of the Business Sub-Committee of the Committee of Supply. Members of the Opposition had absented themselves from the meeting of the Sub-Committee.

The Speaker indicated to the Hon. Member Edghill that he was putting the question and would not allow further discussion. The Hon. Member Edghill was ordered by the Speaker to take his seat but he refused to do so. The Speaker ruled him out of order and again ordered him to take his seat. Again, he refused to do so. The Speaker then ordered the Hon. Juan Edghill to take no further part in the Business of the House for the remainder of the Sitting, in accordance with Standing Order 47 (2). That Standing Order reads:

> "The Speaker or the Chairperson shall order any Member whose conduct is grossly disorderly to withdraw immediately from the Assembly during the remainder of that day's Sitting and may direct such steps to be taken as are required to enforce this order."

The Hon. Member Edghill refused to withdraw from the Chamber.

The Speaker then directed the Sergeant-at-Arms to take such steps as are required to enforce his order. At this stage, the Speaker withdrew from the Assembly and the Sitting was suspended to allow his order to be carried out. The Sergeant-at-Arms was unable to remove the Member so he sought the assistance of the Guyana Police Force.

The police attempted to remove Hon. Member Edghill but were prevented from doing so by Members of the Opposition. One female member of the Opposition alleged rape and assault by the Police. The police eventually withdrew. Thereafter the lights and air conditioning units in the Parliament Chamber were turned off.

After the Hon. Member refused to move, the Minister of Social Protection and Government Chief Whip, in accordance with Standing Order No. 47 (2) and (3), moved a motion for his suspension from the service of the Assembly for four consecutive sittings for disregarding the authority of the Chair.

Thereafter, there was a national debate on the right of the police to enter the Chamber. The Clerk of the National Assembly wrote to the press to clarify

the issue. However, Members of the Opposition and their supporters shared a different view.

INDIA

Lok Sabha

Changes to the Budget

Three structural changes in the presentation of the Budget have been made: the merger of the Railway Budget with Union Budget; the advancement of the date of the presentation of Union Budget in Parliament; and the removal of Plan and Non-Plan classification in Budget and Accounts.

In every financial year, the President lays before both Houses of Parliament an ''Annual Financial Statement'' or the estimated receipts and expenditure of the Government of India. Until 2016, the Annual Financial Statement, also known as the 'Budget', used to be presented in two parts, i.e. the Railway Budget pertaining to Railway Finance, and the General Budget which gives an overall picture of the financial position of the Government, excluding the Railways. Since the Budget 2017–18, the Railway Budget has been merged with the Union Budget and a single document was presented in 2017.

With the merger, the capital-at large of railways has been wiped off with no dividend liability and Ministry of Railways would get Gross Budgetary support in a manner similar to other Ministries.

The Budget is presented to the Lok Sabha on such day as the President directs. Until 2016, the budget used to be presented every year on the last working day of February. However, from Budget 2017–18, the date of the presentation of the Budget has been advanced to 1 February. Explaining the reasons therefor, the Finance Minister, delivering the Budget speech on 1 February 2017 stated:

> ''The presentation of the Budget has been advanced to 1 February to enable the Parliament to avoid a Vote on Account and pass a single Appropriation Bill before the close of the current financial year. This would enable the Ministries and Departments to operationalise all schemes and projects, including the new schemes, right from the commencement of the next financial year. They would be able to fully utilise the available working season before the onset of the monsoon.''

The Plan and Non-Plan classification has been done away with from the Central Budget from 2017–18. This has been done on the lines recommended by a high-level expert committee and the Administrative Reforms Commission. The Finance Minister while presenting the 2017–18 Budget explained that this will give a holistic view of allocations for sectors and Ministries and would facilitate optimal allocation of resources.

Rajya Sabha

Motion to remove a judge

A judge of the Supreme Court or a High Court may, by writing to the President, resign his office. A judge cannot be removed from his office except by an order of the President passed after an address by each House of Parliament, supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. Such an address for the removal of a judge has to be presented to the President on the grounds of proved misbehaviour or incapacity.

The law and procedure for the removal from office of judges of the Supreme Court and High Courts are provided in Article 124(4) and Article 217(1)(b) of the Constitution of India, and the Judges (Inquiry) Act 1968 and rules made thereunder. Section 3(1)(b) of the Judges (Inquiry) Act 1968 states that if notice is given of a motion in the Rajya Sabha for presenting an address to the President praying for the removal of a judge, the motion has to be signed by not less than fifty Members.

On 4 March 2015, 58 Members of the Rajya Sabha signed a Motion addressed to the Hon'ble Chairman of the Rajya Sabha regarding the removal of Mr. Justice S.K. Gangele, a judge of the Madhya Pradesh High Court. After the perusal of the documents, the Hon'ble Chairman of the Rajya Sabha constituted an Inquiry Committee under Section 3(2) of the Judges (Inquiry) Act 1968 consisting of three members (namely Justice Smt. R. Banumathi, a judge of the Supreme Court, Justice Smt. Manjula Chellur, Chief Justice of the Bombay High Court and Shri K.K. Venugopal, Senior Advocate of the Supreme Court). The Committee heard the complainant and complainant's witnesses, and respondent and respondent's witnesses. The Inquiry Committee submitted its report to the Hon'ble Chairman and the report was laid on the Table of the Rajya Sabha on 15 December 2017 and the Lok Sabha on 17 December 2017. As per the report, the charges, *inter alia*, of sexual harassment of an Additional District and Sessions Judge of Gwalior in the State of Madhya Pradesh, levelled against the judge of the Madhya Pradesh High Court were not proved. Therefore, no further action was taken by the House in this regard.

STATES OF JERSEY

Commissioner of Standards

The role of Commissioner of Standards was created. The Commissioner investigates alleged breaches of the codes of conduct relating to elected Members, as well as ministers and assistant ministers.

Review of parliamentary privilege

Sir Malcolm Jack, former Clerk of the House of Commons, undertook a review of parliamentary privilege in Jersey. The purpose of the review was to 'review Jersey Legislation and Case Law relating to parliamentary privilege with a view to preparing a paper on codifying parliamentary privilege in a single, draft law, drawing on experience in other jurisdictions.' Sir Malcolm reported to the Privileges and Procedures Committee on 12 September 2017.

Enhancing the scrutiny of legislation

In December 2017, the Privileges and Procedures Committee published proposals for enhancing the scrutiny of legislation. The Committee's proposals for further consideration included the referral of propositions automatically to the relevant Scrutiny Panel, giving such Panels a minimum of six weeks to scrutinise and report back on propositions (and the ability to request further time), and the option (in the case of legislation) for Scrutiny Panels to automatically trigger a further period of scrutiny.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Outcome of review into the suitability of the Auditor-General

In November 2016, Martin Matthews was appointed as the Controller and Auditor-General with cross-party support on the recommendation of the Officers of Parliament Committee. On 24 May 2017, Mr Matthews requested that his suitability for the role be reviewed by an independent investigator.

The request came after extensive media coverage, as well as concerns raised by Opposition MPs, of Mr Matthews' handling of a fraud case when he was Secretary for Transport. The case related to fraud committed by a former senior manager at the Ministry of Transport at that time.

The Officers of Parliament Committee agreed unanimously to initiate the review, led by senior public servant Sir Maarten Wevers. Mr Martin volunteered to step aside whilst the review was undertaken, in favour of his deputy Greg Schollum.

Sir Maarten completed his review at the end of June, and provided his draft report to the Clerk of the House. This draft report was provided to Mr Matthews for comment, in the interests of natural justice. Mr Matthews provided comments on the draft report, which the Committee then considered.

During this consideration, Mr Matthews tendered his resignation in writing from his position as Controller and Auditor-General with immediate effect. The Committee promptly concluded its consideration on this matter, and presented a report to the House detailing the process it had followed.

General election

The general election was held on 23 September 2017. There were 2,591,896 votes cast, of which 1,023,059 were cast before polling day, up from 718,000 votes before the 2014 election. This is the largest early-vote turnout in any New Zealand election. The election also saw more special votes cast than ever before – 446,287, which was 17 per cent of the total votes cast (special votes mostly comprise votes cast by people outside their registered electorates, including overseas voters, and people who enrolled in the last few weeks before election day).

Turnout as a percentage of enrolled electors (92.4 percent of New Zealanders were enrolled to vote) was 79.8 per cent, which is the highest since 2005.

On election night, the National Party ('National') won 46 per cent of the vote (58 seats), the Labour Party won 35.8 per cent of the vote (45 seats). The other parties that were re-elected to Parliament were New Zealand First (NZ First) with 7.5 per cent of the votes (nine seats), the Green Party of Aotearoa/New Zealand (Greens) with 5.8 per cent (seven seats), and ACT New Zealand won 0.5% per cent (one seat). No other party qualified for a seat in Parliament by winning either an electorate seat, or more than five per cent of the party vote.

The final election results were announced two weeks after Election Day. This was to allow for the large number of special votes to be counted, and other appropriate checks. After the special votes were counted, the final allocation of seats in the House was announced. National remained the largest party, but with a reduction of two seats in the final result, with those seats being transferred, one each to Labour and the Greens. The representation for the two remaining parties, ACT and NZ First, was unchanged from election night.

No party or self-identified group of parties had enough seats to govern on election night. NZ First began negotiations with National and Labour, who, with the support of the Greens, had enough seats to govern. There was speculation about the Greens negotiating with National, but the Green Party leader quickly ruled this out.

After a two-week period of negotiations, NZ First leader the Rt Hon Winston Peters announced his party would enter into a formal coalition with Labour. The Governor-General, Rt Hon Dame Patsy Reddy, accordingly appointed Rt Hon Jacinda Ardern as Prime Minister, with Mr Peters as Deputy Prime Minister. The new Government is supported on issues of confidence and supply by the Green Party.

A number of members and commentators declared this the "first truly mixed member proportional (MMP) Government", as the party with the most seats was not in government. The Rt Hon Bill English, now the new Leader of the Opposition, vowed that National would be "the strongest Opposition party that Parliament has seen".

The 52nd Parliament has the fewest parties (five) since New Zealand adopted MMP. Two incumbent parties that contested the election, the Māori Party and United Future, failed to be returned to Parliament. Both parties had been government support parties since 2008.

Following the appointment of the new Government, the 52nd Parliament of New Zealand opened on 7 November 2017.

Election of Speaker

On the first day of Parliament the Government nominated Hon Trevor Mallard to be Speaker. Six members (five Government, one Opposition) were absent. As they had not yet taken the oath or affirmation these members were unable to vote in the House. As the Clerk called for nominations, National questioned whether the Government had a majority to get Mr Mallard elected. The Clerk delayed the vote while the Leader of the House and the Shadow Leader of the House quickly negotiated a solution. Eventually the vote proceeded, and Mr Mallard was elected unopposed.

The Leader of the House later announced that, in exchange for an uncontested vote on the Speaker, the number of seats on select committees would be 109, rather than the 96 seats suggested by the Standing Orders Committee.

UNITED KINGDOM

House of Commons

Recognising occupants of the public gallery

In many parliaments it is customary for the Chair, or other Members, to formally recognise the presence of visitors in the public gallery. In sharp contrast, it has long been the practice in the House of Commons for the Chair to rule out of order any reference to the occupants of the gallery. This dates back to a time when the act of noticing such attendance led to the galleries being cleared, since public attendance was not, in formal terms, allowed at all. For many years the House has, of course, accepted and indeed welcomed the attendance of observers in the public gallery and the Speaker recently decided it was time to change the practice as regards formal recognition. On 19 July 2017 he explained to the House that he had not sought to enforce the old rule for some time, and clarified that henceforth it would no longer be considered out of order for a Member to refer to visitors in the Public Gallery. He emphasised that any such reference should be brief and relevant to the debate, and should not be phrased in a way that might intimidate or seek to influence debate.

As a consequence there has been rather more references by Members to those in the gallery. For instance, during a debate in December on the payment of state pensions to women born in the 1950s, almost all Members who spoke

referred to a delegation of campaigners from their constituency who were present in the Gallery. In one or two cases the "relevance to the debate" has not been very clear, as when a distinguished foreign visitor to Parliament is recognised by the Chair. But this remains the exception rather than the rule.

Northern Ireland Assembly

The political landscape in Northern Ireland has changed significantly since the DUP and Sinn Féin were returned as the two largest parties following the May 2016 Assembly election.

Motion under section 30 of the NI Act 1998—exclusion of Ministers from office

In late December 2016 a motion was submitted under section 30 of the Northern Ireland Act 1998 which sought to exclude the First Minister (Arlene Foster) from office for a period of six months. The motion proposed that she had not observed the terms of paragraph (g) of the Pledge of Office and the first paragraph of the ministerial code of conduct, in that she failed to observe the highest standards of propriety and regularity in relation to the stewardship of public funds surrounding the renewable heat incentive scheme. This is a scheme where there are allegations of mismanagement by Executive Ministers which have led to potentially significant costs to the public purse. A public inquiry, headed by former Court of Appeal Judge Sir Patrick Coughlin, is currently being conducted into the circumstances surrounding the scheme.

Following a three hour debate the motion failed to get cross community support and was therefore negatived.

Resignation of deputy First Minister

The Northern Ireland Assembly has since been in a state of political uncertainty. On 10 January 2017 Martin McGuinness resigned as deputy First Minister due to a breakdown in trust between the two largest parties: the DUP and Sinn Féin. This was largely related to controversy around the renewable heating scheme though he also referred to a lack of equality and mutual respect towards nationalists in his resignation letter.

Due to the joint nature of the office, First Minister Foster also lost her position on the resignation of Mr McGuinness. Following the resignation, there was a one-week timeframe to nominate to the posts of First Minister and deputy First Minister, but Sinn Féin made it clear that it would not make a nomination for deputy First Minister.

Role of Secretary of State and election

It therefore fell to then Secretary of State for Northern Ireland, the Rt Hon

James Brokenshire MP, to set a date for fresh elections to the Assembly. On 16 January Mr Brokenshire announced that the date of the poll would be 2 March, nine months after the previous Assembly election in May 2016. The final plenary of the 2016–17 session took place on 24 January, with committees holding their last meetings the following day.

Shortly after the date was set, Martin McGuinness announced that he would not be contesting the election due to ill-health. Michelle O'Neill, former holder of the ministerial portfolios for Agriculture and Health, was announced as the new leader of Sinn Féin in Northern Ireland. Mr McGuinness subsequently passed away on 21 March.

The election itself was contested for 90 seats, rather than 108. The number of MLAs had been reduced by virtue of the Assembly Members (Reduction of Numbers) Act 2016, which came into effect at the first election following the May 2016 Assembly election. In the normal course of events, this would have been the election scheduled for 2021.

The results of the election were:

- DUP: 28 seats
- Sinn Féin: 27 seats
- SDLP: 12 seats
- UUP: 10 seats
- Alliance: 8 seats
- Green Party: 2 seats
- Traditional Unionist Voice: 1 seat
- People Before Profit: 1 seat
- Independent: 1 seat

Following the election, Mike Nesbitt resigned as leader of the Ulster Unionist Party and has been replaced by Robin Swann MLA.

As a result of commitments in the Stormont House Agreement and the subsequent Fresh Start Agreement, the UK Government had previously legislated to extend the time taken to form an Executive from seven days to 14 days (section 6 and schedule 1 of the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016). Failing this, fresh elections could be called.

The parties entered talks after the election to resolve outstanding issues, but the two-week deadline was not met. The Assembly did meet on 13 March at which time MLAs signed the Roll of Membership, but its statutory first item of business, the election of a Speaker, did not proceed. Therefore, no Ministers were nominated, no committees were established, and no date was set for a second Plenary.

The Assembly has not been dissolved and could therefore meet and to carry out limited business if it wished. However, under section 39 of the Northern

Ireland Act 1998, it could not carry out any other business until it had elected, with cross-community support, a Speaker and deputy Speakers. The Speaker has confirmed that he remains ready and willing to facilitate a future plenary sitting as required if there is political consensus for him to do so. So far, this consensus has not yet emerged.

The Northern Ireland Assembly Commission "has the responsibility, under section 40(4) of the Northern Ireland Act 1998, to provide the Assembly, or ensure that the Assembly is provided with the property, staff and services required for the Assembly to carry out its work. This means that the staff and premises of the Assembly remain in place whilst the Assembly is not sitting.

The Commissioners appointed on 31 May 2016 remain in place until a new Commission can be appointed, meaning that even MLAs who lost their seats at the 2017 Assembly election remain members of the Commission.

On 28 March the Secretary of State made a statement to the House of Commons outlining a way forward. He anticipated that, in the event of a successful outcome to the talks, he would bring forward legislation after the Easter recess to facilitate the formation of an Executive.

As no agreement was reached, the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017 extended the statutory timetable for the formation of an Executive retrospectively to 108 days from the first sitting of the Assembly after the election on 2 March. This period expired on 29 June without agreement.

Talks to reach an agreement resumed after the summer break, with the Secretary of State warning that a failure to reach agreement would result in inevitable intervention from Westminster, including the setting of a budget for 2017/18.

On 17 October 2017 Mr Brokenshire told the House of Commons Northern Ireland Affairs Committee that the latest date for the Assembly to pass a budget was 6 November 2017 and that he would need to begin the legislative process to allow the restoration of the Executive in the week commencing 30 October. In the event, the Northern Ireland Budget Act 2017 passed through Parliament and received Royal Assent on 16 November 2017.

In November 2017 Secretary of State James Brokenshire asked Trevor Reaney, former Clerk of the Assembly, to provide advice on the most appropriate approach to the level of salaries, expenses and allowances for MLAs in the continued absence of devolved government. In particular, Mr Brokenshire asked for advice as to what extent, if any, the Determination issued by the Independent Financial Review Panel should be adjusted. This Panel set the level of salaries, expenses and allowances for MLAs.

Mr Reaney reported in December 2017 and made 18 recommendations in total, including:

- Reduce Members' pay immediately by £7,425 (a drop from £49,500 to £42,075) and then a further reduction of £6,187 three months from now, a total reduction of £13,612;
- A two-stage reduction in the salary of the Speaker, totalling £31,652 within three months.

Karen Bradley was appointed to the position of Secretary of State for Northern Ireland on 8 January 2018 following James Brokenshire's resignation. On 18 January 2018 Karen Bradley announced a new round of talks aimed at breaking the political deadlock. By 14 February it had become clear, however, that this phase of talks had reached a conclusion without such an agreement being finalised and endorsed by both the Democratic Unionist Party and Sinn Féin.

The Secretary of State informed Parliament on 20 February 2018 that while the UK Government remained ready to bring forward the necessary legislation that would enable an Executive to be formed at the earliest opportunity, it nevertheless had a responsibility to ensure good governance and the continued delivery of public services in Northern Ireland.

Subsequently, three pieces of legislation were 'fast-tracked' at Westminster to ensure the continued delivery of public services in Northern Ireland in the absence of a functioning Assembly and Executive. These are:

- *The Northern Ireland Budget (Anticipation and Adjustments) Act 2018* which provides authority for departments and other public bodies in Northern Ireland to deliver public services for the remainder of the year ending 31 March 2018 based on the Northern Ireland Civil Service's final budget plans. It also provides authorisations and appropriations for a vote on account. This is to allow Northern Ireland departments and other public bodies to continue to deliver public services into the early months of the 2018–19 financial year.
- *The Northern Ireland (Regional Rates and Energy) Act 2018* which allows for the collection of regional domestic and non-domestic rates in Northern Ireland and which amends the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012.
- *The Northern Ireland Assembly Members (Pay) Act 2018* which confers power on the Secretary of State for Northern Ireland to determine salaries and other benefits for Members of the Northern Ireland Assembly in respect of periods when there is no Executive.

Political donations

The Political Parties, Elections and Referendums Act 2000 introduced a new system to regulate party funding. Under the system, political parties are required to report to the Electoral Commission political donations over a certain amount. This information is then published by the Commission.

Due to concerns around the potential for intimidation, the system was not initially extended to Northern Ireland.

However, the Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 made provision for the Electoral Commission to publish all Northern Ireland donations and loans above the relevant thresholds received on or after 1 July 2017.

Scottish Parliament

Presiding Officer's Commission on Parliamentary Reform

The Presiding Officer's Commission on Parliamentary Reform, set up following his election the previous year, presented its report in June 2017. It made more than 70 detailed recommendations designed to deliver a stronger Parliament that better engages with the people it serves. Touching on every aspect of the way in which the Parliament conducts its business—including public engagement activity, debate management, business programme, legislative procedures, parliamentary questions and the composition of committees—the recommendations have openness and accountability as essential principles.

Having secured the broad support of all party leaders, the Presiding Officer subsequently established a cross-party advisory group to oversee implementation of the Commission's recommendations. Early changes in 2017 included modifications to the format of First Minister's Questions and the introduction of urgent questions. The implementation of the remainder of the recommendations will be worked up in the first half of 2018.

Preparations to UK exit from the European Union

The Constitutional Issues Board, involving officials from across the parliamentary service, was established to ensure that the Scottish Parliament is equipped to undertake its scrutiny function in relation to the new challenges presented by the UK's exit from the European Union (Brexit) and other developments.

A key aspect of the Board's work in 2017 was Brexit-related planning, including scenarios planning. A capacity exercise was undertaken in the spring and summer months to assess the impact of Brexit on the Scottish Parliamentary Service to support bids for additional resources.

The UK Government introduced the European Union (Withdrawal) Bill in July 2017 to provide a framework for the treatment of EU law within the UK upon exit from the European Union. The UK Government recognised that the Bill engaged devolved competencies in a range of areas and therefore sought the Scottish Parliament's consent to legislate for Scotland in these areas. The Scottish Government objected to the way that the Bill treated the repatriation of UK powers and the impact on the devolution settlement. It indicated that

unless the Bill was amended in this area, it would not recommend that consent is given. After a detailed inquiry, the Finance and Constitution Committee reported on the Scottish Government's Legislative Consent Memorandum in early 2018. It unanimously concluded that it was not able to recommend that consent is given. At time of writing, the Bill was making its way through the House of Lords and the Committee is committed to reporting again prior to the final amending stage in that House. In the meantime, the Scottish Government has introduced a 'continuity bill' to make sure that Scotland's devolved laws can be prepared for the effects of withdrawal from the EU if it is not possible to rely on the UK Bill. A similar approach was being taken by the Welsh Government.

Budget process

The Budget Review Group was set up by the Finance and Constitution Committee and the Scottish Government to carry out a fundamental review of the Scottish Parliament's budget process following the devolution of further powers in the Scotland Acts of 2012 and 2016. Meeting between September 2016 and June 2017, the group included government and parliamentary officials, the Auditor General for Scotland and a number of academic and other experts. It recommended four objectives for the budget process: to have greater influence on the formulation of the Scottish Government budget proposals; to improve transparency and raise public understanding and awareness of the budget; to respond effectively to new fiscal and wider policy challenges; and to lead to better outputs and outcomes measured against benchmarks and stated objectives.

The group identified a weakness in current budget scrutiny procedures in that scrutiny tends only to begin after the Scottish Government's firm and detailed spending proposals are published and tends to focus on a single year. In response, it recommended that the Parliament's committees should report in advance of those proposals being made public, setting out their own policy priorities and their views on the delivery, impact and funding of existing policy priorities. Their views on these matters are to be agreed on a cumulative basis, built on an evidence base developed over the course of a parliamentary session through evaluation of the impact of previous budgets.

The group also recommended a comprehensive series of improvements to the information provided to support the budget process and some procedural changes, including the introduction of a committees' debate following the publication of the Budget Bill. In addition, it published an implementation timetable running to early 2019.

Lobbying Register

The Lobbying (Scotland) Act became law in April 2016. It placed a duty on

the Clerk of the Parliament to establish and maintain a lobbying register. The register is designed to improve transparency of face-to-face lobbying contact between organisations and Members of the Scottish Parliament, Members or the Scottish Government (including Scottish Law Officers), Junior Scottish Ministers, Scottish Government Special Advisers and the Permanent Secretary of the Scottish Government.

Appointed in autumn 2016, the Lobbying Registrar led a small team responsible for intensive preparations for the implementation of the Act. The team drew in support from various internal offices and an external working group to develop a user-friendly online register, associated guidance and a code of conduct.

The Act came into force on 12 March 2018 when the online register went live. There will be a statutory review of the operation of the Lobbying (Scotland) Act in 2020.

National Assembly for Wales

Wales Act 2017 and Assembly reform

In the year when the National Assembly for Wales celebrated 20 years since the referendum which led to its establishment (18 September 2017), the passing of the Wales Act 2017 gave the Assembly powers to legislate to change the institution's name, its size, and to reform the electoral system. The Act also confers competence over a range of the Assembly's internal, organisational and operational arrangements, including issues such as the rules on disqualification from membership and the design of the committee system.

The Assembly's corporate body, the Assembly Commission, unanimously agreed to take forward work relating to electoral reform and the size of the Assembly, acting on behalf of the institution, and in the interests of democracy in Wales. The report of an Expert Panel on Electoral Reform appointed by the Llywydd at the end of 2016, entitled "A Parliament that Works for Wales", was published on 12 December 2017.

The report recommended that the Assembly needs between 20 and 30 additional Members elected through a more proportional electoral system, with accountability to electors and diversity at its heart. It also recommended lowering the minimum voting age for National Assembly elections to include 16 and 17-year-olds. Responding to the report, the Llywydd said:

> "The Assembly Commission will consider the proposals in detail over the coming months and engage with people across the country and the political spectrum. I hope we can find a broad consensus for change and deliver a stronger, more inclusive and forward-looking legislature that works for Wales for many years to come."

The Wales Act 2017 also gives the Assembly the power to change its name,

and there were 2,821 responses to public consultation on this issue in March 2017. Sixty one per cent agreed or strongly agreed with a name change, and that the name best describing the institution's role and responsibility was Welsh Parliament/Senedd Cymru (73 per cent). 60 per cent of respondents disagreed or strongly disagreed that the role of the Assembly is well understood. The preferred title for elected representatives was not as clear cut. On balance, the most popular choice was Members of the Welsh Parliament. However, the Commission agreed to put forward a proposal to call them Welsh Parliament Members, in keeping with the current title of Assembly Members. This change will be taken forward as part of a wider programme of internal reforms under consideration, some of which will require legislation via an Assembly Bill, which could be brought forward by the Assembly Commission.

The Assembly's Business Committee has responsibility for changes to Standing Orders, including those arising from the Wales Act 2017 and not requiring Assembly legislation. Changes implemented during 2017 included the introduction of a super-majority requirement for votes on an Assembly Bill that touches on a "protected subject-matter" (such as electoral arrangements). The changes mean that, as in the Scottish Parliament, a recorded vote is now always taken on any Stage 4 vote to pass an Assembly Bill. Should any Bill subsequently be challenged, or referred to the Supreme Court, there will be a record of whether two thirds of the total number of Assembly Members had voted in favour. Standing Orders for the participation of the Secretary of State for Wales have also been amended now that there is no requirement for them to attend proceedings to consult the Assembly on the UK Government's legislative programme. Some changes do not come into force until the Principal Appointed Day of commencement, 1 April 2018, when the Assembly will move from its current conferred model of devolved powers to a reserved powers model. One change to take effect from April 2018 is a requirement for 'Judicial Impact Assessments' to set out the potential impact (if any) on the justice system in England and Wales of the provisions of any Assembly Bill.

Death of a Member

Assembly business was cancelled on 7 November 2017 as a mark of respect following the death of former Cabinet Secretary Carl Sargeant AM. This sudden and shocking loss had a profound impact on Assembly Members and staff. It came four days after he was sacked from his government post and suspended from the Labour Party pending an inquiry into allegations about his conduct. The Llywydd paid tribute to the Labour AM and former Government Minister, who had "served the people of Alyn and Deeside with pride and determination and made an enormous contribution to the development of this democratic institution." All Plenary and committee business was cancelled, and

did not resume until the following week, after formal tributes had been paid in the Assembly's Siambr with members of Carl's family present in the public gallery.

A coroner's inquest was opened, and in the weeks following Carl Sargeant's death allegations were made in the media of bullying within Welsh Government dating back to 2014. The Welsh Conservatives tabled a motion of direction to the Committee for the Scrutiny of the First Minister, instructing it to undertake an inquiry and report by February 2018. The Government then tabled a "delete all and replace" amendment to that motion, "instructing" the Committee to "note" that the First Minister had already referred himself to an independent adviser, James Hamilton, who also advises the Scottish Government on its Ministerial Code and instructing the Committee to note the report of that investigation when published. The Llywydd decided to select the amendment for debate, and given its nature, also decided that she would follow the convention adopted for opposition and Member debates, with the original motion being voted on first. If the motion was not agreed, the Assembly would then vote on the amendment and, if required, the motion as amended. At voting time, the motion was defeated by 29 votes to 27, and the Government's amendment was then agreed, followed by the amended motion.

Written and oral questions to the First Minister about these allegations continued to be tabled, and on 12 December 2017 a Conservative Member, with the consent of the Llywydd, made a personal statement in the Chamber, stating that he had tabled written questions about bullying within government in 2014, after being asked to do so by Carl Sargeant, who was a member of the government at that time. Clerks and lawyers have provided advice to Members and the Presiding Officers on privilege and *sub judice* issues, considering both the ongoing coroner's inquest and the importance of protecting the anonymity of complainants and those giving evidence to a number of separate inquiries.

Meanwhile a by-election was called for 6 February 2018—a Tuesday. Following consultation, the Llywydd had decided to depart from the tradition of holding elections on a Thursday so that the by-election could be held on the last possible date within the timeframe permitted by law. This was considered desirable both because of the circumstances in which the vacancy had arisen, and because of the impact of Christmas on the nomination period. Carl Sargeant's son, Jack Sargeant, was successful in being elected to the seat formerly held by his father, and after being formally welcomed to the Assembly by the Llywydd on 13 February 2018 he made his first statement in the Siambr.

Brexit and inter-parliamentary relations

The External Affairs and Additional Legislation Committee met concurrently with the Constitutional and Legislative Affairs Committee in November 2017 to

undertake scrutiny of the EU Withdrawal Bill. This followed on from reporting by both Committees on the UK Government's White Paper, public consultation on the topic, and attendance of both committee chairs at an inter-parliamentary forum in Westminster on 12 October 2017, where a Forum statement was subsequently issued. The Committees have considered the way in which the Bill deals with the treatment of devolution; the delegation of powers and their control; and the scrutiny processes and the role of the devolved legislatures.

In October 2017, the Chair of the External Affairs Committee wrote to all Welsh MPs with six objectives for changing the European Union (Withdrawal) Bill, and alongside these objectives prepared suggested amendments to achieve them. These amendments were subsequently tabled by Stephen Kinnock MP.

The allocation of Committee Chairs between party groups

At the start of the 5th Assembly, in 2016, the procedure for appointing committee chairs was changed. Though some Assembly-specific adaptations were made, the new procedure draws on the model introduced in the UK's House of Commons in 2010. In summary, the distribution of chairs among political groups is agreed by the whole Assembly on a motion tabled by the Business Committee, and individual chairs are then nominated by Members of the relevant party group. Un-opposed nominations automatically take on the chair's role, and in the case of opposition or multiple nominations the election is conducted by secret ballot of the whole Assembly.

An unprecedented number of changes to party group affiliations since then, in an Assembly of only 60 Members, saw the principles behind the new procedure opened up to challenge in 2017. The distribution of chairs among political groups was based on the make-up of the Assembly in June 2016. Since then, two Members have left the United Kingdom Independence Party (UKIP) group, one to sit as an Independent and one to join the Welsh Conservative group, and two Members have either left or been expelled from the Plaid Cymru group. All these changes led to a situation whereby the Welsh Conservatives are now the largest opposition party, with 12 Members, and Plaid Cymru have dropped from 12 Members to 10.

Despite this, the Labour and Plaid groups have continued to argue that the allocation of chairs at the start of the Assembly should continue, with Plaid Cymru allocated three chairs and the Conservatives allocated two. As together the Labour and Plaid groups carry a majority of votes on the Business Committee, it is this view that has prevailed over the Welsh Conservatives' position that one of the three Plaid chairs should be re-allocated to them.

The Llywydd cannot direct the Business Committee to come to a particular decision, and so when it became clear that a consensus could not be reached on allocation of chairs, the Committee took the unusual decision to publish a

report outlining the discussions that had taken place and how the decision not to change the chairing allocation had been reached.

In making their case for no change, the Labour Business Minister and the Plaid Cymru Business Manager argued that the new procedure for having committee chairs elected directly by the Assembly was designed to give chairs greater authority and autonomy and protect them from being removed by their groups as has happened in the past. It was also argued that the continuing ability of the Business Committee to re-allocate chairs during an Assembly conflicts with this aim of ensuring that chairs have security of tenure and does not provide for a stable and effective committee system. Finally, it was argued that the current allocation of chairs reflects the balance of groups to which Members belonged at the time it was agreed unanimously by the Assembly. Whilst that balance has changed, it would be undesirable to cause upheaval within a committee by removing its chair because of changes in the political make-up of the Assembly. The tenure of committee chairs should not be at the mercy of the political actions of other Members.

The report also included the Llywydd's view, which was different to that of the "majority". The report was agreed on 17 October 2017 and laid along with motions tabled to give effect to decisions regarding committee membership.

In Plenary the Welsh Conservatives' Business Manager expressed his extreme disappointment. In response, the Llywydd said that she was satisfied that the Business Committee had been through the process required by Standing Orders in considering this matter and that it had every right to make the decision it had, even if she did not necessarily agree with it. In a situation such as this, Standing Order 17.13 gave the Business Committee the option of revising the allocation of Chairs, but on this occasion the majority view was that it was not appropriate to do so. The Llywydd said that there was clearly a tension between different provisions in the Standing Orders, and an unprecedented series of events had led to the current anomalous situation. That was why she would be asking the Business Committee to review the requirements regarding the allocation and election of Chairs. The motions to elect members to committee were then objected to by the Welsh Conservatives and were passed by electronic vote at voting time, with the Conservatives abstaining.

ZAMBIA NATIONAL ASSEMBLY

Suspension of Standing Orders

For the National Assembly to consider the estimates of expenditure for 2018 in time, Standing Orders 19, 20, 21(1) and 101 were suspended to enable the House to sit from 9am each day from Tuesday 13th December 2016, until the completion of all Business before the House. Ordinarily, the House sits from

2.30pm to 8pm on Tuesdays and Thursdays, 2.30pm to 7.15pm on Wednesdays and 9am hours to 1pm on Fridays.

COMPARATIVE STUDY: DISSOLUTION OF PARLIAMENT

This year's comparative study asked, "Who has power to dissolve your parliament or legislature? In what circumstances may your parliament or legislature be dissolved? Are there conventions or practices applying to dissolution?"

AUSTRALIA

House of Representatives

A House of Representatives may last for no more than three years from the date of its first meeting after an election. It then comes to an end automatically—it is said to expire. The House may also be dissolved by the Governor-General (in practice on the advice of the Prime Minister) before the end of the three years. After the expiry or dissolution of a House, the House no longer exists and elections for the full membership of a new House are held at a general election.

Historically, dissolution of the House before the three-year maximum has been usual. Only one House of Representatives has lasted for the maximum time allowed, expiring in 1910.

Double dissolution

The Governor-General has, in specific circumstances provided for under section 57 of the Constitution, the power to dissolve both the House of Representatives and the Senate simultaneously—a 'double dissolution'—prior to elections for the full membership of both Houses.

A double dissolution may occur in situations where the Senate and House of Representatives are unable to agree over one or more pieces of legislation. There is a series of steps which must take place before a double dissolution is possible—these are specified in section 57 of the Constitution and outlined below.

Disagreement between the Houses over legislation

Proposed laws must be agreed to by both Houses of the Parliament. When the Government does not have a majority in the Senate the situation can arise that the two Houses disagree over proposed legislation. In most cases, compromises are reached and amendments are made by one or the other House until the bill concerned is in a state acceptable to both. The Constitution provides the double dissolution mechanism as a means of breaking a deadlock between the Houses when such compromise is not achieved.

In effect the legislation may be put to the people, presenting the electorate

with the opportunity to change the composition of the Senate following a full Senate election. There is also of course the possibility of a change in the composition of the House (i.e. a change of government)—the deadlock may be broken in either direction.

Continued disagreement—joint sitting

If the Houses disagree on the bill again after a double dissolution and elections for both Houses, the Governor-General may convene a joint sitting of the Senate and the House of Representatives to enable the members of both Houses to vote together to resolve the matter. Because the House of Representatives has approximately twice as many Members as the Senate, a joint sitting is likely to give a majority in the House the opportunity to more than balance the resistance of a majority in the Senate.

Results of double dissolutions

There have been seven double dissolution elections:

- 1914—the deadlock was broken by the government losing its majority in the House as a result of the double dissolution election. The legislation was not reintroduced.
- 1951—the deadlock was broken by the government gaining a majority in both Houses. The legislation was reintroduced and passed by both Houses in the normal manner.
- 1974—the government was returned but the disagreement between the Houses continued, resulting in a joint sitting at which the bills concerned were passed.
- 1975—the bills concerned were not reintroduced in the new Parliament. Unique circumstances applied in 1975—following disagreement over the passage of a number of bills the government was dismissed by the Governor-General and a 'caretaker' government installed to enable passage of appropriation bills. The caretaker government then requested a double dissolution and was elected at the ensuing election. The bills providing the technical grounds for the double dissolution were not those of the caretaker government seeking the dissolution, but those of the government dismissed by the Governor-General.
- 1983—the deadlock was broken by the government losing its majority in the House.
- 1987—the government was returned; the bill concerned was reintroduced and again passed by the House but ultimately not proceeded with.
- 2016—the government was returned; one of the bills concerned was reintroduced and again passed by the House and by the Senate, early in the new Parliament.

The steps leading to a double dissolution and joint sitting

Section 57 of the Constitution sets out the steps for resolving a disagreement involving a proposed law that originated in the House. The procedure does not apply to a bill originating in the Senate.

1. The House of Representatives passes a bill and sends it to the Senate.
2. The Senate rejects the bill, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree.
   The term 'fails to pass' has not been strictly defined and would be interpreted according to the circumstances at the time. The High Court has stated that a 'reasonable time' must be allowed.
3. After an interval of three months (but in the same or the next session of Parliament), the House of Representatives passes the bill a second time and sends it to the Senate again. The bill reintroduced must be the original bill, except that it may be modified by amendments made, requested or agreed to by the Senate.
   A new session starts after a prorogation (temporary suspension) or dissolution. In recent times it has been the practice for Parliaments to consist of one session only.
4. The Senate again rejects the bill, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree.
5. The Prime Minister may now advise the Governor-General to dissolve both Houses.
   Once the preceding conditions have occurred, whether and when to advise a double dissolution is a matter for the Prime Minister. There is no constitutional necessity to do so, or to do so within any period of time. However, a double dissolution cannot occur within six months of the end of a three year term of the House of Representatives.
6. Elections are held for both Houses.
7. In the new Parliament the House of Representatives passes the bill again and sends it to the Senate. The bill may be reintroduced with or without amendments made, requested or agreed to by the Senate.
   There is no constitutional necessity to reintroduce a bill that was the cause of the double dissolution.
8. The Senate again rejects the bill, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree.
9. The Prime Minister may now advise the Governor-General to convene a joint sitting of the members of both Houses.
10. The joint sitting votes on the bill as last proposed by the House of Representatives and on any amendments made by one House and not agreed to by the other. To be passed, amendments and the bill (as, and if, so amended) must be agreed to by an absolute majority (i.e. more than half of the total number of the members of both Houses).

Senate

The Australian Senate may be dissolved only in the course of disputes over legislation between the two Houses. Since federation in 1901, the Senate has been dissolved on only seven occasions: 1914, 1951, 1974, 1975, 1983, 1987 and 2016. These 'simultaneous dissolutions' are provided for in section 57 of the Constitution:

As outlined above, in order for the Senate to be dissolved the following must occur:

- the House of Representatives must pass a bill and transmit it to the Senate for consideration;
- the Senate must then reject or fail to pass the bill;
- after an interval of at least three months from the Senate's rejection of (or failure to pass) the bill, the House of Representatives must pass the bill again and transmit it to the Senate for reconsideration; and
- the Senate must again reject (or fail to pass) the bill.

Once the Senate has rejected (or failed to pass) the bill for the second time, the Governor-General may, on the advice of the Prime Minister, dissolve both the Senate and House of Representatives (provided that there is more than six months before the expiry of the three year House of Representatives term). As the power to grant a simultaneous dissolution is one of the Governor-General's 'reserve powers', the Governor-General may independently consider whether the conditions for invoking section 57 have been met, and has on occasion sought further advice before accepting the Prime Minister's request for a simultaneous dissolution.

One significant issue in relation to the operation of section 57 is that while it is clear when the Senate has rejected a bill, what amounts to the Senate 'failing to pass' a bill is less clear. In this regard, the High Court has held that 'the Senate has a duty to properly consider all bills and cannot be said to have failed to pass a bill because it was not passed at the first available opportunity; a reasonable time must be allowed': *Victoria v Commonwealth (1975) 134 CLR 81.*

Australian Capital Territory Legislative Assembly

The Assembly may be dissolved by the Governor General (under section 16, Australian Capital Territory (Self-Government) Act 1988). Dissolution suspends the Assembly and results in a general election.

The Assembly has never, since its establishment in 1989, been dissolved.

The circumstances and processes for the dissolution of the Assembly are (as under section 16 of the 1988 Act:

(1) If, in the opinion of the Governor General, the Assembly:
    (a) is incapable of effectively performing its functions; or

(b) is conducting its affairs in a grossly improper manner;

the Governor General may dissolve the Assembly.

(2) Where the Assembly is dissolved:

(a) the Governor General:

(i) shall appoint a Commissioner for the purposes of this section; and

(ii) may, at any time, give directions to the Commissioner about the exercise of the powers of the Executive; and

(b) a general election shall be held on a day specified by the Commonwealth Minister by notice published in the Commonwealth Gazette, being not earlier than 36 days, nor later than 90 days, after the dissolution of the Assembly.

(3) The Commonwealth Minister shall not specify a day that is the polling day for an election of the Senate or a general election of the House of Representatives.

(4) The Commissioner:

(a) shall exercise all the powers of the Executive in accordance with any directions given by the Governor General; and

(b) if it is necessary to issue or spend public money of the Territory when not authorised to do so by or under enactment—may do so with the authority of the Governor General."

(5) The Commissioner shall be paid such remuneration and allowances as are determined by the Governor General.

(6) Unless sooner terminated by the Governor General, the term of office of the Commissioner ceases at the beginning of the first meeting of the Assembly held after the next general election.

(7) The powers of the Governor General under this section shall be exercised by proclamation.

(8) The Commonwealth Minister shall cause a statement of the reasons for the dissolution to be:

(a) published in the Commonwealth Gazette as soon as practicable after the day of the dissolution; and

(b) laid before each House of the Parliament within 15 sitting days of that House after the day of the dissolution.

(9) A person holding office, or acting as, Chief Executive of the Chief Minister's Department must not be appointed as a Commissioner under this section.

(10) If the name of the office of Chief Executive, or of the Chief Minister's Department, is changed, a reference in subsection (9) to that office or Department is to be taken to be a reference to the office or Department under the new name.

Northern Territory Legislative Assembly

The Administrator of the Northern Territory has the power to issue writs for the election of Members the Legislative Assembly of the Northern Territory. However, the Administrator's power to issue writs and determine the date of elections is limited by the Electoral Act which fixes the term of the Assembly to four years, unless no Government can gain the confidence of the Assembly, in which case an extraordinary election may be called. Procedures for determining lack of confidence are provided by the Electoral Act.

Northern Territory (Self-Government) Act 1978 (Cwlth)

This Act (amongst other things) details the role of the Office of Administrator, the extent of executive power, and the dates of elections. The Administrator is charged with the duty to administer the government of the territory (being appointed by the Governor-General). The Administrator determines the date for a general election of members of the Legislative Assembly, with the caveat that the period from the first meeting of the Assembly following a general election to the date of the next general election should not be more than four years. Writs for the election of members to the Legislative Assembly are issued by the Administrator.

Electoral Act

The Act details the dates for holding a general election, stating that unless the previous election was an extraordinary general election, that an election should be held on the fourth Saturday in August of the fourth year after the previous general election. If the previous general election was extraordinary, the date should be the fourth Saturday in August of the third year after that election.

An extraordinary general election takes place when the Administrator moves a writ for a general election following a motion of no confidence in the Government being passed by the Assembly, and if during the period of no confidence, no motion of confidence in Government is passed. The period of no confidence is a period of eight days from when the motion is passed. The Legislative Assembly may not be prorogued before the end of the period of no confidence and may not be adjourned for a period extending beyond that period unless a motion of confidence has been passed.

An extraordinary general election can also take place if at any time the Assembly rejects an appropriation Bill or fails to pass an appropriation Bill before the time the Administrator considers the appropriation is required.

In deciding whether a writ for an extraordinary general election should be issued, the Administrator must consider whether a viable alternative Government can be formed without a general election and, in so doing, must have regard to any motion passed by the Legislative Assembly expressing confidence.

The Act also makes provisions for changing the date of a general election, should it clash with a national election.

New South Wales Parliament

The period of a Parliament is prescribed by the (NSW) Constitution Act 1902 as four years.

The Constitution Act also confers on the Governor of New South Wales the power to prorogue the Legislative Council and the Legislative Assembly, and the power, in specified circumstances, to dissolve the Legislative Assembly.

The Constitution Act establishes the Legislative Council as a continuing body, since only half of its Members are elected at any periodic Council election. By contrast, the Legislative Assembly may either be dissolved or its term may expire, to be reconstituted again following a State general election.

Section 24 states that, unless sooner dissolved, an Assembly shall expire on the Friday before the first Saturday in March in the fourth calendar year in which the return of the writs for the previous Assembly occurred. Under the provisions of section 24A polling day will usually be the fourth Saturday in March following the expiry of the Legislative Assembly.

The Constitution Act also makes provision for the Legislative Assembly to be dissolved, under certain circumstances, prior to its expiration. Under section 24B the Assembly may be dissolved by the Governor, by proclamation, if:

(1) a no confidence motion in the Government is passed by the Legislative Assembly (after three days notice is given); and

(2) within eight clear days after passage of such a no confidence motion a motion of confidence in the then Government has not been passed. The House cannot be prorogued before the end of the eight-day period and may not be adjourned for a period beyond that eight-day period, unless the confidence motion has been passed.

Subsection 24B (4) states that the Assembly may be dissolved within two months before it is due to expire if the general election would otherwise be required to be held during the same period as a Commonwealth election, during a holiday period or at any other inconvenient time. Subsection 24B(5) retains the Governor's discretion to dissolve the Assembly "in accordance with established constitutional conventions" (despite any advice of the Premier or Executive Council).

Subsection 24B(6) requires the Governor, in deciding whether the Assembly should be dissolved, "to consider whether a viable alternative Government can be formed without a dissolution". In cases where the Assembly is dissolved prior to its expiration section 24A provides that the polling day for the general election is to be a day not later than the fortieth day from the date of the issue of the writs.

An amendment to the Constitution Act in 2011 provides that the Premier or Executive Council cannot advise the Governor to prorogue the Parliament prior to 26 January (Australia Day being a public holiday) in the calendar year in which the Legislative Assembly is due to expire (subsection 10A). This amendment was introduced to prevent a Government from proroguing Parliament for an undesirably long period in the lead up to a general election.

Queensland Parliament

Part 2A of the Constitution of Queensland 2001 provides that the Legislative Assembly has fixed four-year term parliaments. The Governor may, however, postpone the dissolution of the Parliament, if the Premier recommends, and the Leader of the Opposition agrees to, the postponement. The Governor may also dissolve the Parliament, at any time, if the following circumstances occur:

- a no confidence motion is passed, or a confidence motion is defeated, in the Assembly, and a confidence motion is not passed subsequently within eight days after the passage or defeat of the motion; and the Governor considers no government can be formed that will command the confidence of a majority of the Assembly;
- the Assembly rejects a Bill for an ordinary annual appropriation Act; or
- the Assembly fails to pass a Bill for an ordinary annual appropriation Act before the day notified by the Governor, by a message given to the Assembly, that the appropriation is required.

South Australia House of Assembly

Section 28 of the Constitution Act 1934 (SA) provides for the dissolution of the House of Assembly by the Governor for a general election every four years. The specific timing of the issue of the writs by the Governor is subject to the requirements of the Electoral Act 1985 (SA) and the provisions of section 28 of the Constitution Act 1934 (SA).

The early dissolution of the House of Assembly by the Governor is also provided for in section 28a of the Constitution Act 1934 (SA), on the following grounds:

- a motion of no confidence in the Government is passed in the House of Assembly; or
- a motion of confidence in the Government is defeated in the House of Assembly; or
- a Bill of special importance passed by the House of Assembly is rejected by the Legislative Council;[1] or

[1] Constitution Act 1934 (SA), s.28a (5)

- pursuant to section 41 of the Constitution Act 1934 (SA), in order to resolve a deadlock between the houses, in which case both the House of Assembly and the Legislative Council would be dissolved.

In addition to the provisions of the Constitution Act 1934 (SA), the Governor holds "reserve powers" in accordance with a number of conventions.[2] Selway cites the following circumstances for dissolution by the Governor:

- loss of parliamentary support. In this case the convention is that the Premier who has lost the support of the House (potentially including blocking of supply) should resign or obtain a dissolution. Failure to do so could result in the Governor dismissing the Premier and appointing another member (usually the Leader of the Opposition), who can command a majority or, in the event no majority can be found, advise a dissolution.[3]
- if a government acts unlawfully, and advises the Governor to act unlawfully. However, there is a lack of clarity regarding the exercise of this power. Arguably, the Governor may only Act if: the illegality is upheld by a court of law; it is not being appealed by the government; or the government is seeking to introduce retrospective legislation to authorise unlawful actions.[4]

The Governor also has a reserved power to refuse a dissolution. Selway suggests that refusal may occur if:

- there is a vote of no confidence 'early' in the life of a parliament, and there is an alternative member who could command a viable majority;
- a Premier has been defeated and seeks a second dissolution prior to the meeting of the next parliament, and an alternative government may be found; and
- the requirements of section 28a of the Constitution Act 1934 (SA) have not been met.[5]

Tasmania House of Assembly

The Tasmanian Constitution provides that the Governor by proclamation, may prorogue Parliament or dissolve the House of Assembly whenever the Governor deems it expedient so to do, but shall not have power to dissolve the Legislative Council (section 12(2) of the Constitution Act 1934).

In practice, the Governor will only issue such a proclamation on the advice of the Premier.

2 Bradley Selway, The Constitution of South Australia, The Federation Press, 1997, p. 37
3 Selway, pp. 38–40
4 Selway, pp. 41–42
5 Selway, pp. 44–45

Victoria Legislative Council

Fixed dates apply for the expiration (dissolution) of the Parliament of Victoria. Following on from changes made to the Constitution Act 1975 in 2003, each Parliament automatically expires on the Tuesday, which falls 25 days before the last Saturday in November nearest the fourth anniversary of the Election Day on which it was elected. Since the 54th Parliament of Victoria began in 1999, all Parliaments have consisted of just one session, with no prorogations.

Although parliamentary terms are fixed, the Governor retains some powers to dissolve a parliament before it expires. The Governor can dissolve the Assembly if a motion of no confidence in the government has been passed by the Assembly and a motion of confidence is not passed within eight clear days. There is a requirement that parliament must sit within the eight days after a no confidence motion being passed in order to allow for a confidence motion to be passed.

The Premier can advise the Governor to dissolve both Houses in the case of a Deadlocked Bill. Under the Constitution (Parliamentary Reform) Act 2003, a Bill that has been passed by the Legislative Assembly, but rejected during its passage through the Legislative Council, becomes known as a Disputed Bill. The Bill is then referred to the Dispute Resolution Committee, which consists of members of both houses. If the Committee cannot come to a resolution regarding the Disputed Bill, or the Committee's resolution is rejected by either House, the Bill becomes known as a Deadlocked Bill. In this case, the Governor can, on advice of the Premier, dissolve the Legislative Assembly, causing an election to be held for both Houses of Parliament, known as a double dissolution.

Western Australia Legislative Council

Section 3 of the Constitution Act 1889 empowers the Governor to dissolve the Legislative Assembly at any time within the life of the Parliament. The Legislative Council has continuous existence. It is prorogued only, not dissolved. The convention is that the Governor exercises the power to dissolve the Legislative Assembly (and prorogue both Houses) on the Premier's advice. No prerequisites or limitations apply to when the Premier may give this advice, or the Governor may exercise their powers under section 3.

As to when the dissolution must occur, section 21 of the Constitution Acts Amendment Act 1899 provides that unless sooner dissolved by the Governor, the Legislative Assembly expires due to the 'effluxion of time', on 31 January in:

- the fourth year after the year in which that Assembly first met if that first meeting was before the end of August; or
- the fifth year after the year in which that Assembly first met if that first meeting was after the end of August.

Since 20 December 2011 the Electoral Act 1907 and Constitution Acts

Amendment Act 1899 have provided a fixed date for State general elections, with a general election held every four years subject to earlier dissolution by the Governor. A general election is held on the second Saturday of March in the election year. These provisions impact on when Parliament is dissolved.

The Governor's proclamation to effect the prorogation of the two Houses and the dissolution of the Legislative Assembly is published in a special edition of the *Government Gazette*.

CANADA

House of Commons

The power to dissolve Parliament is accorded to the Governor General in the Constitution Act 1867. Dissolution is accomplished when the Governor General, on the recommendation of the Prime Minister via an Instrument of Advice, issues a proclamation to that effect, which is published in the *Canada Gazette*.

The Constitution limits the duration of a Parliament to five years, except in the event of "war, invasion or insurrection". In the absence of dissolution, the Parliament would simply "expire". In practice, Parliament has always been dissolved, even if dissolution has taken place only a few days before the five years have passed. The date of a general election is set in accordance with the provisions of the Canada Elections Act which, since May 2007, stipulates that each general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, limiting the duration of a Parliament to four years. However, given that dissolution is a prerogative act of the Crown, the Governor General may, on the recommendation of the Prime Minister, dissolve Parliament any time before this date and issue a proclamation for a general election.

Senate

The Governor General has the power to dissolve, prorogue and summon Parliament. Both dissolution and prorogation are acts of the Crown, not of either House of Parliament. Dissolution is the formal ending of a Parliament, which must be followed by an election. Prorogation is the end of a session of Parliament. While a prorogation is typically followed by a new session of the existing Parliament, it may be followed by a subsequent dissolution of Parliament. All the proclamations described below relating to dissolving, proroguing or summoning Parliament, as well as those for a general election, are issued by the Governor General upon the advice of the Prime Minister.

The proclamation to dissolve or prorogue Parliament ends all business in the Senate and in the House of Commons. In the case of a dissolution, the

date of the subsequent election is set in accordance with the provisions of the Canada Elections Act, which stipulates that a general election must be held on the third Monday in October in the fourth calendar year following polling day from the last general election. However, given that dissolution is a prerogative act of the Crown, the Governor General may dissolve Parliament any time before this date. Parliament may be dissolved regardless of whether either or both chambers are scheduled to meet on a particular day.

Once the proclamation dissolving Parliament has been issued, another proclamation is made to issue writs of election and fixing the date of the election, as well as the date for the return of the writs.

Usually three proclamations are issued at the time of dissolution. The first is for the dissolution itself, stating that Parliament is dissolved and declaring that "the Senators and Members of the House of Commons are discharged from their meeting and attendance". A second proclamation appears simultaneously; it calls the next Parliament and deals with the issuance of writs of election, the date set for polling and the date set for the return of the writs. The third proclamation fixes the date on which Parliament is summoned to meet, sometime following the return of the writs. The date of this summons may be changed through the issuance of a subsequent proclamation.

The Senate is an assembly of its members. The Constitution does not expressly provide for the dissolution or summoning of the Senate. However, the proclamation that dissolves Parliament is addressed to members of both Houses and discharges them from their parliamentary duties until the next session. Because of this discharge, the Senate as an assembly is effectively dissolved and cannot meet during a period of dissolution, all items on the Order Paper and Notice Paper die and all committees, except two, cease to exist.

Under the terms of the Parliament of Canada Act, the Standing Committee on Internal Economy, Budgets and Administration continues to exist during a prorogation or dissolution. In addition, the Leaders of the Government and the Opposition, or their designates, may change this Standing Committee's membership during periods of prorogation or dissolution. The chair and deputy chairs of the Standing Committee remain in office and are remunerated for their extra duties during a prorogation or dissolution until replaced.

The Ethics and Conflict of Interest Code for Senators creates an Intersessional Authority on Ethics and Conflict of Interest for Senators, which is active during a period of prorogation or dissolution. The authority is composed of the senators who were members of the Standing Committee on Ethics and Conflict of Interest for Senators at the time of prorogation or dissolution. The authority continues to generally direct the work of the Senate Ethics Officer and can also exercise such other duties and functions as were given to it by the committee.

Subsection 29(2) of the Constitution Act, 1867, provides that a senator holds

his or her place in the Senate until the age of 75. In other words, a member of the Senate is a senator at all times, whether or not Parliament is in session, prorogued or dissolved. Pursuant to section 34 of the Constitution Act, 1867, the Speaker of the Senate remains Speaker until replaced.

Alberta Legislative Assembly

In Alberta, as in many other Westminster jurisdictions, dissolution is a prerogative act of the Crown. This power is exercised by the Lieutenant Governor, by proclamation, on the advice of the Premier. Under section 4(1) of the Constitution Act, 1982, and section 3(1) of the Legislative Assembly Act, a Legislature can last no more than five years.

Firstly, a Legislature may be dissolved because a legislature expires five years after commencement (Constitution Act, 1982, section 4(1)) and can last no longer.

Secondly, before the five-year expiration, the Lieutenant Governor may, on the advice of the Premier, dissolve a Legislature. A likely scenario in which this would happen is pursuant to section 38.1(2) of the Alberta Election Act, which provides that "general elections shall be held within the three month period beginning on March 1 and ending on May 31 in the 4th calendar year following polling day in the most recent general election." However, section 38.1(2) of the Act holds that the Lieutenant Governor may "dissolve the Legislature, in Her Majesty's name, when the Lieutenant Governor sees fit."

Practically speaking, dissolution would come, as ever, upon the advice of the Premier and most likely following circumstances indicating a want of confidence in the Government. It is important to note, however, that even under these circumstances, the Queen's representative would still retain the right to refuse to dissolve the Legislature, although the chances that that would happen would be remote. In any event, the scenario in which a Government has lost the confidence of the Assembly has never come to pass in the history of the Legislative Assembly of Alberta.

All business standing on the Order Paper dies on dissolution. Furthermore, upon dissolution there are no longer any committees of the Assembly. As well, a dissolution nullifies all orders or addresses of the Assembly for returns or papers.

If the Assembly is sitting, dissolution is usually announced to the Assembly by the Premier. The Premier has also announced the dissolution of a Legislature outside of the Assembly by way of a press conference.

Although there are no Members and all seats are vacant when the election is called, Members continue to receive their allowances until the day preceding polling day (Legislative Assembly Act, section 33(4)(b)). Dissolution terminates a Legislature and is followed by a general election, the date of which is set by the

Lieutenant Governor in Council.

British Colombia Legislative Assembly

The power to dissolve the provincial legislature rests with the Lieutenant Governor who is the Crown's representative in British Columbia. The powers and duties of the Lieutenant Governor are set out in Canada's Constitution Act 1867, sections 58-67 and 90.

British Columbia has partially codified the Lieutenant Governor's powers and duties in its own provincial Constitution Act. Section 23 provides that the Lieutenant Governor may dissolve the Legislative Assembly as the Lieutenant Governor sees fit by issuing a proclamation to that effect in Her Majesty's name; however the Lieutenant Governor generally exercises the power of dissolution on the advice of the Premier. The Act provides for fixed dates for provincial general elections and the Premier formally requests that the Lieutenant Governor dissolve the Legislative Assembly for this purpose. This process of dissolution is most typical of British Columbia practice.

The most likely catalyst for dissolution outside of a fixed election is the Assembly's lack of confidence in the government, evidenced by the loss of a vote on a matter of confidence. Matters of confidence in British Columbia include: a vote on the Address in Reply, signalling approval and support for the Speech from the Throne; motions regarding the Budget Speech and approvals related to Final Supply; and matters explicitly stated by the government to be a matter of confidence.

A Lieutenant Governor may disallow a request for dissolution in specific circumstances: if an incumbent government has lost the confidence of the majority of the Legislative Assembly and an alternative government exists which appears to be able to carry the confidence of the Legislative Assembly; or if the request for dissolution arises shortly after a provincial general election, unless there is an overwhelming issue of public policy upon which the electorate should pass judgement upon.

Both these exceptional circumstances occurred in British Columbia following the provincial general election on 9 May 2017. The party that had won a plurality of seats (43 of 87) had been defeated in the House on a confidence vote on the Address in Reply on 29 June and the then-Premier had made a request for dissolution. The Lieutenant Governor had two courses of action: to accept the Premier's advice, or, to take into consideration the timing of the request and the existence of a confidence-and-supply agreement between the opposition party with 41 seats and three Independent Members. Under these circumstances, it was deemed more prudent by the Lieutenant Governor to reject the dissolution option and invite the Leader of the Opposition party to form a new government.

Manitoba Legislative Assembly

The Lieutenant Governor of the Province of Manitoba has the authority to dissolve the Legislature.

The Legislature could be dissolved if the Government lost a vote in the House on a confidence issue; or a request is received by the Premier to dissolve the Legislature. In addition there are set election dates as to when provincial general elections must be held.

The following are the statutory provisions regarding the duration of the Assembly as outlined in the Legislative Assembly Act, as well as the provisions for set election dates as per the Elections Act:

The Legislative Assembly Act

This Act states that every Legislative Assembly shall continue for five years from the 10th day after the day upon which polling takes place for the general election of members; but the Lieutenant Governor may at any time dissolve the assembly if he deems it advisable.

The Act also states that there shall be a session of the Legislature at least once in every year, so that 12 months shall not intervene between the last sitting of the Legislature in one session and the first sitting in the next. It also states that the Legislative Assembly shall not determine or be dissolved by the demise of the Crown, but shall continue and may meet, convene and sit, proceed and act, in the same manner as if the demise had not happened.

It is not necessary for the Lieutenant Governor in proroguing the Legislature to name any day to which it is prorogued, or to issue a formal proclamation for a meeting of the Legislature when it is not intended that the Legislature shall meet for the dispatch of business.

The Elections Act

The Elections Act states that a general election must be held on the first Tuesday in October in the fourth calendar year after election day for the last general election. If the election period for a general election to be held in October under that clause will, as of 1 January of the year of the election, overlap with the election period for a general election to be held under the Canada Elections Act, the general election must be held instead on the third Tuesday of April in the next calendar year.

Ontario Legislative Assembly

In Ontario, the Lieutenant Governor, who represents the Queen in the province, has the power to dissolve Parliament on the advice of the Premier. The dissolution of Parliament is followed by a general election. The province's Election Act provides that general elections shall be held on the first Thursday

in June in the fourth calendar year following polling day in the most recent general election. However, the Act also stipulates that the Lieutenant Governor can dissolve Parliament any time before this date, as he or she sees fit.

At the time of dissolution, the House and its committees cease to exist. All items on the *Orders and Notices Paper* die and the Government is no longer required to respond to written questions, petitions, Orders of the House or committee reports. The Clerk continues to receive documents for tabling notwithstanding dissolution.

Prince Edward Island Legislative Assembly

According to the Election Act for the province of Prince Edward Island, a general election shall be held on the first Monday of October in the fourth calendar year following the most recent general election; unless the writ period overlaps with the general election pursuant to the Canada Election Act, in which case, the provincial election shall be held on the fourth Monday in April, in the calendar year following the calendar year mentioned previously.

Section 4.1 of the Prince Edward Island Election Act states:

> "Nothing in this section affects the powers of the Lieutenant Governor, including the power to dissolve the Legislative Assembly, by proclamation in Her Majesty's name, when the Lieutenant Governor sees fit."

Only the Lieutenant Governor has the power to dissolve the provincial legislature. By convention, the Lieutenant Governor will dissolve Parliament on the advice and discretion of the Premier.

Québec National Assembly

Pursuant to sections 5 and 6 of the *Act respecting the National Assembly*, the Lieutenant Governor dissolves the National Assembly by proclamation. However, dissolution takes place on the Government's advice, as a constitutional convention. To end a legislature, the Executive Council, on the recommendation of the Premier, adopts an order to dissolve the Assembly. The Lieutenant Governor then issues a proclamation by which the Assembly is dissolved. Both the order and the proclamation are published in the *Gazette officielle du Québec*.

Since the passage of the *Act to amend the Election Act for the purpose of establishing fixed-date elections* in 2013, section 6 of the *Act respecting the National Assembly* provides that a legislature ends on 29 August of the fourth calendar year following the year that includes the most recent general election polling day. However, if this overlaps the election period for the next federal or municipal general election, the legislature ends instead on 27 February, or 28 February in the case of a leap year, of the fifth calendar year following the year that includes the most recent general election polling day.

Despite these amendments, the Government has retained its right to ask

for the dissolution of the Assembly before the expiry of a legislature, which right it exercised on 5 March 2014. Likewise, the Assembly may still withdraw its confidence in the Government, which could lead to the dissolution of the legislature before the end of the period provided for by statute.

Saskatchewan Legislative Assembly

Dissolution is the formal ending of a legislature by proclamation of the Lieutenant Governor. It ends all business in the Assembly and Committees, and is followed by a general election. Dissolution and Prorogation remains the prerogative of the Crown. The Lieutenant Governor, on the advice of the premier will make a formal announcement of dissolution.

The Lieutenant Governor can dissolve the Assembly or refuse dissolution, but this is invariably done "on advice." Dissolution is also governed by constitutional convention. The Assembly is dissolved when no party has the confidence of the Assembly; when the governing party is defeated on a clear non-confidence motion; or the Legislature reaches the end of the constitutional length of a term, which is five years after the return of the election writs of the last general election.

Since 2008, Saskatchewan has had a statutory set election date. *The Legislative Assembly Act*, prescribes the date of a general election to occur the first Monday of November in the fourth calendar year after the last general election. This Act, however, does not alter the prerogative of the Crown to dissolve the Legislative Assembly. The demise of the Crown does not have the effect of dissolving the legislature.

With dissolution, all business of the Assembly is terminated. To ensure the continuity of government, members of the Executive Council continue in office during the dissolution period. Likewise, the Speaker, the Deputy Speaker and members of the Board of Internal Economy continue in office to maintain the continuity of governance of the legislative arm of government.

When the Assembly is dissolved all Members cease to maintain office and all their constituency affairs are suspended or wound-up. The offices are closed and all funding is terminated. The basic underlying principle of democratic elections is that there must be a level playing field for all candidates. An incumbent should not have the advantage over other candidates because of access to public funds, or because of the status associated with being a Member of the Assembly. This is a requirement of law in Saskatchewan and the concept is reflected both in the funding rules for Members' expenses and in the way members may represent themselves during the dissolution period.

Yukon Legislative Assembly

Subsection 11 (1) of the current Yukon Act (which came into force on 1 April

2003) addresses the duration of the Legislative Assembly. The subsection says, "No Legislative Assembly shall continue for longer than five years after the date of the return of the writs for a general election, but the Commissioner [of Yukon] may dissolve it before then."

The Commissioner of Yukon is the 'vice-regal' head of state for Yukon; the territorial equivalent of a Lieutenant-Governor in a Canadian province.

Pursuant to subsection 11(1), there are two methods of dissolving the Legislative Assembly. The first is by law. This method would be invoked should the Legislative Assembly not be dissolved prior to the expiration of five years after the date of the return to the writs for a general election. This has never occurred in Yukon.

The second method of dissolution is by proclamation of the Commissioner. The Commissioner would, by convention, issue such a proclamation on the advice of the Premier (First Minister). This was the method used to dissolve the Legislative Assembly prior to the general elections of 2006, 2011 and 2016.

CYPRUS HOUSE OF REPRESENTATIVES

The power to dissolve a parliament is drawn from the Constitution of the Republic of Cyprus, within which there is also a complete separation of powers (Executive, Legislative and Judicial Branches).

According to Article 67 of the Constitution, "the House of Representatives may dissolve itself only by its own decision carried by an absolute majority...". This must include at least one third of the Representatives elected by the Turkish Community. Any decision to dissolve must provide for the date of the holding of the general election, which shall not be less than thirty days and not more than forty days from the date of such decision, and also for the date of the first meeting of the newly elected House (which shall not be later than fifteen days). This Article further states that the term of office of the House of Representatives to be elected after dissolution shall be for the unexpired period of the term of office of the dissolved House. When the House has been dissolved within the last year of the five years' term of office, a general election shall take place both for the unexpired part of the term of office of the dissolved House, during which any session of the newly elected House shall be considered to be an extraordinary session, and for the subsequent five years' term of office.

Article 65 of the Constitution states that the term of office of the House of Representatives shall be for a period of five ears. The outgoing House shall continue in office until the newly-elected House assumes office.

Article 66 states that a general election for the House of Representatives shall be held on the second Sunday of the month immediately preceding the month in which the term of office of the outgoing House expires. If an election cannot

take place on the date fixed by or under this Constitution owing to extraordinary and unforeseen circumstances such as earthquake, floods, general epidemic and the like, then such an election shall take place on the corresponding day of the next week.

STATES OF GUERNSEY

The Reform (Guernsey) Law 1948 (as amended) sets out the provisions in respect of the constitution of the States of Deliberation and the elections of People's Deputies. This does not contain any provisions regarding the dissolution of the States of Deliberation.

GUYANA NATIONAL ASSEMBLY

Parliaments exist for five years, unless sooner dissolved (although can be extended for 12 months at a time). The Parliament is dissolved whenever there is a general election. Article 70 of the Constitution of the Co-operative Republic of Guyana states that the President may dissolve or prorogue Parliament at any time, by way of a Proclamation.

After a general election, the President is required to issue another Proclamation naming the date, place and time for the first sitting of the new Parliament. Article 69 states that the Parliament must meet by six months from the end of the preceding session of prorogued and within four months if it has been dissolved.

INDIA

Rajya Sabha

As per Article 83(1) of the Constitution of India, the Rajya Sabha is not subject to dissolution, but as near as possible one-third of the members retire on the expiration of every second year. This constitutional provision ensures continuity as well as change in the composition of the Rajya Sabha.

Kerala Legislative Assembly

On expiry of the term of the State Legislature (after five years), the Governor of the State dissolves the Legislature. As per Article 356 of the Constitution of the India, the President of India can impose President's rule in States in the case of failure of constitutional machinery in the State. The Constitutional provision states:

> "If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this

Constitution, the President may by proclamation

a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;
b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of parliament;
c) make such incidental and consequential provisions as appear to the president to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to anybody or authority in the State".

The imposition of President's Rule can usually be up to six months; but it can be extended up to three years by a resolution to that effect in the Parliament. In Kerala, there have been seven instances of imposition of President's rule as per Article 356 of the Constitution.

STATES OF JERSEY

There is no concept of dissolution in Jersey. The States Assembly is always in existence. There was a general election in Jersey on 16 May 2018. The Assembly's last sitting was on 10 April but there was a ceremonial sitting for Liberation Day on 9 May. The outgoing Assembly remained in place until 1 June when new members were sworn in.

NAMIBIA NATIONAL ASSEMBLY

Article 57 of the Namibian Constitution states that the National Assembly made by dissolved by the President, on the advice of the Cabinet, if the Government is unable to govern effectively. It also states that should the Assembly be dissolved a national election for a new National Assembly, and a new President, should take place within 90 days of the dissolution.

NEW ZEALAND HOUSE OF REPRESENTATIVES

The dissolution of Parliament is a legal power possessed by the Governor-General, although constitutionally the Governor-General exercises it—like the other legal powers of the office—on the advice of the Prime Minister. A dissolution would not necessarily result from a loss of confidence in the Government by the House, as the Governor-General would first ascertain whether a new Government could be formed.

The term of a Parliament can last for no more than three years from the

day appointed for the return of the writ for the general election. This has been the case since 1879, with the exception of the 1935 election (when members were elected for four years). Unless Parliament is dissolved sooner, it expires at the end of its three-year term. The only Parliament to run its full legal course and then expire was the 27th Parliament of 1943–1946. All others have been dissolved before the expiry of the three-year term.

There have several instances of dissolution occurring earlier than normally anticipated. The 29th Parliament, elected in 1949, was dissolved in 1951 as a result of a large-scale industrial dispute known as the waterfront dispute (the shortest of all New Zealand's Parliaments). The 40th Parliament was dissolved in June 1984 due to a snap election, four months before it would otherwise have been expected, and the 46th Parliament was dissolved in June 2002, three months earlier than might have been expected.

Conventions and practices

Since the 43rd Parliament was dissolved in 1993, all Parliaments have been dissolved by a proclamation read on behalf of the Governor-General from the Parliament House steps or at some other prominent place within the precincts. While this procedure is not celebrated with the rich tradition and pageantry of the opening of Parliament, it has come to be marked with some ceremony as a significant point in the democratic cycle.

On the dissolution of Parliament all business then before the House or its committees lapses. The House has the power to reinstate by resolution any business that has lapsed when it sits in the new Parliament. In practice, most business is reinstated, including non-Government business such as petitions and members' bills.

By convention, after the Governor-General has issued a proclamation dissolving the current Parliament, and issued a writ to the Electoral Commission to put in train preparation for the next general election, a proclamation is made summoning Parliament to meet for the first time after the election. The summoning of the new Parliament in association with the dissolution of the old is a token of the Crown's intention to preserve the continuity of the operation of parliamentary institutions in New Zealand. There has been only one dissolution since 1860 where the date and time for the first meeting of the next Parliament has not been appointed by a proclamation issued within a few days of the dissolution of the old Parliament. No such proclamation was issued in association with the dissolution of the 40th Parliament in June 1984. This and other procedures surrounding the snap election of 1984 were the subject of subsequent inquiry.

There is an express statutory requirement for the Governor-General to summon Parliament to meet if a state of national emergency is declared while

Parliament is dissolved (see the Civil Defence Emergency Management Act 2002). A similar provision requires the making of a proclamation appointing a day for Parliament to meet if an epidemic notice (see the Epidemic Preparedness Act 2006) is given after Parliament has been dissolved.

PAKISTAN NATIONAL ASSEMBLY

The President of the Islamic Republic of Pakistan has the power to dissolve the National Assembly on advice of the Prime Minister of Pakistan, as defined in the Article 58 of the Constitution the Islamic Republic of Pakistan.

Article 58 states that the National Assembly (unless sooner dissolved) should be dissolved within 48 hours of the Prime Minister advising the President. The Article is clear that if the Prime Minister has been given notice of a resolution for a vote of no confidence which has either not been voted on, or which has been passed, or who is continuing in office after their resignation or dissolution of the National Assembly, then the President is not bound by their advice.

The Article also states that the President may also dissolve the National Assembly at their discretion where, if a vote of no-confidence has been passed against the Prime Minster, no other member of the National Assembly can commands a majority in the National Assembly (as ascertained in a session of the National Assembly summoned for the purpose).

UNITED KINGDOM

House of Commons

Historically the dissolution of Parliament in the UK was the prerogative of the monarch, exercised on the advice of the Government of the day. The Fixed Term Parliaments Act 2011 replaced this prerogative regime. Under its provisions Parliament is now dissolved automatically 25 working days before a general election.

The Fixed Term Parliaments Act

Prior to 2010, elections in the UK usually resulted in a majority government by a single party. At the 2010 election, for the first time since the 1970s there was no longer one party with an overall majority. The Fixed Term Parliaments Bill was introduced by the resulting coalition government in order to provide a degree of political certainty that the coalition agreement between the Conservative Party and the Liberal Democrats would continue for a full five year Parliament.

The Act provides that general elections should take place every five years on the first Thursday in May. It also provides that an early general election may only be called if one of two conditions is met. The first is that the House of

Commons votes for an early general election. The second requires the House in effect to pass two successive votes of no confidence. If either condition is met, the Queen issues a proclamation (on the advice of the government) setting the date of the election and the House dissolves automatically 25 working days before that date.

Resolution for early elections

Under section 2 of the Act, an early election can be triggered by the House of Commons passing a Resolution "That there shall be an early parliamentary general election". Such a motion is effective if it is passed without a division, or if it is passed on a division and the number of Members who vote in favour of the motion is equal to or greater than two thirds of the number of seats in the House, including vacant seats.

As there are 650 seats in the House, at least 434 Members must vote in favour for the motion to have effect. When calculating the number of Members voting in such a division, the tellers do not count as Members voting.

This provision was exercised for the first time in 2017. The Prime Minister announced her intention to call an early election on 18 April 2017. The following day the House agreed a motion "That there shall be an early parliamentary general election". The motion was agreed on a division by 522 votes to 13. The Queen subsequently issued a proclamation announcing that an election would take place on 8 June 2017. Parliament was then prorogued on 27 April and was dissolved automatically on 3 May.

Motions of no confidence

Prior to the 2011 Act, it was a constitutional convention that the government of the day required the confidence of the House to continue in office. Were the government to lose a motion of no confidence, usually expressed in the form "that this House has no confidence in her Majesty's Government", then there was an expectation that the government would resign, and if no new government was capable of being formed which could command the confidence of the House, then an election would be called. Confidence motions did not have to follow this precise form, and it was also possible for the government to deem particular decisions as matters of confidence, indicating an intention to resign in the event of a defeat.

Under the 2011 Act, the form and effect of a motion of no confidence is now strictly prescribed. If the House passes a motion "That this House has no confidence in Her Majesty's Government", there is then a 14 day period during which the current government (or an alternative government) can seek to (re)gain the confidence of the House. Unless a motion "That this House has confidence in Her Majesty's Government" is passed within that time, then an

election must be called. No other forms of motion can be treated as matters of confidence.

This provision has so far not been used.

Process of Dissolution

Once dissolution has occurred, the provisions of the Representation of the People Act 1983 (which governs the conduct of elections in the United Kingdom) apply, with the Clerk of the Crown in Chancery issuing new writs for the forthcoming election and the Queen issuing a proclamation setting the date of the first meeting of the new Parliament. Constitutionally it is important that the date of the meeting of the new Parliament is announced at or around the same time of dissolution, to ensure that there is no undue gap between one Parliament and the next (of particular historical importance following Charles I's attempts to rule without Parliament in the seventeenth century, which led to the English Civil War).

The election timetable specifies particular periods prior to election day by which nominations for candidates must be submitted, and by which people must be registered to vote in order to participate in the election.

Effect of Dissolution on Parliament

The effect of a dissolution of Parliament is that Parliament as an entity ceases to exist. All Parliamentary business falls and all current Members of the House of Commons cease to be Members at the point of dissolution. During a dissolution, former Members are prohibited from styling themselves as Members, and guidance is issued to assist them with making changes to their publicity material to comply with this rule (such as on their websites, Twitter accounts and Facebook pages).

The only exceptions to this are that Ministers continue to hold office during dissolution, to ensure that the machinery of the state can continue to operate effectively. There is a convention that no major policy decisions are taken during the "pre-election period of sensitivity", or colloquially "purdah". Guidance is issued to civil servants governing publications and other activity, and similar restrictions apply to Local Government under the Local Government Act 1986.

The Speaker continues to hold the office of Speaker and likewise Members of the House who are members of the House of Commons Commission (the governing body of the administration of the House of Commons) continue to be members of the Commission over a dissolution, until re-appointed or replaced in the next Parliament.

Although all business falls at dissolution, some private and hybrid legislation may be resumed in the new Parliament, provided that a revival motion is passed in each House. Statutory Instruments laid before the House in the previous

Parliament can be considered by the House in the new Parliament without the instruments having to be re-laid, although in the case of affirmative instruments the motion to approve the instrument must be re-tabled.

House of Lords

As members of the House of Lords are appointed, the dissolution of the UK Parliament affects the House differently to the House of Commons. Members of the House of Lords retain their positions, but all business in the House comes to an end when Parliament is dissolved.

When Parliament is prorogued, which takes place before dissolution, there is a ceremony beginning with an announcement, on behalf of the Queen, read in the Chamber by the Leader of the House. The announcement states, 'My Lords, it not being convenient for Her Majesty personally to be present here this day, she has been pleased to cause a Commission under the Great Seal to be prepared for proroguing this present Parliament.'

A Royal Commission consisting of five Peers, all Privy Councillors appointed by the Queen, enter the Chamber, and instruct Black Rod to summon the House of Commons. When the Commons arrive, the Royal Commission and representatives of the Commons, including the Speaker, the Clerk of the House and the Serjeant at Arms, ceremonially greet each other: the Lords doff their hats and the Members and officials of the Commons bow in return.

The official command of the Queen appointing her Royal Commission is read by the Reading Clerk from a piece of parchment. The Clerk of the Crown then announces from the Opposition side of the table the name of each Act that is to be passed.

As each Act is announced, the Clerk of the Parliaments turns to face MPs, declaring *'La Reyne le veult'*—Norman French for 'The Queen wishes it.' This ceremony signifies Royal Assent for each bill. After all bills have passed Royal Assent, the Leader of the House reads a speech from the Queen reviewing the past year. Like the Queen's Speech at State Opening, this is written by the Government and reviews the legislation and achievements of the Government over the past year.

Parliament is then officially prorogued. After prorogation, and especially on the dissolution of Parliament before a general election, Members shake the hand of the Speaker on leaving the Chamber.

Prorogation has the effect of putting an end to all business before the House, except:

- private bills and hybrid bills which may be "carried over" from one session to another (including dissolution);
- proceedings on Measures, statutory instruments and special procedure orders laid in one session, which may be continued in the next,

notwithstanding prorogation or dissolution. Prorogation and dissolution are disregarded in calculating "praying time"; and
- certain sessional committees which remain in existence notwithstanding the prorogation of Parliament until the House makes further orders of appointment in the next session (but this does not apply to a dissolution, when all select committee activity must cease).
- Government public bills may also be "carried over" from one session to the next, but not over a dissolution.

A proclamation issued at the dissolution of an old Parliament appoints a day and place of meeting of the new Parliament. The new Parliament is summoned to meet a few days, usually a week, before the Queen's Speech. During this period the House of Lords usually sits for two or three "swearing-in" days. Only business which does not require the House to take a decision on a motion may be taken on these days. The principal business is:

- proceedings relating to the election of a Speaker of the House of Commons, which takes place on the first and second days, and
- administering the oath of allegiance to members of the House.
- New writs of summons (the document issued to members of the Lords calling them to Parliament) are issued before the meeting of each Parliament to all Lords who have a right to seats in the House. Members must bring their writ to the Table when they take the oath of allegiance (or solemn affirmation). The oath must be taken, or the solemn affirmation made, before they can sit and vote in the House, and must occur before they participate in a new Parliament (as well as at their introduction).

After taking the oath, members must sign the Test Roll at the head of which the oath and affirmation are written. They then sign an undertaking to abide by the House of Lords Code of Conduct. Finally they go to the Woolsack, shake hands with the Lord Speaker and leave the Chamber.

Members may attend to take the oath at any time the House is sitting during the swearing-in days. The House sits long enough (sometimes with short adjournments "during pleasure") to enable those who are present to take the oath.

Northern Ireland Assembly

In Northern Ireland the timing of elections, and consequently dissolution, is determined by provisions in the Northern Ireland Act 1998 ("the 1998 Act").

Section 31 of the 1998 Act provides that the date for the poll for the election of each Assembly shall be the first Thursday in May in the fifth calendar year following that in which its predecessor was elected.

Section 31 also provides that the predecessor Assembly shall be dissolved at the beginning of the minimum period which ends with the date of the election.

The minimum period means a period determined in accordance with an Order made by the Secretary of State for Northern Ireland.

Section 32 of the Northern Ireland Act makes provision in relation to extraordinary elections. If the Assembly passes a resolution that it should be dissolved the Secretary of State shall propose a date for the poll for the election of the next Assembly. However, such a resolution requires the support of a number of members of the Assembly which equals or exceeds two thirds of the total number of seats in the Assembly (i.e. at least 60 out of 90).

Section 32 also provides that if prescribed periods of time end without the offices of the First Minister and deputy First Minister having been filled the Secretary of State shall propose a date for the poll for the election of the next Assembly.

Where the Secretary of State proposes a date for an election in either of these circumstances then Her Majesty may, by Order in Council at Westminster, (a) set out the date of the poll for the election of the next Assembly; and (b) provide for the Assembly to be dissolved on a specified date.

Scottish Parliament

The Scottish Parliament is dissolved before ordinary and extraordinary general elections take place. The Scotland Act 1998 ("the Act") governs when and how dissolution is to take effect and who has the power to dissolve the Parliament.

Ordinary general elections

Section 2 of the Act provides that an ordinary general election shall be held on the first Thursday in May every four years. The exception to this is where a UK Parliament general election (other than one called early) or a European Parliamentary election is scheduled to take place on the same day. The Act provides two ways in which the date of the Scottish election can be changed.

The Presiding Officer has the power to specify an alternative date on which any Scottish general election is to be held within the period starting one month prior to the scheduled date and one month after that date. No parliamentary procedure is required to confirm the Presiding Officer's decision. This power has never been used, but it is anticipated that if it were required to be used, the Presiding Officer would set a new date in the best interests of the Parliament in consultation with all political parties.

When the power to regulate the election term cycle was transferred to the Scottish Parliament in 2016, a power was also given to the Scottish Ministers to regulate the prohibition on holding the poll on the same day as a UK or European election. The Scottish Ministers may specify an alternative date by order. There is no time period within which they must select an election date. A draft of the order must be approved by the Parliament before Ministers can

make it.

In either scenario, the Scottish Parliament must be dissolved before the election occurs. In general, the Parliament is dissolved by virtue of section 2(3) of the Act at the beginning of a minimum period which ends with the date of the election. That minimum period is determined by subordinate legislation approved by the Parliament and is used by the Presiding Officer to calculate the date of dissolution. Alternatively, where the election is to take place on a day which is not the first Thursday in—either because the Presiding Officer has exercised his discretion to alter the date or because an order is made by Ministers to avoid a clash with another poll—the Queen may dissolve the Parliament by proclamation under the Scottish Seal.

The Scottish Parliament has the power to legislate for an alternative election date by making specific provision by Act of the Parliament. In doing so, it remains constrained by the prohibition on holding an election on the same date as a UK or European election. The duration of both the current and immediately preceding parliamentary session was set for five years rather than the regular four year cycle, in order to avoid the regular cycle for UK elections established by section 1 of the Fixed-term Parliaments Act 2011.

Extraordinary general elections

Section 3 of the Act governs dissolution before extraordinary general elections. Such elections are held in two circumstances. The first is where the Scottish Parliament resolves that it should be dissolved. If the resolution is passed on a division, the number of members voting in favour of it must not be less than two-thirds of the total number of seats for members of the Parliament. The second is where the Parliament has failed to nominate one of its members for appointment as First Minister within the period specified in section 46 of the Act.

In each of these circumstances, the Presiding Officer must propose a day for the holding of an extraordinary poll. Her Majesty the Queen then has the power to dissolve the Parliament by proclamation and to require an extraordinary general election to be held.

National Assembly for Wales

Section 3(2)(a) of the Government of Wales Act 2006 ("the 2006 Act") requires that the National Assembly be dissolved before a general election of its Members can be held. The 2006 Act brought the Assembly in line with the UK Parliament, the Scottish Parliament and the Northern Ireland Assembly.

Dissolution is the official term for the end of a Parliament or Assembly and signifies the end of an Assembly Members' terms of office. During the period of dissolution there are no Assembly Members.

Welsh Ministers, including the First Minister, Deputy Welsh Ministers and the Counsel General, however, remain in office during dissolution until a new First Minister is elected after the election. The 2006 Act also states that the Presiding Officer and Assembly Commissioners will remain in office, until a new Commission and a new Presiding Officer are elected after the election.

Varying the date of a general election under section 4 of the 2006 Act has historically been a power for the Secretary of State to make an Order varying the date (by up to a month). From 1 April 2018, the Llywydd will have the power to propose a variation of the date (again, by up to a month).

For proposing a day for an extraordinary election under section 5 of the Act, that has historically been a duty for the Secretary of State to propose a day. From 1 April 2018, the Llywydd will have the duty to propose a day under section 5.

ZAMBIA NATIONAL ASSEMBLY

In line with the Constitution of Zambia, Parliament stands dissolved ninety days before the holding of the next general election.

The President may dissolve Parliament if the Executive cannot effectively govern the Republic due to the failure of the National Assembly to objectively and reasonably carry out its legislative function. However, where the President intends to dissolve Parliament in accordance with this clause, the President has to inform the public and refer the matter, within seven days, to the Constitutional Court.

PRIVILEGE

AUSTRALIA

House of Representatives

Impact of Senate Privileges committee report—police raids during election period

Following question time on 29 March 2017, the Manager of Opposition Business referred to a Senate Privileges Committee report, which determined that Australian Federal Police (AFP) raids upon a Senator's office during the 2016 election campaign had "the effect of interfering with the duties of a Senator, and with the functions of the parliament more broadly". The Member then asked that the Speaker report back to the House about "what assurances might be sought from the Prime Minister, the government or government agencies to ensure an improper interference with parliament is not repeated." The Speaker responded that he would give the matters raised by the Manager of Opposition Business "very serious but also speedy consideration" and that he would report back to the House at the earliest opportunity.

The next day, during Government business time, the Speaker stated that he had considered the matter carefully and, given the significance of the issues raised and the overlap of the consideration of a matter of privilege concluded by the House late last year, he will be taking further time to consider the matter. He also stated that he would take further advice before determining his view. He advised that he would report back to the House during the budget sittings.

Following the acknowledgement of country and Prayers on 9 May 2017 (which was the very next sitting), the Speaker made a statement regarding the issue. The Speaker advised that the Senate Committee of Privileges considered that the execution of certain warrants could interfere with the duties of a Senator and the functions of the Parliament more broadly and that the Committee has undertaken an inquiry which will consider the AFP national guidelines for the execution of search warrants where parliamentary privilege may be involved. The Speaker suggested that the House of Representatives Standing Committee of Privileges and Members' Interests also involve itself in any reconsideration of the guidelines.

The Committee has not reported on the matter to this date.

Appointment of former member to paid directorship while still a Member

Prior to the Matter of Public Importance discussion on 15 August 2017, the Manager of Opposition Business raised, as a matter of privilege, the circumstances surrounding a certain former member accepting an appointment as a paid director of the Franchise Council of Australia whilst still a Member

of the House gave rise to any issues which may constitute a contempt of the House. He presented a number of documents. The Speaker stated that he would consider the statement and the material presented by the Manager of Opposition Business.

On 4 September 2017 the Speaker made a statement to the House. The Speaker stated that he was willing to give precedence to a motion for matters to do with contempt or conduct in relation to the circumstances raised by the Manager of Opposition Business to be referred to the Committee of Privileges and Members' Interests. In doing so, the Speaker stated that he was sufficiently concerned by the matters raised to consider they should be examined by the committee, while clarifying that he had not made a determination that there was a *prima facie* case of contempt or breach of privilege. The Manager of Opposition Business then moved a motion to refer the matters raised to the Committee of Privileges and Members' Interests to determine whether they gave rise either to any issues that may constitute a contempt of the House or to any issues concerning the appropriate conduct of a Member having regard to their responsibilities to their constituents and to the public interest. The question was carried on the voices.

The Committee presented its report to the House on the matter on 26 March 2018. The committee recommended that the former member be censured for his conduct when he was a Member prior to the dissolution of the House of Representatives at the end of the 44th Parliament, by the passage of the following motion:

> The House censures the former member…for failing to discharge his obligations as a Member to the House in taking up paid employment for services to represent the interests of an organisation while he was a Member of the House, and failing to fulfil his responsibilities as a Member by appropriately declaring his personal and pecuniary interests, in respect of this paid employment, in accordance with the resolutions and standing orders of the House.

The Committee also recommended that the standing orders be amended to include an express prohibition on a Member engaging in services of a lobbying nature for reward or consideration while still a Member of the House of Representatives.

The following day, 27 March 2018, the Chair of the Committee of Privileges and Members' Interests, by leave, moved in the House a motion of censure of the former member in the terms set out in the Committee's recommendation. The motion was seconded by the Deputy Chair of the Committee and agreed to by the House, following debate.

Senate

On 9 February the Senate referred to the Privileges Committee questions about the treatment of a witness before the Environment and Communications References Committee's inquiry into fin-fish aquaculture in Tasmania. The catalyst was a television program which aired more than a year after the conclusion of the inquiry and which alleged that representatives of a Tasmanian salmon farming company may have improperly interfered with the right of a witness to appear before the committee.

The Privileges Committee tabled its report into this matter on 9 August. It was alleged that the witness, who withdrew from the References Committee hearing citing health reasons, had in fact been coerced into withdrawing. Parliamentary privilege provides measures to protect witnesses and safeguard the integrity of their evidence. However, provided with two similar but conflicting accounts by those involved, the Privileges Committee was unable to conclude with any certainty that any improper interference had occurred. The Senate adopted the Committee's recommendation that no contempt be found. The Committee was, however, highly critical of the fact that discussions between those involved about the evidence they might give to the inquiry appeared to be treated as currency in commercial negotiations. The Committee also observed the inherent difficulty of dealing with such allegations so long after the events giving rise to them.

Australian Capital Territory Legislative Assembly

Motion to establish a Privileges Committee

On 2 August 2017, the Speaker advised the Assembly of a letter she had received from a government member of the Standing Committee on Public Accounts, alleging an unauthorised disclosure of the private deliberations of that committee. The Speaker outlined the action she had taken in response to the letter and advised that she was prepared to give precedence to a motion being moved to establish a select committee on privileges to examine the matter. The government member subsequently moved the motion which, after debate, was negatived when the crossbench voted with the opposition to defeat the motion.

Victoria Legislative Council

Unauthorised disclosure of Committee report

On Tuesday 21 March 2017, the President read a letter from the Chair of the Economy and Infrastructure Standing Committee regarding the unauthorised release of committee information. The letter detailed that on Tuesday 6 December 2016, prior to the tabling of the Committee's final report into the Domestic Animals Amendment (Puppy Farms and Pet Shops) Bill 2016, an article appeared in the media citing the Committee's recommendations.

The letter detailed that the Committee resolved that all Committee members who were involved with the inquiry would write to the Chair and declare whether they were responsible for the disclosure of information. The letter concluded that all current, former and participating members of the Committee who were involved in the inquiry had supplied responses and assured the Chair they were not involved in any unauthorised distribution of the report or committee deliberations. The Chair considered the matter resolved.

Victorian Ombudsman's jurisdiction

On 25 November 2015, the Legislative Council agreed to a motion to refer a matter relating to allegations that members of the Victorian Parliament misused members' staff budget entitlements against the provisions of the Parliament of Victoria Members Guide.

The Victorian Ombudsman applied to the Victorian Supreme Court to seek a ruling whether the matter fell within her jurisdiction to investigate. In August 2016, the Victorian Supreme Court determined that the Ombudsman did have jurisdiction in the matter.

The Attorney-General appealed the decision, which was dismissed in the Victorian Court of Appeal in December 2016. On Tuesday 7 February 2017, the President advised the Legislative Council that the Attorney-General sought leave to appeal the decision of the Victorian Court of Appeal to the High Court of Australia.

On Thursday 9 February, the Acting President read a Message from the Legislative Assembly informing the Council that they resolved to assert the rights and privileges of the House in relation to exclusive cognisance. The Message conveyed that the Council's referral to the Ombudsman cannot apply to current or former members of the Legislative Assembly. Further to the Message being conveyed to the Council, the Victorian Ombudsman was also advised of the Assembly's resolution.

On Wednesday 5 April, the High Court dismissed the Attorney-General's bid to appeal the decision.

The Ombudsman resumed her investigation and delivered her final report out of session on 27 March 2018.

CANADA

House of Commons

The free movement of Members of Parliament within the Parliamentary precinct

On 22 March 2017, Lisa Raitt (Milton) and Maxime Bernier (Beauce) rose on the same question of privilege regarding their delayed access to the

parliamentary precinct for a vote in the House earlier that day. Both Members stated that they were impeded in the performance of their parliamentary duties because the shuttle bus to Centre Bock was delayed by unplanned traffic at the vehicle screening facility.

The Speaker delivered his ruling on 6 April 2017, reiterating the importance of ensuring that Members have unimpeded access to the precinct and that even a temporary denial of access cannot be tolerated. The Speaker having concluded that there were sufficient grounds for finding a *prima facie* question of privilege, Ms Raitt moved a motion to refer the matter to the Standing Committee on Procedure and House Affairs, and Mr Bernier moved an amendment instructing the Committee to consider the question of privilege ahead of all other matters. Debate on the motion ended that day when Alexandra Mendès (Brossard-Saint-Lambert) moved "that the House do now proceed to Orders of the Day". This had the effect of having the privilege motion superseded and dropped from the Order Paper, which was unprecedented.

On 7 April 2017, John Nater (Perth-Wellington) raised a question of privilege in which he asked that the original matter of privilege be revived as the House had been prevented from pronouncing itself on the matter. On 11 April 2017 the Speaker ruled that it was procedurally in order to revive a matter of privilege that had been superseded. Consequently, the Speaker found a *prima facie* question of privilege and invited Mr Nater to move the appropriate motion to refer the matter to the Standing Committee on Procedure and House Affairs. Kevin Sorenson (Battle River-Crowfoot) moved an amendment instructing the Committee to consider the matter a priority over all over business. Tom Lukiwski (Moose Jaw-Lake Centre-Lanigan) moved a sub-amendment instructing the Committee to report back no later than 19 June 2017. The amended motion was adopted and the question referred to the Committee on 3 May 2017.

In its report, presented to the House on 19 June, the Committee indicated that it was unable to reach a conclusion as to whether a breach of privilege had occurred and committed to undertake a review of matters related to Members' free and unfettered access to Parliament.

Senate

On 1 November, the Speaker ruled on a question of privilege raised by Senator Plett, who believed that an open letter from a senator to the Conservative Party leader asking him to encourage Conservative senators to allow a vote on a particular bill undermined the Senate's independence and impeded the ability of senators to carry out their functions independently.

After reviewing past Speakers' rulings dealing with communications, the Speaker noted that a message from one House to another cannot be treated as a point of order or a breach of privilege unless it contains some kind of threat.

He also determined that the letter was not impeding senators' work on the bill, since senators remained free to deal with it as they saw fit and, therefore, ruled that there was no *prima facie* case of privilege.

Alberta Legislative Assembly

On 4 January 2017, the Ethics Commissioner of Alberta, Marguerite Trussler, issued a report finding that Ric McIver, Member of the Legislative Assembly (Calgary-Hays), had breached the Conflicts of Interest Act on 22 November 2016, when Mr McIver asked a question during Oral Question Period regarding proposed price caps on electricity. The report was issued following an investigation into a complaint filed by Heather Sweet, Member of the Legislative Assembly (Edmonton-Manning) and Deputy Chair of Committees. The issue concerned the fact that because Mr McIver's wife is the sole shareholder and director of a competitive retailer in the energy market Mr McIver's question "may reasonably be perceived as seeking to influence government policy in a way that would benefit a business wholly owned and operated by the Member's spouse."

On 15 March 2017, Government Motion 16 was introduced, in accordance with the Conflicts of Interest Act, to have the Legislative Assembly concur in the Report of the Ethics Commissioner concerning Mr McIver and to require the Member to apologise to the Assembly and pay a fine of $500, as recommended by the Commissioner. Ms Sweet recused herself from debate on the motion. On 21 March 2017, the motion carried, on division, and a purported question of privilege was immediately raised following the recorded vote, in which it was argued that the passage of the motion interfered with a Member's freedom of speech.

On 3 April 2017, Speaker Robert Wanner ruled that there was no *prima facie* question of privilege, following which Mr McIver made an official apology to the Assembly and paid the $500 fine.

Mr. McIver made an application for judicial review of the Commissioner's recommendations, arguing that the Commissioner exceeded her jurisdiction in interfering with his free speech. However, the Court of Queen's Bench of Alberta concurred with the Legislative Assembly's submissions and those of the Ethics Commissioner, namely, that the Commissioner's findings and report concerning the allegation of a conflict of interest against Mr McIver, and the subsequent adoption of that report by the Assembly, are subject to parliamentary privilege and, therefore, not subject to judicial review.

Manitoba Legislative Assembly

On 10 October 2017, Hon. Mr. Fletcher (Member for Assiniboia) raised a matter of privilege regarding obstruction, security and functionality as it related

to the emergency evacuation of the Legislative Building which occurred on 5 October 2017. In particular, the Member mentioned difficulties he encountered while trying to exit the building and the fact that the instructions on evacuation were not clear. He further indicated that there were related security matters, because following the evacuation the Premier and Cabinet Ministers found themselves on the ground of the Legislative Building, with no security plan in place to protect them. Hon. Mr. Fletcher concluded his remarks by asking to look at different options to gather people in the event of a security threat. He then moved a motion that the Speaker, the LAMC (Legislative Assembly Management Commission) and independent MLAs form a committee to deal with the aforementioned issues of interference and obstruction.

In her ruling, Madam Speaker reminded all Members that in order for a breach of privileges to have occurred, the activity in question must involve a proceeding of Parliament. This is a long standing parliamentary convention acknowledged by Joseph Maingot in the second edition of Parliamentary Privilege in Canada and reaffirmed numerous times by past Manitoba Speakers. Events taking place outside of the Chamber, including a building evacuation, do not fall within that scope to be included within the protection of parliamentary privilege.

Further to that, Madam Speaker reminded the House that issues and concerns such as this one could be raised directly with the Speaker and House Leaders. Further, she cautioned about comments placed on the record when raising such issues, as they could unintentionally share sensitive information, such as noting the location of certain Members while the security sweep was taking place. Member were informed that enhanced measures such as evacuation plans are under development, with information and training sessions to be provided to all building occupants.

Newfoundland and Labrador House of Assembly

On 16 November, the Privileges and Elections Committee presented their report on a *prima facie* finding breach of privilege referred to them on 29 May. The matter related to the actions of a Member who had been suspended from the service of the House for refusing to withdraw unparliamentary language. The Member then tweeted and re-tweeted the House of Assembly webcast clip of the episode including the unparliamentary language ("That's not honest, Madam Chair… that kind of behaviour from a minister is unethical, it's dishonest and it's deceptive.")

The Committee found that the actions of the Member constituted a contempt but as he had resigned his seat they did not recommend that any action be taken. The Committee did caution however that if the former Member had remained in the House a penalty might have been imposed. If the penalty were a suspension

from the service of the House a Member would be subject to a salary deduction for each day of absence from the House in accordance with section 13 of the House of Assembly Accountability, Integrity and Administration Act.

Ontario Legislative Assembly

On 20 March 20 2017, Jim Wilson (MPP for Simcoe-Grey) rose on a question of privilege concerning government advertising on electricity pricing. The Member for Simcoe-Grey alleged that advertisements or announcements in various forms were issued by the government which alluded to future price cuts and changes to the electricity sector. The Member argued that this constituted a *prima facie* case of contempt in that the items provided to the Speaker presumed and predicted the outcome of a decision of the House before first implementing the legislative changes required to give effect to these pledges.

On 23 March 2017, the Speaker concluded that while the message conveyed to the reader or listener of the various communications were definitive—that a reduction in electricity prices would occur; it did not constitute a *prima facie* breach of privilege. The Speaker ruled that to find a *prima facie* case of contempt in these communications given their definitive, unconditional language, would require the Speaker to conduct legal analysis of the legislative framework necessary to produce the results alluded to in the ads and other items. Precedent dictates that it is not for the Speaker to undertake legal analysis, make legal findings or attempt to interpret the law. The Speaker therefore ruled that it was beyond the purview of the Speaker to determine whether or not the Assembly had a necessary role in the implementation of measures required to bring about the promised changes to the electricity sector.

Following the subsequent introduction of Bill 132, Fair Hydro Act 2017, on 15 May 2017, Steve Clark (MPP for Leeds–Grenville) renewed the question of privilege previously raised on 20 March. Referencing the Speaker's 23 March ruling, Mr. Clark alleged that advertisements released by the government relating to changes to the electricity sector, combined with the introduction of Bill 132, constituted a *prima facie* case of contempt by the Minister of Energy given that they presumed a timeline and outcome of a bill currently before the House.

On 18 May 2017, the Speaker delivered his ruling and in doing so made reference to the question of privilege originally raised by Jim Wilson (MPP for Simcoe-Grey). In his earlier ruling, the Speaker found that a *prima facie* case of contempt had not been made out largely due to the fact that to do so would have required the Speaker to conduct some sort of a legal analysis of the legislative framework necessary to produce the results alluded to in the ads and other items. The Speaker found this to be as true in the present case as had been in March. He concluded that it was beyond the scope of the

Speaker's interpretive powers to determine whether or not the specific piece of legislation before the House, Bill 132, was the sole mechanism available to the Government of Ontario to implement its policy agenda. The Speaker found that the government messaging around Bill 132 was conditional in nature and explicitly recognised the need for the Bill to first pass in the Legislative Assembly. The Speaker therefore concluded that a *prima facie* case of contempt had not been established.

Québec National Assembly

Testimony of the Minister of Justice

In a notice sent to the President on 24 October 2017, the Official Opposition House Leader raised a point of privilege or contempt, concerning statements made by the Minister of Justice within the framework of the clause-by-clause consideration of Bill 62, *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies and, subsequently, in the media*. The Official Opposition House Leader alleged that the Minister of Justice had knowingly misled the House by changing her opinion about the interpretation of a provision contained in the bill that concerned the obligation to uncover one's face. He further alleged that these statements had hindered parliamentary proceedings by influencing the decision of a Member of his parliamentary group whether or not to introduce an amendment.

In his decision, the President recalled that parliamentary jurisprudence has established that deliberately misleading the House or its committees can constitute contempt of Parliament and that in this regard it is expedient to begin by recalling the fundamental principle under which a Member must be taken at his or her word. To reverse this assumption, the Member, when speaking, must have misled the Assembly or a committee and subsequently acknowledge having done so deliberately. Failing such an admission, the Chair may ask itself whether it is confronted with two contradictory statements made by a Member about the same facts in the context of parliamentary proceedings.

In this case, the Minister of Justice's statements following questions from a Member within the framework of the consideration of Bill 62 seemed to indicate an obligation to uncover one's face for the bus ride's entire duration.

Subsequently, the Minister's statements in the media seem to show that her interpretation of the Bill's provisions was no longer the same as the one she gave before the parliamentary committee.

However, the Chair concluded that the Minister's statements could not be considered an admission to having deliberately misled parliamentarians, as at no time did she admit to having deliberately made statements in order to mislead the committee.

The Chair recalled that giving rise to a point of privilege or contempt on the basis of having deliberately misled the Assembly requires more than a clumsy or poorly prepared statement. There must be a clear demonstration of the intent to mislead or hinder parliamentary proceedings. The facts did not show that the Minister intended to mislead the parliamentarians when she made her statements in parliamentary committee.

As to whether the Minister gave two conflicting versions of the same facts in the context of parliamentary proceedings, the Chair underlined that a distinction must be made between two specific, contradictory pieces of information regarding the same facts and two general, ill-prepared statements on how to interpret a provision contained in a bill under consideration.

In the case at hand, the Chair was not informed that the Minister made two contradictory statements in the context of parliamentary proceedings, the second statement having been made by the Minister in a televised interview and press conference. Moreover, there were not two contradictory statements on a specific fact—the Minister changed her opinion about the meaning of a legislative provision contained in Bill 62.

However, the Chair wanted to make it clear that the members of a parliamentary committee are entitled to expect consistency on the Minister's part during a bill's consideration, which does not seem to have been the case in this instance. The Chair added that when a Minister makes statements in the context of parliamentary proceedings, in particular on the interpretation of a legislative provision a committee is examining, the Members may also legitimately expect that interpretation to remain the same once the parliamentary proceedings have concluded. This does not mean that one can never change one's mind about the meaning of a given provision during the legislative process.

The Chair also emphasised that, in this case, they cannot find that there was an attempt to influence by means of deceit, threats or undue pressure. Rather, the Assembly was in the sphere of confusion as to the meaning of a legislative provision.

As regards the legislator's intent, the Chair stated that the more specific parliamentary debates are, the more useful they are likely to be in ensuring an accurate, appropriate interpretation of the law. Furthermore, a Member should never be deprived of his or her right to amend when in doubt as to the meaning to be given to a provision in a bill, regardless of the opinions expressed during clause-by-clause consideration.

The Chair therefore concluded that there was no basis for concluding that the Minister of Justice acted in contempt of Parliament for having deliberately misled the House or a committee or for having tried to influence the vote, opinion, judgment or action of a Member by means of deceit, threats or undue pressure.

Arrest of a Member by Québec's anti-corruption unit

On the morning of 25 October 2017, a member of the parliamentary group forming the Government and chair of the Committee on Institutions was chairing the proceedings of the Committee tasked with examining a bill. He was also to chair these proceedings upon resumption of work that afternoon. However, at lunchtime, he received a text message from an individual purporting to be a source of information that he knew and asking to meet urgently. He was therefore replaced as chair of the Committee proceedings and went to the agreed location on the outskirts of Québec City. Police officers of the *Unité permanente anticorruption* (UPAC) were waiting there to arrest him and seize equipment and various documents in his possession. No charges have yet been laid against the Member.

Earlier the same day, the committee he was chairing having just completed the consultations held within the framework of the consideration of Bill 107, *An Act to increase the jurisdiction and independence of the Anti-Corruption Commissioner and the Bureau des enquêtes indépendantes and expand the power of the Director of Criminal and Penal Prosecutions to grant certain benefits to cooperating witnesses*, the Member tabled the committee's report on these consultations. Bill 107 mainly amends the Anti-Corruption Act by changing in particular the mission of the Anti-Corruption Commissioner, namely the head of UPAC, as well as its appointment and dismissal procedure.

The following Tuesday, 31 October 2017, the Official Opposition House Leader asked the Chair for directives on several questions in relation to the Member's arrest.

Before addressing each of these questions, the Chair first and foremost reiterated the fundamental character of the principle of separation of the powers of State. The Supreme Court of Canada has reasserted this principle every time it has had to rule on legislative assemblies' recognised parliamentary privilege, whose goal is precisely to protect the independence of the State's legislative branch. The corollary of the collective recognition of legislative assemblies' independence is the privilege of freedom of speech conferred individually on all Members so that they can fully exercise their functions without fear of being threatened, hindered or limited in their ability to express their viewpoints in the context of parliamentary proceedings.

The Chair recalled that parliamentary privilege has constitutional status recognised by the courts and that it is, to some extent, a departure from common law. The rights and immunities it confers on assemblies and their Members are designed to allow them to perform their legislative, deliberative and government oversight functions efficiently and without interference. The Supreme Court has, in fact, recognised that autonomy is therefore not conferred on parliamentarians merely as a sign of respect but because such

autonomy from outsiders is necessary to enable Parliament and its members to get their job done. The independence of the Assembly and its Members is also codified in the *Act respecting the National Assembly.*

INDIA

Lok Sabha

The Committee of Privileges have had five cases in which they held there was a breach of privilege in 2017.

The first was on the notice of a question of privilege dated 14 March 2016 given by Shyama Charan Gupta MP against Indian Express and Deccan Herald for having allegedly published misleading information pertaining to his parliamentary conduct. The report stated:

> "The Committee cannot but conclude that the intent and the content of the impugned news-item as published by the Indian Express did result in casting aspersions and making insinuations against the member as well as functioning of the Parliamentary Committee and thereby Parliament itself, in relation to discharge of his parliamentary duties which tarnished his public image and therefore, has resulted in the breach of his parliamentary privileges. Further in the news item motives have been imputed to the findings and recommendation of that Committee vis-à-vis their Report on 'The Cigarette and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014'. Hence the newspapers i.e. The Indian Express has undoubtedly breached the privilege of the Parliamentary Committee too and have tarnished its image and thereby brought disrepute to Parliament and Parliamentarians in general."

The second was on the notice of question of privilege dated 14 March 2016 given by Shyama Charan Gupta, MP against Indian Express and Deccan Herald for having allegedly published misleading information pertaining to his parliamentary conduct. The Committee concluded:

> "Further, the Committee cannot but conclude that the intent and the content of the impugned news-item as published by the Deccan Herald also resulted in casting aspersion on the Parliamentary Committee concerned and have imputed motives to the findings and recommendations of that Committee vis-à-vis their Report on 'The Cigarette and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014'. The Committee observe that the remarks in the news-item viz. "the presence of the Member has stirred a hornet's nest" does establish implicitly the intent of the newspaper to convey the impression to the general public as to how Parliamentary Committee deliberations are liable to be influenced and manipulated by Members of the Committee who have a conflict of interest, to sway the decision of the

> Committee in favour of their business interests. The Committee find that the news-item has therefore, undoubtedly breached the privilege of the Parliamentary Committee and have tarnished its image and thereby brought disrepute to Parliament and Parliamentarians in general."

The third was on the notice of question of privilege dated 16 March 2017 by Sanjay Dhotre, MP (signed by 2 other MPs) against the CEO of National Spot Exchange Ltd (NSEL) for allegedly causing obstruction in the discharge of parliamentary duties of Dr. Kirit Somaiya, MP and Notices of question of privilege dated 17 March, 3 April and 7 April 2017 given by Dr. Kirit Somaiya MP on a similar subject. The report stated:

> "The Committee are of the considered view that some paras contained in pages 1, 7 and 9 of the impugned representation given by CEO, NSEL as well as in the legal notice served on Dr. Kirit Somaiya MP have undoubtedly cast serious aspersions on the conduct of the Member in relation to the discharge of his parliamentary duties both as a Member of Parliament as well as that of a Chairperson of the Parliamentary Committee of Energy. Further, by casting reflections on the findings and recommendations made by the Standing Committee of Energy (14th Report, 16th Lok Sabha presented to the House on 27 April, 2016), the CEO, NSEL have breached the privilege of not only the Parliamentary Committee but of the Parliament as a whole, as an institution."

The fourth case was on the notices of question of Privilege dated 30 November 2015 and 3 December 2015 given by Sarvashri Hukum Singh MP, Narendra Keshav Sawaikar MP and Dr. Kirit Somaiya MP against the Editor of Outlook Magazine for allegedly levelling false and baseless allegations against Rajnath Singh MP and Union Home Minister. The report stated:

> "The Committee are, therefore, constrained to conclude that the news item published by the Editor-in-Chief against Shri Rajnath Singh, a Member of Lok Sabha and the Union Home Minister besides being defamatory, cast reflection on the discharge of his parliamentary duties and responsibilities and lowered his public image and reputation built over years. This tantamounts to breach of his privileges." (Para-74)

The final case was on the notice of question of privilege dated 24 March, 28 March and 10 April 2017 given by Sarvashri A.P. Jithender Reddy MP and A.T. Nana Patil MP against the Editor and Publisher of Hindustan Times newspaper for allegedly publishing a false and defamatory news item wherein they have been reported to have low attendance in the House. The report stated:

> "The Committee are, therefore, left with no alternative but to conclude that the news-item published by the Hindustan Times was defamatory, casts aspersions as well as stigmatise the Members in relation to the discharge of their parliamentary duties and responsibilities, and also had tarnished their

public image in general. The impugned news-item, therefore, has resulted in the breach of their parliamentary privileges."

Rajya Sabha

On 25 July 2017, the Committee of Privileges presented a report to the House on the matter of breach of privilege arising out of alleged premature disclosure of the report of the Comptroller and Auditor-General of India (C&AG) to the press before its laying on the Table of the Rajya Sabha.

The Committee in its report, *inter alia,* observed that "In view of the mandate of Article 151 of the Constitution, the Committee feels that the right of the Members of Parliament to have access to the reports of the C&AG before anybody else is pre-eminent". The Committee was of the opinion that any leakage of the contents of the C&AG Report before its presentation to the Houses of Parliament, though technically is not a breach of privilege of the House, nevertheless is a serious matter and is an act of impropriety. Such reports, therefore, should not be made available in the public domain before these are laid on the Table of the House.

STATES OF JERSEY

The report of the Independent Jersey Care Inquiry, which was formally a Committee of Inquiry established under Standing Orders, was published in July 2017 and included a finding that a sitting Deputy had lied to the Assembly in 2008 (in connection with the suspension of the Chief of Police) and lied to the inquiry. The Privileges and Procedures Committee heard evidence from the Deputy and put forward a proposition of censure which was debated on 12 September 2008 and adopted, after lengthy debate, by 29 votes to 16.

UK HOUSE OF COMMONS

Select committee powers

Last year's Table noted that the House of Commons had referred the matter of select committee powers and contempts to the Committee of Privileges. The Committee kicked off its inquiry into these matters in early 2017 and published a memorandum from the Clerk of the House on their website. But they were interrupted by the 2017 general election and have not yet made significant progress with the inquiry.

Motions for papers

The 2017 general election produced a hung parliament, although the Conservative Party remained in government bolstered by a "confidence and

supply" agreement with the Democratic Unionist Party. The lack of a reliable majority on other business may have been a factor in the Government's decision not to vote against motions tabled by the Opposition for debate on the days on which their business has priority under our standing orders. The Government argued that the resolutions consequently passed by the House were not binding on them. In response the Opposition went in search of motions which would be binding and alighted on the House's power to call for papers. In doing so they may well have been inspired by the events which took place in the Canadian House of Commons a few years ago.

On 1 November 2017, the House agreed a motion calling for sectoral impact analyses conducted by the Government into the effects of Brexit to be provided to the Select Committee on Exiting the European Union. For reasons of historical precedent relating to the Royal Prerogative the motion was in the form of a humble Address to Her Majesty, requesting that she direct that the papers be provided. This made no difference to the effectiveness of the motion, a fact which the Government accepted. Indeed it would have been hard pressed to do otherwise since it (and its predecessors) have regularly used the same procedure as a vehicle for providing the protection of parliamentary privilege to the presentation to the House and subsequent publication of the reports of public inquiries into controversies or scandals where protection from legal action has been considered necessary (and in the public interest). Indeed there was just such a motion in the name of a Government minister on the Order Paper on 1 November.

In the debate Government ministers maintained that analyses did not exist in the form described in the motion, but undertook to provide the committee with what information it could. Following negotiations between the chair of the Committee and the Secretary of State, a series of documents was provided which had clearly been created after the date of the debate. In response the Committee took evidence from the Secretary of State and the Permanent Secretary at the Department for Exiting the EU and (after some debate and a vote) resolved (on 6 December):

> That, in view of the statement that no impact assessments have been undertaken, the Committee considers that the Government's response to the resolution of the House of 1 November has complied with the terms of that resolution.

Since it was to the Committee that the House had ordered that the analyses be provided, the Committee's decision in effect closed off the possibility that the Government could have been found in contempt for failing to comply with the House's resolution. But it opened up the possibility that ministers who had been understood to have stated, in the months before the resolution was passed, that such work had been undertaken might themselves have misled the House,

perhaps even deliberately.

If a Member wishes to raise a matter of privilege (as such an allegation would be), they must first write to the Speaker setting out the case that he should give precedence to a motion relating to the matter (almost always these days the motion would be to refer the matter to the Committee of Privileges). On 13 December, the Speaker, noting that it was exceptional that he was making a statement to the House on the replies which he had sent to Members on an issue of privilege, informed the House:

> "Several Members have sought precedence to raise an alleged contempt in relation to the accounts that Ministers have given over the past 15 months of the sectoral analysis and assessment work undertaken by Departments in preparation for Brexit. I have carefully considered the representations made to me, as well as discussing the issue and the practice of the House with the Clerk of the House. I have to judge only whether to give precedence to a motion on the Floor of the House. Ministers could, with advantage, have been considerably clearer in their statements, particularly in challenging lines of questioning in Select Committees that were based on a genuine misconception. However, from the evidence I have seen to date, I have concluded that the test which I am bound to apply—that there is an arguable case that there has on this matter been a contempt of the House—has not been met in this case."

Since then the Opposition have on several more occasions used the procedure of calling for papers to be provided to specific committees and the Government have provided them, although sometimes only after a certain amount of negotiation. The Opposition have not, however, so far succeeded in tempting the Government to vote against one of their opposition day motions.

ZAMBIA NATIONAL ASSEMBLY

Suspension of United Party for National Development Members of Parliament

On Friday 30 September, 2016, when His Excellency Mr Edgar C Lungu, President of the Republic of Zambia, was officially opening the National Assembly, fifty-four opposition United Party for National Development (UPND) MPs absented themselves from the House without obtaining permission from the Speaker or the office of the Chief Whip, as required by the Standing Orders.

The Hon Mr Speaker's Office then received letters of complaint from a Mr Emmanuel Chilekwa and Hon R Musukwa MP, on the matter. The Hon Mr Speaker referred the matter to the Committee on Privileges, Absences and Support Services for its consideration.

In line with parliamentary practice and procedure, and in accordance with the principles of natural justice, the Committee directed the office of the Clerk of the National Assembly to write to the UPND Members of Parliament requesting them to show cause why disciplinary action should not be taken against them for being absent from the House without permission on Friday 30 September 2016.

The UPND Members of Parliament responded and appeared before the Committee on Privileges, Absences and Support Services through their Lawyers. After careful analysis of both written and oral submissions of the parties, the Committee found that the matter before it was one of Members being absent from a sitting of the House without permission and boycotting the President's address to the National Assembly.

After due consideration of the matter, the Committee found the UPND Members guilty of a breach of parliamentary privilege and recommended that they be reprimanded. Acting on that recommendation of the Committee, the Hon Mr Speaker rendered a ruling on 21 December 2016. In that ruling, he stated that while boycotts were permissible, the official opening of Parliament was a solemn and auspicious occasion and all Members were expected to attend and be at their best behaviour. He referred the House to the relevant provisions of the Standing Orders of the National Assembly of Zambia and authorities from other jurisdictions with similar rules on parliamentary practice and procedure. In particular, he urged Hon Members to draw lessons from the Indian case reported in the book written by eminent writers on parliamentary practice and procedure, M. N. Kaul and S. L. Shakder, entitled Practice and Procedure of Parliament, Sixth Edition, on pages 206 to 207. The relevant part provides as follows:

> "On the occasion of the President's address to both Houses of Parliament assembled together on 12 February 1968, two members of the Lok Sabha created obstruction. The incident was followed by a walk-out by about seventy or eighty members belonging to both Houses. On 28 February, having given an opportunity to the two members to explain their position, the Lok Sabha adopted a motion disapproving the conduct of the Hon Members and reprimanded them for their undesirable, undignified and unbecoming behaviour."

In that ruling, the Hon Mr Speaker guided the House that a boycott or walk-out was a conventional means through which a Member of Parliament can express his/her displeasure on a governance matter. He stated that the President's Address was, however, a special event which called for Members to avoid all manner of misconduct or misbehaviour which lower the dignity, decorum and integrity of the House, including boycotts and walk-outs. Having guided the House, he proceeded to reprimanded the 54 UPND Members. He also warned

the Members that a repeat of the conduct would be met with stiffer punishment.

A second breach

On Friday 17 March 2017, the President attended and addressed the National Assembly in accordance with Article 86(1) of the Constitution. Prior to the address by the President, the Office of the Government Chief Whip issued a circular to all Members of Parliament informing them about the event. The circular contained some guidelines on the demeanour to be observed by Members during the address and emphasised that the Presidential Address was a solemn occasion. Further, on Thursday 16 March 2017, the House resolved through a Motion moved by Her Honour the Vice-President to suspend the relevant Standing Orders in order to accommodate the Presidential Address. However, 49 UPND Members decided to absent themselves from the sitting of the House on Friday 17 March 2017 without obtaining prior permission from the Hon Mr Speaker or the Government Chief Whip.

In line with parliamentary practice and procedure and in accordance with the rules of natural justice, the Speaker directed the Office of the Clerk of the National Assembly to write to the 49 UPND Members of Parliament requesting them to show cause why disciplinary action should not be taken against them for being absent from the House without permission on Friday 17 March 2017.

The Members of Parliament submitted a single response through their lawyers Messrs PNP Advocates stating that since the subject matter canvassed by the charge letters were matters pending before the High Court in Geoffrey Lungwangwa and Stephen Katuka vs Attorney General (2017/HP/0426), they were unable to render any responses. They contended that the matters the Speaker sought to superintend over were *sub judice*. The Hon Mr Speaker guided the House that Article 77 (1) of the Constitution conferred powers on the National Assembly to regulate its own procedure. The freedom of the House to regulate its own affairs is also known as "exclusive cognisance". Furthermore, the Speaker stated that the principle of "exclusive cognisance," was in fact provided for in section 34 of the National Assembly (Powers and Privileges) Act which stipulates that:

> "Neither the Assembly, the Speaker nor any officer shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Assembly, the Speaker or such officer by or under the Constitution, the Standing Orders and this Act."

The Speaker stated that while the National Assembly may be amenable to judicial review in matters not captured by the provisions of section 34 above, the same section of the National Assembly (Powers and Privileges) Act ousted the Court's jurisdiction with respect to the exercise of the powers under the Constitution, the National Assembly (Powers and Privileges) Act and the

Standing Orders.

Therefore, the decision by the UPND Members to commence process could not prevent the decision of the Speaker, or indeed that of the National Assembly, undertaken during the performance the Speaker's functions or the National Assembly. Taking into consideration the seriousness of the breach committed by the 49 UPND Members, and the warning earlier given, the Speaker suspended the UPND Members from the service of the National Assembly for a period of thirty days in accordance with the provisions of section 28 (2) of the National Assembly (Powers and Privileges) Act, and by a resolution of the House.

The affected UPND Members commenced court process in the High Court by way of an application for leave to commence judicial review proceedings challenging the decision of the Speaker. The High Court held that the applicants failed to establish a *prima facie* case that the Speaker's decision was either illegal, in breach of procedure or irrational to warrant further investigation. The Court found no merit in the application and dismissed it with costs.

The UPND Members of Parliament renewed their application in the Court of Appeal and the Court of Appeal upheld the decision of the High Court and dismissed the matter with costs. The UPND MPs were at liberty to renew their application for leave to commence judicial review proceedings in the Supreme Court but have so far not indicated their desire to do so.

STANDING ORDERS

AUSTRALIA

Senate

Routine of business

Following a recommendation by the Procedure Committee, on 7 December some minor changes to the Senate's routine of business were agreed to. The changes will commence on a trial basis from the beginning of 2018, and include changes to speaking times for the adjournment debate, an earlier start to sittings on Tuesdays, and moving consideration of private senators' bills from Thursday morning to Monday morning.

Scrutiny of Bills Committee

Other changes to the standing orders were made on 29 November when the Senate agreed to amend standing order 24 to provide that, where the Scrutiny of Bills committee has not finally reported on a bill because a ministerial response has not been received, any senator may ask the minister for an explanation of why a response has not been provided prior to debate on the bill. In the period that a similar but temporary order operated, the committee considered that there was a marked improvement in the provision of timely ministerial responses.

Orders for the production of documents

The Senate adopted the following order of continuing effect to assist in the tracking of public interest immunity claims raised by the executive to resist disclosure of documents to the Senate:

> **Report on outstanding orders for documents**
>
> That there be laid on the table by the Leader of the Government in the Senate, not later than 2 calendar months after the last day of each financial year and calendar year, a list showing details of all orders for the production of documents made during the current Parliament which have not been complied with in full, together with a statement indicating whether resistance to them is maintained and why, and detailing any changing circumstances that might allow reconsideration of earlier refusals.

Australian Capital Territory Legislative Assembly

Amendments to standing orders were made in relation to the order for the production of documents; processes for referral of matters to the Commissioner for Standards (continuing resolution); the Code of Conduct for Members (continuing resolution); declaration of Members interests (continuing

resolution) and the tabling of government responses to committee reports. A full review of the standing orders will be conducted in 2018.

New South Wales Legislative Assembly

Changes to the Sessional Orders regarding Private Members' Statements and Community Recognition Statements

During the reporting period the Legislative Assembly agreed to changes to the Sessional Orders to increase opportunities for Members to give Private Members' Statements (5 minute statements in which Members may raise matters of concern to their electorates or constituents) and Community Recognition Statements (1 minute statements in which Members may acknowledge people or groups in their communities and their achievements).

As a result of the changes the previous allotment of up to 47 Private Members' Statements per sitting week was increased to up to 75 per sitting week, and Members were given an additional 40 minutes each sitting week in which to give Community Recognition Statements.

The changes recognised the popularity of Private Members' Statements and Community Recognition Statements as a means by which Members can speak about issues of significance to their electorates, and acknowledge people and groups in their communities.

Northern Territory Legislative Assembly

The Assembly passed Sessional Orders to refer all except urgent Bills to a scrutiny committee for inquiry. After the First Reading the Member in charge of the Bill moves either to refer the Bill to a committee for report by a date not less than two sitting periods hence, after which the second reading becomes an order of the day, or to declare the Bill urgent, in which case the second reading can proceeding immediately. The Sessional Orders also require a human rights compatibility statement on the introduction of all Bills. On referral a committee considers whether the Assembly should pass or amend the Bill and whether the Bill has sufficient regard to the rights and liberties of individuals and the institution of parliament.

The Sessional Orders also provided that on Wednesdays only non-government Members can ask questions during Question Time. On those days, two consecutive questions cannot be asked of the same Minister. All Members continue to ask questions on Tuesdays and Thursdays.

These Sessional Orders, changes to the committee structure to broad subject based committees, and other minor procedural changes will be reviewed by the Standing Orders Committee after 12 months of operation with a view to including them in the Standing Orders.

Queensland Legislative Assembly

Urgent bills

Standing Orders 136 and 137 concerning Bills were amended to reflect changes to the Constitution of Queensland 2001.

In 2016, the Constitution of Queensland was amended to recognise the Queensland Parliament's portfolio committee system. Section 26A requires the parliament to establish at least six portfolio committees and allocate areas of responsibility to each portfolio committee that collectively covers all areas of government activity. Section 26B requires the Legislative Assembly to refer all bills to portfolio committees for a period of not less than six weeks, unless a Bill is declared urgent. An urgent bill is one which is not referred to a committee, or where a bill is referred for less than six weeks or is discharged from the committee's consideration before six weeks from the referral date. Three bills were declared urgent pursuant to SO137 and S26B of the Constitution of Queensland and referred to a portfolio committee for less than six weeks in 2017.

Protocols for Committees regarding the Documents and Records of a Member

Schedule 10 establishes Protocols for Committees regarding the Documents and Records of a Member. The Protocols seek to provide protection to the documents or records of a member from proceedings in parliament. The protocols apply when, in the course of a parliamentary committee's inquiry, there is a need or desire to obtain the documents or records of a member of the Legislative Assembly. The relevant committee should first invite the member to provide the documents or records within a reasonable time, including where the documents or records are in the control of a third party. A committee should only summons documents where the member declines to provide the documents within a reasonable time, or where, based on reasonable grounds, the committee suspects that that there is a risk to evidence being lost or destroyed, or there has not been a complete disclosure of information.

On the same day, the House also endorsed a protocol for custodians in the possession or control of members' documents. The Protocol sets out the categories of persons who are likely to be 'applicable custodians' including the Clerk of the Parliament and delegates, electorate office staff, ministerial staff and Directors-General and departmental staff. The protocol provides that custodians should not publish or release control or possession of members' documents without the consent of the member unless it is in accordance with an Act or pursuant to a coercive process such as a court order, a notice or summons. Custodians should comply with a summons and any relevant Standing Order by a parliamentary body (the Legislative Assembly or a committee).

Ethics Committee to table relevant proceedings with final report on a matter

Standing Order 211B requires the Ethics Committee when tabling a final report on a matter, to also table the minutes of its proceedings and any submissions received or evidence taken relevant to the matter, unless the Ethics Committee resolves that its proceedings are to remain confidential (confidential proceedings may include where it is not in the public interest, or it would be unfair to a person to publish the proceedings, or publication of the proceedings is irrelevant to the matter).

In moving the motion, the Leader of the House explained that, following a referral from the Ethics Committee, the CLA had conducted an inquiry into matters concerning members' documents, including electronic documents, in the possession or control of the third-party custodians. During its inquiry, the CLA surveyed presiding officers across Australia, took advice from the Clerk, and obtained independent advice from Senior Counsel.

Citizen's right of reply extended to four years

Standing Order 280 concerning citizen's right of reply, was amended to allow an affected person or corporation to make a submission within four years from the date of an adverse reference in the Legislative Assembly or a committee. The amendment followed a statement made by the Speaker earlier that day, requesting the Committee of the Legislative Assembly (CLA) consider whether the relevant Standing Order should be increased to a four year period, rather than expiring within the term of the Parliament. The CLA urgently considered the matter, with the amendment agreed to the same day.

South Australia House of Assembly

The House adopted the Report 2017 of the Standing Orders Committee containing these amendments on 28 November 2017, and resolved that they be laid before the Governor for approval and incorporation prior to the commencement of the next session of Parliament.

The amendments included long standing Sessional Orders, summarised below:

- earlier meeting and adjournment of the House ('family friendly' hours), delivery of messages, Citizen's Right of Reply (first introduced in 2007);
- Private Members Business arrangements;
- empowering the Speaker to direct a disorderly member to leave the Chamber for up to one hour (the 'sin bin' provision) (introduced in 2012);
- enabling Parliamentary Secretaries to act on behalf of a Minister in certain situations (introduced in 2016); and
- authorisation of broadcasting of proceedings of the House, including

Estimates Committees (pursuant to resolution of the House in September 2017).

In addition, the practice of naming of a Member and enabling debate the acceptance of an explanation and/or apology (raised in 2015, and again in 2017) was also recommended for incorporation in the Standing Orders.

Tasmania House of Assembly

The Clerk conducted a comprehensive review of the *Standing Orders and Rules of the House of Assembly*, the first major review since 2009. The Clerk provided the House of Assembly Standing Orders Committee with a draft of new standing orders that contained a range of proposed amendments including: 'plain English' changes; consolidations; repeals of redundant provisions; and other minor amendments to align the standing orders with current practice. A number of substantive amendments were also suggested including:

- removing the requirement for Notice of Motions to read out; removing the prohibition of Members having their heads covered whilst in the Chamber to allow contemporary cultural considerations; and including the prohibition on the use of electronic devices that interfere with other Members or proceedings of the House.

The Standing Orders Committee unanimously agreed to the proposed changes and tabled in June 2017 a report titled, *Proposed Revision of the House of Assembly Standing Orders and Rules* recommending that the current Standing Orders and Rules of the House of Assembly be repealed and that the House adopt the draft standing orders.

The House of Assembly on 17 August 2017 agreed to a motion to adopt the Committee's recommendation.

Victoria Legislative Council

E-petitions

A new standing order was introduced:

10.10 E-Petitions

(1) Standing Orders 10.01 to 10.09 apply except in relation to the requirement for a petitioner's signature.

(2) A principal petitioner may lodge an e-petition with the Clerk for publication on the Parliament's website.

(3) The Clerk will decline to publish an e-petition not in conformity with Standing Orders.

(4) (a) The posted period for an e-petition is to be nominated by the principal petitioner and is to be a minimum of one week and a maximum of six months from the date of publication.

(b) At the conclusion of the posted period, the principal petitioner

may extend the posted period up to a maximum of six months on request to the Clerk.

(c) The principal petitioner may close the posted period of an e-petition prior to the nominated conclusion date on request to the Clerk.

(d) In the event that the Council is due to expire pursuant to section 28(2) of the Constitution Act 1975 within six months from the date of publication of an e-petition, the maximum posted period will be determined by the Clerk.

(5) Once published an e-petition cannot be altered.

(6) Persons may become signatories to (join) an e-petition by electronically providing their name, address and signifying their intention to join the petition.

(7) For the duration of the posted period of an e-petition, signatories may be progressively presented as a petition to the House.

(8) Upon progressive presentation of signatories to the House, the publicly displayed number of persons who have joined that e-petition will re-set to zero.

(9) For the purposes of the records of the House, each progressive presentation of an e-petition will be recorded as a separate petition.

(10) On any occasion of progressive presentation and once the posted period for an e-petition has elapsed, a paper copy of the petition shall be printed by the Clerk in full for presentation by a Member.

Video on demand

A new sessional order was introduced:

(1) Council Members and Parliamentary Officers (authorised by the Clerk or the Secretary of the Department of Parliamentary Services) may republish audio-visual proceedings of the Council that are provided by the Hansard broadcast archive.

(2) Audio-visual proceedings republished under this Sessional Order are subject to the following conditions:

(a) the material must only be used for the purposes of fair and accurate reports of proceedings and must not in any circumstances be used for —

(i) satire or ridicule; or

(ii) commercial sponsorship or commercial advertising;

(b) broadcast material must not be digitally manipulated;

(c) excerpts of proceedings are to be placed in context so as to avoid any misrepresentation; and

(d) remarks withdrawn are not to be rebroadcast unless the withdrawal is also rebroadcast.

Western Australia Legislative Council

In December 2017 the Legislative Council adopted Procedure and Privileges Committee (PPC) recommendations to amend our Standing Orders as follows:

- Strangers in the Council – Standing Order 97(2) was deleted and the following inserted:

  > When a division is called strangers shall withdraw unless otherwise ordered by the President

  Under this provision the President may order any person not being a member or staff to remain in the chamber during a division.
- Consideration of Committee Reports – a new Temporary Order enables each member to debate a committee report for unlimited periods of 10 minutes per report (rather than only one 10 minute period). After 60 minutes consideration of one report the debate on that report is postponed and the report is moved to the end of the list of reports to be considered.
- Witness entitlements – the list of witnesses' (before a committee) entitlements in Standing Order 181 is now expressly 'Subject to order' of the committee. As the PPC explained (PPC Report 39, June 2016, p7):

  > It is the view of the PPC that the "entitlements" contained in SO 181 are provided to witnesses in addition to the usual protections afforded to witnesses, and are a courtesy that accords witnesses with a measure of procedural fairness. There may be instances, however, where these entitlements should be subject to the discretion of the Committee and the necessary requirements of the Committee in relation to its inquiry. The entitlements are not entitlements as of a right, which a witness may then use to impede or delay the finalisation of a Committee's inquiry into a certain matter.

In November 2017 the PPC recommended that the Legislative Council adopts and agrees to the following form of words for a Legislative Council Acknowledgement of Country:

> This House acknowledges and honours the traditional owners of the ancestral lands upon which we meet today—the Whadjuk Noongar people—and pays its respects to their Elders both past and present.

The Legislative Council passed a motion implementing the above on 12 April 2018 (note: this is outside your reporting period). That day the Council amended Standing Order 14 to provide that the above acknowledgement of country will follow the prayer during formal business each sitting day.

CANADA

House of Commons

On 19 June 2017, the Leader of the Government in the House of Commons, Bardish Chagger, moved a motion to amend the Standing Orders of the House

of Commons. The proposed changes were part of a government commitment, included in the platform presented during the federal election campaign, to strengthen and improve Parliament. The motion was adopted by the House on 20 June 2017, following a recorded division, and the following changes to the Standing Orders came into force on 18 September 2017:

1. Use of prorogation: Following a prorogation, the government shall submit a report outlining the reasons why the House was prorogued;
2. Omnibus bills: The Speaker shall have the power to divide the questions for the purpose of voting on second reading and reference to a committee and the motion for third reading and passage of omnibus bills - Budget bills excepted;
3. Financial Cycle: A new schedule for Budgets and Main Estimates;
4. Committee membership: Parliamentary Secretaries may serve as committee members, but may not vote, move a motion or be part of any quorum; and
5. Committee proceedings: Unless a time limit has been adopted by the committee or by the House, the Chair may not bring a debate to an end while there are members present who still wish to participate.

The changes are permanent, with the exception of the changes to the Financial Cycle, which will stay in effect only for the duration of the current Parliament.

Senate

In May, the Standing Committee on Rules, Procedures and the Rights of Parliament presented its seventh report, recommending changes to the Rules so that they better reflect the evolving situation in the Senate. Definitions of "recognised parliamentary group" and "facilitator of a recognized parliamentary group" were added, while other provisions in the Rules were amended to provide a role for such groups and facilitators in the workings of the Senate. In most cases, recognized parties and recognized parliamentary groups are treated in an equivalent manner. The special roles of the Government Leader (currently styled Government Representative) and Opposition Leader have, however, been maintained.

The Rules Committee also presented its eighth report in May, recommending that proportionality between the parties and groups be taken into account when determining the membership of the Committee of Selection, which recommends the initial membership for other committees. Both of the seventh and the eighth reports were adopted by the Senate.

Newfoundland and Labrador House of Assembly

The Standing Orders were amended provisionally at the end or the 2016 fall sitting to provide for:

- a parliamentary calendar

- an extra sitting on Wednesday morning, for government business only
- the daily adjournment by the Speaker (the Speaker adjourned only on Wednesday, Private Members' Day, before the adoption of this amendment) and
- the adjournment by the Speaker at midnight when the House is in an extended sitting.

These amendments were confirmed before the House adjourned in December 2017.

Ironically, during the first sitting in accordance with the new calendar the House sat twice outside the provisions of the calendar: in August for one day to elect a Speaker when the incumbent was appointed to Cabinet and in October to amend the Elections Act 1991 in response to a judicial ruling striking down an unconstitutional provision which had to be amended in advance of an impending bye-election.

The House also amended the Petition template (no more humbly shewing) and added a provision requiring that the prayer appear on every page and a notification to petitioners that their names and addresses would be public once a Petition was tabled.

The next matters to be addressed by the Standing Orders Committee are the estimates procedure and the use of standing committees to review legislation either in draft form or after Second Reading.

Yukon Legislative Assembly

Pursuant to Motion No. 127 (Motion Respecting Committee Reports No. 1), adopted by the Legislative Assembly on 5 October 2017, the Standing Orders were amended, as follows:

Standing Order 11 was amended by adding Standing Order 11(6), which limits the time allotted for Tributes to a maximum of 20 minutes on any sitting day;

Standing Order 75 was amended by adding Standing Order 75(10), which stipulates that the Spring Sitting of the Legislative Assembly shall commence during the first week of the month of March and the Fall Sitting of the Legislative Assembly shall commence during the first week of October in every calendar year.

Standing Order 75 was also amended by adding Standing Order 75(11), which stipulates that the start date for a Spring Sitting or a Fall Sitting may be adjusted in any year in which a general election takes place or if the Premier decides extraordinary circumstances require that the established start date for a Sitting be changed.

CYPRUS HOUSE OF REPRESENTATIVES

A review of the Rules of Procedure of the House is under discussion.

GUERNSEY STATES OF DELIBERATION

"*The Rules of Procedure of the States of Deliberation and their Committees*" were not subject to comprehensive review in 2017. One minor change was made to oblige the Presidents of all States' Committees to provide updates to the Assembly on their Committee's recent activities, work ahead, etc. at periodic intervals.

INDIA

Lok Sabha

With regard to any significant amendment made in the Rules of Procedure during 2017, it may be informed that the following significant amendments were considered and approved by the Rules Committee (16th Lok Sabha) during their sitting held on 10 April, 2017: -

Though there is a provision i.e. 331L, to invite public opinion through print and electronic media on the Bills and subjects, by the DRSCs, however, no such provision or practice or procedure was available to the Committee on Petition of the Lok Sabha, to invite public opinion or take evidence of the experts or interested parties on any matter/petition/representation under its examination. Therefore, in order to enable the Committee on Petitions to invite and avail public opinion as well as to take evidence of the experts or interested parties on the petitions / representatives under its consideration, a new rule viz. 307A was incorporated in the Rules of Procedure; and

(i) To minimise the use of paper in the Secretariat and in the light of the fact that Members E-Portal was already in operation, it was decided to facilitate online submission of petitions by the members through their dedicated E-Portal. Since there was no provision for online submission of petitions by the members, the necessary amendments were agreed to be made in the concerned rules i.e. Rules 162(2) and 164(1) of the Rules of Procedure.

STATES OF JERSEY

The significant changes to Standing Orders in 2017 covered the following matters:

- New rules on the investigation of allegations of a breach in the code of conduct

for elected Members, consequent on the creation of a Commissioner for Standards.
- The extension of rules on the declaration of financial interests to cover written questions.
- The granting of powers to the Presiding Officer to control the use of visual aids in the Chamber.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Changes to Standing Orders implemented

The 52nd Parliament was convened with an amended set of Standing Orders. The Standing Orders Committee presented its report on the review of the Standing Orders on 26 July 2017, with the House adopting the recommendations in the report on 10 August. The amendments to the Standing Orders took effect on the dissolution of the 51st Parliament.

One of the changes was to the structure of select committees. The number of subject select committees was reduced from 13 to 12, and a new approach was recommended for committee membership to be calculated on a more strictly proportional basis. While the Standing Orders Committee had unanimously suggested that the total number of seats on subject select committees should be reduced from about 125 to 96, the National Party—newly in Opposition after nine years in Government—decried this as "anti-democratic". Disagreement on this point was aired in the media until a compromise was unexpectedly reached during the election of the Speaker.

The Standing Orders Committee's report described comprehensively the role of select committee chairpersons as presiding officers for the first time. The report included a set of expectations for effective chairing of committees, which is now regarded as a "job description" for this essential role. As a result of a cross-party agreement, five of the twelve subject select committees are now chaired by Opposition members, which is a higher proportion than ever before.

Other notable changes to the Standing Orders included a rewrite of the rules for financial scrutiny debates to reflect a sector-based approach that has been trialled in recent years, and a new procedure for debating international treaties that the Government intends to implement through primary legislation. The Standing Orders Committee also suggested improvements to legislative scrutiny, better accommodation of family needs in parliamentary life, and the development of an online parliamentary noticeboard for members to publish notices about community events or milestones or significant achievements by constituents.

UNITED KINGDOM

Scottish Parliament

The Scottish Parliament's Standing Orders were amended in March 2017 to allow its committees to appoint Acting Conveners on a temporary basis to cover for a Convener's absence for a period of maternity, paternity, parental, adoption or charted parental leave. Under this procedure, a Member of the same political party as the Convener can be appointed to the Committee on a temporary basis to cover the absence, who can then be chosen as Acting Convenor for that period. The rule has been used on one occasion to cover period of maternity leave by the Convener of the Public Audit and Post Legislative Scrutiny Committee and ensures that a Member taking a period of parental leave has an automatic right to resume their committee convenership on return to parliamentary duties.

National Assembly for Wales

Standing Order changes were required in 2017 as a result of the Wales Act 2017, but also to introduce new financial procedures as a result of tax-raising powers conferred on the Assembly by the Wales Act 2014. Other procedural changes in 2017 have arisen from recommendations made by the Business Committee of the previous Assembly in its legacy report.

Changes arising from the Wales Act 2017

Legislative procedures have been amended to provide for a new requirement for super-majority voting on Assembly Bills that relate to a 'protected subject-matter', and consideration of Bills by the Supreme Court in relation to protected subject-matters (sections 111A and 111B of the Government of Wales Act 2006).

The Llywydd must make a statement as to whether or not any provision of an Assembly Bill relates to a protected subject-matter, before the vote to pass a Bill can take place. Protected subject-matters are those that would modify, or confer power to modify, specific matters including the name of the Assembly, the persons entitled to vote in Assembly elections, and other electoral arrangements over which the Assembly has been given powers, including the Assembly's size. Should the Llywydd decide that any provision of a Bill does relate to a protected subject-matter, the Bill cannot be passed unless the number of Assembly Members voting in favour of it is at least two-thirds of the total number of Assembly seats (i.e. currently 40 or more). A new section 111B provides for the referral of an Assembly Bill to the Supreme Court for a decision in relation to whether or not any provision of that Bill relates to a protected subject-matter. Bills that have been passed or rejected can be referred.

Standing Orders have been changed to include the requirement for the

Llywydd to make a statement under s111A, and to require a recorded vote to be taken on all Assembly Bills at final stage, thus ensuring a record of the number of Members voting in favour. Standing Orders for Reconsideration of Bills passed, or rejected, also now take account of the new statutory provisions.

A requirement for a Judicial Impact Assessment to be carried out for every Assembly Bill has also been introduced, and Standing Orders now make provision for these assessments to be included with the Explanatory Memoranda for every Bill.

Repeal of sections 32 and 33 of the Government of Wales Act 2006 also means there is no longer a statutory requirement to consider the UK Government's Legislative Programme, or to provide documents to the Secretary of State for Wales. The specific provision for the Secretary of State to participate but not vote during annual consideration of the UK Government's Legislative Programme has been replaced with a general provision for the Presiding Officer, in consultation with the Business Committee, to invite any person to participate in proceedings.

The use of D'Hondt was also considered during 2017, arising from the repeal of sections 28 and 29 of the Act referring to the use of D'Hondt to determine the balance of committee membership, but no Standing Order changes have been made.

Finance procedures

In June 2017 the Assembly agreed a set of changes to implement a new two-stage budget scrutiny process and take account of the tax-raising powers granted by the Wales Act 2014. The budget process adapts a model suggested by the Assembly's Finance Committee, to fit with the statutory requirement for an annual budget motion, and for this motion to be passed before the beginning of the financial year to which it relates. It also takes account of recommendations made by the OECD, which was independently commissioned to 'stress test' the developing proposals against its best practice principles for budget transparency and reform, and international best practice. Procedural changes were also made to allow for the Welsh Rate of Income Tax (WRIT), to be devolved to the Assembly from 2019/20. The budget process set out in Standing Orders is accompanied by a revised protocol between the Assembly and Welsh Government on budget scrutiny by Assembly Committees, and the protocol is referred to in the Standing Orders.

The main changes to procedure are:

- The budget process is now split into 'outline' and 'detailed' stages to allow more time for committee scrutiny, both of the high-level outline budget by the 'responsible committee' (the Finance Committee), and of the detailed expenditure plans by other Assembly Committees. The Finance Committee

maintains an oversight and co-ordination role, but the process also allows for early provision of the Government's detailed spending plans to give policy and legislation committees as much time as possible for scrutiny and reporting on the detail, including a good period for public consultation.

- The number of weeks given for scrutiny has increased: Eight weeks in total for scrutiny of the outline budget in a normal budget year, with five being the absolute minimum. The minimum for other committees to report on the detailed proposals would always be five weeks. The associated budget protocol sets out some of the circumstances where the government might expect to request less than eight weeks for scrutiny of the outline budget, though timetabling decisions will always be in the hands of Business Committee.
- The government is required to publish certain information at the same time as its outline budget proposals, to aid scrutiny by Assembly Committees – the detail is set out in the protocol.
- The government's statement on the draft budget would be made after the outline proposals have been published. And as there are now two reporting deadlines – for the Finance Committee and for other Assembly Committees - neither the Finance Committee, the government nor anyone else could move a motion to debate the draft budget until those deadlines have passed.
- In recognition of the new financing powers, Standing Orders make it clear that any changes recommended to the draft budget must be 'cost neutral' in that they either do not increase or decrease the amounts involved, or if they do, they are balanced by a commensurate change to the financing of the overall draft budget.
- Provision is made for Welsh rate resolutions as a result of powers to introduce a Welsh rate of income tax. Only the First Minister or a Welsh Minister may move a Welsh rate resolution and such motions are not amendable, thus protecting the government's sole right to propose financial measures. A Welsh rate resolution cannot be moved until after the Annual Budget Motion has been tabled. This serves to protect the overall integrity of the budget scrutiny process, and ensures that Members vote on the Welsh rate resolution with all the information on the Government's final budget to hand. Standing Orders also set out the dependency between a Welsh rate resolution and the agreement of the Annual Budget Motion (ABM). Both could be debated at the same meeting if the government so wished, but the ABM cannot be voted on until the WRIT resolution has been agreed.

Topical and Urgent Questions

Urgent Questions have been renamed as 'Emergency Questions', and the Llywydd must now be satisfied that the question relates to a matter of 'urgent

national significance' rather than 'urgent public importance'. As the more restrictive definition will lead to fewer Emergency Questions, on only the most critical of matters, it is anticipated any Emergency Question will now be taken as the first item of business in Plenary.

New Standing Orders enable the Business Committee to make time available for Topical Questions as part of Assembly time in Plenary, and stipulate that it is for the Llywydd to select Topical Questions for answer from among those tabled that conform with guidance. Assembly guidance provides that Topical Questions must relate to a matter of national, regional or local significance where an expedited Ministerial response is desirable, and the issue should have arisen since the deadline for tabling Topical Questions the previous week. Members are able to table topical questions between 9am on Monday and 10am on Wednesday, and each Member may table only one Topical Question request in any sitting week. As with Emergency Questions, the government will determine which Cabinet Secretary or Minister will answer, and will be informed of all questions as they are tabled, as well as of the Llywydd's selection as soon as possible after it is made. Standing Orders make clear that Topical Questions are non-government business and their scheduling therefore a matter for the Business Committee. The Business Committee has agreed to schedule Topical Questions for 20 minutes, as the first item of Assembly business after Oral Assembly Questions each Wednesday that the Assembly sits. The Llywydd determines how many Topical Questions to select within the 20 minute slot and how to divide the time available between those questions, e.g. by varying the number of supplementary questions called. The Llywydd will not have to select any question if she does not consider it meets the criteria, even if it is the only one tabled that week.

Public petitions

Following a review of arrangements by the Petitions Committee in 2016 some changes were made to the system in 2017. Petitioners must now be resident or based in Wales – the Committee having recommended that 'Petitions submitted to the Assembly should demonstrably be on issues of concern for, or contain policy proposals from, people and/or organisations based in Wales'. This will be verified via a postcode check at the point when a petition is submitted. Eligibility to sign petitions remains unrestricted. The signature threshold for petitions has been raised from 10 to 50, with the distinction between petitions from organisations and individuals removed. This aims to strike a balance between protecting the openness of the Assembly's petitions system and helping to increase the credibility of the petitions process; and for the same threshold to apply if a petitioner is an organisation. There is also now an automatic threshold for debates on petitions in Plenary—those obtaining 5,000

signatures should be automatically considered for debate (statistical analysis suggesting approximately three petitions each year could be expected to reach the threshold). It was considered appropriate for the Petitions Committee to apply its own discretion regarding any petition that reached the threshold, taking into account issues such as the pertinence of debating the issue and the most appropriate timing, and to retain discretion to request debates to be held on other petitions that do not achieve this threshold but are considered appropriate for debate by the whole Assembly. Therefore, this third change was adopted as part of the Committee's internal procedures and not as a Standing Order change. The Petitions Committee will write to the Business Committee to make it aware of any petitions that reach the threshold and set out whether or not it wishes to request a debate on the petition and its reasons for coming to that view.

Committee Bills

Changes were made to the procedure for Bills proposed by Committees in September 2017, to remove the provision in Standing Orders which prevented such a Bill from being referred to a responsible committee for Stage 1 consideration of its general principles. The change was made in advance of the introduction of the Public Services Ombudsman (Wales) Bill by the Assembly's Finance Committee.

Other procedural areas under consideration in 2017, but where changes have yet to be made, include;

- New procedure being developed for Consolidation Bills;
- Further review of Legislative Procedures, including in light of the Wales Act 2017 move from conferred to reserved powers model;
- Standards: considering removal of requirements for dual reporting of interests to the Assembly and the Electoral Commission; and

New devolved Taxes—making provision for section 116C Orders to grant competence for new Welsh taxes.

SITTING DAYS

Figures are for full sittings of each legislature in 2017. Sittings in that year only are shown. An asterisk indicates that sittings were interrupted by an election in 2017.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Aus HR&	0	9	10	0	10	8	0	7	8	8	0	4	64
Aus Senate	0	7	8	0	3	7	0	7	8	4	8	4	56
Aus Australian Capital Territory	0	3	6	0	3	3	0	9	6	4	5	0	39
Aus New South Wales LA	0	6	6	3	11	4	0	6	6	6	6	0	54
Aus New South Wales LC	0	3	6	3	11	4	0	3	6	6	6	0	48
Aus Northern Territory	0	3	6	0	6	1	0	6	0	6	3	0	31
Aus Queensland LA*	0	4	5	0	6	4	0	6	3	6	0	0	34
Aus South Australia HA	0	4	5	3	8	4	3	5	3	0	4	0	39
Aus Tasmania HA	0	0	6	6	8	4	0	6	6	4	5	0	45
Aus Victoria LA													51
Aus Victoria LC	0	6	6	0	6	7	0	6	7	5	10	4	57
Aus Western Australia LC*	0	0	0	0	7	9	0	6	6	4	8	3	43
Can HC	2	17	10	9	18	15	0	0	10	17	16	9	123
Can Senate	1	9	9	6	12	12	0	0	6	10	11	9	85
Can Alberta LA	0	0	13	11	18	2	0	0	0	2	13	7	66
Can British Columbia LA*	0	9	10	0	0	5	0	0	9	14	14	0	61
Can Manitoba LA	0	0	14	15	15	1	0	0	0	11	14	4	74
Newfoundland and Labrador HA													47
Can Ontario LA	0	5	14	12	15	1	0	0	10	14	16	8	95
Can Prince Edward Island LA	0	0	0	14	8	0	0	0	0	0	11	11	44
Can Québec NA	0	10	9	9	11	9	0	0	6	10	14	5	83
Can Saskatchewan LA	0	0	16	12	12	0	0	0	0	4	17	4	65
Can Yukon LA	1	0	0	5	18	7	0	0	0	16	14	0	61
Cyprus HR	2	4	4	2	3	5	4	0	3	3	3	6	39
Guernsey	2	3	4	1	1	9	0	0	4	1	6	2	33
Guyana NA													25

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
India LS	1	6	16	6	0	0	11	8	0	0	0	9	57
India RS	1	7	15	6	0	0	11	8	0	0	0	9	57
India Kerala LA	0	3	12	3	18	1	0	12	0	0	1	0	50
Jersey	5	4	3	1	2	4	5	0	4	2	8	4	42
Namibia NA	0	7	14	13	0	11	3	0	9	11	7	0	75
New Zealand HR*	0	6	9	6	11	10	6	9	0	0	9	8	74
Pakistan NA	4	5	13	8	10	11	0	12	9	8	7	11	98
UK HC*	17	14	19	7	0	9	12	0	7	15	17	13	130
UK Lords*	15	14	18	8	0	8	12	0	8	15	17	14	129
UK Scottish Parliament	10	9	14	6	13	12	0	0	12	7	14	9	106
UK NA Wales	7	6	9	2	8	8	6	0	4	8	6	4	68
Zambia NA													86

UNPARLIAMENTARY EXPRESSIONS

AUSTRALIA

House of Representatives

We are not going to be lectured by a hypocrite.	7 February
Our company tax cuts that those hypocrites opposite used to support and now oppose	9 February
Here he is; the whinger from Watson!	9 February
It is families around Australia who will pay the price if 'Electricity Bill' ever becomes Prime Minister	9 February
The member for Hughes: you have stood up here and just talked crap	9 February
He does the complete opposite because he is a well-known fraud not only in this place but across workplaces across the country.'	27 February
Wipe the smile off his ugly face	28 February
The previous speaker was such a hypocrite	1 March
And on and on it goes, until you feel like topping yourself.	2 March
And I refuse to be a hypocrite like the Leader of the Opposition.	20 March
The Leader of the Opposition is, by any definition, the greatest hypocrite in this chamber.	22 March
Unless, of course, you are Senator Kitching filling in a Health Services Union workplace safety test for a few friends.	28 March
He was a complete hypocrite.	30 March
'The record prices for goats—and here's one!	9 May
You grub!	29 May
Faux racist! Why do you hate Doug Cameron?	31 May
And in our guts we know you're nuts!	1 June
Shut up, you moron!	22 June
The Prime Minister is compromised by his protection racket that he's running for the banks as they casually snub their noses at our laws. The Prime Minister is compromised by the Liberal Party's strong relationship with the Honoured Society, with the Mafia in Victoria.	10 August
Sometimes he has a little bit of tolerance for union corruption, because otherwise he would've voted.	10 August
And what happens is that the Labor Party is dictated to and run by the CFMEU. They've donated, over the last five years, $8 million to this Leader of the Opposition and this Labor Party.	10 August
You idiot!	10 August
This is the real world, Mr Turnbull, and these are real people you are affecting, facing a—	14 August
As I said, either they've got some sort of psychosis in the way that they are targeting the most vulnerable or they are incompetent or indifferent—	14 August
Well, no shit Sherlock!	5 September

Somebody who is completely controlled by the union movement	7 September
You are full of crap!	7 September
They're all making a sign of solidarity with the Muslim Brotherhood with the Rabia sign there. They might want to think about that.	11 September
I am proud of that, idiot!	11 September
Brain fart	12 September
Morons.	13 September
You idiot!	14 September
$66 billion Bill.	17 October
Shut up, Fletch, you moron.	19 October
I thought you were all piss-weak—	19 October
Why is it that they continue to support the criminal organisations of the CFMEU?	24 October
They are just using people's disabilities as an excuse to raise levies.	25 October
That's an improvement in the IQ level already.	26 October
You're better off keeping your mouth shut so we're still left to wonder if you're a fool, mate.	26 October
Some have been rude enough to call him "Szechuan Sam" which I think is very wrong	4 December
But the Prime Minister is too weak, too bruised, too hostage to the Taliban faction in his own party room	4 December
And this Leader of the Opposition is a fraud	6 December
When I first heard about Senator Dastyari's treasonous behaviour	7 December
Senator—double agent Sam Dastyari—	7 December

Australian Capital Territory Legislative Assembly

Not quite have the courage	14 February
Mislead me	30 March
Bugger off	9 May
Bugger off	10 May
Dodgy	7 June
Ramsay razor gang	7 June
Mislead the Assembly	16 August
Corrupt	23 August
Corrupt	23 August
Corruption	23 August

New South Wales Legislative Assembly

Little dogs	9 March
Lazy roosters	9 March
Idiot	9 March
Broken man	22 June
Beat him to a pulp	22 June
Arthritic-crippled wombat	3 August
Corruption	3 August
Halfwit	14 September

The Conman	16 November

New South Wales Legislative Council

Covering up for a racist	4 April
Grub	30 May

Queensland Legislative Assembly

Fruit loop [in reference to the National Party backbench]	15 February
Suck up to her union mates	14 February
Apparatchik... owned by the RTBU, the ETU and AFULE…	14 February
You goose!	28 February
Because their grubby fingers are over this project.	10 May
That is the sort of crap that went on.	16 June
'You're a dog.'	16 June
'WTF?' The State of Origin is not culturally significant to Queensland?	24 August
A veil of secrecy hanging over the head of the member for	24 August
Bugger all	6 September
You idiot!	6 September
The spineless Leader of the Opposition	10 October

South Australia House of Assembly

Gutter smug	31 October
Paid off	30 November
Demented banshees *Some confusion occurred in relation to the status of the term 'banshee'. In 2015 the Deputy Speaker ruled that the term 'banshee' was unparliamentary, as it was 'akin to an animal'. However, in 2017 the Speaker ruled that 'demented' was unparliamentary, but overturned the Deputy Speaker's previous ruling that 'banshee' was unparliamentary, arguing that it is not an animal.*	21 June

Victoria Legislative Council

Crap	2 February
Ms Snoozy	9 February
Scab	21 February
Scab	9 March
Dickhead	9 March
Fraud	23 June
Hissy Fit	10 August
Poodle	18 October

CANADA

House of Commons

All we got from his Prime Minister was a tweet. I would like to remind my dear colleague that the root word of "Twitter" is "twit"	31 January
They lied to us. They lied to the people	1 February
Screwed	8 February
Simply repeating a falsehood does not make it any truer	15 February

So that my colleagues do not look like a bunch of morons, ...	5 April
Where is the organ grinder? You are not the monkey	2 May
They keep polishing the turd	4 May
How much will it cost for the average family to pay the damn tax?	18 May

Senate

Othering	15 February

British Columbia Legislative Assembly

The minister of intimidation	24 October
The minister of consultation paralysis	7 November
a big, stinking pile	9 November

Manitoba Legislative Assembly

Premier wasn't telling the complete truth when he said that	16 March
The Minister is not being honest with Manitobans	23 March
This is one of the stupidest ideas	4 April
Who was it in the Tory brain trust who dropped the one brain cell they have on the floor	4 April
Only a fool and the Member from Steinbach would get behind a failed - colossally–failure federal-provincial relations strategy	25 May

Ontario Legislative Assembly

Damn	1 March
Alternative facts	2 March
False statements	7 March
Cover up	9 March
Bullshit	21 March
Dicking around	3 April
Shyster	4 April
They're sucking and blowing on this one	24 April
"Cooking the books"; it's a "shell game"; it's "smoke and mirrors."	26 April
Stop killing people	3 May
The Premier hasn't taught her parrot any new lines today	9 May
The only thing that's a joke in this province is that party	9 May
These people are screwing the people of Ontario	15 May
Use weasel words that don't always make much sense to	15 May
It's going to cost families 40 times more than the $1 billion it cost them for the Liberals to buy that election	15 May
It is an absolute clusterduck	29 May
All know the term "CYA." That would be unparliamentary, to expand upon the "CYA," but it certainly appears to be covering their buttocks with this legislation	30 October
How much in hockey bags	31 October
That's why they duped Ontarians	2 November
It is bordering on the criminal to put people's health, safety and security in jeopardy	15 November

They're a bunch of Luddites	23 November
We had a beer at a very special bar where I have a part-ownership, at the Pilot Tavern. I'm just going to do a little commercial, quickly, Speaker: It's our 30th anniversary on Saturday. You're all welcome to come down and have a beer	23 November
Speaker, it's a bloody shame how this government is treating the people of Ontario. It's bloody unacceptable the way they're treating people.	27 November

Prince Edward Island Legislative Assembly

Misleading	25 April
Farce	20 December

Québec National Assembly

Disinformation (the minister is engaging in)	22 February
Lies (repeat them often enough and they become truths)	30 March
Cover up this business	12 April
Corruption (in reference to a political party)	25 April
Protect the extended Liberal family (use the tools of Government to…)	27 April
System (influence-peddling…)	2 May
Stubborn	11 May
Intellectual honesty (to have the slightest bit of)	29 May
Lying	29 May
Accomplice to opacity	30 May
Enlightened despot	30 May
Falsehood	4 November
Bully (the Premier's ministerial…)	7 December
Hide information	7 December
Incompetence	8 December

Saskatchewan Legislative Assembly

They've stolen money from our kids' classrooms…	30 March
We don't need a puppet of the Premier.	25 April
here we have captain grandstand get onto his feet	27 April

Yukon Legislative Assembly

Diatribe	16 May
Deliberately misconstrued	8 June
Fearmongering	23 November

INDIA

Lok Sabha

Dog	6 February, 31 July
Liar	6 February, 20 March, 27 December, 28 December
Negro	6 February

How can you say that? (Aspersion on the Chair)	6 February
Exploiters and looters	6 February
It is a lie	7 February
Sir, this is not fair to say that "your Party has got only three minutes and then you take only two minutes more" ... (Aspersion on the Chair)	7 February
You are threatening me ... (Aspersion on the Chair)	7 February
No, I am not threatening. You are threatening the Chair ...	7 February
Drama	9 March, 19 July, 27 December
Lie	10 March, 27 March, 5 April, 25 July
Spoiled	17 March
This is just pretence and betrayal	17 March
Neither she allowed us to raise the issue nor she heard us. Suo motu, she said that it is not allowed ... (Aspersion on the Chair)	17 March
But, Sir, you cannot expunge like that. Then, we need not speak anything ... (Aspersion on the Chair)	17 March
Fascist forces	17 March
Fascist	17 March
Sabotaging	20 March
Henchmen	20 March
He is a liar	20 March
Congress is a Part of Crooks	21 March
Bunch of crooks	21 March
This is actually a butchery of democracy	22 March
It is all rubbish	23 March
Fraudulence	27 March
Hypocrites	5 April
Sir, you always have the habit of cutting down my speech to size. I request you not to do it this time ... (Aspersion on the Chair)	5 April
Orgy	11 April
Keep quiet. Don't tell a lie. Tell him not to boast. He is in the habit of capering like a monkey	19 July
Ruffianly	19 July
Hooliganism	21 July
You are not controlling the House. You cannot ask them to sit. ... (Aspersion on the Chair)	24 July
You are also not speaking under the rule ... (Aspersion on the Chair)	24 July
Shout	24 July, 31 July
Lie after lie	31 July
Lynching	31 July

You are not defending me ... Sir, is this your job? One man is shouting and you are not allowing me to speak ... You are not disciplining him because he belongs to the Ruling Party ... (Aspersion on the Chair)	31 July
Goons	31 July, 2 August
Nude	31 July
Madam, you are curtailing him which is a little bit of a problem. ... (Aspersion on the Chair)	2 August
For the last two days, you did not allow. This is not a good practice. ... (Aspersion on the Chair)	3 August
an idiot	4 August
Terrorist	8 August
Theatricals	21 December
Maniac	21 December
He is a fool, he is mad	21 December
Mean and tea vendor	21 December
Bastards	22 December, 27 December
Sins	27 December
False	27 December
Mad	28 December

Rajya Sabha

Nonsense	2 February
षड्यंत्र/ साजिश (Conspiracy)	3 February, 22 March, 27 March, 28 March, 27 July, 27 December
शर्म आनी चाहिए। डूब मरो।/ शर्म (You should be ashamed. Drown in shame/ Shame)	3 February, 31 July
Shameful/ Shameless/ Shame/ Ashamed	3 February, 21 March
State sponsored murder	6 February
Deception, Disruption, Diversion	6 February
Diabolic agenda	6 February
Rabidly intolerant	6 February
गुमराह (Misleading)	6 February, 28 March, 7 April
धोखा (Fraud)	6 February, 7 February, 21 March, 26 July, 1 August, 8 August, 29 December

पंगा मंत्री (Quarrelsome Minister)	16 March
Rascals	21 March
गुरुघंटाल/ घोटालों के गुरुघंटालों (Machiavellian/ Machiavelli of scams)	21 March, 8 August
बेईमानी/ बेईमान/ बेईमानो (dishonesty/ dishonest person/ dishonest people)	22 March, 5 April
Bogus	22 March
Conspiracy/ Conspiracies	22 March
Fascist	27 March
'मुंह में राम-राम, बगल में छुरी (A fair face may be a foul bargain)	7 April
State sponsored genocide	10 April
Betraying	11 April
दादागिरी (Bullying)	26 July
गद्दारी (Treason)	27 July
Tamasha	1 August
Prostitution	2 August
Unfair	3 August
घोटाला/ घोटालेबाज, भ्रष्ट (Scam/ Scamster, Corrupt)	8 August
विश्वासघात (Betrayal)	8 August, 29 December
लूट (Plunder)	8 August
पाप (Sin)	29 December

STATES OF JERSEY

Underhand	31 January
Disingenuous	31 January
Bastards	16 November
Poppycock	29 November

NEW ZEALAND HOUSE OF REPRESENTATIVES

Rich pissing on the poor	7 February
The law clerk fired by Russell McVeagh.	7 March
Chicken	6 April
Hypocrite	6 April
The tail is wagging the mongrel Government dog like a lamb	6 April
Grumpy old prick	4 May
Fool of a defrocked priest	4 May
Rusty Myrtle	1 June
Stop hiding behind the Maori language	26 July
Is the cheque in the mail?	1 August
That is the sort of approach that we find in Venezuela	1 August
'Slim Shady' with the bald head	9 November
Slug	29 November
For the people who've been ripped off by National Party supporters, and probably members.	7 December

These buggers	14 December
In so far as that particular member is concerned, I hope that someone plants hemlock."	20 December

UNITED KINGDOM

National Assembly for Wales

Right-wing shits [of Plaid Cymru Assembly Members]	20 September
Taken the shilling [of a Member while defending the First Minister's handling of complaints]	29 November
Deviation from the norm [of transgender people during a debate on the Equality and Human Rights Commission's Annual Report]	12 December

ZAMBIA NATIONAL ASSEMBLY

Warn that boy [in reference to another Member of Parliament]	14 March
Vernacular words meaning, "This is stupidity," [in reference to another Member of Parliament]	28 March
Chaps	20 June
Cantankerous	11 July
As Hon. Members, let us not just pass one Budget after another, yet nothing comes out of it. We should not agree to be a stamp made out of rubber. [Ruled out of order as phrase referring to "Rubber stamp"]	28 September
So, I appeal to some of our colleagues in this House that when people say there is corruption and you are the first one to rebut the allegations, you will just "mess up" your reputation.	5 October
Rubbish	11 October
Are we in order to continue being "hypocritical", Madam Speaker	12 October
Who are such decisions "killing"?	1 November
Steal	8 November
Stealing	23 November
Guys	6 December
When you know that you are a "thief", you must accept that you are a "thief" and show some remorse	7 December

BOOKS ON PARLIAMENT IN 2017

AUSTRALIA

Connecting with the people: the 1978 reconstitution of the Legislative Council: Part two of the Legislative Council's oral history project, by David Clune, Legislative Council, Parliament of New South Wales, ISBN: 9781922258298.

The Legislative Council and Responsible Government: Egan v Willis and Egan v Chadwick: A commemorative monograph: Part three of the Legislative Council's oral history project, by David Clune, Legislative Council, Parliament of New South Wales, ISBN: 9781920788186.

The 45th Parliament: Parliamentary Handbook of the Commonwealth of Australia 2017, Parliamentary Library, Department of Parliamentary Services.

Parliamentary Committees in the Western Australian Parliament: An Overview of their Evolution, Functions and Features. Volume 1: 1870–2000, by Harry C. J. Philips, Parliament of Western Australia, ISBN 978-1-925724-00-4.

CANADA

Foreign Voices in the House: Century of Addresses to Canada's Parliament by World Leaders, by J. Patrick Boyer, Dundurn.

Prime Ministerial Power in Canada: Its Origins under Macdonald, Laurier, and Borden, by Patrice Dutil, UBC Press.

Democracy Rising: Politics and Participation in Canada, by Bill Freeman, Dundurn

The Canadian Party System: An Analytic History, by Richard Johnston, UBC Press.

Fiscal Federalism and Equalization Policy in Canada: Political and Economic Dimensions André Lecours, Gregory P. Marchildon, M. Rose Olfert, Daniel Béland, and Haizhen Mou, University of Toronto Press.

The Constitution in a Hall of Mirrors: Canada at 150, by David E. Smith, University of Toronto Press.

Turning Parliament Inside Out: Practical Ideas for Reforming Canada's Democracy, by Kennedy Stewart, Michael D. Chong, Scott Simms, Ed Broadbent, Preston Manning, and Bob Rae, Douglas & McIntyre.

Une tradition et un droit : le Sénat et la représentation de la francophonie canadienne, by Linda Cardinal and Sébastien Grammond, Les Presses de l'Université d'Ottawa.

George Brown: La Confédération et la dualité nationale, by Jean-François Caron, Agora Canadienne.

Politically Incorrect: How Canada Lost Its Way and the Simple Path Home, by Rafe Mair, Watershed Sentinel Books.

The Senate and the People of Canada : A Counterintuitive Approach to Reform

of the Senate of Canada, by James T. McHugh, Lexington Books.

Rivals for Power: Ottawa and the Provinces: The Contentious History of the Canadian Federation, by Edward Whitcomb, James Lorimer & Company Ltd.

INDIA

Decisions from the Chair (other than questions): fifteenth Lok Sabha (June 2009 to February 2014), Lok Sabha Secretariat.

Commencement and termination of Sessions of the Central Legislative Assembly, Provisional Parliament and Lok Sabha, 2016, Lok Sabha Secretariat, Rs 80/-

Contains information on the dates of commencement and termination of sessions, time of commencement of sittings, total number of days of session and actual number of sittings in each session of the central legislative Assembly, provisional Parliament and Lok Sabha from 1921.

Rajya Sabha at work, by V.S. Rama Devi and B.G.Gujar; ed. Shumsher K. Sheriff, Rajya Sabha Secretariat, Rs 590/-

Contains information on the rules and procedure of the functioning of the Rajya Sabha.

The Speaker and the Deputy Speaker: Procedure for election and removal, 2016, Lok Sabha Secretariat, Rs 90/-

How India Votes: election, law, practice and procedure, by V.S.Rama Devi and S.K.Mendiratta, Lexis Nexis Gurgaon, Rs 2250/-, ISBN 97893503586672

Provides information on the laws, practices and procedures relating to the conduct of General Elections of the Lok Sabha and State Legislative assemblies.

Electing the President and the Vice-President, Lok Sabha Secretariat

Indian Parliamentary democracy in coalition era: its changing paradigms, by Simer Preet Kaur, Adroit Publishers, New Delhi, Rs 595/-, ISBN 9788187393382

Provides information on the coalition politics in India and its impact on Indian Parliamentary democracy.

The Indian Parliament: a critical appraisal, ed. Sudha Pai and Avinash Kumar, Orient Blackswan, Hyderabad, Rs 595/-, ISBN 9789386392435

Contains information on the Indian Parliament and its functioning and considers the current state of India's parliamentary democracy.

Council of ministers (1947–2015) names and portfolios of the members of the Union Council of ministers (from 15 August 1947 to 28 August 2015), Lok Sabha Secretariat

Parliament of India: the fifteenth Lok Sabha 2009–2014 (a study), Lok Sabha Secretariat, Rs 1250/-

Jagannath Rao Joshi in Parliament: a commemorative volume, Lok Sabha Secretariat, Rs 750/-

Provides the ideas and views of Jagannath Rao Joshi as a parliamentarian through selected speeches by him in Parliament.

Rajya Sabha at Work (Third Edition), Rajya Sabha Secreteriat

Rajya Sabha and its Secretariat: A Performance Profile, 2016, Rajya Sabha Secreteriat

NEW ZEALAND

Parliamentary practice in New Zealand (Fourth edition), by David McGee; ed. Mary Harris and David Wilson, Oratia Books, $75.00, ISBN 978-0-947506-24-7 (print); 978-0-947506-27-8 (ebook)

UNITED KINGDOM

Essays on the History of Parliamentary Procedure, in Honour of Thomas Erskine May, ed. Paul Evans, Hart Publishing, £85.00, ISBN 9781509900206

8 February 2015 marked the 200th anniversary of the birth of Thomas Erskine May. May is the most famous of the fifty holders of the office of Clerk of the House of Commons. Bringing together current and former Clerks in the House of Commons and outside experts, the contributors analyse May's profound contribution to the shaping of the modern House of Commons. The book also considers the wider context of parliamentary law and procedure, both before and after May's time.

From depression to devolution: economy and government in Wales, by Leon Gooberman, University of Wales Press, £24.99, ISBN 9781783169580

The Government and Politics of Wales, by Russell Deacon, Alison Denton, Robert Southall, Edinburgh University Press, £19.99, ISBN 9780748699759 The first textbook to explain the full range of operations in Welsh governance and politics for AS, A2 and undergraduate students, it explains Welsh devolution through the use of case studies, critical analysis and clear explanations of processes and terms. As the Welsh Assembly moves towards becoming a Welsh Parliament and the Welsh Government fashions a Welsh policy agenda, distinct from Westminster, students of British politics will learn how Welsh politics works in practice and how it is evolving.

Nothing has changed: the 2017 election diaries from the political editor of ITV Cymru Wales, by Adrian Masters, Parthian Books, £8.99, ISBN 9781912109753

Parliament and the Law (Second edition), ed. Alexander Horne and Gavin Drewry, Hart Publishing, £55.00, ISBN 9781509908714

Theo Pembroke, a clerk in the House of Lords, writes:

Parliament and the Law is a diverse collection of essays on how the law applies to the UK Parliament, that Parliament's constitutional role, and how it operates as an institution. Published with the support of the UK's Study of Parliament Group, this book has contributions from lawyers, academics and officials from both Houses of Parliament in Westminster. With a few exceptions, the essays do not focus on the law-making process. Each chapter contains a self-

standing essay, examining, the subject areas in detail with personal reflections from the authors. Altogether the book provides thorough and insightful analysis for students, academics and practitioners.

This book provides significant updates from the previous edition published in 2014. Notably, whereas the first edition was divided into three parts, this has an additional part on 'Devolution and the English Question' reflecting the adoption of the 'English Votes for English Laws' procedures of the House of Commons in 2015. This is an example of how fast-moving developments are within this field. Brexit will further stir up contentious matters in this area as previously unwritten rules and conventions are put to the test or overhauled. While the book alludes to recent Brexit-related events and issues such as numerous references to the Miller litigation, the book's editors tell the reader that they reluctantly took the decision to leave the full implications to be addressed in a future edition when perhaps there will be some resolution.

Aside from Brexit there appears to be significant appetite to test the law governing Parliament or to introduce new ways of doing things. A theme which recurs in many of the book's chapters is the tension between maintaining the status quo and respecting the role of Parliament as a unique institution, which enjoys traditional powers and in which decision-making and responsibility are spread among the members of each House, and the urge to rationalise and to increase accountability and transparency in line with other modern institutions.

The first part of the book deals with 'Privileges, Exclusive Cognisance and Conduct'—that is, the extent to which Parliament and its members are subject to the general law, and how Parliament polices itself. The privileges of Parliament are ancient rights recognised by the common law to conduct its own affairs without external interference. Freedom of speech and exclusive cognisance (the power of each House to control its own affairs) are the most important privileges today. Parliament cannot create new privileges, or seek to define existing ones, merely by asserting what it thinks those privileges should be. If it wishes, it may legislate in this area, but doing so would invite the courts to examine how such legislation should apply and so become involved in the affairs of Parliament. The issue of privilege has long been obscure and occasionally a matter of dispute between Parliament and the courts. The extent of the scope of Parliament's privileges remain unclear despite caselaw. In recent decades Parliament has commissioned two Joint Committees to consider the issue of privileges. In 1999 the first Joint Committee recommended the statutory codification of privilege, but in 2013 the second recommended against legislating about privileges unless it was necessary. The author observes that, to some, this vagueness is a benefit "displaying the same flexibility and adaptability as the British Constitution of which the law of Parliament is itself a part". But to others, this uncertainty is simply a mess and inappropriate in the modern age. He suggests that the

problem lies with Parliament itself, which simply lacks the will to make time for these complex issues.

By contrast, in recent decades Parliament has acted to tighten its regulation of the conduct of its members. In particular, the crisis of the parliamentary expenses scandal in 2009 has prompted the House of Commons to delegate the regulation of MPs' expenses to an independent statutory body, and the House of Lords to introduce statutory powers to suspend and expel members, contrary to their respective traditional notions of self-regulation. The authors of the second chapter, which focuses on the regulation of parliamentary conduct, suggest that this reflects a wider shift in the regulation of different professions, such as medicine and financial services. Parliament has often been instrumental in legislating for greater external regulation so it is perhaps appropriate that it does so for itself. There is scope for further work in this area. After the publication of this book, bullying and other inappropriate conduct by MPs have been reported leading to a cross-party Working Group which has recommended changes the Code of Conduct and the establishment of an independent investigation and appeals process.

Part 2 of the book concerns select committees and internal arrangements. It begins with a chapter on governance, which highlights the difficulty of Parliament in acting collectively because of "the lack of an accepted hierarchy or an identifiable, active leadership". The author cites 'Restoration and Renewal' of the Palace of Westminster as an example of how Parliament struggles to make corporate decisions unless pushed to a crisis.

The next chapter considers the powers and functions of select committees. Since the 1970s select committees have grown considerably in influence. They have become a useful venue for backbenchers to raise their profile but the author expresses concern that committees have strayed from their primary responsibility, namely to scrutinise the executive, to following the latest news stories in the search for the greatest 'impact'. The assertive conduct of 'celebrity chairs' risks bringing Parliament into disrepute as public figures are brought before committees to be pilloried. It has also turned attention to the ultimate source of the power of committees, namely the ancient powers of both Houses to punish those guilty of contempt. It is doubtful whether these penal powers, including fines and imprisonment, which have fallen out of use, are still exercisable or appropriate in the era of the human rights. Nonetheless they are regularly invoked to cajole reluctant witnesses to appear before committees. The author notes that one public figure came within 48 hours of challenging the "Emperor's nakedness". Since the publication of the book, Dominic Cummings, the Campaign Director of Vote Leave, the designated Leave campaign group in the EU Referendum, has refused to comply with a summons and his matter has been referred to the Committee of Privileges. There are two other chapters

in Part 2 which consider the relationship between the two Houses and the explanatory information that accompanies draft legislation.

Part 3 addresses devolution and is the shortest section of the book. As with other aspects of the British Constitution devolution has developed incrementally without any consistent strategy, and there remain uncertainties around the delineation of responsibilities. The English Votes for English Laws procedures were introduced in the House of Commons to address the problem that there is no legislature for England as there are for the devolved territories. But the author of one chapter finds that there is little evidence to suggest that the procedures have so far made any difference in outcomes in the passing of legislation.

The result of the EU referendum, however, has seriously exacerbated tensions between Parliament and the devolved legislatures. The devolution settlements were predicated on the UK remaining within the EU, and the majority of the populations of Scotland and Northern Ireland voted to remain in the EU in contrast to England and Wales. One author comments that, although Parliament is sovereign, to ignore the will of devolved legislatures would be a "reckless strategy for a government committed to union". Parliamentary select committees have called for devolved administrations to be involved in the Brexit negotiations process. In the Miller case, however, the Supreme Court clarified that the devolved legislatures do not have legislative competence in respect of EU withdrawal parallel to that of the UK Parliament, and that the process by which devolved legislatures are consulted on UK Parliament bills which affect matters within their competence is merely a convention and not justiciable.

The final part of the book entitled 'Rights, Justice and Scrutiny' examines an array of different issues, including: the relationship between Parliament and the courts; Parliament's role in authorising taxation and scrutinising public expenditure; and the scrutiny of delegated legislation. The first chapter deals with Parliament's role in ensuring that legislation complies with human rights. The Joint Committee on Human Rights (JCHR) has been instrumental in identifying technical legal difficulties in legislation and in highlighting high-profile rights issues. The authors note that reasonable people can disagree about rights which may be at odds with other rights or with political objectives. By providing a venue in which parliamentarians debate the implementation of human rights, the JCHR can provide "democratic legitimacy" to an area which would otherwise be the preserve of specialists and lawyers.

Rhodri: a political life in Wales and Westminster, by Rhodri Morgan, University of Wales Press, £25.00, ISBN 9781786831477

CONSOLIDATED INDEX TO VOLUMES 82 (2014) – 86 (2018)

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;
Austr.	Australia;
BC	British Columbia;
Can.	Canada;
HA	House of Assembly;
HC	House of Commons;
HL	House of Lords;
LA	Legislative Assembly;
LC	Legislative Council;
LS	Lok Sabha;
NA	National Assembly;
NI	Northern Ireland;
NSW	New South Wales;
N. Terr.	Northern Territory;
NZ	New Zealand;
PEI	Prince Edward Island;
Reps	House of Representatives;
RS	Rajya Sabha;
SA	South Africa;
Sask.	Saskatchewan;
Sen.	Senate;
Vict.	Victoria;
WA	Western Australia.

GEOGRAPHICAL INDEX

For replies to the annual questionnaire, privilege cases and reviews see the separate lists.

SUBJECT INDEX

Sources and authors of articles are given in brackets.

LISTS

Members of the Society

Abbreviations: R retirement, O obituary.

Privilege cases

⋆ Marks cases when the House in question took substantive action.