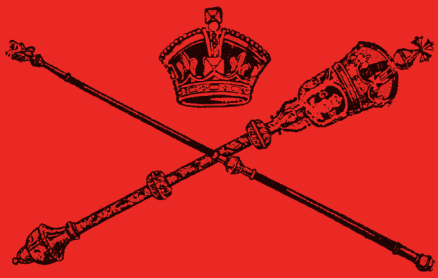

The Table

THE JOURNAL
OF THE SOCIETY OF
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IN
COMMONWEALTH PARLIAMENTS

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EDITED BY
LUKE HUSSEY

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CONTENTS

EDITORIAL

This year's edition of *The Table* sees a bumper crop of articles from colleagues from a range of jurisdictions. We begin with part 3 of Colin Lee's exploration of the evolution of the closure motion through the experiences of Archibald Milman. The article provides a detailed insight into the aftermath of the initial agreement of the UK House of Commons' agreement of its first permanent closure rule, its reformation, the politics of the day and the role of Milman (and his colleague Reginald Pelgrave) in those developments.

We then turn to a 21st century procedural development and the development of electronic voting in the Canadian House of Commons. Jeffrey LeBlanc, Clerk Assistant (House Proceedings), takes us through how that new system of voting came to be, and the practical and procedural implications for introducing it.

The next article is from Tom Wilson, Registrar of Lords' Interests in the UK House of Lords, who provides an update to an article in volume 78 of *The Table* on developments relating to conduct in the Lords, from interests to bullying and sexual misconduct. The article is illustrative of many of the challenges and considerations colleagues from across Parliaments and legislatures have been looking to address in recent years.

Our next article is a fascinating study by Colin Lee on the evolution of pay in the UK House of Commons in the late 18th and early 19th centuries. Colin returns to the lives of John Hatsell and John Ley, the way they generated an income as a result of their position as Clerk of the House and Deputy Clerk, and the challenges more junior staff faced in finding financial stability. The article also considers the developments following the Act of Union between Great Britain and Ireland in 1801 and the tensions which arose in the Clerk's Department in the House of Commons as it looked for a way to handle Irish parliamentary business.

William Wong (Senior Parliamentary Counsel) and Christopher Tyrell (Senior Clerk, Committees) from the Ontario Legislative Assembly have shared an article on the Laurentian University Inquiry and the events surrounding the Legislative Assembly's defence of the Speaker's Warrants issued requesting documents from the President and Chair of the Board of Governors of the University when challenged in the courts. William and Christopher consider the litigation positions of the Assembly and the University, and the implications of the subsequent ruling from the Court.

The penultimate article is from Michael Torrance, a clerk in the Journal Office in the UK House of Lords who considers the process of legislative consent in the United Kingdom and the recent strain that process has been under. The article sets out the devolution arrangements, describes the legislative consent process (and how it operated before and after thae UK's departure from the EU), and looks at the proposals for reform.

Our final article is by Daryl Slatter (Principal Research Adviser) and Gabor Hellyer (Principal Clerk of Committees) from the New Zealand House of Representatives. They provide an update on a recent project in the House of Representatives to give select committees improved access to research and advisory services.

This edition also includes the usual interesting updates from jurisdictions and the comparative study on the powers of committees to compel information or participation from governments.

As ever, I am grateful to all those who have found the time to prepare and contribute these articles, updates and reviews from the Commonwealth and hope it is as informative and useful to you as it has been to me.

Finally, this edition marks my final as editor. I am grateful to everyone who has contributed to the many articles, comparative studies, miscellaneous notes and more over the last five years, and to all involved in this journal's production. I look forward to future editions.

MEMBERS OF THE SOCIETY

Australia

House of Representatives

Catherine Cornish (Deputy Clerk) retired, and **Peter Banson** was promoted to Deputy Clerk in March 2021**. Russell** Chafer became Clerk Assistant (Committees) and **Peggy Danaee** was appointed to Clerk Assistant (Procedure). **Dr Glenn Worthington** became Clerk Assistant (Table).

New South Wales Legislative Assembly

On 28 May 2021 **Leslie Gonye**, Deputy Clerk of the Legislative Assembly, commenced long service leave ahead of his formal retirement in 2023—taking him to 45 years' service.

Mr Gonye has had a long and distinguished career with the Legislative Assembly, starting in 1978 as an Assistant Parliamentary Officer and working his way through positions including Clerk to the Joint Standing Committee on Road Safety (1985); Second Clerk-Assistant (and Clerk-at-the-Table, 1987); Clerk-Assistant, Table; Clerk-Assistant, Committees; and Deputy Clerk in 2017. He was also the Serjeant-at-Arms from 2011 to 2020.

Career highlights include leading reviews to improve staff management for an expanded committee system; ongoing contributions to the evolution of Legislative Assembly practice and procedure; serving as one of only four Clerks-at-the-Table during the hung House of the 50th Parliament; clerking the Select Committee on the Tamworth Tourist Information Centre Bill, a private bill; and being seconded to NSW Government Protocol as an Escort Officer for the Government's official visitors programme at the 2000 Paralympic Games held in Sydney. Mr Gonye is also a very keen supporter and active member of the Australia and New Zealand Association of Clerks-at-the-Table, holding roles including Auditor, Public Officer, Vice President and then President for 2020.

On 12 May 2021 the Speaker made a statement to the House in relation to Mr Gonye's retirement followed by supporting remarks from the Premier and the Leader of the Opposition. At the time of his retirement Mr Gonye was the longest serving Table Officer of the Clerks-at-the-Table in the Australian jurisdiction.

Over 2020 and 2021, following organisational changes in the Legislative Assembly and the retirement of Mr Gonye, **Carly Maxwell** was appointed Deputy Clerk, **Simon Johnston** was appointed Clerk-Assistant, House and Procedure, and **Jonathan Elliott** was appointed Clerk-Assistant, Scrutiny and Engagement.

Northern Territory Legislative Assembly

Michael Tatham, former Clerk of the Legislative Assembly of the Northern Territory, retired in July 2021.

Canada

House of Commons

Patrice Martin retired as Deputy Principal Clerk in March 2021. **Jeffrey LeBlanc** was assigned as Principal Clerk in the Journals Branch. **Jean-Philippe Brochu** was assigned as Principal Clerk at the Legislative Unit within the Committees and Legislatives Services Directorate. **Scott Lemoine** was appointed as an acting Principal Clerk and was assigned to the Parliamentary Information and Publications Directorate.

André Gagnon retired from his role as Deputy Clerk, Procedure, on 23 June 2021. Over a long career at the House of Commons, Mr. Gagnon served 24 chair occupants as a table officer. During his time as Deputy Clerk, he was instrumental in the publication of House of Commons Procedure and Practice, 3rd edition, and oversaw the House's move from Centre Block to the temporary Chamber in West Block.

On 12 October 2021, **Eric Janse** assumed the role of Deputy Clerk,

Procedure, after 20 years of service as a Table Officer.

Also in October, **Ian McDonald** was appointed as a Clerk Assistant assigned to the Committees and Legislative Services Directorate. In addition, **Pierre Rodrigue**, who was recently a Clerk Assistant, retired after 26 years in Procedural Services, and **Jeffrey LeBlanc** became Acting Clerk Assistant assigned to House Proceedings, while continuing his responsibilities with the Journals Branch.

Senate

Blair Armitage, Clerk Assistant, Committees Directorate, retired on 28 October 2021. **Shaila Anwar**, formerly Principal Clerk, Committees Directorate, became Clerk Assistant, Committees Directorate.

British Columbia Legislative Assembly

Susan Sourial, Clerk Assistant, Committees and Interparliamentary Relations, retired on 6 December 2021. She joined the Legislative Assembly in 2011, following 22 years with the Legislative Assembly of Ontario. Susan also served as acting Deputy Clerk on a secondment to the Yukon Legislative Assembly and was an assistant editor of the fifth edition of Parliamentary Practice in British Columbia.

Prince Edward Island Legislative Assembly

Emily Doiron was promoted to Deputy Clerk (having previously been Clerk Assistant – Committees, Journals and House Operations).

Cyprus House of Representatives

Socrates Socratous retired as Secretary General of the House of Representatives of the Republic of Cyprus in May 2021. **Tassoula Jeronymides** was appointed to succeed him.

Falkland Islands Legislative Assembly

Cherie Clifford, Clerk of the Assembly, was awarded the Falkland Islands Queen's Badge of Honour and Certificate for services to Girl Guiding.

India

Rajya Sabha

P.C. Mody became the Secretary-General of the Rajya Sabha on 12 November 2021.

Punjab Legislative Assembly

Shashi Lakhanpal Mishra retired on 31 March 2021. **Surinder Pal** became

Secretary to the Punjab Legislative Assembly on 5 April 2021.

Jamaica Parliament

Valrie Curtis, former Deputy Clerk to the Houses, was promoted to the position of Clerk to the Houses following the resignation of **Heather Cooke** in July 2021.

States of Jersey

Lisa Hart was appointed Greffier following **Mark Egan's** departure from the role in May 2021.

Kenya National Assembly

Jeremiah Walusala Ndombi, Deputy Clerk, was awarded the Order of the Moran of the Burning Spear (MBS) in December 2021.

Tanzania National Assembly

Nenelwa J. Mwihambi has been appointed the Clerk of the National Assembly.

United Kingdom

House of Commons

Crispin Poyser, formerly Clerk of the Overseas Office and Secretary of SOCATT, retired in November 2021.

Mark Hutton was made a Companion of the Order of the Bath (CB) in the New Year's Honours List 2022.

House of Lords

Sir Ed Ollard KCB retired as Clerk of the Parliaments in April 2021. He was succeeded by **Simon Burton**. **Chloe Mawson** was appointed Clerk Assistant, and **Chris Johnson** became Clerk of the Journals.

Sir Ed's successor as Clerk of the Parliaments, Simon Burton, writes of him: Ed joined the House in 1983 as a Fast Stream clerk and quickly rose through the ranks. During his early career he worked in the Committee Office (drafting a memorable EC scrutiny report on Sewage Sludge among others) and in the House's Judicial Office (in the days before the Supreme Court, when the House of Lords was still the final court of appeal). In 1992 he went on secondment to the Cabinet Office where he took on the role of Private Secretary to the Leader of the House and the Government Chief Whip. This was a tumultuous political period in which to undertake the role, and Ed provided expert advice to the Government on how to navigate and manage the parliamentary discussions relating to the Maastricht Treaty. Following his return to the House, Ed undertook a number of senior roles across both procedural and corporate

functions, including Clerk of Public Bills (1994–2000), Establishment Officer (overseeing the HR Department) (2000–2003), the House's first Finance Director (2003–2007), Clerk of Committees (2007-2011) and Clerk Assistant (2011–2017). In 2017, he became the 64th Clerk of the Parliaments, leading the House of Lords Administration until his retirement in April 2021.

Ed's service in the House spanned a period of great change. He joined in the year that the House of Lords was first televised, became Clerk of the Parliaments two days before Prime Minister Theresa May called the Election which lost her party its majority, and left at a time when the House was carrying out its functions partly online in the 'hybrid House'. Ed himself was a great advocate for change, and over his career he led a number of developments across the House. Ed brought a focus on greater diversity to the workforce and on work to ensure all colleagues felt included. He took decisive action to tackle issues around bullying and harassment that came to light with the #metoo movement and he was effective at calling out misconduct and steadfast in defence of standards in public life and the House's reputation. When the House voted to refer back its own Conduct Committee's sanction of a member for sexual harassment, Ed publicly expressed his "dismay". This voiced what many staff felt, it showed leadership and a mature relationship with members, and it developed our understanding of impartiality: we are not impartial as between right and wrong. He also delivered significant changes to the House's printing arrangements and moves towards greater digital publishing. Ed was also instrumental in the development of the Restoration and Renewal (of the Palace of Westminster) Programme over several years and helped to lay the essential groundwork for the development of the programme of works which will need to be undertaken in the decades to come.

As Clerk of the Parliaments, Ed drove a particular focus on inclusion and diversity, and oversaw the House's response to reports on the culture of the House of Lords, alongside implementing various measures to make the Administration more unified and adaptable. He was also the chief procedural adviser when the House required unimpeachable counsel as it responded to some of the most contentious issues of the modern parliamentary era, providing politically impartial advice to Members during the House's consideration of Brexit legislation and during the disputed Prorogation of Parliament in 2019. Ed's focus on business need was relentless, his memory for precedents was uncanny, and his nose for the weak point in an argument or business case was unerring. He wore his learning lightly but he had a deep understanding of the political context of his work.

Perhaps Ed's most significant professional achievement though was the way in which he led the House's response during the COVID-19 pandemic. During the first lockdown in April 2020, he oversaw the development of the House's

first ever fully virtual proceedings (established within around a fortnight), before then leading the development of the 'hybrid House' which began in June 2020, with remote voting introduced a week later. Ed himself volunteered for many of the in-person duties at the Table, cycling in every day, and kept a close eye on the physical quorum of three Members. The pace and scale of the technological and procedural changes involved had never been seen here before, and Ed was intricately involved in every step, working closely with Members and staff to ensure its success. At the same time, he also oversaw the House's wider response to the pandemic, helping to ensure the continued safety and security of all those working on site. He was proud of the way the House responded to the pandemic—both in terms of speed of change but also the way in which teams worked together in a truly collaborative and effective way. This built on Ed's previous work to encourage a more unified and adaptable Administration.

Ed is deeply reserved, modest and self-deprecating and tends to deflect any praise of himself, and direct it towards his colleagues. However, his merits were duly recognised during tributes in the House when he retired. The Leader of the House, Baroness Evans of Bowes Park, highlighted his "authoritative leadership to the staff of the House". Baroness Smith of Basildon, the Labour Leader, remarked that she "was never in any doubt that he had the interests of [the] House, its Members, and its staff at heart".

During a retirement talk with staff Ed was asked what his greatest achievement had been, and his answer was that his greatest achievement had been to marry Mary, the other fast-stream clerk who started in the House on the same day as him in 1983. Ed is now enjoying a happy retirement with Mary and their two daughters, including spending time watching his beloved Charlton Athletic Football Club. He was appointed Knight Commander of the Order of the Bath in the 2021 Birthday Honours for services to Parliament, a thoroughly well-earned honour.

ARCHIBALD MILMAN AND THE EVOLUTION OF THE CLOSURE—PART 3: 1885–1894

COLIN LEE
Managing Director, Select Committee Team, UK House of Commons

Introduction

On 13 November 1886, Archibald Milman, the Clerk Assistant of the United Kingdom House of Commons, wrote to Lord Randolph Churchill, the leader of the House of Commons, to give advice on how best to construct a package of procedural reforms with "a fair prospect of an advantageous result". Milman argued that an effective closure rule lay at the heart of such proposals, as the best way to "frustrate the very objects of obstructers by threatening them with the loss of their opportunity of advocating their strong points" and suggested that the passage of a new closure rule, alongside another related reform, would mean that "further reform will be comparatively easy".[1] Four years earlier, in 1882, the House had agreed its first permanent closure rule, but that rule failed for the purposes for which it was designed.[2] This article examines the response to that failure—how proposals for a reformed and more effective closure were first mooted within Liberal ranks, how the Conservatives were converted to the case for closure under Churchill's leadership, how Milman and his colleague Reginald Palgrave played an important role in preparing an effective rule, how it was passed, and how it operated up to 1894.

Compared with the great procedural dramas of 1881 of which the Speaker's first use of the closure was the centrepiece,[3] and the programme of procedural reform embarked upon by William Gladstone as prime minister in 1882, the procedural reforms of 1887 and 1888, and the new closure rule which lay at their heart, have been relatively neglected by historians. There are some brief accounts of the debates which took place in 1887 on the new closure rule, by Josef Redlich, in his survey of the history of parliamentary procedure up to

[1] Cambridge University Library (hereafter CUL), Add MS 9248/17/2012, Milman to Churchill, 13 Nov. 1886.

[2] C Lee, "Archibald Milman and the Evolution of the Closure—Part 2:1882–1885", in *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments*, Vol 89 (2021), pp 5–55 (hereafter "Part 2").

[3] On which see C Lee, "Archibald Milman and the Evolution of the Closure—Part 1: Origins to 1881", in *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments*, Vol 88 (2020), pp 5–54 (hereafter "Part 1").

1902,[4] by Sir Edward Fellowes,[5] and more recently by Michael Koß, whose account focuses on the parallels between the arguments used in 1882 and 1887, and who sees Irish obstruction as the common driver of reform in both cases.[6]

This study draws upon a broad range of archival sources to which those who have previously examined this stage in the evolution of the closure did not have access. In addition to those noted previously,[7] this article uses the papers of successive Conservative leaders of the House—Sir Michael Hicks Beach,[8] Lord Randolph Churchill,[9] and William Henry Smith[10]—as well as those of the Conservative Chief Whip, Aretas Akers-Douglas,[11] and the marquess of Hartington,[12] together with Cabinet papers at the National Archives.[13] It also uses some printed memoranda prepared by Milman and Palgrave and held in the Journal Office of the House of Commons.[14] Alongside the relevant printed writings of Milman,[15] the account also uses the parliamentary sketches of Henry Lucy,[16] an important account of life as a backbench member,[17] and

4 J Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form* (London, 1903, 3 vols), I.176–180.

5 Sir Edward Fellowes, *History of the Standing Orders of the House of Commons relating to Public Business, 1833–1935*, edited by Simon Patrick, pp 71–73.

6 M Koß, *Parliaments in Time: The Evolution of Legislative Democracy in Western Europe, 1866–2015* (Oxford, 2018), pp 121–125. See also M Koß, "The Origins of Parliamentary Agenda Control: A Comparative Process Tracing Analysis", *Western European Politics* (2015), pp 1062–1085, at pp 1070–1075.

7 "Part 1", pp 7–8.

8 Gloucestershire Archives (hereafter GA), D2455X, Ministerial and Parliamentary Papers of Sir Michael Hicks Beach.

9 CUL, Add Ms 9248, Papers of Lord Randolph Churchill.

10 Reading University Special Collections (hereafter RUSC), HAM, Papers of W H Smith.

11 Kent History and Library Centre (hereafter KHLC), U564, Papers of Aretas Akers-Douglas.

12 Devonshire MSS, Chatsworth (hereafter DMC), DF6, CS8 and CS12, Correspondence of Spencer Compton Cavendish, 8th Duke of Devonshire.

13 The National Archives (hereafter TNA), CAB 37/18, Cabinet Papers, 1886.

14 House of Commons, Papers of the Clerk of the Journals (hereafter PCJ), Miscellaneous Precedents and Memoranda on Procedure (hereafter Miscellaneous Precedents), 4 volumes.

15 A Milman, *A Selection from the Decisions from the Chair, Illustrative of the Procedure of the House, 1886–92* …, January 1893 (hereafter *Decisions, 1886–92*); A Milman, *A Selection from the Decisions from the Chair, Illustrative of the Procedure of the House, Drawn Mainly from the Session of 1893–4,* March 1894 (hereafter *Decisions, 1893–94*); [A Milman], "The Peril of Parliament", *Quarterly Review*, Vol 178 (1894) (hereafter "Peril of Parliament"), pp 263–88; [A Milman], "Parliamentary Procedure *versus* Obstruction", *Quarterly Review*, Vol 178, 1894 (hereafter "Parliamentary Procedure *versus* Obstruction"), pp 486–503; *The New Volumes of the Encyclopædia Britannica constituting in combination with the existing volumes of the Ninth Edition the Tenth Edition … Volume 31* (London, 1902) (hereafter *Encyclopædia Britannica*), entry for Parliament written by Milman at pp 477–483.

16 H Lucy, *A Diary of the Salisbury Parliament, 1886–1892* (London, 1892).

17 R Temple, *Life in Parliament being the experience of a Member in the House of Commons from 1886 to 1892 inclusive* (London, 1893).

contemporary newspaper reports.[18]

"A household tool for daily use": ideas for reform during Gladstone's second administration

Although Gladstone and his cabinet had devoted enormous energy and much parliamentary time to the introduction of a closure rule in 1882, the rule itself represented a compromise, and one driven principally by Gladstone's own reluctance to contemplate a more effective closure.[19] The requirement for 200 members to vote in favour of the closure for it to be effective in most circumstances and the dependence upon the initiative of the Speaker were recognised as rendering it a weapon that would hardly ever be deployed.[20] Pressure for reform soon started to mount within Liberal ranks. John Morley, newly elected as an MP but already prominent as a journalist, told his constituency party in late March 1883 that, in order for the Liberal Party to deliver on its election promises, "the closure, instead of being an engine rarely used, would have to be transformed into a household tool for daily use".[21]

Ideas for one means of achieving this arose in part from the House's experience with private members' bills, which often fell victim to the early scheduled end time for opposed business on Wednesdays. In February 1880, one Liberal MP, Sir Charles Forster, had proposed that, on Wednesdays, "there should be a new Standing Order that at 20 minutes to 6 the question should be put without further debate".[22] In 1883, one newspaper suggested that the closure might be used to prevent the talking out of private members' bills on Wednesdays.[23] In June 1884, a Liberal, James Stevenson, proposed that, when a stage of a private member's bill was set down as first order of the day on a Wednesday and debate on that stage had started by 2 p.m., the questions necessary to conclude proceedings on that stage would be put automatically at 5 p.m.[24] The leader of the opposition, Sir Stafford Northcote, looked upon the proposal with "considerable alarm" as the thin end of a wedge: "if we once admit this principle, and say that after a certain number of hours' debate there is to be an absolute *clôture* in regard to Bills of private Members, we shall very soon have the same proposal made with regard to other Business".[25] Churchill

18 References to *The Times* are via The Times Digital Archive. All other newspapers have been accessed via the British Newspaper Archive.

19 "Part 2", pp 52–53.

20 "Part 2", pp 45–48, 52–53.

21 *Northern Echo*, 30 Mar. 1883, p 4.

22 HC Deb, 27 Feb. 1880, col 1606.

23 *Morning Post*, 27 Aug. 1883, p 4.

24 HC Deb, 17 June 1884, cols 658–659.

25 HC Deb, 17 June 1884, cols 675–676.

characteristically adopted a position at odds with his frontbench, expressing sympathy for the proposal.[26] Gladstone indicated that the government would remain neutral, but expressed personal sympathy for the idea embodied in the proposal being tried out on an experimental basis.[27] Although the proposal made no progress, Gladstone's speech was seen as possibly heralding a government move towards an automatic or "self-acting" closure at a set time.[28]

Soon after the debate on Stevenson's motion, Edward Hamilton, Gladstone's private secretary, discussed with the editor of the periodical *Nineteenth Century* his idea for "a more simple and workable form of closure for (at any rate) morning sittings &c".[29] Late in July, a pamphlet was published anonymously referring to the need for a "time clôture".[30] In September, *Nineteenth Century* published the article inspired by Hamilton's meeting with the editor.[31] It argued that the House needed "to resolve to apply the *clôture* in more drastic fashion than has hitherto been contemplated" and recommended that the question on the main business before the House on the day of any morning sitting should be put automatically at a particular hour.[32]

"Some extension of the power of closing debate": Lord Randolph Churchill's first attempt

In 1885, it was understood that a General Election would take place as soon the register of the new expanded electorate was ready. In June that year, Gladstone used the opportunity of a defeat in the Commons on the Budget, when the Home Rulers voted with the Conservatives, to resign. The marquess of Salisbury formed what was in effect a caretaker administration, pending the autumn election. Sir Stafford Northcote had led the Conservative opposition in the Commons, but was seen as an increasingly marginal figure. In the spring of 1885, Lucy had predicted that, if the Conservatives won an election,

> "Sir Stafford would be gently but firmly transported to the refuge of political failures—the House of Lords; and Lord Randolph Churchill, with perhaps an interval of Sir Michael Hicks-Beach, would lead the House of Commons,

26 HC Deb, 17 June 1884, cols 669–670.

27 HC Deb, 17 June 1884, cols 661–664.

28 *Globe*, 18 June 1884, pp 1, 3.

29 D W R Bahlman, *The Diary of Sir Edward Walter Hamilton 1880–1885* (Oxford, 1972; 2 vols), p 663. There is continuous pagination across the two volumes and subsequent references take the form HD.page.

30 *London Evening Standard*, 28 July 1884, p 7.

31 J Guinness Rogers, "Chatter *versus* Work in Parliament", *Nineteenth Century* (1884), pp 396–411; HD.680.

32 "Chatter *versus* Work", pp 409–410.

and would really be captain of the Conservative party."[33]

As part of the formation of Salisbury's administration, and as Lucy had predicted, Northcote was forced into the upper house with the title of Lord Iddlesleigh; Sir Michael Hicks Beach became chancellor of the exchequer and leader of the House, but with limited authority. Churchill had made himself "indispensable" to the Tory leadership,[34] and although he was given the post of secretary of state for India, there was no doubting his dominance in domestic policy, including procedure.

The general election of November 1885 election saw the Conservatives weakened, and made it likely that the government would not last much beyond the start of the next session. Churchill was nevertheless keen to pursue procedural reform. One reason for this was his conviction, expressed in January 1884, that a Conservative administration would face "an obstructive combination more ferocious than anything the H of Cms has ever dreamt of", so that that there was a risk that a "conservative govt will be paralysed before it has had time to learn to walk".[35] Hamilton noted a similar point the following month: "the more the Tories play an obstructing game, the greater will be the temptation, when sides are changed, for the Liberals in opposition to pay the Tories out and moreover pay off their scores with interest".[36] Arthur Balfour, Churchill's Fourth Party ally until the autumn of 1882, had also observed in 1881 that a closure might eventually be "of advantage to the Conservative Party on the broad ground that the obstructives will always oppose *our* legislation".[37]

Hicks Beach, as leader, "questioned the policy of putting procedure first",[38] but Churchill nevertheless prepared a memorandum for the Cabinet "on the necessity for, and nature of, certain further Reforms of the House of Commons Procedure", probably devised with assistance from his Party in Fourth Party colleague John Gorst. Churchill first noted "the evils produced by the present system of late sittings, which has increased, is increasing, and must be diminished". As a solution for this problem, Churchill proposed fixed hours for the sittings of the House. He envisaged that the House would sit at 2 p.m. on Monday, Tuesday, Thursday and Friday, be suspended from 7.30 p.m. to 9 p.m. and then rise at midnight. On Wednesday, the House should sit from 12 noon to 7 p.m. without a suspension. Churchill then argued that "In the

33 *Gladstone Parliament*, p 454.

34 HD.671.

35 R Rhodes James, *Lord Randolph Churchill* (London, 1959), p 135.

36 HD.567

37 *Salisbury–Balfour Correspondence: Letters exchanged between the Third Marquess of Salisbury and his nephew Arthur James Balfour 1869–1892* (Hertfordshire Record Society, 1988) (hereafter *Salisbury–Balfour Correspondence*), p 62.

38 GA, D 2455/X4/1/1/21, transcript of Hicks Beach to Churchill, 18 Dec. 1885.

event of any alteration of the hours of business providing a regular hour for the rising of the House, some extension of the power of closing debate becomes, obviously, consequential and inevitable".[39]

Churchill seems initially to have proposed that the closing power would be automatically available at nine set times each sitting week, just before each time for suspension and for the end of each sitting. Hicks Beach was sceptical about whether the closure could be operable in an automatic form:

> "The cloture before 7 & 12. I think you must in some way limit the occasions on which it could be applied; or else you would have bills & motions, particularly those of 2nd rate importance, rushed through after (perhaps) 5 minutes debate by a pre-arranged whip. A government might suffer from doing this, & therefore might not try it: but private members would. When one subject does not require 5 minutes talk, and another might be completely discussed in 5 days, it is most difficult to frame".

Hicks Beach suggested the need for "some check", proposing the idea that it might only be "applicable on the motion of a Minister". He also reminded Churchill of the problems he would face with any proposal for closure "remembering how it was *the* proposal which was specially fought by our side".[40]

The revised memorandum contained a new proposal: 15 minutes before the hour appointed for suspension or closing of a sitting, the Chair was to put the question to adjourn the debate and, if that question was then negatived, the question before the House or Committee was to be put forthwith automatically.[41] This proposal for a closure being triggered by the outcome of a vote on an adjournment motion had echoes of suggestions made to procedure committees in 1848 and 1878.[42] Hicks Beach replied to the new draft on Christmas Day: "I think your new proposal for closing is an improvement on the former one: but the subject is too big to discuss in a note".[43]

An exploratory discussion on aspects of Churchill's memorandum took place in cabinet on 2 January, but the proposal on automatic closure was not considered. The next day, Salisbury wrote to Churchill to remove any illusions he might have about the prospects for progress:

> "I did not say much about cloture in cabinet yesterday, as it was not directly before us, but on thinking the matter over, it has occurred to me that you

39 TNA, CAB 37/18/19, undated memorandum by Churchill, probably finalised by 24 Dec. 1885 and printed before Cabinet meeting on 2 Jan. 1886.

40 GA, D2455/X4/1//21, transcript of Hicks Beach to Churchill, 21 Dec. 1885; emphasis in original.

41 TNA, CAB 37/18/19, p 4.

42 "Part 1", pp 11, 16.

43 CUL, Add MS 9248/10/1194, Hicks Beach to Churchill, 25 Dec. 1885.

> might conclude from my reserve that I had changed my opinion. I write a line therefore, to say that my objection to the cloture clause is undiminished and very strong. I think it will tend to pass a number of mischievous private members bills: & that it does not fit well with our previous course of conduct."[44]

Churchill wrote to Smith that day: "Lord Salisbury is so strong agst. any extension of the cloture that I must abandon it".[45] The procedural proposals published by Hicks Beach on 1 February provided for the sitting hours proposed by Churchill, except with 12.30 pm replacing midnight, but, as Harcourt was later to note, the "proposals entirely excluded the question of Closure".[46]

Despite abandoning the idea as government policy, Churchill continued to explore options for the closure, and did so in a way that was to prove of lasting significance. He approached Reginald Palgrave, the Clerk Assistant, to discuss the idea, and they collaborated on preparing a new draft.[47] Palgrave evidently shared the proposal with Milman, then the Second Clerk Assistant, because Palgrave wrote to Churchill asking for a meeting on Monday 11 January and added: "With your permission, I shall bring Milman with me: for the proposal to close the sitting of the House at 12.30 is full of difficulty as it at present stands in our paper".[48] It seems that Palgrave and Milman were able to present some proposals of their own at the meeting, paving the way for subsequent collaboration between Churchill and the two clerks. Palgrave wrote that "Both Milman & myself are deeply indebted to you for allowing us, at least, the opportunity of trying to work with & for you, & for the extreme consideration, & if I may say so, understandingness, with which you have met our attempt."[49]

"An overpowering resistance": the 1886 Procedure Committee and the closure

Soon after the Conservatives published their procedural proposals shorn of any reference to the closure, the government fell, allowing Gladstone to form a new administration with support from the Irish Home Rulers. Even before

44 CUL, Add Ms 9248/11/1241a, Salisbury to Churchill, 3 Jan. 1886.

45 RUSC, HAM PS9/100, Churchill to Smith, 3 Jan. 1886.

46 TNA, CAB 37/18/48, Cabinet paper, 3 Nov. 1886, pp 1–3; BL, Add MS 44200, fos 186–94, Harcourt Memorandum for Gladstone, Dec. 1886.

47 Churchill probably eschewed the advice of the Clerk of the House because he saw Erskine May as too close to Gladstone: C Lee, "May on Money: Supply Proceedings and the Functions of a Legislature", in P Evans, ed, *Essays on the History of Parliamentary Procedure in Honour of Thomas Erskine May* (Oxford, 2017), pp 171–87, at p 186.

48 CUL, Add Ms 9248/11/1268, Palgrave to Churchill, 9 Jan. 1886; CUL, Add Ms 9248/11/1282, Palgrave to Churchill, 11 Jan. 1886.

49 CUL, Add Ms 9248/11/1284, Palgrave to Churchill, 12 Jan. 1886.

this happened, there had been an agreement in principle that a procedure select committee would be established.[50] Following the change of government, the marquess of Hartington, who had declined to serve in the government in view of its attitude towards Home Rule, agreed to chair the Committee.[51] He brought to the task a commitment to procedural reform which dated back to his time as leader of the opposition up to 1880 and a knowledge of the options from his close involvement in developing the closure proposals between 1880 and 1882.[52]

With Gladstone preoccupied with Home Rule, Harcourt as chancellor of the exchequer was asked to draw up proposals to be placed before the Procedure Committee. An informal committee was formed to do this, including Harcourt himself, the lord chancellor Lord Herschell, and Joseph Chamberlain. Alongside these three members of the cabinet, the committee had three backbench members—Hartington, George Goschen and Samuel Whitbread.[53] Harcourt later drew attention to the fact that this group met in Devonshire House—Hartington's London residence—in order to associate Hartington, by then supporting a Unionist administration, with all of the proposals, an interpretation Hartington contested.[54]

The proposals drawn up by the group bore a close resemblance to Churchill's plan outlined to the Conservative cabinet at the turn of the year. The sitting times and closing times were as proposed by Beach, except that the moment of interruption on Wednesdays remained as 5.45 p.m. At 5.30 p.m. on Wednesdays, and half an hour before the scheduled suspension or end time on other days, the debate was to be interrupted. Two alternative draft provisions were offered on what would happen at this time. Under the first, the question before the House was to be put automatically, and if that question was on an adjournment motion and was negatived, the question before the House prior to the moving of the adjournment motion was also to be put automatically. Under the second option, a minister alone would be able to move the closure.[55] These two proposals were subsequently replaced by one, whereby the interruption 30 minutes before the suspension or the end of the sitting allowed for "divisions on Cloture if such Cloture is moved", with no automatic putting of the question,

50 GD.xi.497.

51 GD.xi.499; *Report from the Select Committee on Parliamentary Procedure*, HC (1886–I) 186, p vii.

52 "Part 1", pp 16, 18, 24, 26, 29–30, 35, 44; "Part 2", pp 7–8, 14–15, 17, 28–29, 36–37, 43.

53 TPA, ERM/8/264, Harcourt to May, 2 Mar. 1886.

54 HC Deb, 17 Feb. 1887, col 1783; HC Deb, 21 Feb. 1887, col 254; HC Deb, 22 Feb. 1887, col 322.

55 TPA, ERM/8/261, Confidential print of motions to be moved on the Business of the House, 1 Mar. 1886.

but also no restriction on the members able to move the closure and with a decision to be reached by simple majority.[56] As Harcourt explained later, "the object of this proposal was to prevent surprise by a snap motion as everyone would have notice that the Closure might be moved at these hours and could be moved at no other".[57]

When the Devonshire House proposals were sent to Hicks Beach, he indicated opposition to many of them, and reported as much to Churchill, disregarding their resemblance to Churchill's own: "I told him [Harcourt] that I objected … to treating the sittings on Mondays, Tuesdays, Thursdays and Fridays as two sittings, instead of one sitting with a suspension of 2 hours in the middle of it". Of the proposals on closure, Hicks Beach reported to Churchill that he had told Harcourt:

> "If the clôture was to be adopted at all, it should only be at the end of each day, by notice given on the previous day by the member in charge of the Bill or motion standing 1st or 2nd on the paper for the day on which it is to be applied: the division to require a proportionate majority, as now, to ensure its application."

Perhaps assuming that Churchill's enthusiasm for closure had died with the first Salisbury administration, Hicks Beach noted: "As we have, with the Irish, a majority on the Committee, I think we may, if we choose, defeat the Cloture altogether: and I think our people would not forgive us for agreeing to it in its present bald shape."[58]

Harcourt placed the proposal for closure as agreed by the Devonshire House committee before the Procedure Committee at its second meeting on 22 March, providing for the closure to be moved at 5.30 p.m. on Wednesdays and at 6.30 p.m. and midnight on other weekdays.[59] At its meeting on 13 May, the Committee started consideration of this proposal. Harcourt found "the feeling of the Committee strongly against the proposal" and therefore conceded on the proposed opportunity for closure at the end of the morning sittings other than on Wednesdays, reducing the number of possible scheduled closures in a sitting week to five.[60] Sir Michael Hicks Beach then moved a further amendment to limit the use of the closure at the end of a sitting to the first and second orders

56 TPA, ERM/8/266, Harcourt to May, 11 Mar. 1886; TNA, CAB 37/18/48, p 4; BL, Add MS 44200, fos 186–94, Harcourt Memorandum for Gladstone, Dec. 1886.

57 BL, Add MS 44200, fos 186–94, Harcourt Memorandum for Gladstone, Dec. 1886.

58 CUL, Add Ms 9248/12/1417, Hicks Beach to Churchill, 17 Mar 1886.

59 HC (1886–I) 186, pp vii–viii.

60 BL, Add MS 44200, fos 186–94, Harcourt Memorandum for Gladstone, Dec. 1886; CUL, Add MS 9248/17/1993, Hartington to Churchill, 10 Nov. 1886; HC Deb, 21 Feb. 1887, col 255.

of the day, which was agreed to by the Committee.[61] Hicks Beach made clear in a subsequent letter to Smith that he viewed this as still allowing a broad use of the closure power, which would not just be confined to the question before the House at the time:

> "as we interpret the limitation of its applicability to the first & second Orders or Motions, it would be applicable if effective Supply stand first or second, to any vote proposed in that Committee of Supply: or to *any* Clause or amendment in Committee on a Bill standing in that position. The same would apply to discussions on Report of Supply or of a Bill. The effect of the limitation is therefore only to prevent the application of the Cloture to the main discussion on some new subject, which no one could have anticipated would be discussed at all: surely a very reasonable limitation."[62]

The Committee then moved on to the question of the majority for closure, which had been at the heart of much of the dispute around the 1882 rule.[63] None of the proposals for automatic or scheduled closure prepared by Churchill and then by the Devonshire House committee specified a majority required for the closure, relying on a simple majority. For Hicks Beach, this was not acceptable. He told Smith on the eve of the critical meeting of the Procedure Committee:

> "We must insist on a proportionate majority: if it is not agreed to, we must vote against the cloture altogether. Three-fifths is insufficient. I intended to propose the existing limitation: but I quite admit that there is much to be said in favour of a simpler plan: & therefore, if Hartington & his friends will accept 2/3rds, that might do."[64]

The reference to Hartington and his friends reflected the changing political context in which the Committee was now operating. A number of the Liberal members of the Committee were now politically aligned with the Conservatives on Irish Home Rule, and faced the prospect of fighting the next General Election against Liberal opponents. There was now a large natural majority within the Committee against the Government on the closure, composed of Conservatives, some of the Liberal Unionists and the Irish Home Rule party representatives, and Hicks Beach won a vote to insert a requirement for a two-thirds majority.[65]

At this point, faced with what he later termed "an overpowering resistance" of Conservatives, Liberal Unionists and Home Rule members and in a "wretched

61 HC (1886–I) 186, pp xvi–xvii; CUL, Add MS 9248/17/1993, Hartington to Churchill, 10 Nov. 1886; HC Deb, 21 Feb. 1887, col 255.

62 RUSC, HAM PS9/145, Hicks Beach to Smith, 16 May 1886; emphasis in original.

63 "Part 2", pp 26–27, 29–31, 32–34, 40–43.

64 RUSC, HAM PS9/145, Hicks Beach to Smith, 16 May 1886.

65 HC (1886–I) 186, pp xviii–xix; CUL, Add MS 9248/17/1993, Hartington to Churchill, 10 Nov. 1886.

minority", Harcourt effectively abandoned the proposed closure rule altogether, voting against the relevant resolution "as a protest".[66] He later said that he "told the committee I could never be a party to anything of the kind, to allowing one-third of the House of Commons to be practically masters of its time, business, and progress".[67] As a Conservative member of the Committee later recollected, "when we had arrived at a conclusion on the Clôture Resolution, [Harcourt] flung up his brief and declined to take any further interest in the proceedings".[68]

"Nearly intolerable": the 1886 autumn session and the Conservative conversion to closure

Little more than seven months after the Report of the Procedure Committee, a Conservative-led administration was proposing the introduction of a new and wide-ranging closure rule. Some accounts of the consideration of the 1887 rule place the debates in the context of the determination by the Unionist government to introduce new coercive legislation for Ireland, and Koß argues that the measure arose from concerns about "Irish obstruction".[69] This section traces the change of the Conservative position on closure in the late summer and autumn of 1886, and suggests a different story. The change certainly arose from concerns about obstruction, but it was not obstruction from only one quarter. Moreover, the decision to commit to procedural reforms with the closure as their centrepiece predated the decision to introduce new coercive legislation for Ireland, and did not result from it.

In the general election that followed the defeat of the Home Rule Bill, there was an electoral pact between the Conservatives and the Liberal Unionists who had voted against the Bill, under Hartington's leadership. The Conservatives were the largest party, with 317 MPs, and the Liberal Unionists had 74. Gladstone's Liberals had 191 MPs, and there were 94 Parnellites. Hartington declined Salisbury's proposal that he assume the premiership, and indeed declined to take ministerial office, but promised support from the backbenches.[70] The administration formed in consequence was seen as weak. Salisbury reluctantly gave the post of foreign secretary to Iddlesleigh. The prime minister wanted

66 HC (1886–I) 186, p xix; BL, Add MS 44200, fos 186–94, Harcourt Memorandum for Gladstone, Dec. 1886; HC Deb, 21 Feb. 1887, col 255; CUL, Add MS 9248/17/1993, Hartington to Churchill, 10 Nov. 1886.

67 *The Times*, 4 Nov. 1886, p 6.

68 HC Deb, 21 Feb. 1887, col 267.

69 M Koß, *Parliaments in Time*, p 122. The speech that Koß cites in specific support of his argument, by W H Smith, refers to obstruction generally and makes no reference to the national or other origins of obstruction: HC Deb, 21 Feb. 1887, cols 186–190.

70 A Roberts, *Salisbury: Victorian Titan* (London, 1999), pp 392–393; Lucy, *Salisbury Parliament*, pp 3–4.

Hicks Beach to resume leadership of the House, but Hicks Beach insisted that the post and the chancellorship should go to Churchill because "the Leader in fact should be the Leader in name". Churchill was felt to have earned his role as leader of the House and chancellor of the exchequer for his role as "the standard-bearer in the electoral battle just won", but it was assumed that his relationship with Salisbury would not be an easy one.[71] Hicks Beach himself accepted the post of chief secretary in Ireland.

Churchill was now in a stronger position to pursue the reform ideas he had promoted during Salisbury's short-lived first administration, and saw procedural changes as a means to strengthen the Unionist alliance by developing a programme that could be supported by Hartington and Chamberlain. On 5 August 1886, Churchill had breakfast with Chamberlain and reported his discussion as follows: "As for procedure, he says it will be an admirable occupation for next February".[72] However, while Churchill seemed likely to gain support from Hartington and Chamberlain for proposals on the closure, he must also have been aware that most of the members of Salisbury's cabinet, including its head, still opposed the closure.

Before Churchill could turn to planning for the first full session of the new administration, he had to navigate a short autumn session for the passage of the Estimates.[73] Gladstone and the Parnellites saw delay as a way to secure clarification from the new government on its policy for Ireland, and together they ensured that the debate on the Address alone lasted for 11 days, leading ministers to realise their hopes to conclude the Session by early September would be dashed.[74] In the course of this Session Churchill was, in Roy Foster's perceptive words "forced to face many of the inconsistencies of his own past career in parliament".[75] Much of Churchill's destructive impact on Gladstone's second administration between 1880 and 1885 arose from his ability to forge obstructive alliances with Parnellites, and sometimes even radicals within Gladstonian ranks.[76] He nevertheless seemed dismayed that the radicals on the Liberal benches and Gladstone's own front bench were as willing to engage

71 Roberts, *Salisbury*, pp 392–394; Lady Victoria Hicks Beach, *Life of Sir Michael Hicks Beach (Earl St. Aldwyn)* (2 vols, London, 1932), I.273–276; R F Foster, *Lord Randolph Churchill: A Political Life* (Oxford, 1981), pp 271–274; *Life in Parliament*, p 111; R Shannon, *The Age of Salisbury, 1881–1902: Unionism and Empire* (London, 1996), pp 214–215.

72 GA, D2455/X4/1/1/20, copy of Churchill to Hicks Beach, 5 Aug. 1886.

73 For a further exploration of the circumstances of this Session, see C Lee, "Archibald Milman and the failure of Supply reform, 1882–1888", in *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments*, Vol 87 (2019), pp 7–34, at pp 26–27.

74 HC Deb, 19 Aug. 1886, cols 109–111; RUSC, HAM A/1099, Smith to Mrs Smith, 26 Aug. 1886.

75 Foster, *Churchill*, p 275.

76 "Part 1", pp 19–20, 42; "Part 2", pp 47–48.

in obstruction as Parnellites, so that, as he told the Queen, "the Govt. have to contend against a kind of guerrilla warfare, sustained by different bands under different chiefs".[77] In mid-September he told Hartington that he found "the recklessness and utter absence of all sense of responsibility on the part of the Opposition, their guerrilla character [and] the want of a Leader who can control most alarming".[78] The short Session established the case for more far-reaching reform than hitherto seemed possible and persuaded some of Churchill's more cautious colleagues of the need for reform: on 15 September Churchill told Salisbury of "another desperate night" in the House and went on: "You may imagine how bad was the Irish conduct when Beach's last words to me were 'I am now all for a strong clôture'."[79]

Churchill was sufficiently emboldened by his experiences in the autumn session to make his position fairly evident in public in a speech at Dartford on 2 October. He argued that "the first and chief *desideratum* in any reform of procedure must undoubtedly be a simple and effective power of closing debate". He acknowledged the dangers of the closure, but contended that they were outweighed by the dangers of obstruction, and identified "the Parnellites and the Radicals" as the source of such obstruction. He admitted that there were other reforms which ought to be considered, but emphasised that:

> "all these reforms, valuable as they are, follow naturally and easily upon the great cardinal reform which must be passed before Parliament can do any more business—the power of closing debate in the House of Commons according to the will of the majority. (Cheers.)."[80]

Churchill may have calculated that his explicit advocacy of the closure would be supported by his colleagues, not least due to the support which Hicks Beach had conveyed in the course of the short session. However, Hicks Beach wrote to Churchill on 24 October to emphasise that he still entertained doubts:

> "My action on last session's Committee, to say nothing of my own opinion, makes it impossible for me to be responsible for proposing, next year, cloture by a bare majority. But of course you have an equal right to stand by the opinions you have expressed."[81]

Churchill did not seem unduly restrained by the concerns of his colleague. On 26 October, in a speech at a Conservative party conference in Bradford, he went further in implying that his position was that of the government: "We have

77 CUL, Add Ms 9248/15/1739, draft letter from Churchill to Her Majesty, 31 Aug. 1886.

78 CUL, Add MS 9248/17/1792, copy of Churchill to Hartington, 13 Sept. 1886.

79 CUL, Add Ms 9248/15/1799, copy of Churchill to Salisbury, 15 Sept. 1886; Foster, *Churchill*, pp 275–277; *Life in Parliament*, pp 124–125; Shannon, *Age of Salisbury,* pp 219–221.

80 "The Chancellor of the Exchequer at Dartford", *The Times*, 4 Oct. 1886, p 10.

81 GA, D2455/X4/1/1/21, copy of Hicks Beach to Churchill, 24 Oct. 1886.

come to the conclusion that there must be some power adopted by Parliament for closing debate". He emphasised that the closure was "the foundation not only of any reforms of procedure, but it is the foundation and the essential and vital principle of any scheme of practical legislation for the wants of the people of this country". He admitted that he had changed his mind on the closure, but argued that he was responding to and embodying public opinion in doing so.[82] This last assessment was borne out in part by the press response to the proposal,[83] although *The Times* was critical of the lack of precision in his proposals, and questioned the appropriateness of closure by a bare majority.[84]

A few days after the speech at Bradford, Churchill was advised by the Conservative chief whip, Aretas Akers-Douglas, that his position was "frightening some of the Old boys".[85] One senior Conservative backbencher argued in a letter to Akers-Douglas that adopting the closure by bare majority would be "a terrible mistake. It would be leaping from the Frying-pan into the Fire." A closure without a proportional majority would be inconsistent with past Conservative positions and would create a weapon that might be used by a future Radical majority to endanger the constitution.[86] Churchill himself was told by another senior backbencher that:

> "There is alarm and dissatisfaction among some of your truest friends about the use our opponents may hereafter make of the clôture, if it can be enforced by a simple majority."[87]

The Conservative Henry Chaplin went public with his concerns. Chaplin cited with relish the words spoken in opposition to the closure in 1882 by Churchill and characterised the closure by a bare majority as "a formidable weapon for the despotism of a leader and the tyranny of a party". He suggested that, to support such a closure proposal, the party was being asked "to perform an acrobatic feat, a political somersault of such dimensions as the party had never attempted without disaster before".[88]

The "extraordinary conversion" of the Conservatives to closure was picked up on by Harcourt in a speech at the National Liberal Federation in Leeds on 3 November. He recalled Churchill's own role as someone who "could well carry off the palm of obstruction". He then recollected how Conservative opposition had led to "a much weaker" closure in 1882 than was initially proposed. He detailed the opposition to closure in the Procedure Committee's deliberations

82 *Morning Post*, 27 Oct. 1886, p 2.
83 *London Evening Standard*, 27 Oct. 1886, p 4; *St James's Gazette*, 27 Oct. 1886, p 12.
84 *The Times*, 27 Oct. 1886, p 9.
85 CUL, Add Ms 9248/16/1938, Akers-Douglas to Churchill, 29 Oct. 1886.
86 KHLC, U564/298/1, Beresford Hope to Akers-Douglas, 7 Nov. 1886.
87 CUL, Add Ms 9248/17/2121, Sir John Henniker Heaton to Churchill, 6 Dec. 1886.
88 "Mr Chaplin at Radcliffe", *The Times*, 6 Nov. 1886, p 8.

earlier that year and went on:

> "But now, after this prolonged and successful resistance on the part of the Tories, we are told at Bradford that closure by a majority is the fundamental, essential, and vital principle of any reform of procedure. (Laughter and cheers.)"

Harcourt described Churchill's attempt to imply that the Liberal opposition provided no support against obstruction while the Conservative opposition in 1882 had been helpful to the then government as "absolutely false". He recollected Churchill's unhelpful opposition on the only occasion so far when the closure rule had been put into operation—in February 1885. And he suggested that the Liberals themselves would be the ultimate beneficiaries of Churchill's proposed reform:

> "The future belongs to the Liberal party. Let us seize the occasion. Let us draw the fangs of Tory obstruction for ever … This is a weapon which they may forge, but you may depend upon it that it is a weapon that we shall wield."[89]

When Churchill advanced the case for closure by a bare majority in October 1886, Irish policy was far from settled. Hicks Beach believed that renewed coercive legislation could be avoided through conciliatory measures to improve relations between landlords and tenants, and Salisbury and Churchill were willing to accept the chief secretary's assessment.[90] Churchill based his argument for closure on the threat of changing obstructive combinations, including guerrilla activities by mainland MPs and an opposition frontbench complicit in obstructive tactics. Similarly, Harcourt, in welcoming the Conservative conversion to closure, dwelt upon the potential benefits it offered in preventing "Tory obstruction", rather than Irish obstruction.

"We hit upon a device": drafting the new closure rule

The challenge of converting Churchill's words into a workable rule was remitted to a cabinet committee chaired by Churchill. He secured an early victory in this committee on 4 November when it rejected the policy espoused by Hicks Beach in his letter of 24 October, as Churchill reported to Salisbury:

> "We had a very pleasant Meeting of the Procedure Committee to-day. Beach most affable. We all agreed that there were immense objections to treating the cloture as an open question."

The main issue in contention during the initial discussion was about the required majority, on which Churchill set out his stall:

89 "National Liberal Federation", *The Times*, 4 Nov. 1886, pp 6–7.

90 L P Curtis Jr, *Coercion and Conciliation in Ireland: 1880–1892: A Study in Conservative Unionism* (London, 1963), pp 125–158; *Hicks Beach*, I.278–298; Foster, *Churchill*, pp 279–284.

> "I said that if it was inevitable I would agree to a 2/3rds majority, but pointed out what an awkward position I should be in on account of my speech in 1882 and I also dwelt strongly on the arithmetical uselessness of it."

Churchill then realised that he could make progress by switching from a numerical safeguard to a safeguard in the form of a Speaker's veto, which also addressed a crucial weakness of the current rule which relied on the Speaker's initiative:

> "Finally we hit upon a device which Ld. Hartington hinted at last night to me, viz. that we should take the present cloture and allow any member to move it giving the Speaker the right of ruling whether the motion was a proper one or no."

Churchill outlined to the prime minister the great advantage of this proposal: "This transforms the Speaker's positive initiative into a negative check, which for the protection of minorities might be extremely valuable".[91] Salisbury's response was encouraging:

> "I think your proposal is a cautious one—if I criticised at all I should doubt whether it was quite stringent enough against the obstructive which will probably be levelled at the *necessary* business of the House—mutiny & money. But, as Hartington says, it is better to take what you can get."[92]

Although the cabinet was far from fully reconciled to the form of the closure, Churchill viewed the initial discussion on 4 November as sufficient to enable him to "put this into draft". To this end, he sought a meeting with Palgrave and Milman.[93] Since he had last discussed the matter with them in January, Palgrave had become Clerk of the House and Milman Clerk Assistant. It transpired that Palgrave was away from Westminster, so Churchill held a meeting with Milman alone on 5 or 6 November. Milman seemingly identified concerns with Churchill's proposal, because Palgrave subsequently wrote that, at the meeting, Milman "suggested to you our feeling, that a different form of Cloture, from that to be used in the House, is *required* for Committee proceedings".[94]

In his letter following up Milman's initial meeting with Churchill, Palgrave also argued that, should a proportionate majority be insisted upon in the House, it would not be appropriate for Committee:

> "For my part, I think that the objections that are urged against a simple majority Cloture, do not touch the form of Cloture in a Committee: Committee proceedings being subject to an almost indefinite power of review by the House itself."

91 CUL, Add Ms 9248/16/1973a, copy of Churchill to Salisbury, 4 Nov. 1886.
92 CUL, Add Ms 9248/16/1974, Salisbury to Churchill, 5 Nov. 1886; emphasis in original.
93 CUL, Add Ms 9248/16/1973a, copy of Churchill to Salisbury, 4 Nov. 1886.
94 CUL, Add Ms 9248/16/1963, Palgrave to Churchill, 7 Nov. 1886; emphasis in original.

Palgrave also supported a simple majority in the House:

> "Indeed, as regards the cloture, I am a parliamentary heretic. I have deemed that the risk of abuse attendant on a majority cloture does not countervail the utility of a power, that is not only absolutely needed, but which, also, has the merit of bringing home to the idle & the indifferent, the responsibility that must be borne by a Member of Parliament."[95]

A version of the rules arising from Milman's meeting with Churchill was prepared by Milman and Palgrave by 9 November.[96] On 22 November, Churchill told Hartington that "Milman and Palgrave will be with me today with draft rules embodying what I should like to see carried".[97] The draft at this point is not among Churchill's papers, but evidence from subsequent exchanges suggests that the draft remained essentially unchanged until its publication the following February.[98] The initial paragraph embodied the principle of the Speaker consenting to a closure motion moved by another member:

> "That, at any time after a question has been proposed, a Motion may be made, if the consent of the Chair has been previously obtained, 'That the Question be now put.' Such Motion shall be put forthwith, and decided without Amendment or Debate."

The first part of the second paragraph made clear that the closure could, with the Speaker's consent, cover any consequential questions:

> "When the Motion 'That the Question be now put,' has been carried, and the Question consequent thereon has been decided, any further Motion may be made (the consent of the Chair having been previously obtained) which may be requisite to bring to a discussion any Question already proposed from the Chair".

The second part of the same paragraph included a form of the "major closure"—in other words, the application of the closure to subsequent amendments and to the question on the clause of a bill standing part:

> "and also if a Clause be then under consideration, a Motion may be made (with the consent of the Chair as aforesaid) That the Question, That the Clause stand part, or be added to the Bill, be now put. Such Motions shall be put forthwith, and decided without Amendment or Debate."

The third paragraph carried forward the numerical requirements of the 1882 rule:

> "Provided always, that Questions for the closure of Debate shall not be

95 CUL, Add Ms 9248/16/1963, Palgrave to Churchill, 7 Nov. 1886.

96 CUL, Add Ms 9248/16/1989, Palgrave to Churchill, 9 Nov. 1886.

97 CUL, Add Ms 9248/17/2064, copy of Churchill to Hartington, 22 Nov. 1886.

98 The rule took a settled form in the version sent to Gladstone in mid-December: BL, Add Ms 44499, fos 244–246v, Churchill to Gladstone, 17 Dec. 1886.

> decided in the affirmative, if a Division be taken, unless it shall appear by the numbers declared from the Chair, that such Motion was supported by more than Two Hundred Members, or was opposed by less than Forty Members, and supported by more than One Hundred Members."[99]

Palgrave remained uneasy about the Speaker's veto,[100] but Milman wrote to Churchill to distance himself from Palgrave's doubts. Milman viewed the new closure rule as having "a fair prospect of an advantageous result", although he wished it to be accompanied by separate controls on the length of debate on amendments. He echoed the position set out by Churchill himself at Dartford and Bradford that an effective closure rule would lay the foundations for subsequent procedural reforms, so that "further reform will be comparatively easy".[101]

On 30 November, Churchill sent the package of proposals agreed by the cabinet committee to the Speaker, Arthur Peel. In his covering letter, Churchill began by identifying the weaknesses of the existing arrangement:

> "By the present rule an unfair responsibility is thrown upon the Chair, in that the initiative with regard to closure is thrown upon it which initiative has to undergo the ordeal of a vote of the House. It is difficult & impracticable for The Chair to possess the information with regard to the proper time for the exercise of the initiative, without which action in execution of closure would be unsafe."

Churchill then went on to indicate the advantages of the new proposal:

> "The chair, under This provision, is not only the protector for orderly debate, (its chief function), but also guards against abuse of the closure rule from instances of frivolity, obstruction, haste or Tyranny … This is a far better and more durable protection for minorities than any arrangement of numbers. An extreme and violent Government in Office, supported by a powerful majority, would very soon make short work of any protective management of proportionate majorities which might prove embarrassing to them. It would be much more difficult matter to dissociate & exclude The Chair from all connection with, or control over, The closure after that Parliament has on two occasions laid down a contrary principle."

Finally, he addressed when he envisaged the closure being used:

> "Speaking generally, this closure (as per enclosed) is aimed at persistent, deliberate, wilful obstruction … This closure is also designed to facilitate and render possible earlier hours of session, and prevent unnecessary,

[99] CJ (1887) 79.

[100] CUL, Add Ms 9248/17/2019, Palgrave's Memorandum on Rules VI. and II. of the Draft Rules of Procedure.

[101] CUL, Add MS 9248/17/2012, Milman to Churchill, 13 Nov. 1886.

stupid, & perverse 'talking out'."[102]

The cabinet seemingly agreed an unchanged version of the closure rule, along with at least some elements of a wider package of procedural reforms relating principally to the sitting hours of the House and the conduct of legislative business, by mid-December. On 17 December, Churchill shared a confidential draft with Gladstone as leader of the opposition, which Gladstone in turn sent to Harcourt for detailed analysis.[103] Harcourt's reply to Gladstone started by noting the dramatic turnaround in the Conservative position since February:

> "Whereas the last Govt. of Lord Salisbury in their proposals entirely excluded the question of Closure they now make that subject the main staple of their proposed reforms."

He then noted how the new closure rule was far more all-encompassing than the version Harcourt himself had proposed in the spring:

> "they propound a universal power of Closure which may be moved at any time by any one without notice and carried by a simple majority, which Closure is to apply not only to the particular motion under discussion but to carry with it a motion for adding a clause to the Bill without further amendment or debate."

The only conditions for the closure were the numerical requirements rule and the previous consent of the Speaker, both on the initial application and for any application of the major closure, so that "the whole weight of responsibility and the odium attaching to it will be cast on the Speaker".[104] Gladstone shared Harcourt's concern that "the weight laid on the Speaker is overgreat".[105]

"A deliberate design to obstruct the business": the changed context of the closure rule

While the form of the closure rule remained essentially unchanged between November 1886 and February 1887, the political context altered dramatically in ways which shaped the debate on the new rule. The unease among Conservative MPs about Churchill's approach was partly motivated by a sense that Churchill's enthusiasm for the closure arose from a wish for a far-reaching legislative programme. There was also a sense that Churchill was an unreliable leader, prone to scorn for others and pity for himself. As it became increasingly clear that he lacked broader support within the cabinet for some

102 CUL Add Ms 9248/17/2100a, copy of Churchill to Peel, 30 Nov. 1886

103 BL, Add Ms 44499, fos 244–246v, Churchill to Gladstone, 17 Dec. 1886; CUL, Add Ms 9248/18/2220, Gladstone to Churchill, 18 Dec. 1886 (GD.xi.640).

104 BL Add MS 44200, fos 186–194, Memorandum by Sir William Harcourt, undated [Dec. 1886/Jan.1887].

105 HD.xi.641.

of his legislative ambitions, including local government reform, Churchill took the occasion of a dispute with spending ministers concerning the Estimates to tender his resignation.[106]

While Churchill almost certainly intended his offer of resignation as a bargaining chip and reminder of his political indispensability, Salisbury responded with consummate skill. He accepted Churchill's resignation, delayed the planned meeting of Parliament from 13 January to 27 January,[107] and constructed a broader based government. Salisbury was all too aware that his front bench in the Commons was "weak" without Churchill,[108] but he took two steps to strengthen it. First, he obtained Hartington's agreement that George Goschen, the Liberal Unionist, could join the government as chancellor of the exchequer. This move both gave the government the benefit of a skilled financier, and also made it at least in a limited way a Unionist coalition. After Salisbury had concluded that Goschen's party affiliation meant that he could not also assume the leadership, the prime minister then persuaded W H Smith to take the role. Smith was in many ways an inspired choice. He was viewed within the parliamentary party as "safe, popular and trustworthy".[109] His fundamental decency ensured that he was also held in high regard by the opposition, with one of Smith's colleagues observing that "there is no-one on our side who is regarded by the Radicals & Gladstone with so much weight & esteem as yourself".[110] To enable Smith to assume the burden of leadership unencumbered by other ministerial duties, Salisbury surrendered the post of First Lord of the Treasury—the first separation of that role from the premiership in over a century[111]—and returned to the Foreign Office. This meant removing Iddlesleigh from his post as foreign secretary. Learning of that move, Smith wrote to Hicks Beach: "Poor Iddlesleigh, it will break his heart to give up the F.O.".[112] These words proved prophetic, as Iddlesleigh collapsed and died before he could meet Salisbury to discuss an alternative post.[113]

Smith described the task he was asked to take on as "a most hateful one" and agreed to take up the role only out of a "sense of duty".[114] He felt that "the importance of cementing the Unionist Alliance takes precedence of every other

106 Rhodes James, *Churchill*, pp 266–302; Foster, *Churchill*, pp 298–317; Shannon, *Age of Salisbury*, pp 222–235.
107 CJ (1887) 2.
108 DMC, CS8/340/2070, Salisbury to Hartington, 2 Jan. 1887.
109 *Life in Parliament*, p 129.
110 RUSC, HAM PS12/12, Sir Baldwyn Leighton to Smith, 10 Jan. 1887.
111 HC Deb, 27 Jan. 1887, cols 99–102.
112 GA, D2455/X4/1/1/6, Smith to Hicks Beach, 5 Jan. 1887.
113 Roberts, *Salisbury*, pp 425–427.
114 GA, D2455/X4/1/1/6, Smith to Hicks Beach, 3 Jan. 1887.

consideration at this juncture". But for that consideration, he would "shrink from a step which will put on me an amount of labour which I shall find it hard to bear".[115] Smith was happy to take on the procedural package and the priority for procedure over other business agreed in December under Churchill's leadership, but would present the measures in a very different way; his stolid conservatism served to disguise the radicalism inherent in the proposals crafted by Churchill.

By February, the context had also changed in another way. In making the public case for the closure at Dartford and Bradford, Churchill had acknowledged the Parnellite contribution to obstruction, but also emphasised the threat from Radicals, and from alleged Gladstonian passivity in the face of backbench obstruction. He had placed the need for the closure in the context of an ambitious domestic legislative programme, at a time when he and Hicks Beach had hoped to manage the Irish situation without further coercive measures. However, as the start of the delayed Session approached, the outlook in Ireland had been transformed. In late October, the Irish National League launched its Plan of Campaign, a scheme where tenants demanded a rent reduction; if the landlord refused, the tenants paid their rent, less the desired reduction, to a committee of trustees. The amounts collected were to be used to support evicted tenants, and were only payable to the landlord if they agreed to the lower rent. As the full impact of the Campaign became apparent, Hicks Beach became increasingly reconciled to the need for new coercive legislation. In mid-January, convinced of an inability to curb the Plan of Campaign through existing measures, the cabinet agreed to a new Crimes Bill to break the organised resistance to rents and associated "grave crimes", which differed from earlier coercion bills in having enduring rather than temporary effect. This was duly announced as the first legislative measure in the Queen's speech on 27 January.[116]

The Plan of Campaign and the proposed response enabled the closure to be presented to the parliamentary Conservative party and its Liberal Unionist allies in a wholly different light to the picture drawn by Churchill the previous autumn. Any doubts in the cabinet were put to one side in view of the certainty of sustained Parnellite obstruction to the new measure, and a party meeting was held, in Salisbury's words, with the "purpose of urging the general support of the Party to the proposed rules of Procedure".[117] At that meeting, Salisbury contended that the procedural proposals were only being put forward under "the pressure of sheer necessity". Although the question of procedure would

115 RUSC, HAM PS12/5, copy of Smith to Iddlesleigh, 4 Jan 1887.
116 Curtis, *Coercion and Conciliation*, pp 148–167; *Hicks Beach*, I.296–306.
117 KHLC, U564/C18/19, Salisbury to Akers-Douglas, 5 Feb. 1887.

not be treated as a matter of confidence—"without pretending that the question of Procedure was one vital to their existence"—he urged the government's supporters to "act together on the subject" and accept the reforms as a package.[118]

The debate on the Address in response to the Queen's speech also served to highlight the challenge ahead and the increasing centrality of an effective closure rule in meeting it. Gladstone made clear that the government could not look to the official opposition for any support for its legislative response to the Plan of Campaign, which Gladstone viewed as flowing from the failure of the government's Irish policy.[119] Churchill, an increasingly isolated figure on the backbenches, also questioned the need for the planned legislation.[120] After six days of debate on the address, the House had not even begun to debate amendments, causing Smith to enter his first protest at the length of proceedings.[121] After an amendment to the motion relating to Egyptian policy was disposed of on the seventh day,[122] the House spent a further five days debating an amendment moved by Parnell relating to the crisis in Irish agrarian affairs. On 7 February, Smith wrote to the Queen:

> "Mr Smith does not disguise the fact that patience is severely tried by this open and cynical waste of public time which is perpetrated for party purposes but he is much more concerned for the danger to which it exposes Parliamentary institutions than for any personal inconvenience which may be inflicted upon the Servants of Your Majesty."[123]

On the fourth day of debate on the amendment, Hartington entered a protest about "the protracted debate",[124] but on the fifth day Harcourt expressed no sympathy for the delay to the government's business, arguing that the Conservatives were simply victims of the abuse of the debate on the Queen's speech which they had started in 1880.[125] Smith made pleas for briefer debate on subsequent amendments, or for amendments to be withdrawn, that day and the next sitting day,[126] but this did not prevent an amendment on the state of Scottish agriculture being moved on 14 February. Even the Liberal Richard Haldane conceded that debate was now being "protracted to a degree

118 *Globe*, 22 Feb. 1887, p 6; Curtis, *Coercion and Conciliation*, p 168.
119 HC Deb, 27 Jan. 1887, cols 105–110.
120 HC Deb, 31 Jan. 1887, cols 286–287.
121 HC Deb, 3 Feb. 1887, col 632.
122 HC Deb, 4 Feb. 1887, cols 656–735.
123 RUSC, HAM PS 10/12, draft of Smith to HM Queen, 7 Feb. 1889.
124 HC Deb, 10 Feb. 1887, cols 1114–1116,
125 HC Deb, 11 Feb. 1887, cols 1308–1309.
126 HC Deb, 11 Feb. 1887, col 1349; HC Deb, 14 Feb. 1887, cols 1412–1413.

incompatible with the public interest".[127] However, this proved to be the first of three amendments on Scottish business which took the House until the evening of Wednesday 16 February. At that point, all amendments of which notice had been given had been considered, and the House clearly expected a division on the main question. However, the Irish Home Ruler James Sexton then moved the adjournment of debate, and the leader of the House was powerless to prevent extension of the debate.[128] *The Times* deplored this new evidence "of a deliberate design to obstruct the business of the House of Commons" and the Liberals for their complicity in the time-wasting and the sympathy for the Plan of Campaign which it implied.[129]

After the failure to conclude the debate on 16 February, discussions took place between Smith and the Speaker: writing to the Queen the next afternoon, Smith conveyed "a confident assurance that the debate on the proceedings of the address will be closed tonight and the report will be concluded tomorrow", and asserted his "conviction that any success which may have been obtained is due to the admirable fairness and courage of the Speaker".[130] This implies that Peel had decided that he would put the closure rule of 1882 into operation for the first time since its near disastrous first use in February 1885.[131] "Precisely at midnight", the Speaker indicated that he would allow the closure to be moved in respect of an amendment, and Smith, who along with his colleagues, was "obviously prepared", did so. The closure was agreed to with 291 votes in favour and 81 against, *The Times* noting with pleasure that "only the Parnellites and a handful of reckless free lances among the Gladstonians were willing to stand up against the authority of the Chair" following a "most legitimate exercise of the Speaker's power of applying the closure". After the amendment had been disposed of, another member rose to speak on the main question. Peel then indicated he would accept the closure on the main motion, which Smith moved, and which was agreed to with a similar majority.[132]

The extraordinary duration of the debate on the Address and the challenges involved in putting the existing closure rule into effect helped to demonstrate the case for reform. It was evident that the Speaker set a high bar for bringing the current closure rule into operation,[133] and doing so required careful preparation and enormous patience from the leader of the House. Although Peel was credited

127 HC Deb, 14 Feb. 1887, col 1425.
128 HC Deb, 16 Feb. 1887, col 1712.
129 *The Times*, 17 Feb. 1887, p 9.
130 RUSC, HAM PS 10/17, draft of Smith to HM Queen, 17 Feb. 1887.
131 "Part 2", pp 49–51.
132 *The Times*, 18 Feb. 1887, p 9; *Pall Mall Gazette,* 18 Feb. 1887, p 2; *London Daily News*, 18 Feb. 1887, p 5; CJ (1887) 74; HC Deb, 17 Feb. 1887, cols 1846–1854.
133 *Life in Parliament,* pp 134–135.

for his "firmness" and "vigorous action" in invoking the closure, Smith was also praised for "the temper and tact he displayed, not only in this little episode, but during the whole course of the troublesome debate that has come to an end at last".[134] Palgrave for one was in no doubt, as he wrote in a congratulatory letter to Smith, that the success "was your own". Smith had referred to the closure as "the action of our admired Speaker", but Palgrave trusted that Smith would excuse him "if I remind you that the success was quite as much due to the tact, wise discretion & firmness of the Leader of the House".[135]

"Accepted in principle": party lines in the debate on the new closure rule

Smith had been clear from the start of the session that the government would seek precedence for its proposals on the rules of procedure as soon as the debate on the Queen's speech was concluded.[136] When the plan to complete the Queen's speech debate on 16 February was derailed, the government decided to proceed with a debate on precedence for the rules of procedure even before the conclusion of the debate on the Queen's speech. Smith told the House:

> "I think nothing short of the course it is now proposed to the House to take will save the House and Parliament from that which will virtually amount to self-destruction—the abnegation of the duties which belong to the Parliament of an enlightened country."[137]

Precedence for the rules of procedure was agreed after a fractious debate,[138] but progress was further delated by a request from Harcourt for a debate on the principle of procedural reforms ahead of specific consideration of the closure rule. This proved procedurally difficult to deliver, but meant that three days of debate were consumed before the House turned to detailed consideration.[139]

From an early stage of the debate, the Conservative frontbench faced criticism for having, in Harcourt's words, "completely changed their opinions on this subject" of the closure.[140] Smith acknowledged this line of criticism at the outset and sought to disarm it:

134 *Pall Mall Gazette*, 18 Feb. 1887, p 11; *St James's Gazette*, 18 Feb. 1887, p 3.

135 RUSC, HAM PS12/45, Palgrave to Smith, 21 Feb. 1887.

136 HC Deb, 27 Jan. 1887, col 57.

137 HC Deb, 17 Feb. 1887, col 1780.

138 HC Deb, 17 Feb. 1887, cols 1778–1825; RUSC, HAM PS 10/17, draft of Smith to HM Queen, 17 Feb. 1887.

139 HC Deb, 17 Feb. 1887, cols 1784, 1790–1793; RUSC, HAM PS 12/45, Palgrave to Smith, 21 Feb. 1887; HC Deb, 21 Feb. 1887, cols 186, 191–192, 200–201; RUSC, HAM PS 10/19, draft of Smith to HM Queen, 21 Feb. 1887; RUSC, HAM PS 10/20, draft of Smith to HM Queen, 22 Feb. 1887.

140 HC Deb, 21 Feb. 1887, col 253.

> "I may, no doubt, be told that I have individually opposed the restrictions which are now sought to be imposed … I say I make this proposition to the House with a sense of humiliation, but I admit its absolute necessity."[141]

He later termed the closure "an unfortunate necessity".[142] Another minister, Cecil Raikes, pleaded for his part to be "allowed to profit by experience".[143] The Conservative conversion meant that the debate was different in tenor to that of 1882, as the closure was "accepted in principle" by the two main parties.[144] Gladstone indicated that he and his frontbench would view the matter on its merits, rather than as a party question.[145] At the same time, Gladstone recollected that it had required 19 days of debate to secure his version of the closure rule, and it was evident that he would shed no tears if debate on the replacement was prolonged by others.[146]

The forbearance of the Liberal frontbench contrasted with the position of the Irish Home Rulers. Parnell signalled outright opposition from the outset of debate.[147] Some Parnellites saw the proposals through the prism of the imminent conflict over the Crimes Bill.[148] They were convinced that the closure would be targeted against them and that the intention of the government was to direct "the whole force of these Rules against the Irish Party".[149] On the eleventh night of debate on the measure, Parnell said:

> "I submit to the House that 11 nights is not an excessive time for a discussion on a question of such great, grave, and urgent importance, giving, as it does, to the Government stringent powers in regard to the government of Ireland."[150]

The Parnellites expressed a sense of injustice that acts of obstruction were by no means confined to their ranks, but new procedural proposals always seemed to come forward when Irish obstruction was to the fore. Bernard Molloy noted that "Obstruction has been practised in Parliament by every party",[151] and William Macdonald noted that "the real Obstructionists in the Parliament of 1880 were hon. Gentlemen opposite"[152]—a remark not without an element of

141 HC Deb, 17 Feb. 1887, col 1780.
142 HC Deb, 2 Mar. 1887, col 998.
143 HC Deb, 21 Feb. 1887, cols 262–263.
144 HC Deb, 22 Feb. 1887, col 308; HC Deb, 22 Feb. 1887, col 371.
145 HC Deb, 21 Feb. 1882, cols 191, 198.
146 HC Deb, 21 Feb. 1882, col 191.
147 HC Deb, 21 Feb. 1887, cols 209–215.
148 HC Deb, 22 Feb. 1887, cols 376–380, 384–386.
149 HC Deb, 8 Mar. 1887, col 1600.
150 HC Deb, 11 Mar. 1887, cols 116–117.
151 HC Deb, 22 Feb. 1887, cols 376–380, 384–386.
152 HC Deb, 23 Feb. 1887, col 422.

truth for the period from 1883 onwards.[153] Parnell also noted how the new rule was different in nature to the 1882 rule:

> "the old Clôture Rule was brought in by the then Government as a weapon which would be very rarely used; but there can be no doubt that this Clôture Rule will be frequently and indiscriminately used".[154]

Once the House proceeded to consider amendments, the debate was for some days dominated by Home Rule members, as authors and supporters of amendments. The first such amendment proposed to exclude the Chairman of Committees from consenting to closure, on the grounds that he lacked the impartiality of the Speaker. Such a line of argument had been pursued by the Conservatives at some length in 1882, but it garnered no support beyond Irish ranks in 1887.[155] The Parnellites showed particular relish in moving amendments derived from amendments proposed by the Conservatives in 1882.[156] For example, on the twelfth night of debate, Parnell moved an amendment modelled on the Gibson amendment of 1882, requiring a two-thirds majority, albeit limited to the major closure. Parnell gleefully recollected how the Conservatives had taken "a very strong and decided stand" on this matter in 1882, and debate on it had occupied "many nights".[157] The next night, Parnell tabled an amendment which Smith himself had proposed in 1882, which envisaged allowing for the defeated minority to enter a textual protest.[158]

Smith handled this aspect of the proceedings skilfully and with "great tact", as one Irish MP conceded.[159] The leader generally spoke briefly and in a conciliatory manner, and even managed to accept an amendment from Parnell which constituted a drafting improvement.[160] Smith was restrained in resisting an amendment from Parnell to set a minimum duration of debate before the closure could be granted.[161] When Sexton proposed an amendment to limit application of the closure to the first and second order of the day, or the first or second motion on the notice paper, he drew explicitly on the amendment successfully moved in the 1886 Procedure Committee deliberations by Sir Michael Hicks Beach, who replied to explain that his amendment in 1886 had been in the context of an automatic closure at a set time, rather than a

153 "Part 2", pp 47–48.
154 HC Deb, 15 Mar. 1887, col 435.
155 HC Deb, 24 Feb. 1887, cols 486–503; "Part 2", pp 25, 39.
156 HC Deb, 24 Feb. 1887, cols 405–548; HC Deb, 25 Feb. 1887, cols 587–635; "Part 2", p 40.
157 HC Deb, 15 Mar. 1887, col 435.
158 HC Deb, 16 Mar. 1887, cols 484–490; HC Deb, 18 Mar. 1887, cols 784–791.
159 HC Deb, 25 Feb. 1887, col 618.
160 HC Deb, 24 Feb. 1887, cols 503–505.
161 HC Deb, 25 Feb. 1887, cols 634–639.

discretionary closure.[162]

"A marked change": the debate on the role of the Speaker in the new closure rule

The new rule embodied what Smith acknowledged was "a marked change" from the 1882 rule regarding the Speaker's role: he was to cease to be the initiator, and become instead the adjudicator, who would "exercise a control over the application of the closure".[163] The government faced two different—and arguably incompatible—critiques of this approach from the opposition despatch box. The first line of attack came from Gladstone. Although he admitted that his confidence in his own closure rule had been shaken by its first use in February 1885, he did not think it was right to repeal it. Instead, he favoured a "further trial" of his own rule.[164] Gladstone maintained that the change embodied in the new rule would "break the back of the Speaker by putting upon him duties which it is not possible for him to discharge".[165] By placing the added burden on the Speaker "we may not only endanger the dignity of the Chair in the discharge of its functions, but the future efficiency of this House".[166]

Harcourt adopted a different position to Gladstone. Rather than supporting the 1882 rule, he argued that the role of the Speaker should be removed altogether, and replaced by a scheduled closure operating without discretion at set times, based on the proposals put to the 1886 Procedure Committee, which he argued would guard against surprise.[167] This element of surprise he now contended was the weakness of the proposed rule.[168] The weakness of Harcourt's proposal for a scheduled closure was pinpointed by Hartington, who argued that it was

> "somewhat unreasonable that it should be in the power of a bare majority at the close of a Sitting to put an end to a debate on, perhaps, a very important question, while it would not be in the power of that majority to stop a minority, however small, which might be wasting the whole time of the House in one Sitting on what might be a very trivial matter and a comparatively unimportant issue."[169]

Ministers developed their case for the Speaker's role by suggesting that any

[162] HC Deb, 1 Mar. 1887, cols 917–921.
[163] HC Deb, 21 Feb. 1887, col 187.
[164] HC Deb, 4 Mar. 1887, cols 1286–1291.
[165] HC Deb, 21 Feb. 1887, col 196.
[166] HC Deb, 4 Mar. 1887, col 1287.
[167] HC Deb, 21 Feb. 1887, cols 254–255.
[168] HC Deb, 21 Feb. 1887, cols 254–259.
[169] HC Deb, 22 Feb. 1887, col 322.

Speaker would exercise their role by reference to certain criteria, most clearly set out by Hicks Beach:

> "The Chair shall be able to interfere for the prevention of abuse by the Motion for closure being made in order merely to interrupt the proceedings of the House, for the prevention of surprise, and for the protection of minorities. These three heads … comprise all the circumstances under which the interference of the Chair can be required by our proposal."[170]

The weakness in the government's initial position, which was identified at an early stage by Gladstone, was that—in contrast to the 1882 rule—the intended safeguards were not embodied in the text of the rule.[171]

A further problem identified by Harcourt was the lack of clarity about whether consent would be sought and given privately or openly in the House.[172] Courtney, who as Chairman of Ways and Means would be required to operate the new rule, said that he was "in the dark" as to how the consent mechanism was intended to operate. Other members voiced a preference for an explicit Speaker veto publicly exercised by refusal to grant, rather than as a preliminary arrangement made in private.[173]

Smith hinted on 25 February that he would consider an amendment to embody safeguards referred to in ministerial speeches.[174] He gave a firm undertaking to that effect on 1 March,[175] and the amendment was brought forward later that day. The amendment also addressed the concern about the form of consent, turning the Speaker's role into "a negative, rather than an affirmative consent".[176] The amendment read as follows:

> "A Member rising in his place may claim to move, 'That the Question be now put,' and, unless it shall appear to the Chair that such Motion is an abuse of the Rules of the House, or an infringement of the rights of the minority, the Question, 'That the Question be now put,' shall be put forthwith, and decided, without Amendment or Debate."[177]

The amendment was agreed to, with opposition largely confined to the Irish benches.[178]

170 HC Deb, 22 Feb. 1887, col 372.
171 HC Deb, 21 Feb. 1887, cols 196–197.
172 HC Deb, 21 Feb. 1887, col 258.
173 HC Deb, 22 Feb. 1887, cols 345–346 (Sir Albert Rollit); HC Deb, 22 Feb. 1887, cols 351–352 (Francis Powell); HC Deb, 23 Feb. 1887, cols 407–408 (Henry Labouchère).
174 HC Deb, 25 Feb. 1887, col 654.
175 HC Deb, 1 Mar. 1887, cols 929–930.
176 HC Deb, 8 Mar. 1887, col 1648.
177 CJ (1887) 91; HC Deb, 1 Mar. 1887, col 968.
178 CJ (1887) 103–104.

"Too much restricted": the continuing arithmetical puzzle

The numerical safeguards of the 1882 rule were carried forward without amendment into the 1887 proposals. Gladstone saw "with great satisfaction that all those apprehensions which were entertained as to voting the closure by a majority have entirely disappeared from the minds of hon. Gentlemen opposite".[179] There was significant concern across the House about the wisdom of the continuing requirement for 200 MPs to support the closure in most cases. Harcourt said that he supported the closure "pure and simple—by a simple majority",[180] and Hartington argued that "the numbers are far too large".[181] Courtney, who was almost alone in continuing to support a proportional majority, pointed out that 200 Members from the majority were hardly ever present during proceedings in Committee of Supply.[182]

Smith made it clear that he felt bound by the proposal for 200, while noting that it was not a party question.[183] The Liberal Unionist Alexander Craig Sellar proposed that the majority required for the closure should be 120, a proposal supported by Conservative backbenchers.[184] Perhaps the most significant supporter of a reduction was the Gladstonian Liberal Edward Marjoribanks, who had served as a senior whip in previous Liberal administrations and was thus, in his own words "well acquainted with the difficulty of insuring the presence of 200 Members of the House when it was desired to put the closure in force". He cautioned that

> "Towards the end of the Session, when the House begins to empty and Members, on one pretext or another, go into the country or abroad, it will be very difficult to insure a majority of 200 for the discussion of the Estimates and similar Business."[185]

The maintenance of the requirement for 200 was, however, supported by the Liberal frontbench,[186] and in the ensuing division, the proposal for a reduction was defeated by 120 votes to 222. The majority was largely comprised of the two frontbenches and the Home Rule party, with Conservative and Liberal backbenchers in the minority.[187] *The Times* subsequently acknowledged that

> "The numerical restrictions inherited from Mr. Gladstone will perhaps impose some labour upon the Government Whips; but they will offer to the

179 HC Deb, 21 Feb. 1887, col 198.
180 HC Deb, 21 Feb. 1887, col 253.
181 HC Deb, 22 Feb. 1887, col 324.
182 HC Deb, 22 Feb. 1887, col 369.
183 HC Deb, 16 Mar. 1887, cols 456–457, 468–469.
184 HC Deb, 16 Mar. 1887, cols 467–470, 474–475.
185 HC Deb, 16 Mar. 1887, col 472.
186 HC Deb, 16 Mar. 1887, cols 472–473.
187 HC Deb, 16 Mar. 1887, cols 475–478.

country a measure of the earnestness of the rank and file of a Government's supporters."[188]

"Almost the impossibility": the major closure and its limits

In the various discussions which had taken place over the design of the new closure rule, Milman had attached particular importance to the provisions for the major closure. Samuel Whitbread, who had been party to the deliberations in 1882, suggested that they meant that closure "will be used to drive through the House a clause of a Bill", which might contain four or five subsections. He predicted that it was "almost impossible that the House would submit to deal thus with a clause of importance" and foresaw that such an attempt would "lead to the most disastrous failure" because "the minority will always have ample means of avenging itself if they consider that the closure has been unfairly used".[189]

Smith offered one amendment on the major closure immediately, which confirmed that the Speaker's power to withhold consent to a claim of closure on grounds that it was an abuse of the rules or to protect minorities applied also to the major closure.[190] Smith otherwise sought to defend the major closure in the form in which it was first proposed. He noted that, without the major closure in some form, the effect of the closure could simply be destroyed by subsequent amendments.[191] He claimed that the purpose of the major closure was to prevent "the right to debate Amendment after Amendment to the clauses of a Bill", but tried to reassure the House that "it would be impossible for the Chair to sanction a closure which would shut out debate upon substantial Amendments".[192] Smith and other ministers then sought variously to define the amendments which would be shut out by use of the major closure—namely "frivolous and obstructive" or simply "bogus" amendments.[193]

Irish and Liberal members pointed out that the text of the proposed rule did not allow for the distinction which Ministers were now seeking to draw between bogus and substantial amendments, and the fate of the major closure in its initial form was sealed when the force of this argument was accepted by Hartington:

"'There is a difficulty as the words stand if the House desires to get rid of a large number of frivolous or unimportant Amendments, and yet wishes to

188 *The Times*, 19 Mar. 1887, p 11.

189 HC Deb, 21 Feb. 1887, cols 216–217.

190 CJ (1887) 104; HC Deb, 8 Mar. 1887, cols 1647–1648, 1656–1661.

191 HC Deb, 8 Mar. 1887, col 1621; HC Deb, 9 Mar. 1887, cols 1670–1671.

192 HC Deb, 9 Mar. 1887, col 1686.

193 HC Deb, 11 Mar. 1887, col 52; HC Deb, 9 Mar. 1887, col 1691. The reference to only "bogus" amendments being excluded was noted by the Speaker: HC Deb, 11 Mar. 1887, col 49.

> discuss two or three or more which really raise questions of importance. Under the Rule as proposed, it appears that there will be no alternative except adopting the clause as it stands and so negativing without discussion *bonâ fide* Amendments, or not applying the closure on the clause at all."[194]

The government was forced to concede by accepting an amendment suggested by Hartington to allow for the closure to operate on the question that "certain words" stand part of a clause, so that amendments to those words would be excluded, but not amendments to subsequent words in the clause.[195] When Hartington moved the amendment, he tried to broaden the interpretation of the amendments which might be excluded as those which the House or Committee of the whole House considered did not raise "important issues".[196] However, Playfair, who spoke from his experience as Chairman of Committees between 1880 and 1883, told the House of

> "the great difficulty—I will say almost the impossibility—of the Speaker judging whether particular Amendments, perhaps several in number, which he has had little or no time to consider, and has not heard discussed, are substantial, or frivolous and obstructive".[197]

An additional challenge arose from the intended application of the major closure in the Committee of Supply. Although the text only referred to a clause, Goschen argued that its terms also applied potentially to enable the question on a Vote to be treated like a clause subject to the major closure, precluding other amendments within a Vote.[198] Smith initially argued that the major closure needed to remain in its original form to operate effectively in the Committee of Supply in the way described by Goschen.[199] One Liberal questioned whether the comparison between amendments to a clause and amendments to a Vote within an Estimate was legitimate, given the inherent variety of matters that could be raised in Committee of Supply.[200] Henry Labouchère made a similar point, arguing that amendments in Committee of Supply all had a legitimate purpose on the face of it, because they sought to reduce expenditure: "there can be no obstructive Amendment having for its object the reduction of the Estimates".[201]

In response, Ministers including Goschen did their best to maintain that the

194 HC Deb, 9 Mar. 1887, col 1701.
195 HC Deb, 9 Mar. 1887, cols 1701–1702.
196 HC Deb, 11 Mar. 1887, cols 67–69.
197 HC Deb, 11 Mar, 1887, cols 83–84.
198 HC Deb, 25 Feb. 1887, cols 591–594. Votes were the main sub-division of Estimates, but Votes could contain many separate sub-heads: see "May on Money", p 176.
199 HC Deb, 9 Mar. 1887, col 1674.
200 HC Deb, 15 Mar. 1887, cols 398–399.
201 HC Deb, 15 Mar. 1887, cols 423–425.

major closure could effectively operate in the Committee of Supply, relying on the discretion of the Chairman to ensure it operated fairly.[202] The weakness of the government's position was perhaps evidenced by the fact that five ministers participated in a relatively short debate.[203] Smith claimed that there could be "trivial" amendments in Committee of Supply, but did little to illuminate how they could be identified when they were all in the form of a proposal to reduce a sum.[204] The government successfully defeated the amendment,[205] but it was open to question whether they had provided a convincing explanation as to how the major closure would operate in the Committee of Supply.

The closure rule was finally agreed on the fourteenth day of debate on 18 March, with 262 votes in favour and only 41 against.[206] The result was greeted with "loud Ministerial cheers".[207] Smith's proposal that the rule be made a Standing Order so that it could be used immediately was agreed to with little debate.[208] *The Times* thought that "the way is at length to some extent cleared for useful work".[209]

"He has chosen it with his eyes open": the use of the closure in 1887

The government's initial intention had been to use the closure to help secure the wider package of procedural reforms, but the duration of the debates on the Address and then on the closure rule meant that the remainder of the package had to be abandoned for the year.[210] Even without that package, the business management challenges facing the government were formidable: they needed to complete the essential financial business required by 31 March, secure precedence for the Criminal Law Amendment (Ireland) Bill and then make progress on it, and provide time for a Budget.

The closure was claimed 37 times in the 1887 Session, 15 times in the House and 22 times in Committee. Of those 37 occasions, 24 were during proceedings on or about the Criminal Law Amendment (Ireland) Bill. On 32 occasions, the closure was claimed by Smith. The Speaker or Chairman withheld assent to the closure on five occasions between them, including three times when the

202 HC Deb, 15 Mar. 1887, cols 395–396, 403.
203 HC Deb, 15 Mar. 1887, cols 395–396, 401–402, 403, 425, 427–428.
204 HC Deb, 15 Mar. 1887, cols 427–428.
205 CJ (1887) 116.
206 CJ (1887) 124; HC Deb, 18 Mar. 1887, cols 798–800.
207 *St James's Gazette*, 19 Mar. 1887, p 4.
208 CJ (1887) 124; HC Deb, 18 Mar. 1887, cols 800–801.
209 *The Times,* 19 Mar. 1887, p 11.
210 *Salisbury–Balfour Correspondence*, p 187.

claim was by Smith.[211] The political and procedural realities behind these bare statistics are illuminated by proceedings on 21 March, 1 April and 10 June.

Monday 21 March was the first sitting day after the new closure rule had been agreed. Immediately after questions, Arthur Balfour—who had succeeded Hicks Beach as chief secretary in Ireland when Hicks Beach had resigned on health grounds[212]—gave formal notice of the motion to bring in the Bill which would dominate the next few months and Smith then gave notice of the intention to seek precedence for proceedings on the Bill. The Liberal opposition immediately made clear they would not support either the Bill or the motion for precedence.[213] The House then embarked upon consideration of the Supplementary Estimates and Votes on Account, starting with the Navy Estimates, which gave opponents of the government's Irish policy an opportunity to delay and obstruct even before the Bill itself came before the House. After contributions from those with an interest in naval affairs, the debate soon deteriorated into a series of irritable exchanges about process between the government, Parnellites and radicals, including divisions on two dilatory motions, until at 5.40 am Smith interrupted a speech by an Irish member to successfully claim the closure. This had an operational significance which was noted by Milman: the "previous question" could only be claimed by a member who had been called to speak; the issue had not arisen with the Speaker's closure under the 1882 rule, because of the Speaker's inherent right to stand and force others to resume their seats; the proceedings on 21 March established that a member claiming the closure could interrupt another member to do so.[214] Proceedings on the Civil Service Votes on Account then continued until after 1 p.m. the next day, including seven divisions. One new member remarked that "This was the first time I had ever seen the employment of Obstruction naked and avowed". The closure was not claimed again, although the threat of the closure—and the presence of 200 government supporters in the division lobbies to make that threat effective—was essential to progress.[215]

The motion for precedence to be given to the Criminal Law Amendment (Ireland) Bill was agreed to on Friday 25 March after four days of often

211 *Return to an Order … dated 3 August 1888 … respecting Application of Standing Order XXV …*, HC (1888) 332, pp 2–6, 15.

212 *Hicks Beach*, I.312–320.

213 HC Deb, 21 Mar. 1887, cols 857–858.

214 CJ (1887) 127; HC Deb, 21 Mar. 1887, cols 861–1018; *Decisions, 1886–92*, p 126; "Part 1", p 10. For a subsequent ruling confirming this point, see HC Deb, 23 May 1887, col 918. It was also confirmed that the closure could be claimed by a member who had already spoken: *Decisions, 1886–92*, p 125.

215 CJ (1887) 127–128; HC Deb, 21 Mar. 1887, cols 1020–1120; *Life in Parliament*, pp 138–140.

acrimonious debate.[216] The debate on the motion for leave to bring in the Bill began the following Monday. On the fourth night of debate, on Thursday 31 March, Smith indicated that he hoped that would be the penultimate day of debate:

> "I am now under the necessity of saying that I shall invite the House to-morrow to come to a decision on the Main Question before it … Tomorrow will be the fifth day, making altogether nine days that will have been devoted practically to this one subject. I am sure the House will, therefore, think that the time has come when a decision should be taken."[217]

Harcourt responded with outrage, both about the inadequacy of the time to be allowed for the debate and about the way Smith presumed upon a successful claim of the closure. He suggested that it implied an abandonment of the idea that the Speaker would protect the minority. Smith rejected the implication that he took success in claiming the closure for granted, and the Speaker effectively supported his position and rebuked Harcourt:

> "I regard these constant references as to whether my assent has been obtained or not as utterly and entirely irregular. I think it fair to myself and just to the House to say that if any insinuation of that sort is made it is unworthy and it is untrue. No assent of mine has been asked or withheld."[218]

The mood of debate on Friday 1 April was even darker. When a Parnellite moved a dilatory motion, Gladstone himself spoke in favour of it.[219] After a second dilatory motion was rejected, Smith rose around 2 a.m. on Saturday morning to claim the closure and the Speaker agreed to put the question. The closure was agreed to by 361 votes to 253, amidst shouts of "Tyranny" from the opposition benches. Gladstone made sure his vote against what he termed in his diary "the mischievous Closure under the Speaker's authority" was very conspicuous, and he then led a Liberal and Parnellite walkout from the chamber when the closure was agreed to.[220] Gladstone's anger was in part because he viewed the overall length of debate on the motion for leave as insufficient, but it was also about how the Speaker had acted on the closure, reflected in a letter he wrote the next day to the previous Speaker, Henry Brand, now Viscount Hampden:

> "He [Peel] evidently thinks it is properly to be used as a legitimate weapon by one side of the House against another … He has chosen it with his eyes open."[221]

216 CJ (1887) 140–141. See in particular, HC Deb, 25 Mar. 1887, cols 1530–1577.
217 HC Deb, 31 Mar. 1887, cols 175–176.
218 HC Deb, 31 Mar. 1887, cols 176–178.
219 HC Deb, 1 Apr. 1887, cols 320–324.
220 CJ (1887) 156l; HC Deb, 1 Apr. 1887, col 340; *Life in Parliament*, pp 144–145; GD.xii.22.
221 TPA, BRA/1/8/59, Gladstone to Hampden, 2 Apr. 1887.

In a subsequent letter to Hampden, Gladstone contended that a situation in which 260 or 280 MPs were not sufficient to prevent closure led to the "total destruction of the authority of the Chair *on its old footing*: on the footing that is to say of its being regarded with *confidence* by both sides of the House."[222] Gladstone at this point demonstrated the same weaknesses that explained the failure of the 1882 closure rule. He denied that the closure was appropriate for use simply to assert the will of the majority of the House against a substantial minority, even though that was the essence of the case for the closure advanced by many of his frontbench colleagues, including Hartington in 1882 and Harcourt in more recent times. The sheer unreality of his position was exposed by the exchanges he had with Chamberlain at the same time. Chamberlain told him that he did not support the role of the Speaker set out in the new rule. Gladstone seemingly believed that this might be the basis of a step towards Liberal "reunion" by Chamberlain proposing the removal of the veto. However, it soon became apparent that Chamberlain wanted to remove the Speaker's veto to allow the untrammelled assertion of majority control, in sharp contrast to Gladstone's wish to see the revival of the Speaker's initiative.[223]

Gladstone was far from alone in his consternation at the Speaker for allowing the closure on 1 April. The radical MP Charles Conybeare was reported to have told a protest meeting the next day that the Speaker had "descended from his high position, and had become an ally to one party in the House of Commons, and that the most tyrannical".[224] When the issue was raised as a matter of privilege on 4 April, the Speaker wisely did not allow it to be treated as such, while making clear his regret that "an hon. Member of this House should think it becoming in him to charge me in the action I took with having thereby become a partizan of either one side of the House or the other".[225] Conybeare withdrew the imputation, and later claimed his original speech had been misreported.[226]

Although the closure was used extensively during the Committee stage of the Criminal Law Amendment (Ireland) Bill, it was not sufficient in itself to secure progress, so that the government resorted to a "guillotine motion", with, as Milman later put it, the House "still compelled to deal with the crisis in 1887 under the new Rule, just as it had dealt with a similar crisis in 1881 under the old Rule".[227] However, the value of the closure was shown on proceedings on

222 TPA, BRA/1/8/60, Gladstone to Hampden, 4 Apr. 1887.

223 C H D Howard, ed, *A Political Memoir 1880–1892 by Joseph Chamberlain* (London, 1953), pp 265–266.

224 *The Times*, 4 Apr. 1887, p 10. See also *London Daily News*, 4 Apr. 1887, p 6.

225 HC Deb, 4 Apr. 1887, cols 371–372.

226 HC Deb, 4 Apr. 1887, cols 372–374; HC Deb, 12 Apr. 1887, cols 708–709.

227 "Parliamentary Procedure *versus* Obstruction", p 493.

that guillotine motion on 10 June, when Smith successfully claimed the closure in respect of two amendments and the main question, enabling the guillotine motion to be agreed at a single sitting despite Parnellite and Gladstonian opposition.[228] In short, the closure was proving a necessary if not sufficient condition for the transaction of the most contested government business.

"An indispensable agent in Parliamentary procedure": the 1888 changes and their impact

In the autumn of 1887, the government decided to bring back the remainder of the procedural package the following year, and received papers on possible further changes prepared by Milman and Palgrave.[229] The lead element of the proposals in 1888 was to give effect to the idea of set hours of sittings each day, subject to exceptions only for certain government business, which helped to embed the idea of fixed end times for opposed business and the related procedural concept of the "moment of interruption". Three changes affecting the operation of the closure rule were also made, one linked to the moment of interruption and one having a profound effect on use of the closure.

The mood of the House when it met in February 1888 was very different to that of 1887. The implementation of the new coercive legislation in Ireland had led to the imprisonment of 10 Irish MPs since the end of the 1887 session, and the Parnellites were relatively subdued.[230] Gladstone's Liberals agreed on the need for the procedural package and Gladstone saw little to oppose in the government's legislative proposals for the session.[231] The decision to consider the new rules directly after the conclusion of the debate on the Address attracted little contention,[232] and Gladstone made only a very half-hearted proposal for a general debate on the rules of the House, along with a mild protest at the precedence motion, both of which Smith rebuffed.[233]

On Friday 24 February, Smith was thus able to proceed directly to his main proposal for revised sitting hours: the House was to sit on each weekday other than Wednesdays at 3 p.m., was to suspend between 8 p.m. and 9 or 9.15 p.m. and the House was to adjourn without question put at 1 a.m. unless it was considering certain government business. The moment of interruption

228 CJ (1887) 284–285; HC Deb, 10 June 1887, cols 1594–1673.

229 PCJ, Miscellaneous Precedents, Vol 4, fos 162–166, Memorandum on New rules proposed, 30 Nov. 1887; PCJ, Miscellaneous Precedents, Vol 4, fos 166ff, Printed version of Procedure Rules, 17 Dec. 1887

230 CJ (1888) 4–6.

231 HC Deb, 9 Feb. 1888, cols 75–87.

232 HC Deb, 22 Feb. 1888, cols 1204–1205.

233 HC Deb, 23 Feb. 1888, col 1252; HC Deb, 24 Feb. 1888, cols 1382–1397; Lucy, *Salisbury Parliament*, p 33.

was set as 12.30 a.m. on these weekdays, and 5.30 p.m. on Wednesdays, and all opposed business was to stop at this time, unless exempted by a motion moved by a Minister at the commencement of public business on the day and decided without debate. The proposed Standing Order also made explicit that the closure under the 1887 rule could be claimed at the moment of interruption and any questions to be put consequent on the closure being put and agreed to then determined.[234]

Smith was able to present a clear case for the changes in remarkably short order. The House had sat for 277 hours after midnight during the previous Session, with members often "too exhausted" to discharge their duty.[235] One Liberal MP made the case for extending the provision for closure at the moment of interruption to allow for its semi-automatic operation, but none of the advocates of that proposal in 1886 and 1887, such as Harcourt, spoke in support, and the amendment was quickly withdrawn.[236] An amendment by Courtney as Chairman of Committees to make clear that the closure at the moment of interruption applied to any further motion that could be moved under the closure rule was agreed to.[237] In a mood of remarkable consensus, an amendment from the Radical Henry Labouchère to allow the Chairman of Committees to exercise the full powers of the Speaker as a Deputy Speaker and for Deputies to exercise the power of the Chairman of Committees was also added to a Standing Order ostensibly about the sittings of the House.[238] To general astonishment, the revolution in the hours of sitting and related operation of the House was agreed to on a single Friday, so that it could come into effect the following Monday.[239] Smith told the Queen of the "remarkable progress" and wrote that "It is a long time since the House has got through so much business in so short a time".[240]

The government's run of success continued the following Tuesday when the House considered an amendment to the 1887 closure rule to change the required number of MPs voting in the majority on the closure from 200 in almost all cases to 100 in all cases.[241] The need for 200 to vote in the majority

234 CJ (1888) 62–63.
235 HC Deb, 24 Feb. 1888, cols 200–201.
236 CJ (1888) 63; HC Deb, 24 Feb. 1888, cols 1448–1450.
237 CJ (1888) 64; HC Deb, 24 Feb. 1888, col 1451.
238 CJ (1888) 64; HC Deb, 24 Feb. 1888, cols 1457–1459.
239 HC Deb, 24 Feb. 1888, col 1462.
240 G E Buckle ed, *The Letters of Queen Victoria: Third Series: Volume I: 1886–1890* (London, 1930) (hereafter *LQV*), p 388.
241 CJ (1888) 70. The motion was drafted as a standalone provision so that the original terms of the 1887 rule were not otherwise open for debate: PCJ, Miscellaneous Precedents, Vol 4, fos 162–166, Memorandum on New rules proposed, 30 Nov. 1887, at fo 162.

in almost all cases had meant that, even in the dog days of the session, it was "absolutely necessary that in addition to the ordinary working majority from day to day the Government shall be able to rely upon the attendance of at least 200 Members on any occasion at 48 hours notice to carry a motion for closure".[242] This undermined the usual practice whereby many members were able to "pair"—one member from each side of the House agreeing not to vote—and depart in July.[243] This imposed an enormous burden on the MPs who attended for most of the 1887 session. As one of them noted, "From the end of January till the middle of September we never, except during two very brief intervals, had proper rest at night". The effects of exhaustion and uncertainty were described by one leading Conservative as "mental torture".[244]

When Smith put the proposed reduction to the House on 28 February, it even attracted the support of one Parnellite, who noted it would assist a future government seeking to pilot a Home Rule measure through the House.[245] There were some unlikely alliances among opponents of the proposed reduction, including Chaplin and Churchill, as well as Gladstone and Parnell, but the government won the vote easily, with some Gladstonian and Irish support.[246] More significantly still, the debate was concluded by 8 p.m. on the day the motion was moved, enabling the bulk of the new procedure rules also to be agreed later the same day, which Smith termed "extraordinary progress".[247] The remaining changes included one further revision to the closure rule consequent upon the Labouchère amendment, enabling the closure to be consented to by the Chairman of Committees as Deputy Speaker.[248]

The closure in its revised form was claimed far more in 1888 than in the year before—84 times compared with 37.[249] The number of claims of the closure fluctuated in subsequent sessions—with 43 claims of the closure in 1889,[250] 87 in 1890,[251] 39 in 1890–91,[252] and 49 in the short Session of 1892[253]—but the statistics only told part of the story. Henry Lucy, who had been away from his place in the press gallery for most of 1886 and 1887, was very struck by the change in the conduct of business since he last witnessed proceedings:

242 RUSC, HAM PS 12/89, copy note from Smith to colleagues, 19 Aug. 1887.
243 *Life in Parliament*, p 55.
244 *Life in Parliament*, pp 177–178.
245 HC Deb, 28 Feb. 1888, cols 1661–1662.
246 HC Deb, 28 Feb. 1888, cols 1674–1677.
247 *LQV*, p 388; CJ (1888) 70–72.
248 CJ (1888) 74–75, 82–83, 84–86.
249 *Return to an Order … dated 7 August 1889*, HC (1889) 0.150, p 20.
250 HC (1889) 0.150, p 21.
251 *Return to an Order … dated 24 July 1890*, HC (1890) 369, p 15.
252 *Return to an Order … dated 20 July 1891*, HC (1890–91) 0.166, p 9
253 *Return to an Order … dated 13 June 1892*, HC (1892) 313, p 9.

> "The great salvation of the dignity of the House and the prosperity of public business is the Closure ... It becomes daily more and more clear that the Closure is an indispensable agent in Parliamentary procedure. Its effects are much wider than is apparent from the line in the Parliamentary reports, which states that the Closure has been moved. The knowledge that this rod is in pickle deters obstruction, for obstructionists know that they are ineffectively wasting their own time by prolonging debate. At the proper moment the Closure will be moved, and the division will be taken. It might, therefore, as well be taken early in the evening as late."[254]

On another occasion he observed that the new rules "operate not only by the restraint of their actual application, but by their influence, which dominates the whole spirit of the proceedings".[255]

The reduction of the numbers needing to vote in support of the closure to 100 greatly increased the flexibility of the closure, which could be used with much less notice, such that on occasions it was referred to as "the pounce".[256] On 15 February 1892, during the debate on an amendment to the Address relating to Ireland, the opposition sought to use the closure to catch the government by surprise, claiming the closure near midnight, when they suspected many government supporters were still at dinner and aware that travel in central London was made harder by "snow falling fast on the ice-bound earth". The closure was agreed to without a division, and, as the division ensued on the amendment, one Unionist backbencher recorded:

> "We thought we had not men enough in attendance. As we entered the division-lobby for a question on which the Government must resign if beaten—I trembled for the Unionist cause! We actually won, however, by the narrow majority of 21."[257]

Fewer than 180 members voted for the government, demonstrating the vulnerability of the majority to ambushes of this kind.

The use of the closure changed in other ways. In 1888, the closure was claimed on 19 occasions in Committee of Supply, and granted on 11 of them.[258] In 1887, the granting of the closure had led to a division on every occasion except 3.[259] In 1888, there were 18 occasions when the closure was agreed to without a division,[260] a pattern broadly reflected thereafter.[261] Another change

254 Lucy, *Salisbury Parliament*, pp 41–42.
255 Lucy, *Salisbury Parliament*, p 47.
256 Lucy, *Salisbury Parliament*, p 41.
257 CJ (1892) 41; HC Deb, 15 Feb. 1892, col 552; *Life in Parliament*, pp 329–330.
258 HC (1889) 0.150, pp 2–13.
259 HC (1888) 332, pp 2–6.
260 HC (1889) 0.150, pp 2–13.
261 HC (1889) 0.150, pp 14–19; HC (1890) 369, pp 2–14.

noted by Lucy was that Smith "has no monopoly" on the closure which could be claimed by private members "with excellent effect".[262] In 1887, only five MPs other than the leader had claimed the closure, and only three had done so successfully, two of which were in respect of private business.[263] In 1888, over thirty backbenchers claimed the closure.[264]

Opposition to the growing use of the closure came to be associated particularly with Conybeare. On 19 July 1888, the Speaker accepted the closure while the Cornish radical was speaking on an Irish hybrid bill, making what Milman referred to as "a rigmarole and exasperating speech".[265] Later in the evening, Conybeare referred to the granting of the closure as "a public scandal". The Speaker asked him to withdraw, and he did so reluctantly and almost inaudibly. At first, the Speaker did not hear him, and so named him, but he withdrew the naming after Conybeare asserted his withdrawal of the phrase.[266] The next day, an evening newspaper published a letter from Conybeare referring to the "scandalous proceedings" on the bill the previous evening, restating his opinion that the Speaker's conduct was a "public scandal", and indicating that he had withdrawn the phrase only "in obedience to the rules of Parliamentary decorum". When Churchill raised this as a matter of privilege, Conybeare was suspended for a period of one calendar month, covering the period until the summer adjournment.[267] When the House met again in November, "in the first quarter of an hour of the Autumn Session, Mr. Conybeare, in his studiously offensive manner" rose first to complain about the terms of his suspension and then to give notice of a motion of censure on the Speaker for "a very gross abuse of the Rules of this House".[268] Although no time was found for his motion during the remainder of the Session, he tabled it again in 1889, encompassing criticism of what he felt was another premature acceptance of the closure. In response, the Speaker stated:

> "I am vested with absolute discretion to allow the Closure to be moved at any time unless I think Debate ought to be allowed in the interests of fair debate and of the rights of the minority."[269]

This discretion was exercised with remarkable frequency when Conybeare was on his feet in the ensuing years. Lucy observed that his appearance in debate

262 Lucy, *Salisbury Parliament*, p 41.
263 HC (1889) 332, pp 2–6.
264 HC (1889) 0.150, pp 20–21.
265 HC Deb, 19 July 1888, cols 1881–1883; *Decisions, 1886–92,* pp 345–346.
266 HC Deb, 19 July 1888, cols 1899–1900.
267 HC Deb, 29 July 1888, cols 60–107.
268 Lucy, *Salisbury Parliament*, p 109; HC Deb, 6 Nov. 1888, col 462.
269 *Decisions, 1886–92*, pp 346–348.

> "is as regularly followed by application of the closure as night follows day … It has come to be quite an automatic process. In theatrical parlance, Mr. Conybeare is the cue for the Closure".[270]

The Speaker's discretion was also apparent in interpreting the operation of the closure in the new circumstances which arose from the 1888 Standing Order creating the moment of interruption. The issue of how far the closure could be claimed at or after the moment of interruption and the questions to which it then applied if claimed was the subject of a memorandum prepared by Milman in May 1892. What Milman termed the "convenient, and indeed necessary elasticity of practice" enabled the Speaker to put the question on subsidiary and formal questions, as well as the consequential questions covered by the Standing Order, when the closure was agreed to at the moment of interruption. The same elasticity allowed the moment of interruption to be projected to cover the period after any question that was the subject of a vote at the moment of interruption was decided and also any period when business continued unopposed, with the closure being capable of being claimed when anyone voiced opposition.[271]

"Shown to be imperfect": the limits of the major closure

The major closure in the 1887 rule took two forms, one applying to certain words within a clause standing part and one applying to a clause as a whole. The closure in the first form was claimed on 9 May 1887, in Committee on the Criminal Law (Amendment) Bill, to enable two words to stand part of Clause 1 and thus to pass over eight amendments. The Chairman refused to grant it because he felt two of those amendments merited debate, although the exchange on the claim encouraged the withdrawal of some lesser amendments.[272] The closure in this form was also successfully claimed on two occasions during proceedings on Clause 2 of the Bill.[273] On 7 June, the closure in the form originally envisaged by Milman was claimed, to apply to Clause 3 of the Bill as a whole. Courtney as Chairman declined to accept the motion. Although he felt that many of the remaining amendments were not "of sufficient importance to demand discussion", he felt that two or three merited debate.[274] A couple of days later, Milman prepared a draft motion, intended to apply to remaining provisions on the Bill, amending the application of the closure rule to provide "That certain amendments or New Clauses specified in the Motion be not

[270] Lucy, *Salisbury Parliament*, p 465.

[271] PCJ, Miscellaneous Precedents, Vol 1, fos 220–226v, Questions pending at the moment of the interruption of business, and on the interpretation of the Closure Rule, 2 May 1892; also republished without the Appendices in *Decisions, 1886–92*, pp 375–382.

[272] CJ (1887) 222; HC Deb, 9 May 1887, cols 1416–1420.

[273] HC (1888) 332, pp 2, 4.

[274] CJ (1887) 274; HC Deb, 7 June 1887, cols 1313–1314; *Decisions, 1886–92*, p 132.

considered", but this more targeted form of the closure did not commend itself to the government which preferred the simple guillotine.[275]

The major closure was not claimed at all in 1888, for the reason already identified by the experience of 1887, namely that one or two amendments meriting debate might be found among those to be excluded by this device.[276] Early in January 1889, Smith invited Palgrave and Milman to consider further possible procedural reforms.[277] In response, Milman prepared a new version of the motion he had proposed in June 1887, which was included in a new package presented to Smith by him and Palgrave in January 1889. The proposed form of the closure was "That certain Amendments (to be defined in the Motion) be not considered". Milman wrote:

> "Great importance is attached to this proposal, the object of which is to prevent irresponsible Members from occupying with some trivial Amendment that time which the House generally desires to devote to propositions of graver importance".[278]

He noted how proceedings on the coercion legislation of 1887 had demonstrated the ineffectiveness of the major closure when there were many amendments, few meriting debate. He also argued that this power could be exercised in Committee of Supply to "frustrate the tactics commonly pursued of raising trivial Amendments to non-contentious Votes".[279] In forwarding the proposal to Smith, Palgrave explained:

> "Milman ventures to offer for consideration a rule giving power of Closure on such Amendments as may be specified in a Motion for that object; & I need not urge that Milman is a well-qualified adviser on such a matter."[280]

Smith considered the new draft rules, and consulted colleagues on them,[281] but no proposals were brought to the House that year.

In April 1891, Milman prepared a memorandum which set out his analysis of the failings of the rule in more detail. He argued that it was anticipated that the provisions for clauses or words standing part in the 1887 rule "would enable the Committee, or the House, to brush aside frivolous Amendments; whilst obstructive debate on fair Amendments could be brought to a conclusion by the first part of the Rule". That it did not operate in this way he attributed to the reference in the rule to the rights of the minority:

275 PCJ, Miscellaneous Precedents, Vol 3, fo 17, draft motion in Milman's hand.
276 HC (1889) 0.150, pp 2–13; "Peril of Parliament", p 281.
277 RUSC, HAM PS 14/6, Palgrave to Smith, 11 Jan. 1889.
278 PCJ, Miscellaneous Precedents, Vol 3, fos 154–155v, Procedure: draft Rules (1889).
279 PCJ, Miscellaneous Precedents, Vol 3, fo 155.
280 RUSC, HAM PS 14/7, Palgrave to Smith, 17 Jan. 1889.
281 GA, D 2455/X4/1/1/6, Smith to Hicks Beach, 24 Jan. 1889; RUSC, HAM PS 14/9, Palgrave to Smith, 29 Jan. 1889.

> "The Chairman in consequence of his direction felt great difficulty in passing over any Amendment, and the ingenuity of obstruction has been able in consequence to place him in great embarrassment".

Milman went on:

> "It is by multiplying Amendments by way of addition to Clauses, and new Clauses, that a Bill can be most easily smothered by persistent obstruction, and this is the precise point at which the Rule has been shown to be imperfect."

He noted how the operation of the closure rule, and its limitations, had changed the nature of obstruction:

> "The old devices of patent obstruction are being superseded by the tactics of veiled obstruction. Some score or more of members are banded together. It is arranged that no one of them is to speak for more than five to ten minutes at a time. They ... mingle in debate with the fair Opponents of the Bill, who raise substantial amendments … The real and sham debates are so cleverly alternated that it is difficult to affix the blame to any one in particular, and the Closure Rule is too slow to be applied to successive Amendments in Committee."

Milman again argued for the use of a new form of the closure motion to exclude trivial amendments, as well as proposing a wider package of reforms to legislative procedure as an alternative to the guillotine. Finally, he suggested that temporary Chairmen in the Committee of the whole House should have the same power to accept the closure as the Chairman of Ways and Means.[282] As he was subsequently to put it in 1894:

> "It is hardly desirable that such Chairmen should be placed in an inferior position, as they are intended to occupy the chair of the Committee continuously, whenever, owing to any long indisposition of the Speaker, the Chairman of Ways and Means may be called upon for a considerable time to discharge the duties of the Speaker. Besides, the Chairman of Ways and Means might himself be ill and absent for some time in the crisis of the session."[283]

"Winnow the chaff from the grain": new challenges and the case for reform, 1893–94

Although the new closure rule was still seen as deficient in some respects by Milman, the rule was to pass a significant test in the life of any procedural reform when it was embraced and used unhesitatingly by a government of

[282] PCJ, Miscellaneous Precedents, Vol 1, fos 251–252v, Memorandum on the Working of the Closure Rule, Apr. 1891.

[283] "Parliamentary Procedure *versus* Obstruction", p 494.

a different political complexion from that which introduced it. The partial support of many Gladstonian Liberals, if not Gladstone himself, for many key features of the 1887 closure rule had been motivated by awareness that it would assist a future Liberal administration as much as a Unionist one.

The closure was a vital and essential tool for the passage through the Commons of the legislative programme of Gladstone's fourth administration in the Session of 1893–94, the centrepiece of which was the Government of Ireland Bill, designed to deliver Home Rule for Ireland. The closure was claimed 168 times during the Session, and granted on 108 occasions. The closure was claimed 54 times during proceedings on the Bill, and a further 9 times on business motions relating to the Bill. There were also 27 claims of the closure during the financial business which had to be completed by 31 March, which was subject to obstruction to impede the passage of the Bill.[284] The instrument that was much admired among Unionists and much deplored among radicals was suddenly seen through a very different lens. Conybeare himself claimed the closure on six occasions.[285] The reversal of positions was no barrier to protests about the operation of the closure rule, with government supporters criticising instances when claims were not granted and Unionists criticising instances when it was.

The controversy which surrounded these decisions was enhanced by the approach of and personnel in the Chair. During the Parliament of 1886–92, Lucy considered that the House "had had the further advantage of supremely good direction from the Chair". Both Peel and Courtney had "been suddenly called upon to solve knotty points, or to establish momentous precedents" and had done so with aplomb.[286] Although Peel remained Speaker, he was thought to have concluded that a greater reluctance to accept claims of the closure than in the previous Parliament was justified by reference to the smaller ministerial majority.[287] More importantly, Gladstone opted to replace Courtney with a new Chairman of Committees, John William Mellor, who had been out of the House since 1886, so that, in Milman's words, he "could not be familiar with the conditions on which closure had hitherto been assented to".[288] Mellor failed to establish his authority as Chairman from the outset, and his decisions

284 *Return to an Order … dated 17 August 1893 … respecting Application of Standing Order 25* …, HC (1893–94) 57, pp 2–18. On the disruption to financial business in March, see C Lee, "Archibald Milman and the 1893 Irish Home Rule Bill" (hereafter "1893 Bill"), *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments* (2016), pp 28–63, at pp 39–41.

285 HC (1893–94) 57, p 24.

286 Lucy, *Salisbury Parliament*, pp 518–519.

287 "1893 Bill", p 43.

288 *Decisions, 1893–94*, p 85; "1893 Bill", p 43.

on the closure were soon challenged from both sides. What was seen as a premature decision to accept the closure led to a two-hour debate in a House, in Milman's words "seething with excitement", on "the propriety of the Motion of Closure".[289] Three days later, Mellor rejected a claim for closure from John Morley, the minister in charge of the Bill, and Mellor was then the target of exasperation from Gladstone and other Liberals.[290] The Unionist frontbencher Lord George Hamilton was also angry at the fact that Morley had claimed the closure at the conclusion of his speech which made the case for the closure to be accepted, and raised this the next day with the Speaker, who somewhat unwisely ventured an opinion on the matter:

> "I am bound to say that for an hon. Member to make a controversial speech, and then to move the Closure, is scarcely in conformity with the spirit of the Rule, because such a course shuts out an answer to his speech being given. With reference to the Motion of the Closure, it would be improper and contrary to the spirit of the Rule to move the Closure and then to give reasons; and, therefore, I think it would be improper to give reasons for moving the Closure and then to move it."[291]

Milman made his unease with the Speaker's words evident, and sought to reinterpret them:

> "The Standing Order is explicit; Closure may be moved, after the question has been proposed from the Chair, without any restriction as to time, and there is nothing unreasonable in a Member stating shortly the grounds on which he claimed to move the Closure … As a matter of fact, on the occasion of which Lord G. Hamilton complained, Mr. John Morley had only spoken for two or three minutes, and the Chairman withheld his assent. The Speaker had not the facts before him, and declined to deal with the concrete case, whilst uttering a word in season in deprecation of an obvious abuse on a hypothetical case."[292]

A few days later, Mellor was much more assertive in preventing the Unionists sustaining a protest about the use of the closure, so that they were left "smarting under the closure which they themselves had brought into existence".[293]

A striking feature of the operation of the closure rule in respect of the Bill was that it was exclusively used in its simple form—to bring to a decision the question already proposed from the Chair.[294] The major closure was not used

289 *Decisions, 1893–94*, p 85; "1893 Bill", p 43.
290 "1893 Bill", p 43.
291 HC Deb, 12 May 1893, col 790.
292 *Decisions, 1893–94*, pp 68–69.
293 "1893 Bill", p 44.
294 HC (1893–94) 57, pp 8–18.

at all, having been blunted as a tool by the difficulties in its use exposed since 1887. The government was, like its predecessor, forced to resort to a guillotine motion to secure passage of the Bill.[295] Milman tried at various junctures in the spring and early summer of 1893 to persuade ministers to adopt the reforms to the closure rule and to legislative procedure which he had pressed upon the previous administration. For example, the memorandum prepared in 1891 on the operation of the closure rule was sent in revised form to Sir William Harcourt.[296] However, Milman's arguments fell on similarly stony ground.

In the spring of 1894, at the close of the session, Milman decided to make his argument for the reform of the closure rule in a more public way, publishing an article in the *Quarterly Review*. Although the article was published anonymously, its authorship would be evident to any of the recipients of Milman's memoranda prepared between 1887 and 1893. Milman may have been more willing to publish at this time because he had advanced the case for reform in similar terms to successive administrations, reducing the chances that his line of argument would be seen as partisan. He described the new rule passed in 1887 as "a remarkable success", which was "effective against obstruction by a few, for which it was mainly devised". He argued that its imperfections arose in part from the constraints imposed on its drafting by the process necessary to secure agreement: "to pass it at all, it had to be compressed into the shortest possible compass".[297]

To remedy the defects of the closure rule, Milman advanced in published form the same proposal he had been advocating privately since 1887, namely an additional closure motion to provide that certain amendments be not considered. He also clarified how the Chair's discretion would operate in relation to this motion:

> "The Chair should be empowered to make its assent conditional on the omission from the motion of any of the specified amendments it might deem entitled to consideration."[298]

The use of this new motion in this way would, Milman argued, "winnow the chaff from the grain—the proposal of substance from the flimsy pretence".[299] As he put it in another article published a month later, "Such a Rule would enable the House to control the abuse which has hitherto baffled its authority".[300] He also pointed out that the closure in this form could be applied to motions

295 "1893 Bill", pp 44–47.

296 "1893 Bill", p 44; Bodleian Library, Harcourt Ms 190, fos 6–7, Memorandum on the Working of the Closure Rule, June 1893.

297 "Peril of Parliament", p 277.

298 "Peril of Parliament", pp 280–281.

299 "Peril of Parliament", p 281.

300 "Parliamentary Procedure *versus* Obstruction", p 494.

for resolutions as well as during proceedings on bills, so that it might prevent excessive debate of the kind seen when passing the new closure rule in 1887 when "many of the proposed amendments were simply meant to destroy it".[301]

Conclusions

Prior to 1880, the closure had few advocates in the parliamentary mainstream. Resistance from the Conservative opposition frontbench meant that it required Speaker Henry Brand to initiate a closure for the first time in 1881, which was then made available in what Milman termed "special emergencies".[302] The passage of the closure rule in 1882 by Gladstone was an extraordinary personal achievement, but that rule was deeply flawed. The case for reform—to fashion an instrument which could be, in John Morley's words, a "household tool for daily use"—was initially made by Liberals. The prospects for progress up to and including the time of the Procedure Committee which met in the spring and early summer of 1886 were stymied by the Conservative frontbench.

The creation of a political environment in which a closure rule suitable for regular and effective use could be introduced and passed was above all the achievement of Lord Randolph Churchill. Although he laid himself open to charges of hypocrisy and inconsistency by announcing his conversion to closure, this had little impact on a politician who revelled in Disraelian opportunism. He also had a genuine interest in enhancing the effectiveness of the House of Commons, not least because he was far more committed than prime minister Salisbury and most of his cabinet colleagues to the case for an ambitious legislative programme. The evidence of the power of obstructionist combinations—Parnellites, Radicals and sometimes the Gladstonian frontbench—in the short session of autumn 1886 enabled Churchill to convince his cabinet colleagues of the case for a new closure rule even before the administration was committed to coercive legislation for Ireland.

Churchill was also a leading figure in translating the agreement in principle into a new draft rule, but was indebted to Lord Hartington. Until the latter's intervention in early November, Churchill's own thinking was dominated by proposals for a scheduled closure and bound up with proposals for new sitting hours. Hartington realised the value of the switch to a veto, and Churchill was also quick to realise the benefits of the change. This switch was fundamental to the effectiveness of the new closure rule. Milman later described how, under the new rule,

> "the intervention could only be in favour of the minority and of the orator in possession of the House. The Speaker was constituted the guardian

301 "Parliamentary Procedure *versus* Obstruction", p 494.

302 *Encyclopædia Britannica*, p 479.

of rational debate; he was no longer under the invidious obligation of intervening only on the side of the majority."[303]

If Churchill was the principal architect of a new and effective closure rule, its successful passage through the House of Commons owed a great deal to WH Smith's persistence, concision and conciliatory manner. To secure passage of the rule, and in the light of criticisms from within Unionist as well as opposition ranks, Smith agreed some textual changes to the rule. Some of these clarified and improved the text, most notably the provision for claiming the closure. Another important change was the addition of a textual reference to the reasons why the Speaker could withhold assent to the closure. By 1894, in a published article, Milman also saw this change as beneficial, noting that "the intervention of the Chair was strictly limited to the discharge of two well-defined duties—preserving the minority from any infringement of its rights, and protecting the member who was addressing the House from impertinent interruption".[304] Although Milman saw the inclusion of some form of major closure as an important change between the rules of 1882 and 1887, it was of limited effect. Even in the course of 1887, Milman was offering the leader of the House a way to make the major closure more effective, by enabling the exclusion of selected amendments. Milman persisted with proposals for change up to 1893, but without success.

Despite the limitations which Milman was keen to identify and remedy, it is important not to underestimate the significance of the closure rule as introduced in 1887, amended in 1888 and operated thereafter. A provision that was initially seen as un-English and a by-word for parliamentary despotism became accepted as a necessary and integral part of the effective operation of the House of Commons. As Milman was to put it in 1902, it had "now become a part of parliamentary routine".[305] The rule as first conceived by Churchill, Hartington and Milman in late 1886, and as amended by the House in 1887 and 1888, has stood the test of time and remains embodied in Standing Order Nos. 36 and 37.

The closure alone could not transform the conduct of business in the House of Commons. Wider changes were needed to legislative procedure, to the control of Supply business and finally to the control of time in the House more generally to achieve that. However, the closure provided the essential starting point for those other changes, and was the cornerstone of the reformed procedure of the House of Commons.

303 "Parliamentary Procedure *versus* Obstruction", p 491.
304 "Parliamentary Procedure *versus* Obstruction", p 491.
305 *Encyclopædia Britannica,* p 479.

ELECTRONIC VOTING IN CANADA'S HOUSE OF COMMONS

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Introduction

The possibility of electronic voting has been discussed in the House of Commons of Canada for many years. As early as 1959, members made suggestions for systems that would allow them to cast votes electronically. In 1985, when many reforms were made to House procedure, a special committee recommended that the House adopt computerised electronic voting. This recommendation was not taken up, and in 2003, another special committee made a similar recommendation. Some electronic infrastructure was installed in the summer of 2004, but no further action was taken. Votes continued to be taken in the tradition manner, with members rising in their places and having their names called by a Table Officer. The COVID-19 pandemic brought the issue to the top of the agenda in 2020.

After months of members participating in reduced numbers, on 23 September 2020, the House adopted a motion governing proceedings during the pandemic and allowing hybrid sittings, whereby members of Parliament could choose to participate and vote in the Chamber or by videoconference. The motion also tasked the House of Commons Administration with creating an electronic voting solution.

Virtual voting

The motion of 23 September 2020, specified that "until such time as a remote voting application is ready for use, recorded divisions shall take place in the usual way for members participating in person and by roll call for members participating by videoconference, provided that members participating by videoconference must have their camera on for the duration of the vote." Members participating remotely had their names called one at a time and had to announce how they were voting. This process was very time consuming and recorded votes took an average of 45 minutes, a significant increase over traditional standing votes, which usually took less than 10 minutes.

The first virtual vote took place on 28 September 2020, on a motion concerning the Address in response to the Speech from the Throne. It was

[1] The author would like to acknowledge the assistance of Sophia Nickel, Procedural Clerk in the Table Research Branch, in the preparation of this article.

not without challenges: a global Microsoft outage delayed the vote by more than forty minutes and prevented some members from connecting to the videoconference. The House agreed by unanimous consent to allow the affected members to vote by telephone.

Following an iterative development process and simulations with members, the Speaker announced on 25 February 2021, that he had received written notice from the four House Leaders stating they were satisfied with the electronic voting solution. On 8 March 2021, the first recorded division was held using the new system. It continued to be employed until the dissolution of the 43rd Parliament on 15 August 2021.

In November 2021, the House adopted a motion that reinstated hybrid proceedings for the 44th Parliament and tasked the House Administration with onboarding members to the electronic voting application used in the 43rd Parliament. The first vote in the 44th Parliament using the electronic voting system took place on 9 December 2021.

Developing the electronic voting system

The electronic voting system was developed, tested and refined between September 2020 and March 2021 using an iterative process. Prototypes were presented to the party Whips and the Speaker to help ensure that the proposed solution would respond to the needs of the House. In February 2021, members participated in two simulations and provided feedback to the House of Commons Administration. Extensive testing was done on all aspects of the system to ensure that all components would perform to the highest standards.

The House Administration designed and developed the electronic voting system according to various priorities, including security, equal access for all members, integration in the Chamber, bilingualism, and immediate voting results.

The electronic voting system builds on technologies already present in the House, such as streaming and broadcasting capabilities, as well as technologies that have successfully enabled hybrid proceedings in the Chamber and in committees.

Practical and procedural aspects

The electronic voting system is made up of various tools. The central feature is a mobile application that members use to cast votes remotely. To use the application, members require a House of Commons-provisioned mobile device that is connected to a Canada-based Wi-Fi or cellular network and enrolled in the House of Commons' mobile device management platform. Members must be within Canada to vote using the application and must also be registered in the electronic voting system itself.

When a recorded division is requested, members are notified in three different ways: division bells ring as usual in Parliamentary Precinct buildings, an e-mail notification is sent to each member's personal parliamentary email address, and a direct message sent to each member through a secure messaging application. Members can vote either by standing in the Chamber to indicate their vote or by submitting their vote through the electronic voting system.

If they choose to vote electronically, members open the voting application. There, they see a countdown clock displaying the time remaining until the vote begins. If the vote has already begun, there is a countdown until the 10-minute voting period ends. Members can also view information about the motion before the House within the application.

Voting itself involves three steps: first, members choose "yea", "nay" or "abstain" and confirm their selection. They then confirm their identity through facial recognition technology and finally submit their vote.

The House of Commons of Canada does not record abstentions in its official tallies of votes. During a recorded division in the Chamber, members are asked to stand to vote "yea" or "nay" on a motion. Those who wish to abstain from a vote remain seated during the roll call. The purpose of the "abstain" option in the electronic voting system is for members to indicate that they are present and are deliberately choosing not to cast a "yea" or "nay" vote on the motion. Thus, selecting "abstain" is the electronic equivalent of remaining in one's seat during a recorded division in the Chamber. Abstentions submitted through the electronic voting system are neither recorded by Table Officers nor included in a vote's official tally.

During the vote, an electronic dashboard enables House Leaders, Table Officers and key support staff to see which members are connected to the electronic voting system and the virtual sitting of the House, who submits a vote, and what that vote is ("yea", "nay" or "abstain"). It also shows House Leaders the facial recognition photos submitted through the system and any technical issues reported to the technical support team.

In addition to the mobile application and electronic dashboard, the system includes a live vote webpage. Accessible to members and the public, it displays real-time, unofficial results of votes cast in-person and remotely. In the Chamber, screens display live voting results from the application so that members that are voting in person can follow the votes cast by their colleagues voting remotely. This information is only available during the voting period. In order to ensure that the live voting results are accurate and to prevent a member's vote from being counted twice, Table Officers now record in-person votes via an electronic application, in addition to the traditional paper voting sheets.

After voting, members receive a confirmation of their voting intention. They

are also able to change their vote before the end of the 10-minute voting period. To do so, they must repeat all three steps for casting a vote. Should a member wish to change their vote following the close of a voting period, the unanimous consent of the House is required. When the set voting period has concluded, the results are announced in the Chamber. If a member votes both in person and via the application, the in-person vote takes precedence.

Finally, members have access to immediate technical assistance before and during votes. If they experience technical difficulties, they can log into the virtual House sitting, and the Speaker will give them the opportunity to vote by roll call before the results are announced. At the end of the voting period, the votes cast by members who experienced technical difficulties are confirmed and included in the tally reported to the Speaker.

After the House adjourns, the official results of the vote are published in the Journals (official record of the decisions and other transactions of the House), as well as on ourcommons.ca in the "Votes" section.

Security considerations

Cybersecurity is an integral part of any technology offered by the House of Commons. The House Administration maintains close working relations with other legislatures, as well as with national and international security partners and leaders in the technology industry, to ensure that all appropriate security measures and protocols are in place. Canada's national security partners have evaluated the electronic voting system and concluded that it meets or surpasses all essential and recommended security criteria.

In addition to the many IT security access controls and authentication steps that the House of Commons already has in place, every time members participate in a vote using the electronic voting system, they are required to take a live picture of themselves to confirm their identity. If the facial recognition is successful, the authenticated photos are sent through the system and available for the Whips to consult. If the system's automated security controls detect a significant discrepancy between the live picture that was taken and the member's photo on record (taken as part of the registration process), the member will be prompted to take a second picture. After two failed attempts, the system will notify the member that their identity could not be confirmed, although they will still be allowed to cast their vote in the application. Failed attempts resulting in a non-authenticated picture will be flagged to the members and the Whips and may give rise to a point of order.

Conclusion

The COVID-19 pandemic has provided an opportunity for Canada's House of Commons to develop an electronic voting system that has long been discussed

and recommended. The system, as it was developed in 2020 and 2021, involves various parts, including an application that members may use to cast votes from anywhere in Canada. Electronic voting does not replace current in-person voting procedures, but provides an alternative means to cast votes. Various security controls ensure that only verified members of Parliament can cast votes during a limited voting period.

Currently, the procedures used for electronic voting have not been made permanent in the Standing Orders. Time will tell whether the system will be implemented permanently or whether members will return to an in-person only procedure for taking recorded divisions in the House of Commons.

THE EVOLUTION OF THE CODE OF CONDUCT IN THE HOUSE OF LORDS

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Background

In the 2010 edition of *The Table*, Dr Christopher Johnson described far-reaching developments in the regulation of conduct in the House of Lords which had taken place following media revelations about peers agreeing to accept payment from a fictional company in return for seeking to amend legislation. The intervening 12 years have been no less dramatic. Not only were the 2010 improvements to the conduct system tested by scandals relating to expenses and lobbying, but further changes were required to deal effectively with multiple allegations of sexual misconduct and bullying in Parliament. This article sets out the main developments across those 12 years.

As Dr Johnson explained, the conduct system in place before 2010 was just about able to deal with those members found to be in breach of the Code in a high-profile "cash for amendments" sting. This was in large part thanks to the Code's requirement that members must "act always on their personal honour" and the finely-balanced decision of the Committee for Privileges (contrary to the advice of the then Attorney General) that the House possessed an inherent power to suspend members for not longer than the remainder of the current Parliament. However, it was becoming clear that the Code and the system for investigating breaches were ripe for an overhaul: a view which was further reinforced by the expenses crisis which unfolded in both Houses from May 2009.

The ensuing Leader's Group, chaired by Crossbencher Lord Eames, recommended several significant changes to the Code which were accepted by the House.

1. The introduction of a Guide to the Code of Conduct to provide a more detailed explanation and interpretation of the principles set out in the Code itself.
2. A ban on the provision of parliamentary services and advice in return for payment or other incentive or reward (the UK House of Commons still does not ban the provision of paid parliamentary advice (also known as parliamentary consultancy) though the Standards Committee recommended in May 2022 that it should).
3. A requirement to act in accordance with rules agreed by the House in respect of financial support for members (i.e. allowances and expenses) and the House's facilities. This was the first time that the Code had referenced

other sets of rules which were unrelated to interests or members' conduct in proceedings.

The Group also recommended an injection of independence into the investigatory system in the form of a Commissioner for Standards who would take on the role previously played by a Sub-Committee of the Committee for Privileges. The Sub-Committee on Lords' Conduct (as it became known) would henceforth be responsible for proposing sanctions on members found in breach of the Code, and the Committee for Privileges (renamed the Committee for Privileges and Conduct) would hear appeals against finding and/or sanction. The new arrangements came into force at the start of the 2010 Parliament, and the first Commissioner for Standards, Paul Kernaghan CBE QPM, was appointed on 2 June 2010.

The expenses scandal

The new Commissioner and his successors have been kept busy. Following the 2010 changes, the growth in complaints about members which were unrelated to the traditional core subject matter of the Code—the registration and declaration of interests—continued apace, perhaps most notably as a result of the expenses scandal which engulfed both Houses of Parliament. In total, nine complaints about breaches of the rules on financial support by seven different members have been upheld since 2010, some under the old system which required the Clerk of the Parliaments to investigate.

Perhaps the most eye-catching breach was that committed by Baroness Uddin, who in 2010 was required to repay over £125,000 of public money and was suspended from the service of the House for the remainder of that session, which turned out to be around 19 months. Two of the other members found in breach of the rules on financial support, Lord Hanningfield and Lord Taylor of Warwick, were separately convicted of the criminal offence of false accounting and sent to gaol. All seven members found in breach of the rules are still members of the House.

In the same period, five members have been found to have breached the rules on the use of the facilities and services of the House. This is all in addition to the more traditional caseload relating to the registration and declaration of interests and the provision of paid parliamentary advice and services.

The 2014 and 2015 Acts

Following the collapse of the Conservative–Liberal Democrat coalition government's attempt at wholesale reform of the House of Lords, pressure began to grow in both Houses to take smaller legislative steps to address some of the issues on which there was more widespread agreement. The Government initially resisted this pressure, declining to support Lord Steel of Aikwood's

private member's bill which had been passed by the House of Lords. That bill would have tackled a long-standing issue by allowing members of the House formally to retire (superseding the informal and non-binding retirement scheme then in operation) as well as providing for the permanent removal of members who did not attend for an entire session. It also addressed the inability of the House to expel members convicted of criminal offences by providing for those sentenced to more than a year's imprisonment for serious criminal offences to be automatically deprived of their membership.

The Government later agreed to support a similar bill introduced by Dan Byles MP and sponsored in the Lords by Lord Steel. This became the House of Lords Reform Act 2014. In parallel with the bill's passage, the House amended the Code of Conduct so that members handed a gaol term of up to a year or a suspended sentence of imprisonment—who would not be caught by the new Act—would nonetheless be susceptible to sanction by the House.

There was however the outstanding problem that, in the absence of a serious criminal conviction, the House did not have the power to suspend members beyond the end of the Parliament or expel them altogether for breaches of the Code of Conduct. The limitation on suspension could be particularly problematic if a member was found in breach of the Code only a matter of weeks or months before the end of the Parliament. Former Lord Speaker Baroness Hayman sought to address this problem by introducing a private member's bill which would empower the House to make standing orders allowing unlimited suspension and expulsion. The bill received Government support and became the House of Lords (Expulsion and Suspension) Act 2015. On 16 July 2015, the Chairman of Committees (Deputy Speaker), Lord Sewel, invited the House to agree a new standing order to govern the use of the powers under the 2015 Act, which it did without debate.

Lord Sewel and disrepute

Just 10 days later, in the deepest of ironies, Lord Sewel—Chair of the Committee on Privileges and Conduct—was the subject of a dramatic front-page story in the *Sun on Sunday*, accusing him of using prostitutes and cocaine in his London apartment. Two days later, under the provisions of the 2014 Act, Lord Sewel resigned from the House. If he had decided to continue as a member, it is unlikely that he could have been investigated or sanctioned under the Code of Conduct as it does not extend to members' private lives.

In early 2016 the Committee for Privileges and Conduct sought to address this issue in its report on *Undermining public confidence in the House*. The Committee noted that on occasion a member's misconduct in his or her non-parliamentary activities might be so serious, and fall so far below the standards of conduct expected of a member of the House, that, should he or she remain a member,

public confidence in the House as a whole would be seriously undermined. The House of Lords Code (unlike the House of Commons Code) did not allow the House to sanction members in such circumstances. The report therefore proposed that such misconduct should be a breach of the Code of Conduct, and that it should lead to automatic expulsion from the House.

For reasons that are unclear, this report was never put to the House for agreement. The Conduct Committee, which succeeded the Committee for Privileges and Conduct, considered the matter again in 2021 in the context of members' use of social media. This is discussed further below.

Lord Lester of Herne Hill

In November 2017, a member of the public complained to the Commissioner for Standards (by now Lucy Scott-Moncrieff CBE) that Lord Lester of Herne Hill QC—a long-serving Liberal Democrat member and distinguished human rights lawyer—had sexually harassed her, offered her a corrupt inducement to have sexual relations with him, and had warned her of unspecified consequences if she did not accept his offer. The Commissioner took the view that the alleged conduct occurred in the course of Lord Lester's parliamentary duties—because the complainant had been working with him on parliamentary matters—and therefore fell within the scope of the Code of Conduct. As the events in question had taken place more than four years previously, she sought and received the agreement of the Sub-Committee on Lords' Conduct to launch a formal investigation.

At that time, the Code did not have any provisions relating to sexual harassment, but the Commissioner took the view that the conduct, if proven, would amount to a breach of the requirement on members to act always on their personal honour. Even so, the investigatory procedures were simply not designed for the kind of emotive, contentious and at times upsetting allegations involved. The Commissioner therefore had to make several *ad hoc* adaptations to the procedures, most notably the following:

- not identifying the complainant in the report;
- not publishing the full range of evidence; and
- involving the complainant throughout the investigation.

The investigation was complex and the whole process, including an appeal and debates in the House, took around one year. The details of the case are available in the report, but in short the Commissioner upheld the complaint on the balance of probabilities.

It then fell to the Sub-Committee on Lords' Conduct to recommend a sanction. Several of its members had known Lord Lester for many years and would have preferred to recuse themselves, but they concluded "that it has instead been our regretful duty to deal with this case as with any other". The

Sub-Committee's report also noted:

> "The tragic irony of this case is that for decades past the respondent has been one of the most widely known, effective and admired of those campaigning for racial and sexual equality in this country, a renowned supporter of human rights and freedoms across the board."

Nonetheless, the Sub-Committee concluded unanimously that, given "the very serious nature of the respondent's abuse of power", the most serious sanction of all—expulsion from the House—was warranted. Even though the conduct in question occurred well before the House of Lords (Expulsion and Suspension) Act 2015 came into force in June 2015, the Sub-Committee concluded that s. 1 of the Act permitted the House to impose such a sanction because the conduct had not been "public knowledge" before that time.

Lord Lester appealed to the Committee for Privileges and Conduct against both the Commissioner's finding and the Sub-Committee's recommended sanction. This involved a written submission and an oral hearing. After consideration, the Committee rejected Lord Lester's contention that the Commissioner was at fault in the way she carried out her investigation, and endorsed her findings. The Committee did however uphold Lord Lester's appeal against the sanction, suggesting that the Sub-Committee characterisation of his conduct as a "grave abuse of power" was stronger than the Commissioner's own conclusion, and noting that the sanction of expulsion had not been available at the time of the conduct. Instead, the Committee recommended that Lord Lester should be suspended until the anticipated start of the next Parliament, 3 June 2022—about 43 months.

The proposed suspension still required the agreement of the House, with debate scheduled for 15 November 2018. Unusually, the motion to agree the Committee's report was opposed: the eminent advocate Lord Pannick QC tabled an amendment to send the report back to the Committee on the grounds that "the Commissioner for Standards failed to comply with paragraph 21 of the Code of Conduct which required her to act in accordance with the principles of natural justice and fairness".

In moving his amendment, Lord Pannick declared that "I have been a close friend of the noble Lord, Lord Lester, and we were colleagues at the Bar for almost 40 years". He went on to argue that the Commissioner's investigation had been "manifestly unfair" because she had not allowed counsel to cross-examine the complainant. He also pointed to an opinion commissioned by Lord Lester from David Perry QC in the course of his appeal which alleged unfairness. Lord Pannick concluded that, because the case could not be considered in the courts due to parliamentary privilege, it was incumbent on the House "to apply at least equivalent standards in addressing these matters". His concerns were echoed by other members with a legal and judicial background, including

former Lord Chief Justice Lord Woolf and divorce lawyer Baroness Shackleton of Belgravia.

A number of members pushed back against these arguments. Former Lord Chancellor Lord Mackay of Clashfern pointed out that the procedures had operated for years without complaint, and that it would be "extraordinary" and unjust to the complainant to change them mid-way through an investigation. He said that the Commissioner had "no authority under the rules to ask someone to cross-examine the complainant".

Former Deputy President of the Supreme Court Lord Hope of Craighead also endorsed the Commissioner's approach, taking the view that she had correctly applied the inquisitorial process required by the Code in a way which was "in accordance with fairness and the principles of natural justice". Labour's Baroness McIntosh of Hudnall defended the Commissioner too, calling it "regrettable" that members had "chosen to attack a public servant who is acting on its behalf when there is apparently no evidence that she acted either incompetently or in bad faith". Liberal Democrat Baroness Hussein-Ece focused on the complainant, reminding the House of the importance of protecting "people who are not powerful, who do not have powerful friends or friends sitting in your Lordships' House who can speak and advocate on their behalf".

After a debate of nearly three hours, Lord Pannick pushed his amendment to a division and it was carried by 101 votes to 78.

The debate and the result caused considerable disquiet amongst staff of the House, 74 of whom wrote to the Committee for Privileges and Conduct to express their unease. The letter stated:

> "We were dismayed to see that the result of an investigatory process which has been created and approved by Members was so easily disregarded by those same Members, none of whom had previously objected to the process and many of whom referred to their friendship with the accused."

It went on to point out the power imbalance between members and staff, concluding that the debate had made them doubt whether any complaints they might make would result in "a fair and satisfactory outcome".

Lord Lester and the complainant also made further written submissions to the Committee.

The Committee rapidly reconvened to consider the matter further. A follow-up report explained in detail why it considered that the requirement for the investigation to be conducted with fairness and natural justice had been met, and went on to underline that the requirement applied just as much to the complainant as the respondent. With reference to the 15 November debate and the surrounding publicity, the Committee stated:

"The complainant has publicly and forcefully referred to the fact that Lord

> Pannick, who has made it clear from the outset that he is a close friend and adviser to Lord Lester, was one of those who sat in judgment on Lord Lester when the matter came before the House and campaigned in favour of the points he intended to put to the House in a national newspaper the day before the vote and has continued to campaign in the media since. Nor was he the only member to do so. By contrast, the complainant had no such connections in the House to campaign on her behalf, even were it appropriate to do so. We agree with her point."

In cross-examination specifically, the Committee noted that it is "not an established feature of other systems of law that uphold the principles of natural justice", nor of institutions comparable to the House of Lords such as the Canadian Parliament, the Scottish Parliament, the Senedd or the Northern Ireland Assembly, nor of the systems under which ministers and judges are investigated. The Committee had also been advised that cross-examination could be particularly problematic in cases of sexual harassment. Moreover, the Committee stated that the Commissioner had no power to have witnesses cross-examined even if she wanted to, adding: "To publicly and repeatedly criticise the Commissioner for reading the Guide and Code exactly as the House intended is, we believe, an inappropriate way to treat a public servant."

The Committee also issued a point-by-point rebuttal of the specific criticisms which had been made of the Commissioner's investigation, noting that the critics would perhaps not have made such unfounded points had any of them read the confidential annexes which had been made available for all members to see on a reading room basis.

The report concluded:

> "We are of the unanimous opinion that the process set out by the House in the Code and Guide, and followed in this case, was fair, understood by all parties and conducted entirely appropriately. We are concerned that many of the participants in the debate on 15 November were not fully aware of the care and professionalism of those charged with operating our scheme and may have been led to substitute their own interpretation of such evidence as they heard. That led to the House undermining the processes in the Code which were put in place with some care after significant problems that came to light over a decade ago about members' conduct. These processes were designed to be independent, transparent and credible in the House and beyond. We urge the House to support the decision reached in this case."

On the day the follow-up report was published, 12 December 2018, Lord Lester retired under the 2014 Act, rendering the proposed sanction unnecessary. Nevertheless, the report was put to the House for agreement on 17 December, since it contained important points of principle and sought to restore public confidence in the House's disciplinary system. A further heated debate

followed, though the report was agreed without a vote. The one issue on which everybody agreed was that the investigatory procedures needed reviewing in order to ensure that they were suitable for dealing with bullying, harassment and sexual misconduct cases. This work was in fact already in progress on a bicameral basis.

The Independent Complaints and Grievance Scheme

Following a series of media stories in 2017 which pointed to a culture of bullying and harassment at Westminster, a bicameral working group of members and officials was established to make recommendations. The group published its report on 18 February 2018, several months into the Lord Lester investigation. Its key proposals were as follows:

- a new Behaviour Code for Parliament, applying to all people on the parliamentary estate or engaged in parliamentary business away from Westminster;
- the provision of effective support to those who feel that they may be the victim of bullying, harassment or sexual misconduct;
- new policies and procedures on (a) bullying and harassment and (b) sexual misconduct to ensure consistent and independent investigation of allegations; and
- a programme of culture change and training.

A team was established to implement the proposals of the working group, under the supervision of a bicameral steering group chaired by the then Leader of the House of Commons, Andrea Leadsom MP. The Programme Team published its *Independent Complaints and Grievance Scheme Delivery Report* in July 2018. The Commons swiftly incorporated the Behaviour Code into the Code of Conduct for MPs and adopted by resolution the new policies and procedures on bullying, harassment and sexual misconduct.

The House of Lords Commission also agreed that the Independent Complaints and Grievance Scheme (ICGS), underpinned by the Behaviour Code, would meet the need for a new approach to dealing with bullying, harassment and sexual misconduct both on the parliamentary estate and in the course of parliamentary activities elsewhere. The House of Lords Management Board approved the application of the ICGS to Administration staff, but the situation was more complex in respect of members of the Lords and their staff. The Sub-Committee on Lords' Conduct was tasked with considering:

- how to integrate the ICGS with the Codes and Guide; and
- how the proposed independent reporting and investigatory service could best sit with existing procedures for investigating breaches of the Codes.

The Sub-Committee reported to the Privileges and Conduct Committee in October 2018. That Committee then held a consultation for members of

the House on some of the key aspects of the proposals. The ensuing report, *Independent Complaints and Grievance Scheme: Changes to the Code of Conduct*, was published on 4 April 2019.

The Committee proposed that bullying, harassment and sexual misconduct should be a specific offence in the Code, to avoid reliance on the personal honour provision alone. Members of the House would also be enjoined to observe the principles set out in the Parliamentary Behaviour Code, which would be taken into account in any bullying, harassment or sexual misconduct investigation. Complaints under these provisions would be accepted only from people directly affected by the conduct, not from third parties.

The scope of the bullying, harassment and sexual misconduct provisions, and the existing personal honour clause, would be members' "parliamentary duties and activities" rather than the narrower "parliamentary duties" which applies to the rest of the Code. In the Committee's words, this would enable the Commissioner "to investigate complaints brought by members of the public who may have contacted a member in their capacity as a parliamentarian, even if the complaint was unconnected to any particular parliamentary business". This change was to prove crucial in the Lord Ahmed case (see below).

Reflecting strong advice from the Sub-Committee, complaints of bullying, harassment or sexual misconduct would be investigated by the Commissioner for Standards as with any other alleged breach of the Code, though the Commissioner would have the option of enlisting the help of the independent ICGS investigators if desired—an option which has been taken up in every full investigation to date.[1] This meant that the ICGS investigatory processes would not apply to members of the House of Lords or their staff in the way that they applied to other members of the parliamentary community. Rather, the Committee was recommending that the House, in the spirit of self-regulation, should tackle bullying, harassment and sexual misconduct through its own Codes and Commissioner, albeit while remaining closely aligned with the ICGS where desirable.

There are thus some discrepancies between the treatment of MPs and the treatment of Lords members. On the one hand, the Commons can argue that MPs are investigated in the same way as staff and other members of the parliamentary community. On the other hand, the approach of the House of Lords might be said to have at least three advantages.

[1] For other members of the parliamentary community, the initial investigation is undertaken by the independent investigators alone, who then report to the relevant decision-maker. For ICGS investigations into MPs, the Parliamentary Commissioner for Standards has oversight of the investigations from initial assessment until delivery of the final report, but does not undertake the initial assessment herself.

- Anybody who feels that they have been a victim of bullying, harassment or sexual misconduct by a Lord member can make a complaint, whereas only members of the parliamentary community can make complaints under the ICGS.
- Investigations can extend to parliamentary proceedings in certain circumstances, unlike in the House of Commons (see further discussion below).
- The use of the Commissioner for all investigations ensures consistency between cases and makes it easier to benchmark.
- The Committee also recommended that all its conduct functions—not just those related to bullying, harassment and sexual misconduct—should be taken on by a new and more independent Conduct Committee, comprising five members of the House and four external lay members with full speaking and voting rights. The quorum of the Committee would be three members of the House and two lay members.[2] The report further proposed that the Conduct Committee should in due course consider the merits of making the process for investigating and determining complaints against members of the House more or entirely independent of the House.

Finally, in a move aimed squarely at avoiding any repeat of the Lord Lester debacle, the Committee recommended that a new standing order should be introduced requiring reports of the Conduct Committee on individual conduct cases, together with any resolution on sanction, to be decided by the House without debate.

The House agreed to these recommendations on 30 April 2019. The new Conduct Committee was first appointed on 9 May 2019, without lay members who needed to be recruited. The complete Committee was first appointed on 29 October 2019.

Lord Ahmed

In 2018, a member of the public submitted a complaint about Lord Ahmed. The complainant had contacted Lord Ahmed to seek help in making a complaint to the Metropolitan Police about a faith healer whom she believed had exploited innocent men and women financially and sexually. Her complaint against Lord Ahmed was that when she asked him for help, he initially made unwanted physical contact of a sexual nature with her and later held out the promise of using his influence to help her, when in fact his aim was to have sex with her. The Commissioner found that Lord Ahmed's offer to help the complainant

[2] The advice of the clerks is that the Committee's proceedings and publications are privileged in the same way as any other select committee, notwithstanding the lay members amongst the membership.

did not constitute a parliamentary duty and was therefore outwith the scope of the Code as it then was. The complainant subsequently went to the police, who investigated but concluded that there was insufficient evidence to prosecute. She also contacted the BBC and a Newsnight programme was broadcast in February 2019 setting out her allegations and Lord Ahmed's denial that he had done anything wrong.

Following the expansion of the scope of parts of the Code to "parliamentary duties and activities" in May 2019, the complainant renewed her complaint and the Commissioner took the view that it was now in scope on the basis that Lord Ahmed offering to use his influence as a parliamentarian was, if not a parliamentary duty, a parliamentary activity. At the time, the new bullying, harassment and sexual misconduct provisions applied retrospectively only to the start of the Parliament in June 2017, which was halfway through the alleged conduct in question,[3] so the Commissioner investigated Lord Ahmed under the personal honour provision instead.

A lengthy and complex investigation ensued, with the Commissioner concluding that Lord Ahmed had failed to act on his personal honour by "sexually assaulting" the complainant and "by failing to progress [her] case and lying about his intentions". In her view, the severity of the breaches was exacerbated by the fact that Lord Ahmed (1) knew the complainant was receiving "treatment for anxiety and depression" and (2) provided the Commissioner with "deliberately inaccurate and misleading accounts". On the basis of these findings, the Commissioner recommended that Lord Ahmed should be expelled from the House.

Lord Ahmed appealed against both the findings and the proposed sanction. As part of his appeal, he submitted new evidence which the Committee remitted to the Commissioner for consideration. The Commissioner concluded that the new material did not provide any basis for amending any of the conclusions or findings set out in her first report, nor for altering her recommended sanction. The Committee subsequently dismissed Lord Ahmed's appeal against the findings and, in respect of the sanction, concluded as follows:

> "We have … come ultimately to the conclusion that it would not be appropriate for this case to lead simply to a period of lengthy suspension followed by re-admission to the role, responsibilities and privileges of membership of the House. The abuse of the privileged position of membership for a member's own gain or gratification, at the expense of the vulnerable or less privileged, involves a fundamental breach of trust and merits the gravest sanction.

[3] This restriction was removed in 2020, so the Commissioner can now investigate further back if they wish – though they still require the Conduct Committee's agreement to investigate conduct which allegedly took place more than six years prior to the complaint.

> Even though it is possible to think of even more serious breaches, the case in all its circumstances which we have set out crosses the threshold calling for immediate and definitive expulsion."

Upon being shown an embargoed copy of the report, Lord Ahmed retired from the House under the 2014 Act. While it was therefore unnecessary to move a motion to expel him under the 2015 Act, the House was still invited to approve the Conduct Committee's report—which it did without debate under the new standing order. In addition, Lord Ahmed was denied any of the usual privileges granted to a retired member. Lord Ahmed was later convicted of historical sex offences unrelated to the case considered by the House and gaoled for over five years.

Cox, White and Ellenbogen

Not a firm of solicitors, but a trio of external reviewers tasked with investigating the nature and extent of bullying, harassment and sexual harassment in Parliament. Dame Laura Cox's focus was staff employed by the House of Commons Service; Gemma White QC looked at staff employed by MPs; and Naomi Ellenbogen QC considered those working in the House of Lords. The Cox report was published in October 2018, some months after the ICGS had come into operation, and identified "a culture, cascading from the top down, of deference, subservience, acquiescence and silence, in which bullying, harassment and sexual harassment have been able to thrive and have long been tolerated and concealed". The White report and the Ellenbogen report, both published in July 2019, reached similarly damning conclusions. The three reports are not the focus of this article, but suffice to say that they vividly demonstrated the need for the reforms which were already underway.

The Cox report eventually led to the House of Commons (1) allowing House employees with complaints involving historic allegations to pursue them through the ICGS (in the Lords, the Code of Conduct already allowed for such complaints, as demonstrated by the Lester case), and (2) establishing an Independent Expert Panel (IEP), comprised entirely of external figures and no MPs, to determine appeals and sanctions in cases where complaints of bullying, harassment or sexual misconduct have been brought against MPs. Where the IEP recommends a serious sanction, this must be voted on by the House without debate, in line with the system agreed by the House of Lords.

Reviews of the ICGS

The ICGS was subject to a six-month review (published in June 2019) and an 18-month review (published in February 2021) by Alison Stanley, an expert in human resources and change. In the latter report, Ms Stanley praised the ICGS as a "sophisticated" scheme and noted that "effective implementation

and operation is a substantial achievement in the complex organisational context of Parliament, with its mix of employers, employees, office holders and elected representatives, together with the differences in the decision-making, governance and regulatory frameworks in each House." She also recognised, however, that its operation and processes "have become over complex" and that "there is a perception amongst the Parliamentary community that it is a stressful, isolated and lengthy process". A number of reforms were proposed and these have mostly now been implemented.

The ICGS has certainly been well used in both Houses, with many complaints being upheld. Undoubtedly the most high-profile case was that involving the former Speaker of the House of Commons, John Bercow. The Parliamentary Commissioner for Standards upheld complaints of bullying against Mr Bercow by a former Clerk of the House of Commons and two former Speaker's Secretaries. Mr Bercow appealed against these findings but the IEP dismissed the appeal in emphatic fashion, labelling him a "serial bully" and a "serial liar". Concluding that they would have recommended his expulsion from Parliament had he still been an MP, they proposed that Mr Bercow should never again have a parliamentary pass.

The slightly different system for investigating complaints against members of the House of Lords and their staff has also been heavily used, with several complaints of bullying and harassment by members being investigated and upheld. In some cases, remedial action has been agreed between the parties—for example, apologies and behavioural training—whereas in more serious cases members have been suspended from the House.

Two Lords Commissioners for Standards

When the non-renewable term of the House of Lords Commissioner for Standards, Lucy Scott-Moncrieff, ended on 31 May 2021, the House agreed for the first time to appoint two Commissioners for Standards. Each complaint would be investigated by only one Commissioner, but they would be supported by the same team of officials and would regularly confer with each other to ensure a consistency of approach.

The Conduct Committee had two principal reasons for recommending two Commissioners.

- The number and complexity of complaints had grown under the previous Commissioner, and it was increasingly becoming a full-time role. The Committee wanted to build capacity into the system and thus allow the Commissioners to continue to pursue other roles outside the House.
- It would provide greater resilience in case of ill health or a conflict of interest (for example, if a respondent was a personal friend of one Commissioner).

So far, this new system appears to be working well.

Freedom of speech

The final area which might be of interest to readers is the increasingly challenging interaction between Parliament's rules of conduct and parliamentarians' right to freedom of speech, both in parliamentary proceedings and in the wider world. This issue, which would be emotive at the best of times, comes at a time when the so-called "culture wars" over issues such as trans rights are running at fever pitch.

In parliamentary proceedings

As far as parliamentary proceedings are concerned, members of both Houses are of course protected by parliamentary privilege from having their contributions questioned in a court or any other kind of disciplinary setting outside Parliament. It has become clear, though, that some parliamentarians labour under a misapprehension that parliamentary privilege also protects them from regulation by the House of which they are a member. The reality is that both Houses have regulated their own members in a myriad of ways since at least the sixteenth century, well before the Bill of Rights 1689 codified one aspect of privilege. The two Houses have very different systems, however, so each must be considered separately.

In the House of Lords, as explained above the rules on bullying, harassment and sexual misconduct were implemented by means of amendments to the Code of Conduct. The Code has since its inception regulated what members say in proceedings (for example in prohibiting paid advocacy and requiring declarations of interest) and in recent times there has been a mechanism to hold them to account for things said or not said in proceedings. The new provision prohibiting bullying, harassment and sexual misconduct has the same status as any other provision of the Code, and therefore—absent a specific exclusion—similarly applies to members' conduct in proceedings. The Commissioners for Standards, officers of the House appointed to investigate alleged breaches of the Code, and therefore instruments of the House's self-regulation, are not constrained by the Bill of Rights.

However, the bar for investigating an allegation of bullying or harassment in parliamentary proceedings is deliberately set very high. First, only alleged victims can make complaints, so complaint campaigns are unlikely to be effective. Second, in recognition of the importance of parliamentarians being able to speak freely, the Code has always prohibited the Commissioners for Standards from investigating members' "views or opinions", both during parliamentary proceedings and elsewhere. This alone is likely to rule out an investigation into many complaints. Third, it must be shown that the behaviour met all elements of the Code's definition of bullying or harassment. And finally, even if all these hurdles are cleared, an additional safeguard added in June

2020 enjoins the Commissioners to "recognise as a primary consideration the constitutional principle of freedom of speech in parliamentary proceedings, including but not limited to the need for members to be able to express their views fully and frankly in parliamentary proceedings".

To date, no complaints of bullying or harassment in parliamentary proceedings have passed preliminary assessment. However, one complaint—even though it was dismissed at preliminary assessment on the ground that it was a third-party complaint—caused several members to express concern on the floor of the House that their right to freedom of speech in proceedings was being curtailed, even if only through a chilling effect. This led in early 2022 to the Conduct Committee publishing a detailed report on *Freedom of speech and the Code of Conduct*, which set out to explain the position and sought members' views on the issues. This led to some further clarificatory changes to the Code and Guide.

The House of Commons, which has adopted the ICGS rather than making bullying and harassment a breach of their Code of Conduct, is in a different position. The Clerk of the House, Dr John Benger, has advised the Committee on Standards that "The House of Commons or a Committee's control of its own proceedings is so fundamental that it could only be displaced by express words … or necessary implication", and no such displacement has been agreed by the House. Therefore, poor behaviour in proceedings falls to be dealt with by the Speaker or Chair, who unlike their equivalents in the Lords have extensive disciplinary powers to enable them to do so.

Dr Benger added, though: "The fact that proceedings are limited to the formal business of the House or a Committee, or matters extremely close to such business, means that bullying or harassment which simply take place at the time of a sitting, rather than being an intrinsic part of proceedings, remains amenable to the ICGS." Thus assault, words spoken to an individual not intended for the House or Committee as a whole, and notes to an individual unrelated to the business could be investigated under the ICGS.

Time will tell whether these differences between the two Houses are significant.

Outside Parliament

It has always been a feature of the conduct system in the House of Lords that people complain about members' conduct outside of their parliamentary duties and activities, which is outwith the scope of the Code. But the number of such complaints has grown significantly in line with the rise in social media. It is not uncommon for the Commissioner to receive hundreds of complaints about a single tweet by a member of the House which is seen by some as offensive. Many of the tweets in question deal with culture war issues and therefore

arouse strong emotions on both sides. All such complaints to date have been ruled out of scope. Yet in their recent annual report, the Commissioners noted that complainants were often "unable to reconcile how the member's social media could be viewed as entirely private when they were clearly using their official title".

This is an area where the Senedd has gone further than the UK Parliament. The Senedd Code of Conduct "applies to Members holding the public office of a Member of the Senedd at all times, including in Members' personal and private lives" and states:

> "Members must not subject anyone to personal attack – in any communication (whether verbal, in writing or any form of electronic or other medium) – in a manner that would be considered excessive or abusive by a reasonable and impartial person, having regard to the context in which the remarks were made."

This kind of "personal attack" clause has not so far been proposed in the House of Lords. However, in November 2020, following some controversial tweets by members of the House, the House of Lords Commission invited the Conduct Committee to return to the question of whether it should be a breach of the Code of Conduct to bring the House into disrepute. The Conduct Committee agreed to consider the matter.

The Committee, in its response to the Lord Speaker, suggested that a suitable provision might require that members "should not, in the course of their public life outside their parliamentary duties or activities, [cause] [behave in a way which causes] significant damage to the reputation and integrity of the House of Lords as a whole, or of its members generally". This was largely based on a clause which already featured in the House of Commons Code of Conduct. It would not apply to members' parliamentary conduct (which is already regulated by the other provisions of the Code) or their purely private and personal lives (which would still be out of scope). However, the Committee noted that their consultations with members had revealed "significant disagreement within the House" about expanding the scope of the Code in this way, and accordingly they did not wish to take the matter forward at that time. The proposal is available for use in the future if needed.

Conclusion

So ends this account of the complex evolution of the conduct regime in the House of Lords during the last 12 years. Further adjustments will surely be needed in response to new challenges and changing expectations. But it is undoubtedly the case that the House has a stronger and more independent standards system now than it did in 2010, and one which is better suited to handling sensitive complaints of bullying, harassment and sexual misconduct.

"MUCH MORE THAN SUFFICIENT": CLERKLY PROFITS AND PATRONAGE, 1796–1802

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Introduction

In January 1796, John Hatsell, the Clerk of the House of Commons, contemplated a possible measure that might see his annual income fall by around 40 per cent. He concluded that, even with the prospective reduction in his income, his own fortune was "much more than sufficient to enable me to continue in the course of life I have adopted".[2] The large and growing income from which Hatsell benefitted during the 1780s and the first half of the 1790s is central to the consideration of several developments between 1796 and 1802 which are examined in this article. That growing income helped to explain his decision to retire from the day-to-day conduct of his duties as a Clerk in 1797 when John Ley—who had been Clerk Assistant since 1768—was appointed to the role of Deputy Clerk. There was a marked contrast between the wealth and benefits which both Hatsell and Ley accumulated and the financial difficulties experienced by more junior clerks in the Clerk's Department. This, together with the mismatch between the situation that prevailed in the House's administration and the broader approach to reform of public offices, led to the passage of legislation in 1800 to regulate the fee income of the Clerk, the Clerk Assistant and the Serjeant at Arms. This article also considers significant developments following the Act of Union between Great Britain and Ireland of the same year—the creation of a role for a third clerk at the table and a dispute about the management of Irish parliamentary business at Westminster—which shed new light on the tensions within the Clerk's Department.

Some of the episodes examined here have been considered before, most notably in the account of the professional development of the Clerk's Department by Orlo Williams,[3] in the work of Sir William McKay,[4] and in an

[1] The author is grateful to Peter Aschenbrenner, Dr Stephen Farrell, Sir Malcolm Jack and Dr Paul Seaward for comments on an earlier draft of this article.

[2] P J Aschenbrenner and C Lee, *The Papers of John Hatsell*, Camden Fifth Series, Volume 59 (Royal Historical Society, Cambridge, 2020) (hereafter *Hatsell Papers*), p 96.

[3] O C Williams, *The Clerical Organization of the House of Commons 1661–1850* (Oxford, 1954).

[4] W R McKay, *Secretaries to Mr Speaker* (House of Commons Library Document No. 14, London 1986) (hereafter McKay, *Secretaries*); W R McKay, *Clerks in the House of Commons 1363–1989* (House of Lords Record Office Occasional Publications, 1989) (hereafter McKay, *Clerks*).

important unpublished study by Clare Wilkinson.[5] The present study draws in part on sources used for those accounts, including Hatsell's letters to Ley,[6] the journals and associated letters of the MP Charles Abbot,[7] and various select committee reports relating to the internal affairs of the House of Commons, most notably that of 1833.[8] In addition, this article uses a broader range of papers not available to Williams, including letters from both Hatsell and Ley to Henry Addington, Speaker of the House of Commons from 1789 to 1801 and prime minister from 1801 to 1804,[9] what Hatsell termed his "Memorabilia", a mixture of contemporary record and memoir,[10] Hatsell's accounts books relating to his country residence,[11] a broader range of Ley family papers,[12] the papers of Charles Abbot as Chief Secretary in Ireland,[13] a broader range of Hatsell's correspondence and other papers,[14] and contemporary newspapers reports.[15]

"All other Rewards … and Emoluments whatsoever": income up to the 1790s

Under the Letters Patent given to John Hatsell when he was appointed Clerk of the House in 1768, he, like his predecessors, was entitled to an annual salary of £10 "together with all other Rewards Rights profits comodities advantages

5 C Wilkinson, "The Practice and Procedure of the House of Commons c. 1784–1832" (University of Wales, Aberystwyth, PhD thesis, 1998).

6 Devon Heritage Centre (hereafter DHC), 63/2/11/1, Ley of Trehill papers 1583–1922, Correpondence.

7 The National Archives (hereafter TNA), PRO 30/9/31–35, Charles Abbot, Journal with interpolated correspondence, etc, 1757–1816; C Abbot (Lord Colchester), ed, *The Diary and Correspondence of Charles Abbot, Lord Colchester: Speaker of the House of Commons 1802–1817* (London, 1861, 3 vols) (hereafter *CDC*).

8 *Report from the Select Committee on Establishment of the House of Commons*, HC (1833) 648.

9 DHC, 152M/C, Political and Personal Papers of Henry Addington, 1st Viscount Sidmouth.

10 *Hatsell Papers*, pp 13, 17, 167–217.

11 The Parliamentary Archives (hereafter TPA), HAT/1/1, Papers of John Hatsell, Account book for Bradbourne and Marden Park, 1792–1816.

12 DHC, 63/2, Ley of Trehill papers 1583–1922; DHC, 2741M, Ley of Trehill, 1541–1878.

13 TNA, PRO 30/9/112–116, Chief Secretaryship, Ireland papers of Charles Abbot, 1801–1802.

14 *Hatsell Papers*, p 10–13. See also a fuller account of those sources in "'Upon a greater Stage': John Hatsell and John Ley on politics and procedure, 1760–1796", in *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments*, Vol 89 (2021), pp 66–119 (hereafter "Greater Stage"), p 67.

15 References to *The Times* are via The Times Digital Archive. All other newspapers have been accessed via the British Newspaper Archive.

and Emoluments whatsoever" appertaining to the office.[16] Hatsell's office was treated as his freehold property.[17] As early as 1776, Hatsell was conscious that his income was "secur'd to me by enjoying my office for life".[18]

One source of income available to some of Hatsell's predecessors had been through the sale of offices within the Clerk's Department. Hatsell recorded in 1781 that formerly the sale of posts within the Clerk's gift had "made a considerable part of the Clerk's income, as it was the usual practice to sell them".[19] Although Jeremiah Dyson had bought the post of Clerk of the House from his predecessor for £6,000, Dyson, in Hatsell's words

> "with a generosity peculiar to himself, and from a regard to the House of Commons, that the several Under Clerkships might be more properly filled, than they probably would be, if they were sold to the best Bidder, first refused this advantage, and appointed all the Clerks, whose offices became vacant in his time, without any pecuniary consideration whatever".[20]

Hatsell was especially grateful to Dyson for making no financial demand for the post of Clerk Assistant, for which Hatsell reckoned that Dyson could have asked £3,000. Through general practice, Dyson thus became, in Hatsell's words, "the first to refuse a considerable and legal profit", an example which Hatsell then followed.[21]

The loss of this income stream was more than offset by the growth of others. The Clerk of the House was entitled to fees for each private bill in respect of almost every stage of its progress through the House. The level of these fees had remained fixed since 1700, but there was a growing tendency for private bills to attract double or even triple fees, in part due to their increasing length and complexity.[22] Hatsell benefitted enormously from the upward trend in the volume of private bills, particularly private bills with an economic function, in the 1770s and again from the mid-1780s. This growth was aided in part by reforms of private bill procedure in the 1770s which Hatsell himself had

16 TNA, C.66/3717 f 7, Letters Patent issued to John Hatsell, 3 June 1768; *Members/Speaker* (1781 edn), p 190. In this article, the same method of citation of Hatsell's *Precedents of Proceedings in the House of Commons* has been used as in *Hatsell Papers*, on which see *Hatsell Papers*, p xiii. The text of each edition of each volume is available at www.precedentsofproceedings.com.

17 Williams, *Clerical Organization*, p 19.

18 *Hatsell Papers*, p 169.

19 *Members/Speaker* (1781 edn), p 169; Williams, *Clerical Organization*, pp 64–65.

20 Williams, *Clerical Organization*, p 64; *Members/Speaker* (1781 edn), p 169.

21 *Members/Speaker* (1781 edn), pp 169–170.

22 CJ (1699–1702) 356–57; CJ (1727–32) 807–09; CJ (1750–54) 277–78; Hatsell, *Members/Speaker* (1796 edn), p 265; Williams, *Clerical Organization*, pp 300–04; F Clifford, *A History of Private Bill Legislation* (2 vols, London, 1885–87), II. 717–718, 730–733; *Report from the Select Committee on Bills of Inclosure*, ordered to be printed 17 Apr. 1800, p 32; *CDC*, I.157–158.

charted.[23]

Additionally, the Clerk of the House received fees in respect of all bills, both public and private, towards the end of their passage through the House for ingrossing, namely the preparation of a near final copy of a bill on parchment in a special hand. These fees for engrossment gradually became a larger component of fee income compared with fees relating to stages of private bills generally as the length and number of public bills increased.[24] Fees were also payable to the Clerk of the House in connection with the swearing in of Members after each General Election and by-election.[25]

The Clerk of the House also received fees for producing copies of documents, in the form of charges for producing handwritten copies of proceedings relating to bills, petitions, reports or "other matters out of the Journals".[26] Some organisations such as the Corporation of London and the East India Company routinely ordered copies of all papers.[27] The number of entries in the journals more than doubled between 1770 and 1800, reflecting a broader trend in the increase of parliamentary business, which might have presaged a further growth in income, but for another development—the expansion of parliamentary printing.[28]

Although demand for handwritten copies declined, the growth of parliamentary printing itself proved a boon to Hatsell's income. At some point in the first half of the eighteenth century, the practice developed of compensating the Clerk of the House for the loss of fee income for the production of handwritten copies which resulted from the use of printing. For every two pounds paid to the House's printer to print a parliamentary paper, one pound was paid to the Clerk of the House to "compensate the office for the loss it sustains from Papers being ordered to be printed". Hatsell reported that this was "the customary

23 Williams, *Clerical Organization*, pp 109–110, 318–319; J Hoppit, *Britain's Political Economies: Parliament and Economic Life, 1660–1800* (Cambridge, 2017), pp 41, 47–48, 52, n 55, 71; [J Hatsell], *A Collection of Rules and Standing Orders of the House of Commons; Relative to the Applying for and Passing Bills, for Inclosing and Draining of Lands, Making Turnpike Roads, Navigations, and Other Purposes* (London, 1774). On the reforms of 1774 and subsequent years, see P J Aschenbrenner, *British and American Foundings of Parliamentary Science, 1774–1801* (Abingdon, 2018), pp 13–17; J L Hammond and B Hammond, *The Village Labourer, 1760–1832* (London, 1912), pp 73–74; S Lambert, *Bills & Acts: Legislative Procedure in Eighteenth-century England* (Cambridge, 1971), pp 134–135.

24 Williams, *Clerical Organization*, pp 109–113, 227.

25 For a convenient summary of all fees and related resolutions of the House, see *A Table of Fees To be Demanded and Taken by the Officers and Servants of the House of Commons*, HC (1812–13) 221 and Williams, *Clerical Organization*, pp 302–303.

26 CJ (1727–32) 808; Williams, *Clerical Organization*, pp 109, 302.

27 Williams, *Clerical Organization*, p 320; Ninth Report from the Committee on the Public Expenditure, &c. of the United Kingdom, *Printing, and Stationary*, HC (1810) 373, p 201.

28 HC (1810) 373, p 180.

practice" by 1760.[29] Hatsell's income from this "copy money" rose significantly in the early 1770s, when demand for parliamentary printing surged.[30] In 1772, the House's printer, Henry Hughs, took on the 22 year old Luke Hansard as his partner. Hansard became Hatsell's close friend, and did much to speed up the production of printed papers, further increasing incentives for authors of reports and other parliamentary papers to seek to have them printed.[31] Edmund Burke pioneered the idea of select committee reports being printed, and others followed the same path; Hansard attributed the growth particularly to the impeachment of Warren Hastings and the campaign for the abolition of the slave trade.[32]

Hansard's autobiographical account of the 1780s was prefaced by the proverb "In all Labour there is profit",[33] but for Hatsell there was profit without labour. In the period from 1780 onwards, the annual amount of copy money paid to Hatsell never fell below £1,000, and in 1796 it was more than £2,000.[34] There was more than one protest from the Treasury in the course of the 1780s as that department sought in vain to find "a less objectionable manner" of compensating Hatsell "for the loss he sustains by the proceedings being printed".[35]

In 1796, Hatsell estimated his average annual fee income from these three main sources—relating to the stages of private bills, for the engrossment of both public and private bills and in the form of compensatory "copy money"—taken together over the preceding ten years at £5,000.[36] However, this average over a decade could serve to disguise the trend in the 1790s. Although there were considerable fluctuations between a minimum of £4,463 in 1790 and a maximum of £10,912 in 1792, Hatsell's annual income averaged £7,800 in the period 1790 to 1796, broadly equivalent to an annual income of about

29 HC (1810) 373, p 201; HC (1833) 648, p 226.

30 J C Trewin and E M King, *Printer to the House: The Story of* Hansard (London, 1952), pp 41–43; Williams, *Clerical Organization*, p 324.

31 *Printer to the House*, pp 42–43; R Myers ed, *The Auto-biography of Luke Hansard, written in 1817* (Wakefield, 1991), pp 58, 63; *Report from the Select Committee on Printing done for the House*, HC (1828) 520, pp 45–46.

32 HC (1833) 648, p 226; *Auto-biography*, pp 65–67; *Printer to the House*, p 48; HC (1828) 520, pp 45–46.

33 *Auto-biography*, p 62.

34 This is calculated from the printing charges set out in Williams, *Clerical Organization*, pp 323–324.

35 HC (1810) 373, p 201; HC (1833) 648, p 226; Williams, *Clerical Organization*, pp 321–322.

36 *Hatsell Papers*, pp 94–95. This also tallies with the information on the growth of private bills in Williams, *Clerical Organization*, p 319.

£700,000 today.[37]

Ley's income as Clerk Assistant was much smaller than that of the Clerk of the House. He received a net annual salary of £597, which was supplemented by bill fee income which fluctuated between £777 in 1790 and £412 in 1796.[38] In 1792, it was suggested that the limited income of the Clerk Assistant would be a matter of astonishment to the House, and both the prime minister William Pitt and the opposition leader Charles James Fox supported an Address for an additional discretionary payment. In consequence, Ley received an additional annual payment of £550, which was renewed in subsequent sessions.[39] In 1794, he was granted an exceptional payment of £5,814 "in Consideration of his long and meritorious Services".[40] This payment was probably made at the suggestion of the Speaker, Henry Addington, and with the involvement of Pitt as prime minister, to judge by a letter Ley wrote to Addington in response to an enquiry as to whether the payment had come through:

> "I … am exceedingly obliged to you for your concern respecting the paymn[t] of my money at the Exchequer—which Affair has been concluded in the most liberal manner by Mr Pitt; and I have great reason to remember with much gratitude his kindness and your many good Offices on this occasion."[41]

"A great deal of public spirit": Hatsell, Ley and enclosure bill fees

A significant component in the growth in Hatsell's income was attributable to private bills to enclose open field and common land, known as enclosure bills. In particular, after a trough in the early 1780s, the decade up to the mid-1790s saw a vast surge in such legislation.[42] The value of fees paid in the Commons in respect of enclosure bills rose to over £3,000 in 1791 and 1792 and over £6,000 in 1795 and 1796,[43] and most of this fee income went directly to Hatsell. The cost of enclosure legislation to all parties stimulated a campaign, led by the Scottish MP Sir John Sinclair and his fellow agricultural reformer Arthur Young, for a General Enclosure Bill designed to enable enclosure to

37 CJ (1799–1800) 524. This information is reproduced in Williams, *Clerical Organization*, p 319. The equivalent today is based on Bank of England inflation calculator with 2021 prices. The average of £7,800 equates to £821,107 in 1790 and £615,830 in 1796. The gap between these two factors indicates the rate of inflation in the early 1790s, which should be taken into account in assessing the growth of Hatsell's income.

38 CJ (1799–1800) 524. He also received fees averaging around £25 a year relating to controverted elections. Williams (*Clerical Organization*, pp 119–120, 319) gives slightly different figures, using gross income.

39 HC (1833) 648, Q 3070; Williams, *Clerical Organization*, p 120.

40 CJ (1794–95) 240.

41 DHC, 152M/C1794/OZ10, Ley to Addington, 13 Sept. 1794.

42 Hoppit, *Britain's Political Economies*, pp 92–93.

43 *Report from the Select Committee on Bills of Inclosure*, ordered to be printed 17 Apr. 1800, p 33.

take place by agreement without the need for a separate private bill in each case.[44] After a select committee chaired by Sir John backed the proposal in late 1795,[45] there seemed a reasonable prospect for success. The way in which Hatsell and Ley reacted to this proposal reflected their different personalities, and also perhaps their differing incomes at the time.

Sinclair was aware that, if the bill passed, Hatsell's "income would have been materially diminished". He therefore told Hatsell that, "if the bill passed, it was my intention that he should be indemnified for the loss".[46] Hatsell obtained an account of his fee income and found that enclosure bills alone had provided him with an average annual income of £2,000 over the preceding decade.[47] He admitted to Addington that this amount was "much larger than I estimated it at".[48] He told the Speaker that he would "decline receiving any compensation, or allowance" should the Bill pass into law and this income stream disappear. He observed that if he received such compensation

> "I should be consider'd by the Publick at large, & what would be more disagreable to myself, I should consider myself as receiving a Pension, for no publick services nor for any sacrifice made to them".[49]

He suggested that the amount he was to lose, "though certainly very considerable, is really, & without vanity, not of that importance … as to hazard the uneasiness of mind, which I would feel, on being oblig'd to barter or haggle with the Publick for a due compensation".[50] Hatsell also made this position known to Sinclair, who noted that Hatsell had "positively disclaimed" compensation,

> "stating that, if, for the public advantage, any alteration was made in the mode of passing bills, he did not see any right, that any officers of the House of Lords or Commons, had to be indemnified, for any loss which such change or regulation might occasion".

Sinclair later paid tribute to Hatsell who "displayed a great deal of public spirit, and disinterestedness in a very trying situation".[51]

While Hatsell was keen to demonstrate his selflessness, Ley claimed to be

44 R Mitchison, *Agricultural Sir John: The Life of Sir John Sinclair of Ulbster, 1754–1835* (London, 1962), pp 156–157; *Village Labourer*, pp 74–76.

45 CJ (1795–96) 255–270.

46 J Sinclair, *The Correspondence of the Right Honourable Sir John Sinclair, Bart. with Reminiscences of the Most Distinguished Characters Who Have Appeared in Great Britain* (2 vols, London, 1831), I.478.

47 *Hatsell Papers*, p 94.

48 *Hatsell Papers*, pp 94–95. Overall fees for each year from 1786 to 1799 are given in *Report from the Select Committee on Bills of Inclosure*, pp 33–34, but those figures do not distinguish fees for Hatsell as an individual.

49 *Hatsell Papers*, p 95.

50 *Hatsell Papers*, pp 95–96.

51 Sinclair, *Correspondence*, I.478.

more focused on the merits of a General Enclosure Bill. When Sinclair's fellow advocate for the measure Arthur Young visited Devon late in 1795, he dined with the magistrates and spoke to Ley as chairman of the Quarter Sessions.[52] Young found Ley "very decided in his opposition to the measure". Ley defended the current arrangements by reference to their capacity to offer "protection for property", as well as their being "so long the established custom".[53] Young was not initially aware of Ley's position at the House of Commons, but when he learned of it in the course of the dinner, he had no doubt that Ley's defence was in fact self-interested, taking Ley's position as "one proof of what I had often heard, that the Officers of the two Houses of Parliament were of all others the most determined opposers of that measure".[54]

In February 1796, Sinclair received leave to present his Bill, which he promised would reduce the "vast expences of private inclosures", and there were signs that the Bill had high level support, with the prime minister William Pitt and his political lieutenant Henry Dundas both serving on the committee considering the Bill.[55] It soon became evident that Ley was far from alone in his concerns about the apparent reliance of the Bill on agreement among interested parties. This weakness was pinpointed by the equity barrister and relatively new MP, Charles Abbot, who noted the difficulties in the Bill as it stood in dealing with cases where the title to land or the value of compensation was disputed.[56] His contributions during the committee stage attracted the attention of Pitt.[57] Probably encouraged by Pitt, Abbot set about preparing amendments to remedy what he saw as defects in the Bill, which secured Sinclair's support and which Pitt believed strengthened the measure.[58]

However, the Bill was not able to complete its report stage, despite pleas from Sinclair to Pitt, and was anyway lost when Parliament was dissolved in May 1796.[59] Sinclair introduced a less ambitious bill in 1797, designed to deal only with enclosure by agreement between all parties, but even that more modest measure met with opposition. His pleas to Pitt to either offer government support for the bill or to introduce a similar measure fell on deaf ears, perhaps

52 M Bethan Edwards, ed, *Autobiography of Arthur Young* (London, 1898), p 261. On Ley's role as chairman of the Devon Quarter Sessions, see "Greater Stage", pp 102–103.

53 *Autobiography of Arthur Young*, p 261.

54 *Autobiography of Arthur Young*, pp 261–262.

55 *The Times*, 3 Feb. 1796, p 2; *CDC*.I.49.

56 TNA, PRO 30/9/31, Charles Abbot, Journal with interpolated correspondence, etc, 1757–1796, fos 265–266. For a modern critical verdict on the Bill, see Lambert, *Bills & Acts*, pp 148–149.

57 TNA, PRO 30/9/31, fo 267; *CDC*, I.49.

58 TNA, PRO 30/9/31, fos 268–273, 454–469, diary entries, correspondence between Abbot and Sinclair and draft of clauses; *CDC*.I.50, 51. For a critical analysis of other changes made in Committee, see *Village Labourer*, pp 75–76.

59 Mitchison, *Agricultural Sir John*, p 158.

in part because Sinclair was moving more conspicuously into opposition to Pitt's administration.[60] Sinclair continued with his legislative attempts, but none reached the statute book until, in 1801, Sinclair secured the passage of a General Enclosure Bill which provided common statutory elements to enclosure measures and thus reduced the costs of parliamentary enclosure, but did not avoid the need for separate private bills for each local endeavour.[61]

"I hope He will take a peep": Hatsell's social standing by 1797

Hatsell did not come from a wealthy background: his father's annual income as a lawyer had never exceeded £400.[62] After the death of Hatsell's mother, his father's social milieu was that of London's literary demi-monde, rather than anything more elevated.[63] Over time, Hatsell was able to leverage the status of his role, the celebrity arising from the publication of his *Precedents of Proceedings*, his political contacts and his growing wealth to increase his social standing.

Hatsell's mother's family was from the Northamptonshire gentry, and he cultivated that slightly grander society, particularly after his marriage to the widowed Mrs Elizabeth Barton in 1778 opened up influential ecclesiastical connections in that county and beyond.[64] Hatsell had always been keen to mix socially with politicians, but Addington's election to the Chair gave Hatsell opportunities for a different degree of social proximity and social advancement. In 1790, shortly after becoming Speaker, Addington had purchased the house and small estate of Woodley in the parish of Sonning near Reading.[65] In 1792, Hatsell took great pleasure in telling Ley that his elder stepson, John Barton, who was a Church of England minister, "has got the living of Sonning near Reading (The Speaker's Parish) given him by the Dean of Salisbury"; the living was worth £300 per annum "with a good house".[66] The Dean in question was John Ekins, Hatsell's brother-in-law and John Barton's uncle, suggesting that Hatsell had used this family connection to create the opportunity.[67] The Sonning connection enabled Hatsell to pay frequent visits to the Speaker during recesses while staying with his stepson.[68] It also strengthened his bond with

60 Mitchison, *Agricultural Sir John*, pp 170–171; *The Times*, 6 May 1797, p 2.

61 Clifford, *Private Bill Legislation*, pp 23–24; *Village Labourer*, p 77.

62 *Hatsell Papers*, pp 167–168.

63 *Hatsell Papers*, pp 2–3.

64 *Hatsell Papers*, p, 3; Williams, *Clerical Organization*, p 80; DHC 63/2/11/1/31, Hatsell to Ley, 28 Aug. 1778.

65 P Ziegler, *Addington: A Life of Henry Addington, First Viscount Sidmouth* (London, 1965), p 69.

66 DHC, 63/2/11/1/50, Hatsell to Ley, 7 Sept. 1792; DHC, 63/2/11/1/51, Hatsell to Ley, 11 Sept. 1792. See *Hatsell Papers*, p 92, n 200.

67 *Hatsell Papers*, p 72, n 144.

68 See, for example, DHC, Sidmouth MSS 152 M C 1793 OZ 1, Hatsell to Addington, 5 Dec. 1793; DHC, 63/2/11/1/66, Hatsell to Ley, 2 Feb. 1797.

Addington, as Hatsell had good intelligence on the well-being of the Speaker and the family from his stepson.[69]

Addington developed warm relations with Hatsell's wider family, and was keen to assist them. In the autumn of 1795, Addington sought to have Barton named as successor to the role of Speaker's chaplain when it became vacant. This post was not itself especially remunerative, but opened the way to further ecclesiastical preferment.[70] Hatsell was delighted with the suggestion, stressing that it was "Your own kind suggestion", and adding that "though Friendship for me, might first induce You to make the offer … it was entirely without any solicitation from me".[71] However, John Barton failed to secure the position when the vacancy next arose, probably because Pitt had a preferred candidate. Hatsell and his wife tried to accept this with good grace, telling Addington: "We have great confidence in Mr Pitt's good inclinations towards us; & shall wait with patience, till He shall have an opportunity of serving us".[72] Their patience was rewarded, because John Barton was appointed chaplain to the Speaker when the next vacancy arose at the start of 1801, and subsequently secured a canonry at Canterbury.[73]

Although Hatsell retained chambers at Middle Temple for most of his life, his main residence from 1768 was at Westminster. Jeremiah Dyson had secured the construction of a residence for the Clerk of the Commons in Cotton Garden, within the precincts of the Palace, at a cost of just over £3,000, and this house had passed to Hatsell in 1768.[74] It was far from perfect, being described in a survey in 1789 as "defective in several Places, from the Insecurity of the Foundations".[75] John Soane, the Clerk of the Works in the 1790s, later recollected that the building was "condemned in the year 1795" and Soane wanted it to be demolished as part of a broader plan for rebuilding.[76] Soane may also have

69 See, for example, DHC, Sidmouth MSS 152 M C 1794 OZ 39, Hatsell to Addington, 28 July 1794.

70 TNA, PRO 30/9/14, Part 1, "Chaplains Ho. Commons Length of Service & Preferment"; HC (1833) 648, QQ 1827–1834; D Gray, *Chaplain to the Speaker: The Religious life of the House of Commons* (House of Commons Library Document, 1991), pp 18–21, 68–69.

71 DHC, 152 M C 1795 OZ 12, Hatsell to Addington, 21 Sept. 1795; *Hatsell Papers*, pp 92–93.

72 DHC, 152 M C 1797 OZ 11, Hatsell to Addington, 21 Jan. 1797.

73 DHC, 63/2/11/1/83, Hatsell to Ley, 25 Jan. 1801; TNA, PRO 30/9/14, Part 1, "Chaplains Ho. Commons Length of Service & Preferment"; Gray, *Chaplain to the Speaker*, p 93; Williams, *Clerical Organization*, p 80.

74 Williams, *Clerical Organization*, pp 113–114; O C Williams, *The Topography of the Old House of Commons* (London, 1953), p 8.

75 *Report from the Committee appointed to inspect the several Houses and other Buildings immediately adjoining to Westminster Hall, and the Two Houses of Parliament, and the Offices thereto belonging*, 22 July 1789, ordered to be printed 16 Feb. 1790, p 6.

76 *Second Report from Select Committee on Committee Rooms and Printed Papers*, HC (1825) 515, p 8; Williams, *Topography*, p 2.

been concerned with aesthetic considerations, because in 1826 he was to refer to the building as "an eye sore".[77] But Hatsell, according to a later account, went directly to the King who ordered that the house should not be pulled down.[78]

In the 1770s, Hatsell had spent most recesses travelling on the continent. In the 1780s, after his marriage, most recesses were spent staying either in country houses with friends or in rented accommodation in fashionable towns such as Bath and Cheltenham. In the early 1790s, Hatsell decided to take steps to establish himself as a country gentleman. In 1792, he first rented a country house at Bradbourne, near Sevenoaks, which he was to rent until 1799. He kept meticulous accounts of all his outgoings relating to the running of this house, covering payments for housekeeping made to his wife, the costs of malt and hops for his brewery, expenditure on furniture repairs, wages for a gardener, luggage and transportation costs for his servants between London and Bradbourne, the purchase of coal and candles, and donations to local charities. He also became a farmer, purchasing livestock with a value of £222 in 1793 and monitoring the receipts from cereals, wood and livestock that partially offset his outgoings.[79]

The house was chosen in part for its proximity to those within his growing social circle. He listed gleefully the "many Friends" who lived within a three-mile radius, including Lord Frederick Campbell, "not to forget the Duke & D^{ss} of Dorset".[80] Hatsell's closeness to Addington enabled Hatsell to develop his social contacts in the highest political circles. When Pitt and Dundas came to stay with Campbell at nearby Combe Bank, Hatsell told Ley with delight that "They came over here & admired this place very much".[81] His accounts of expenditure on wine and spirits demonstrate Hatsell's commitment to entertaining. Thus, in July 1796, he paid £81 9s 6d for a pipe of port from the entrepreneurial Deputy Housekeeper of the House of Commons, John Bellamy.[82]

In 1793, Hatsell spent more than £834 on repairs at Bradbourne, largely commissioned from the leading and highly fashionable architect James Wyatt, who was subsequently engaged to undertake work in the House of Commons.[83] In 1795, Hatsell tried to encourage Addington to inveigle Pitt into making

77 *Report from Select Committee on Committee Rooms and Printed Papers*, HC (1826) 403, p 20.

78 HC (1826) 403, p 26. Soane's account was that "the situation of the country, the war having just broken out, prevented the plan then in agitation being carried into effect": HC (1825) 515, p 8.

79 TPA, HAT/1/1.

80 *Hatsell Papers*, p 7; DHC, 63/2/11/1/46, Hatsell to Ley, 1 July 1792. On Lord Frederick Campbell and the remarkable life and death of his wife, see *Hatsell Papers*, p 125, fn 125.

81 DHC, 63/2/11/1/47, Hatsell to Ley, 6 Aug. 1792.

82 TPA, HAT/1/1. A pipe was a small barrel. On John Bellamy, see P Seaward, "Bellamy's", https://historyofparliamentblog.wordpress.com/2020/11/24/bellamys/.

83 HAT/1/1; Oxford Dictionary of National Biography online (hereafter *ODNB*), James Wyatt; M Tremellen, "Charles Abbot, 1st Baron Colchester: A Reforming Speaker", available at virtualststephens.org.uk/blog.

another visit to see the return on Hatsell's investments: "I flatter myself, if He recollects any thing of the rude state in which He saw it before, He will approve of the alterations I have made".[84] In 1798, Hatsell was angling for another prime ministerial visit:

> "I am glad to hear Mr Pitt is so much better – If He comes over to L^{d} Camden's, I hope He will take a peep in at the improvements I have made since He & Mr Dundas broke down my Fences."[85]

Hatsell's country house living from the early 1790s onwards was significant in his subsequent decisions about his future. While it consolidated his social standing and ambition to retire from the Table, it also created outgoings which did not fit in well with that aspiration. Thus, in 1796, he calculated that the net costs of Bradbourne for the 16 weeks he spent there that year amounted to £1,116 14s 0d.[86]

"I hate Reforms": Hatsell, Abbot and the growing pressure for reform

The proposals for general enclosure which emerged late in 1795 and early 1796 were in some ways a straw in the wind for the increasing attention paid to the possibilities for reform of the House's practice and operations. Hatsell was faced with increasing pressure towards reform, and found himself increasingly at odds with such proposals.

An approach based on measured adoption of practical administrative reforms shorn of any ideological commitment to reform for its own sake lay at the heart of the political success of William Pitt as prime minister from 1783 onwards. This style proved attractive to many of his allies, including Addington as Speaker. Addington relied greatly on the advice of Hatsell and Ley, but did not adopt the wholesale procedural conservatism evident in both of them from the early 1790s.[87] Addington was willing to consider practical reforms to serve as a better security for the broader constitutional status quo. As he said in relation to a proposed approach to taking evidence on the slave trade, "It does not follow that because a mode is new it must therefore be improper".[88]

As Addington sought to promote increasing change within the House, he identified an important ally in Charles Abbot. As Abbot was later to record, Addington took the relatively new MP into his "entire confidence".[89] Abbot's desire for reform became evident when he was asked to prepare his amendments

84 *Hatsell Papers*, p 90.

85 *Hatsell Papers*, p 116. It seems probable that this is a jocular reference to their assistance with preparations for improvements, rather than an act of vandalism.

86 TPA, HAT/1/1.

87 On that conservatism, see "Greater Stage", pp 111–117.

88 Ziegler, *Addington*, p 73.

89 TNA, PRO 30/9/31, fo 97.

agreed by the Committee on the 1796 General Enclosure Bill for the next print of the Bill. Abbot proposed an innovation in the form of "marginal notes added to each clause in explanation of its contents". Addington initially gave leave for this remarkable innovation of explanatory notes, but, as Abbot noted, "this innovation was afterwards countermanded".[90] It was almost certainly Hatsell who put a stop to this innovation, because when Abbot tried to revive the proposal in the context of the work of his Committee on the Promulgation of Statutes, he recorded Hatsell as "objecting to the putting in marginal notes". Abbot accordingly omitted these proposals from his report.[91]

Addington realised that Abbot could be a prime mover for procedural and organisational reforms which he also wished to see. Late in October 1796, Abbot was told by the MP Henry Bankes that

> "the Speaker was most earnestly disposed on every ground, public as well as personal to me, to adopt and support whatever I might have to propose for the improvement of parliamentary forms; that talents, knowledge, leisure, &c., &c., singularly coincided to render me a most valuable member, and that no man felt more strongly than the Speaker the necessity of accommodating parliamentary forms to the variation of times, in order to preserve its respect and utility in the opinion of the nation."[92]

The first potential area for reform that they identified was that of the printing of financial provisions within bills. Because all charges could only be first proposed in a Committee of the whole House, any bill as first printed had to omit all charging provisions, leaving blanks to be filled up later.[93] As Hatsell was to note in a letter to Ley in 1797, this meant that a tax bill, "before it is committed … will convey no information".[94] Bankes "instanced the idle and inconvenient rules about printing Bills in blanks, and wasting time in going through the forms of committees to render Bills intelligible before they could be the subjects of oral discussion" as an area ripe for useful reform.[95] Abbot was then involved in pursuing this proposal. Hatsell appeared to accept the logic for replacing blanks—"Hatsell agreed to the reason of bringing in all Bills with the blanks filled up"—but nevertheless opposed the change. According to Abbot, Hatsell "objected to it as an innovation merely, and upon the general principle that he would resist all changes, great or small, upon the single reason of their being changes".[96] Probably as a result of Hatsell's opposition, the practice of

90 *CDC*, I.53.
91 *CDC*, I.92.
92 *CDC*, I.71.
93 *Lords/Supply* (1796 edn), p 162.
94 *Hatsell Papers*, p 111.
95 *CDC*, I.71.
96 *CDC*, I.76.

printing bills with blanks persisted for several more decades, rendering many bills "impossible to understand", to use the term employed by Spencer Perceval in 1806.[97] It would not be until the late 1820s that a proposal originating from the radical MP Joseph Hume to replace blanks with italics would be implemented.[98]

Addington was far from alone in seeing Abbot's usefulness as an advocate of practical reform coupled with political reliability. As noted earlier, Pitt had also realised Abbot's potential, and in March 1797 Abbot was chosen as chair of a newly formed Finance Committee, which was intended to identify prospects for further administrative reforms.[99] By mid-July 1797, Abbot's Committee had produced 22 reports. Abbot and his Committee saw it as within their scope to "suggest such further measures as occur to them either for diminishing the Expense, controlling the Expenditure, or regulating the Establishments" of Government.[100] The Committee's work led to the exposure of the practice of lucrative posts being held as sinecures by patent for life and executed wholly by deputies.[101] The Committee envisaged that, where individuals were receiving excess profits from public office, the Government should be willing to buy them out in the interests of longer term economy, offering them compensation "proportionate to the fair and ordinary Emoluments of their former Offices".[102] The adoption of this approach in Hatsell's case would involve determining the fairness of his emoluments, and also might involve an offer of compensation of the kind which Hatsell had resisted in 1796 in the context of enclosure legislation.

Hatsell was a careful reader of the reports of the Finance Committee, and keenly aware of how they were exposing the parlous state of the public finances generally.[103] In October 1797, he acknowledged to Addington that the reports "will make People very angry", suggesting that they would demand redress of

97 Parl Deb, 12 June 1806, col 623.

98 Hume's proposal related to private bills, but was adopted from 1828 for public bills: CJ (1826–27) 582; Parl Deb, 19 June 1827, col 1342. See also CJ (1826–27) 568 and *The Times*, 16 June 1827, p 2 for an earlier proposal for the use of black letter. For reference to the use of italics as the "usual course", see Parl Deb, 12 Apr. 1837, col 1124.

99 *CDC*, I.92. For a good account of the Committee's origins and work, see P and G Ford, eds, *Luke Graves Hansard His Diary, 1814–1841* (Oxford, 1962), pp xix–xx.

100 *Sixteenth Report from the Select Committee on Finance ... Secretaries of State*, p 305; the quotation relates specifically to the offices of the Secretaries of State, but has wider applicability.

101 *Sixteenth Report from the Select Committee on Finance ... Secretaries of State*, p 298; *Twenty Second Report from the Select Committee on Finance ... The Exchequer and Concluding Remarks*, pp 448, 453–454.

102 *Twenty-Second Report from the Select Committee on Finance … The Exchequer; And Concluding Remarks*, p 18.

103 *Hatsell Papers*, pp 106–109.

some of the abuses exposed before they would consent to additional taxes.[104] Hatsell was particularly aware of the impact of the exposure of offices held as sinecures and performed by deputies. The phrasing of his letter to Addington suggests that this had already been discussed between them: "You know, I always dreaded this Crisis. I hate Reforms", but he acknowledged "Persons of moderate Incomes" would find it hard to understand the extent of the incomes of some public servants and the methods used by one official in "keeping back large sums of the Publick-money, which ought to have reached the Exchequer".[105] By this point, however, Hatsell had taken steps to remove himself from the firing line for future inquiries.

"To retire from any further Execution of the Duties": the 1797 arrangement

On 11 July 1797, Addington informed the House of a letter he had received from Hatsell which began as follows:

> "Having had the Honour of attending at the Table of the House of Commons for above Thirty-seven Years, I am desirous, with the Leave of the House, to retire from any further Execution of the Duties of my Office; and, with their Permission, to appoint, as my Deputy, John Ley".[106]

Although the letter was couched in terms of seeking leave, it was clear that Hatsell was setting the terms of his partial departure. It would have been open to him to retire altogether and surrender his patent. Although no formal pension provision existed at this time, pensions could be secured. Thus, in 1804, a pension was awarded to John Clementson, who had served as Deputy Serjeant at Arms since 1770.[107] There can be little doubt that generous provision would have been made for Hatsell had he sought it, but his correspondence with Addington in January 1796 in connection with his potential loss of income from bills of enclosure suggests that he saw pensions as somehow dishonourable. It is also open to question whether a pension could be secured that would fund his lifestyle as it had developed by the mid-1790s.

By retaining his Letters Patent, Hatsell also forestalled any move to replace the existing fee-based arrangements with a fixed annual salary. Hatsell had expressed opposition to this idea as early as 1781:

"It has been sometimes proposed, to take away the fees of the Speaker,

104 *Hatsell Papers*, p 107.

105 *Hatsell Papers*, pp 107–108.

106 *Hatsell Papers*, pp 105–106.

107 TNA, PRO 30/9/33, Charles Abbot, Journal with interpolated correspondence, etc, 1801–1805, fo 464; P D G Thomas, ed, "The Parliamentary Diary of John Clementson, 1770–1802", in *Camden Miscellany Vol XXV*, Camden Fourth Series, Volume 13 (London 1974), pp 143–167, at p 144.

> Clerk, &c. and to substitute in their place a salary from the public; the immediate consequence of this operation would be, that the overflowing of private applications, which at present very much interrupt the public business, would overwhelm every thing else, and it would be impossible for the Speaker, or the Officers under him, any longer to attend to the Bills of the public."[108]

As Hatsell's comments suggested, the Speaker at this point received some fee income in the same way as the Clerk of the House, receiving £5 for each private bill introduced, a further £5 for a bill that passed and double fees in the case of some complex private bills.[109] This income was insufficient on its own for the Speaker's maintenance. When Addington became Speaker in 1789, he had little by way of private means and wished to avoid supplementary income from Government sinecures which might jeopardise his independence. An Act was therefore passed in 1790 which set an annual salary for the Speaker of £6,000 and prohibited him from holding any office of profit under the Crown.[110] The Speaker's right to fee income was effectively extinguished by that Act, which did not make any provision for the fees to be collected. Hatsell pointedly retained the criticism of removing fees in the 1796 edition of his *Precedents*,[111] at a time when it was being suggested that, if a fixed salary was good enough for the Speaker, it was surely good enough for the Clerk of the House.[112] By retaining his Letters Patent, Hatsell pre-empted the possibility of a proposal having immediate effect to replace the Clerk's fee income with a set salary. In that way, he had safeguarded his own financial future.

At the same time, Hatsell secured the position of Ley, his friend and colleague of nearly thirty years. When Hatsell's predecessor Thomas Tyrwhitt had retired, Tyrwhitt had secured a reversion which gave him a right to be appointed again if Hatsell should die or sell his interest. After Tyrwhitt's death in 1787, Ley received an assurance that the government had no plans to grant the reversion to anyone else, and would certainly not do so to Ley's prejudice.[113] On 4 July 1797, Ley finally secured the reversionary rights by patent to Hatsell's office which had been in abeyance since Tyrwhitt's death.[114]

Hatsell's proposal to appoint Ley as his Deputy was unprecedented in

108 *Members/Speaker* (1781 edn), p 194.

109 CJ (1727–32) 808.

110 Ziegler, *Addington*, pp 61–62; 30 Geo 3 c 10.

111 *Members/Speaker* (1796 edn), p 272.

112 *Autobiography of Arthur Young*, p 262.

113 DHC, 63/2/11/1, Appendix, Handlist of certain other letters on parliamentary affairs preserved in the Ley MSS, summary of Lord Sydney to Ley, 14 June 1787. See also Williams, *Clerical Organization*, p 101, n 1.

114 Williams, *Clerical Organization*, p 101; 39 & 40 Geo 3, c 92, Preamble.

respect of the role of Clerk of the House of Commons. Hitherto, when either the Clerk or Clerk Assistant was absent, it was usual for one of the four most senior Committee Clerks, known as the "Clerks without Doors", to deputise.[115] However, the terms of Hatsell's Letters Patent, like those of his predecessors, made explicit provision for his duties to be carried out "by himself or his sufficient Deputy or Deputies".[116] Hatsell noted in 1781 the Clerk's "right of appointing a deputy to officiate in his stead" in consequence of the Letters Patent.[117] He was also well aware of the arrangement in 1726 whereby Michael Aiskew acted as a replacement for the Clerk and the Clerk Assistant during illnesses prior to his appointment as Clerk Assistant.[118] Hatsell recorded Speaker Onslow's observation that "if the principal Clerk makes a Deputy in form (as he may do by his patent) I conceive that the Deputy must sit in the chair of the Principal".[119] Onslow's observation that the post of Deputy was distinct from and senior to the post of Clerk Assistant provided a basis for the arrangements adopted in 1797.

Hatsell's appointment of a Deputy could be viewed as normal within the wider context of senior public appointments at the time. The office of the Clerk of Parliaments, Hatsell's counterpart in the House of Lords, had been exercised through a Deputy since 1716; from 1788, that post was held by George Rose, a ministerial Member of the Commons, one of four remunerative posts he held alongside his main role of Treasury Secretary.[120] Empowering roles to be filled by deputy was a standard provision of Letters Patent, and provided the basis for the accumulation of public offices by Rose and many others besides. As already noted, the Finance Committee had criticised sinecure postholders who immediately passed on their roles to deputies, but criticism alone did not restrain the habit, as a subsequent select committee in 1808 had to acknowledge.[121]

Hatsell was, of course, in a very different position to those who collected

115 *Members/Speaker* (1781 edn), pp 165, 167, 170–171. See also McKay, *Clerks*, pp 98, 103 and Williams, *Clerical Organization*, pp 73–74. There were also instances of less appropriate substitutes, including an MP on one occasion and the Clerk's son on another: *Members/Speaker* (1781 edn), p 165, fn 1.

116 TNA, C.66/3717 f 7, Letters Patent issued to John Hatsell, 3 June 1768; *Members/Speaker* (1781 edn), p 190.

117 *Members/Speaker* (1781 edn), p 97.

118 *Members/Speaker* (1781 edn), p 166; Williams, *Clerical Organization*, pp 67–68; McKay, *Clerks*, p 19.

119 *Members/Speaker* (1781 edn), p 166, fn 2.

120 J C Sainty, *The Parliament Office in the Seventeenth and Eighteenth Centuries* (London, 1977), pp 6–7, 21; P Harling, *The Waning of 'Old Corruption': The Politics of Economical Reform in Britain, 1779–1846* (Oxford, 1996), p 65.

121 Third Report from the Committee on the Public Expenditure, &c. of the United Kingdom, *Pensions, Sinecures & Pensions*, HC (1808) 331, pp 125–128.

public roles without any intention of exercising them other than through deputy. He had held the post of Clerk of the House for over thirty years, and was a widely-respected figure. He relied particularly upon the strength of his relationship with Addington as Speaker. In thanking Addington at the time of the announcement for "the repeated Marks of Attention and Friendship" which he had "uniformly received" from the Speaker, he was alluding to the special bond between them which extended well beyond a normal relationship between Speaker and Clerk. Addington was retaining some of the benefits of Hatsell's advice and friendship while recognising Hatsell's wish to relinquish his duties at the Table.

Hatsell also paid tribute in his letter to Ley, "whose Experience, and accurate Information, in every Part of the Business of that Office, have long been universally acknowledged".[122] Hatsell was leaving his day-to-day responsibilities in safe and trusted hands. At the same time, Hatsell appointed a new Clerk Assistant with legal experience and a distinguished pedigree—Jeremiah Dyson, the son and namesake of the Clerk who had first appointed Hatsell as Clerk Assistant.[123] Dyson seemingly made a favourable impression on the House, as within a year of taking up the role the House agreed an address to the King to increase his salary.[124]

The growth in Hatsell's income as Clerk in the 1790s enabled him to come to a relatively simple agreement with Ley that the Clerk's income would be divided equally between them. Specific arrangements seem to have been made in writing in relation to the printing account and copy money, but not more generally.[125] Hatsell continued to receive his entire income, and then made arrangements to pay half of it to Ley.[126] When, early in 1796, Hatsell estimated his average income over the preceding decade at £5,000 a year, and contemplated a possible reduction due to a General Enclosure Bill by £2,000, he viewed the balance as sufficient:

> "what will be left me, is so much more than I shall probably ever stand in need of—Supposing my Office to remain only at £3000, it is much larger than many others of more consequence to the State; & as large as the services of it deserve."[127]

Hatsell also retained another important benefit of the office by retaining his residence within the precincts. It was his main home while in London for the

122 *Hatsell Papers*, p 106.
123 "Greater Stage", p 68.
124 CJ (1797–98) 704, 708.
125 *Hatsell Papers*, p 155.
126 DHC, 63/2/11/1/111, Hatsell to Ley, 5 Aug. 1803.
127 *Hatsell Papers*, pp 95–96.

rest of his life, and it was also made available to his wider family.[128] It was repaired at public expense in 1816, and was sufficiently grand to be made available to George IV for him to spend the night before his coronation there.[129] From 1780, Ley had been granted a residence in St Margaret's Street as Clerk Assistant, which he retained as Deputy Clerk from 1797.[130] Jeremiah Dyson was granted a separate house close to the precincts as Clerk Assistant.[131]

"Hatsell objected to the power of the House of Commons": Hatsell versus Abbot

Hatsell's retention of a residence at Westminster was in some ways symbolic of his continuing involvement after July 1797 in a range of matters relating to the Clerk's Department and the business of the House when it affected his interests. His role as a backseat driver became very apparent in the context of Abbot's continuing advocacy of internal reform. In the context of the work of a select committee on expiring laws—where Abbot wanted to develop a system to flag up time-limited statutes to enable their timely extension—Abbot proposed to take evidence from the Clerk of Parliaments. Addington thought it would be inappropriate to examine a Lords official about the progress of bills through the Lords, but agreed, after speaking to Ley, that the Clerk of Parliaments could be examined in his capacity as custodian of Acts of Parliament. At this point, Hatsell intervened, as Abbot noted:

> "The Speaker mentioned that Hatsell objected to the power of the House of Commons extending to the Clerk of Parliament; because, if so, the House of Lords might call on the Clerk of the House of Commons".[132]

In order to protect himself from the potential for examination by a Lords committee, Hatsell wanted the order for the attendance of the Clerk of Parliaments discharged, but Abbot refused, citing relevant precedents from Hatsell's own work. At a subsequent meeting between Addington, Abbot, Hatsell and Ley, Hatsell tied himself in knots trying to argue that, while a committee of the House could send for papers and persons, the House itself could not. Abbot was understandably unimpressed: "I contended against the idea of the House delegating a power if they had it not; and, if they had, the Committee was unnecessary". His account also revealed how far Addington and Ley remained somewhat in awe of Hatsell's position:

> "The Speaker and Ley were of my opinion; but wished the matter not to be

128 DHC, 63/2/11/1/73, Hatsell to Ley, 3 Jan. 1798.
129 *Hatsell Papers*, pp 6, 161.
130 Williams, *Clerical Organization*, p 121; HC (1826) 403, p 26; Williams, *Topography*, p 15.
131 Williams, *Topography*, p 21.
132 *CDC*, I.173.

> pressed; to which I agreed in every respect, except not allowing that in point of reasoning I was in any degree of opinion against the authority of the House to require the execution of its order, if it thought fit".[133]

The issue arose again in the context of a Committee on Public Records which Abbot was chairing and where he considered the Clerk of Parliaments a relevant witness. Abbot met Hatsell socially, and found his position had changed again:

> "He was now of opinion that the House of Commons would not call upon the Clerk of the Parliament for an account of Records in his custody (even such as did not belong to the Lords in their separate proceedings) without a message: and that the Committee could not order it."[134]

Probably emboldened by Hatsell's private opinions, the Lords themselves started to make difficulties about whether the order for attendance could be enforced, and indeed about whether leave would be given for the attendance of the Clerk of the Parliaments.[135]

"Ill-paid, half-starved clerks": a Department of contrasts

The income which Hatsell secured for himself even while partially retired was in sharp contrast to the situation of many of his colleagues in the Department he continued to lead. For many years, the Clerk's Department had been highly stratified, in terms of social status and income. The top tier was composed of the Clerk and Clerk Assistant, who were overwhelmingly graduates of Oxford or Cambridge, had almost all been called to the bar and had not served in the House Service prior to their appointment.[136] Most of the remaining clerks had joined the Department at an early age, without university education, often as a result of a family connection, and relied to a considerable degree on length of service for their advancement.[137] Among this group, at the top of the hierarchy were the holders of what Abbot was to refer to as the "three great situations"—the Clerk of Fees, the Clerk of Elections and Privileges, and the Clerk of the Journals.[138] By 1811, each of these had an average annual income between £1,500 and £3,500, although their incomes were probably somewhat lower at the turn of the century and the income of the Clerk of Elections and Privileges

133 *CDC*, I.173–174.

134 *CDC*, I.200.

135 *CDC*, I.201.

136 "Greater Stage", pp 67–68. Dyson (Edinburgh and Leiden) was an exception to the first and third statements, in the former case due to his dissenting background.

137 McKay, *Clerks*, pp 5–11; Williams, *Clerical Organization*, pp 142, 242.

138 TNA, PRO 30/9/35, fos 33–34. This account of the pay of Clerks is fully transcribed in *CDC*.II.324–325 and in Williams, *Clerical Organization*, pp 124–125.

fluctuated, being much higher in election years.[139]

Next in income terms were the four "Clerks without Doors", who were appointed to attend select committees on private bills and on public matters.[140] These posts were generally achieved by seniority, and the postholders became less active over time. They were later recognised either as "retiring positions" for Clerks or, in one case, an out and out sinecure, so that the bulk of the work was performed by deputies.[141] By 1811, the average annual income of each of these four Clerks without Doors was £863; since the growth was fuelled by the expansion of private bill work, their incomes at the turn of the century were probably nearer to £500.[142] The income of one of these four Clerks was usually supplemented by additional income from the sinecure role of Clerk of Ingrossments.[143] The income of the four Deputy Clerks without Doors had been about £150 a year in the 1770s, but was on an upward trajectory, reaching between £518 and £621 a year by 1811.[144]

Beyond these 11 senior clerks, incomes were much smaller and much more variable. One source of income for them, from preparing handwritten copies of papers and Journal entries, was in decline. The distribution of remunerative work, such as extended private bill or public select committee work, was uncertain. Work on public select committees was theoretically rewarded with payments from the government, but the payments were often delayed and their distribution was uneven.[145] John Henry Ley, who joined the Clerk's Department in 1801 in circumstances that will be considered below, referred to the Journal Office at that time "being in a most inefficient state, from the system of ill-paid, half-starved clerks".[146] George White, who had joined the Department in 1802, later recollected:

> "When first I came on the establishment, our incomes were not sufficient, supposing we had had no other dependence, and we were told we were not

139 TNA, PRO 30/9/35, fos 33, 33v, 101; McKay, *Clerks*, p 50; Williams, *Clerical Organization*, pp 123–125, 223–224.

140 *Members|Speaker* (1781 edn), p 184.

141 Williams, *Clerical Organization*, pp 141, 154–156; HC (1833) 648, Q 1105; McKay, *Clerks*, pp 53, 64, 90–91, 115–116. The sinecurist was Edward Stracey, probably reflecting the fact that his family had reached a higher social stratum than that of other clerks without doors.

142 TNA, PRO 30/9/35, Charles Abbot, Journal with interpolated correspondence, etc, 1811–1816, fo 33v.

143 Williams, *Clerical Organization*, pp 141–142, 229–231.

144 Williams, *Clerical Organization*, pp 141; TNA, PRO 30/9/35, fo 33v.

145 DHC, 2741M/FC15/7, draft of Ley to Charles Long, 12 July 1793; Williams, *Clerical Organization*, pp 143–148, 329–335.

146 HC (1833) 648, Q 3105. The reference can be dated to 1801 from his reference to the situation when John Bull first joined the Journal Office: McKay, *Clerks*, p 28; Williams, *Clerical Organization*, pp 204–205.

to look for any thing like a subsistence till we had been some years here, and worked ourselves up to one or two offices".[147]

"Real Distress": Samuel Gunnell's first ordeal

These later accounts are also borne out by the contemporary evidence of Samuel Gunnell, who had joined the Clerk's Department in 1776 when he was about 14 years old. There Samuel joined his father, Robert, who had been a clerk since about 1743 and had become a Clerk without Doors in 1774, and Samuel's elder brother Henry.[148] Samuel's work included the production of handwritten copies of parliamentary material—a diminishing element with the growth of printing—as well as acting as clerk of private bill and public select committees.[149] In that last capacity, he had come to the attention of Abbot. In 1801, Gunnell was to state:

"I have been … for a long time back, accustomed to be consulted upon & employed in any Parliamentary Business in which Mr Abbot has been engaged."[150]

On 2 July 1799, Gunnell wrote to Abbot describing himself as "acting Clerk to the Committee on the Improvements of the Port of London", a Committee undertaking work closely connected to private bills for that Port in which Abbot was interested. The Committee produced two reports in the course of the session, and such work was usually recognised by a Government payment, but this was often slow to come through.[151]

Gunnell began his letter by apologising to Abbot for writing to him about his personal situation and assuring Abbot that he was only doing so because of "real Distress". Gunnell reported that he had served as a Clerk for 23 years but found himself with the same salary as when he first joined, namely £20 per annum, which put him on "the same footing" with many much less experienced Clerks. Due to the expansion of printing, there was less additional money to be earned for copying parliamentary papers. Income for work on private bill committees had also fallen, because their work was conducted more efficiently

147 HC (1833) 648, Q 1107; McKay, *Clerks*, p 99.

148 McKay, *Clerks*, pp 53, 54.

149 TNA, PRO 30/9/32, Charles Abbot, Journal with interpolated correspondence, etc, 1797–1800, fos 398–399v, Gunnell to Abbot, 2 July 1799; TNA, PRO, 30/9/112, fos 247–248, copy of Gunnell to Hatsell, 16 Nov. 1801.

150 TNA, PRO, 30/9/112, fos 247–248, copy of Gunnell to Hatsell, 16 Nov. 1801.

151 TNA, PRO 30/9/32, fos 398–399v, Gunnell to Abbot, 2 July 1799; *First Report from the Select Committee appointed to consider Evidence taken on Bills for the Improvement of the Port of London*, ordered to be printed, 1 June 1799; *Second Report from the Select Committee Upon the Improvement of the Port of London*, ordered to be printed, 11 July 1799;Williams, *Clerical Organization*, pp 143–148, 329–335.

and the four Deputies to the principal clerks delegated less of the work to the junior clerks. Moreover, if he was sick, he was unable to earn anything beyond his £20 salary. He reported that his income had not exceeded £100 "for several Years past", was unlikely to do so in the current year, and might decline thereafter if further work was not delegated by the Deputies. He believed that no clerk had served so long as a junior clerk without promotion to a Deputyship and no other clerk stood equally in need of assistance as himself. He had a wife and six children, and his income was not sufficient to support them; he had been forced to rely on disposing of property passed to him by his father and built up over his father's fifty years of service. Now that property was gone, he found it "impossible to go on without Assistance, and to hold at the same time that little Rank of Life to which I have hitherto been accustomed, & which my Situation I humbly conceive requires". He then went on:

> "I have at different Times applied to Mr. Hatsell, but he has not had it in his power by any Official Situation to afford me Relief, & he has expressed his Concern that he has not been able so to do."

Gunnell asked Abbot to approach Pitt as Chancellor of the Exchequer to ask Pitt to offer some "temporary Relief till otherwise provided for". If Abbot could assist Gunnell, he would earn the "Prayers & Thanks of an amiable Woman & six Infants". If Abbot could not help, then Gunnell claimed he would comfort his children by being able to offer a copy of the letter as a "Memorial" to Gunnell's efforts to escape from the "Effects of Poverty".[152]

Abbot clearly decided that the best way to pursue the case was not directly with Pitt, but instead to forward Gunnell's letter to the Speaker. Addington replied the following day to say that he found Gunnell's account "artless & affecting", accepting the need for Gunnell's distress to be "speedily relieved" and offering a meeting to Abbot that afternoon or the following morning.[153] Addington raised the matter in turn with Pitt, but no immediate relief was forthcoming, and Gunnell wrote again to Abbot on 7 October 1799.[154] His first request was that Abbot write a "recommendatory Letter to Mr. Ley, in order that he may forward my Account to the Treasury" relating to Gunnell's service for another select committee of the previous session. He also recorded his pain in having again to report that he stood in need of the "benevolent Intentions of The Speaker":

> "I now have no Resource left—the last Remains of my Father's Legacy (which was near £500), I was obliged to sell out about this Time last Year; & by far the greatest part of my Income of the last Session arises from

152 TNA, PRO 30/9/32, fos 398–399v, Gunnell to Abbot, 2 July 1799.
153 TNA, PRO 30/9/32, fos 396–396v, Addington to Abbot, 3 July 1799.
154 Williams, *Clerical Organization*, p 116.

attending public Committees which is not yet paid."

Finally, he provided an update on his outgoings. In addition to the six children referred to in his previous letter, "I am now in daily Expectation of a Seventh to add to my Difficulties".[155] Abbot again raised the matter with the Speaker and also made a payment himself to Gunnell of £20 pending a more substantial payment which seems to have been offered by Pitt.[156]

In his account of this episode, Williams notes how "at a time of great national emergency, the Speaker and the prime minister had both been exercised by the unfortunate situation of a humble clerk".[157] Williams also notes how Abbot and Addington were "moved by a sense of indignation at the sad case of Samuel Gunnell" and motivated by that to introduce legislation in 1800 that was to make provision about the future distribution of fee income and establish salaries for senior roles.[158] There can be no doubt about the importance of these events, not least because they brought to the attention of Abbot, Addington and Pitt the extent of the contrast between the great wealth available to Hatsell and Ley and the financial distress of more junior clerks. However, it is also important to place this legislation in the broader context of public service reform and examine the passage and provisions of the legislation in more detail.

"A different Distribution should be made": the House of Commons (Offices) Act 1800

When the Finance Committee was first established in 1797, it had been specifically instructed to consider the increase or diminution in pay and personnel in public offices.[159] To aid in assessing the impact of the Committee's work, in March 1800, the House of Commons ordered a detailed breakdown of the increase or diminution in the number and amounts of salaries, emoluments and expenses of posts in each "public office" in 1797, 1798 and 1799.[160] These figures were provided by the Treasury in early June 1800, but did not include the House of Commons.[161] However, this wider interest formed part of the context in which legislation affecting the House of Commons was considered.

The driving force behind legislation was the Speaker, but its form and approach were also shaped by the wider work which Abbot had led as chairman of the Finance Committee. Addington decided on the broad outlines of a plan

155 TNA, PRO 30/9/32, fo 397, Gunnell to Abbot, 7 Oct. 1799.
156 Williams, *Clerical Organization*, pp 116–117.
157 Williams, *Clerical Organization*, p 117.
158 Williams, *Clerical Organization*, p 115.
159 CJ (1796–97) 393.
160 CJ (1799–1800) 333.
161 *Accounts and Papers Respecting The Increase Or Diminution Of Salaries, &c. &c. In The Public Offices, For The Years 1797, 1798, and 1799*, House of Commons Paper, 9 June 1800.

by early March 1800, when he discussed it with Abbot.[162] On 6 May 1800, during the Committee stage of yet another abortive attempt to provide for general enclosure, as Abbot recorded:

> "The Speaker … opened his Plan for limiting the emoluments of the Clk & Assist[t] Clerk, after the expiration of the Interest of the present Patentee and Reversioner (Hatsell & Ley)—and appropriating the Surplus to defray the extra allowances of The Speaker & other Officers of the House, & to improve the situation of the inferior Clerks".[163]

At this stage, three fundamental elements of the legislation were seemingly settled. First, it would respect the property rights of Hatsell and Ley derived from the former's Letters Patent and the latter's reversionary interest, and only have full effect when those patent rights lapsed. The option of compensating Hatsell and Ley for the loss of fee income and establishing a salary with immediate effect was therefore excluded. Second, the proposed legislation would not follow the method criticised by Hatsell in 1781 and adopted by the 1790 Act relating to the Speaker's salary of removing fees altogether; instead, it would create a fund from those fees for redistribution. Third, it would seek to address the concerns brought to light by Samuel Gunnell by aiming to improve the financial position of the junior clerks.

The next day, at Addington's request, Abbot moved a motion for returns to be prepared of the fees and emoluments received by the Clerk and Clerk Assistant since 1790, a year probably chosen because it was the year in which the Speaker ceased to receive fee income.[164] Through this proposal, Addington and Abbot were applying to Hatsell and Ley the methodology which had proved so successful for the Finance Committee in exposing some of the abuses in public offices and in creating impetus for change. For the first time, it was letting daylight in on the magic money tree from which Hatsell and Ley were benefitting. The returns were produced on 13 May. The incomes for the period up to 1796 have already been considered; the income of the Clerk of the House in 1797 was shown to be £9,613. In 1798, the total to be shared between Hatsell and Ley was £6,994; that for 1799 was £7,797. These returns were referred to a Committee of the whole House.[165]

That consideration led, on 19 June 1800, to the House giving leave for a Bill based on Addington's plan to be brought in.[166] Those instructed to bring in the

162 *CDC*, I.200.

163 TNA, PRO 30/9/32, fo 511; *CDC*, I.203.

164 CJ (1799–1800) 481; *CDC*, I.203. This motion is confused by Williams (*Clerical Organization*, p 115) with the motion for leave to introduce the Bill, which was not moved by Abbot.

165 CJ (1799–1800) 524.

166 CJ (1799–1800) 675.

Bill were led by Charles Yorke, who had been a member of Abbot's Finance Committee, as had those also asked to prepare the Bill, including the Speaker's younger brother, Hiley Addington.[167] The Bill was presented by Yorke and read the first time the next day.[168] On the same day, the House ordered a return to be prepared of fees and emoluments provided to the Serjeant at Arms.[169] The Bill received its second reading on 23 June, when the account of fees of the Serjeant at Arms was also provided.[170] The returns on fees were considered alongside the Bill in Committee on 1 July, when the Bill was amended.[171] The House completed its consideration of the Bill on 8 July, when further Clauses were added.[172] The Bill passed all its stages in the Lords without amendment within a week, and received Royal Assent on 28 July.[173]

The Preamble to the Act set out its rationale and approach, stating that, when certain Letters Patent expired, "a different Distribution should be made of the Fees and Emoluments now belonging thereto". It then identified Hatsell's Patent, Ley's reversionary Patent and the Letters Patent held by Edward Coleman, the Serjeant at Arms.[174] Section 1 established a Commission to give effect to the Act, composed of the Speaker, the Secretaries of State, the Chancellor of the Exchequer, the Master of the Rolls and the Attorney and Solicitor Generals, provided in the case of the last three that they were Members of the House. The quorum of the Commission was to be three, but the Speaker's presence was required. Section 2 provided for "all Fees, Perquisites and Emoluments which would have been due and payable to" the Clerk, Clerk Assistant and Serjeant at Arms to be "paid into the Hands of the said Commissioners". It then provided that the annual salary of the Clerk of the House was to be £3,000, rising to £3,500 after five years in post and that of the Clerk Assistant was to be £1,500, rising to £2,000 after five years in post.[175] The net annual income of the Serjeant at Arms in the 1790s averaged about £2,300, but fluctuated considerably between a peak of £3,168 in 1792 and a trough of £1,516 in 1796.[176] Section

167 CJ (1799–1800) 675; CJ (1796–97) 393.
168 CJ (1799–1800) 680.
169 CJ (1799–1800) 680.
170 CJ (1799–1800) 689, 690.
171 CJ (1799–1800) 720.
172 CJ (1799–1800) 733–734.
173 CJ (1799–1800) 759, 784.
174 39 & 40 Geo 3, c 92, Preamble.
175 39 & 40 Geo 3, c 92, sections 1 and 2. Section 3 arose from one of the Clauses introduced immediately prior to third reading, and made transitional provisions if the Clerk Assistant was appointed as Clerk.
176 CJ (1799–1800) 690. It seems likely that these totals included fees payable to the Housekeeper, a post also held by the Serjeant, but the 1800 Act did not itself make explicit provision about those fees.

4 set the annual salary of successors to Edward Coleman at £2,300, with the proviso that if he employed a Deputy, he was to pay the Deputy a salary of at least £300 which was to come out of the Serjeant's salary, so that the net salary was likely to be £2,000.[177]

Sections 5 and 6 made provision about the management and distribution of the fees which would pass to the Commissioners. The first distribution would be to staff in the Departments of the Speaker, Clerk or Serjeant "as may from casual Circumstances appear to require the same", then for "affording Relief" to staff in those Departments "who may have been disabled by Age or Infirmity from the Discharge of their respective Duties", then for providing a salary to the Chairman of Ways and Means, and finally for providing support for staff who did not meet the two initial criteria.[178] The first element of this provision almost certainly derived directly from the situation highlighted by Samuel Gunnell in his letters to Abbot in 1799, although Gunnell himself was unlikely to be in need of it; his income improved considerably at least in 1800 due to his "extraordinary trouble and unremitting attention to the daily business and extensive correspondence" of another Committee which Abbot chaired and in respect of which he received £300.[179]

The House of Commons (Offices) Act 1800 represented a direct response to the striking growth in Hatsell's income in the 1790s and the inequitable distribution of fee income among Clerks highlighted by the case of Samuel Gunnell, and was consistent with the broad reforming approach mapped out in the work of Abbot's Finance Committee. However, such was the respect for property rights, and for Hatsell and Ley as individuals, that it did nothing that would affect them in their lifetimes, unless they chose to relinquish their Patents. And in the years that followed, their income, and the broader benefits of patronage, would be enlarged rather than diminished.

"All the Instances of Favour and Indulgence": Addington's ascent

In terms of direct impact on the life and well-being of Hatsell and Ley, the House of Commons (Offices) Act was not the most significant legislation passed in 1800. Ireland had had its own Parliament for several centuries, but had become an increasing source of risk and instability since the start of war with France in 1793. In early 1798, Hatsell himself had written that "Ireland is, I fear, the thorn,

177 39 & 40 Geo 3, c 92, section 4.

178 39 & 40 Geo 3, c 92, sections 5 and 6. Section 7 arose from the other Clause introduced immediately prior to third reading, and placed beyond doubt that the Act would come into effect either when the interests of Hatsell and Ley in the Clerk's Patent or Coleman's interest in the Serjeant's Patent was extinguished.

179 Williams, *Clerical Organization*, pp 329–330.

which if We do suffer, will prick us to death".[180] The rebellion later that year led in 1800 to Acts of Union being passed by the two Parliaments, which dissolved the Irish Parliament and enlarged the Westminster Parliament, which became a Parliament for the United Kingdom of Great Britain and Ireland. Hatsell and Ley were soon in correspondence about some of the likely consequences of the Act of Union, including the reorganisation of the space within the Palace, the appointment of additional clerks to handle the extra workload and the possible preparation of distinct "Rules & Orders, respecting Irish Bills".[181]

However, the most enduring impact on Hatsell and Ley came from a change on the larger political stage. Pitt was convinced that the new Union would only be sustainable if greater political and social rights were provided to the male Catholic population. Pitt resigned as prime minister when he became convinced the King would not agree to the measure. It soon became apparent that the most acceptable successor would be Addington, able to forge a cabinet in part by side-stepping the issue of emancipation.[182] It is a revealing reflection on Hatsell's reputation, and his closeness to Addington, that there were rumours that he had been approached as a possible successor to Addington as Speaker—"a situation for which he is so well qualified".[183] Even the newspaper that reported this rumour doubted the truth of it, and Addington had approached Sir John Mitford about the Speakership within a day of accepting office as prime minister.[184] Mitford's candidacy may have been suggested to Addington by Hatsell, who had encouraged Mitford to consider the role a decade earlier.[185] Addington formally resigned the Speakership on 10 February 1801 and Mitford was elected the next day.[186]

Hatsell and Ley now had a close friend and ally at the pinnacle of power, and Addington's friendship was to be vital to developments in the Clerk's Department. Shortly after moving from the Chair to Downing Street, he sent a letter of appreciation to Ley which Ley read to all the Clerks.[187] Fifteen Clerks then wrote a letter to Ley to say how Addington's "Condescension and Kindness" in his letter had made "the deepest Impression on our Minds". They also asked Ley to pass on their "Thanks, for all the Instances of Favour and

180 *Hatsell Papers*, p 113.

181 DHC, 63/2/11/1/78, Hatsell to Ley, 26 Dec. 1800; DHC, 63/2/11/1/83, Hatsell to Ley, 25 Jan. 1801.

182 *CDC*, I.240.

183 *Morning Chronicle*, 10 Feb. 1801, p 3.

184 Ziegler, *Addington*, p 96.

185 TNA, PRO 30/9/33, fo 75.

186 CJ (1801) 33.

187 DHC, 152M/C1801/OZ23, Ley to Addington, 17 Feb. 1801.

Indulgence, which, during so many Years, we have uniformly experienced".[188]

For Hatsell, Addington's ascent provided an opportunity to assist the career of his second stepson. Charles William Barton, known by this time as Newton Barton, was in his late thirties, but had not settled down. He had studied at Oxford and trained as a lawyer, but, according to Hatsell "found the Study of the Law too dry". He had gone travelling for two and half years in the early 1790s, and was a fellow of an Oxford college, but Hatsell had been seeking a position for him of a more public nature since at least 1793.[189] Newton Barton knew Addington through Hatsell and Newton's own brother,[190] and in 1798 Addington had been active in seeking a role for him.[191] When Addington moved into Downing Street, Newton Barton started to work for him in a secretarial capacity. At an early stage in his time there, Newton Barton seems to have suffered some form of physical or mental difficulty which meant he left Addington's papers in a state of disorder and went to a coastal resort to recuperate. However, Addington assured Hatsell that he would welcome Barton's return to his role. Barton thanked Addington for the part he offered "to take in order to raise me from my present distress", and for the prime minister's continuing generosity towards him and his brother.[192] Newton Barton returned to his role during Addington's premiership and became a crucial source of continuing political information for Hatsell, as well as a continuing connection to Addington.[193] For Ley's family, however, the patronage gains from Addington's premiership were to be even greater and of lasting significance for the Clerk's Department.

"A valuable acquisition at the Table": the third clerk

From the time of the creation of the role of Clerk Assistant, there is no evidence to suggest that there had ever been more than two clerks at the table at a time. In the letters from Hatsell to Ley immediately following the passage of the Act of Union, there was a recognition of the impact of increasing business, but no mention of an additional role at the table.[194] However, Ley had begun to contemplate the idea by early February 1801. Ley himself was single, and was very close to the children of his brother Henry; the sons often stayed with him during their education at Westminster School. One of those nephews,

188 DHC, 152M/C1801/OZ21, Clerks to Ley, 17 Feb. 1801.

189 British Library, Add MS 34452, fo 189, Hatsell to Auckland, 1 Nov. 1793.

190 DHC, 63/2/11/1/66, Hatsell to Ley, 2 Feb. 1797.

191 *Hatsell Papers*, p 113.

192 DHC, 15M/C1801/OZ176, Newton Barton to Addington, 29 May 1801.

193 "Newton Barton writes almost everyday, & I am always glad, when there is no news": DHC, 63/2/11/1/87, Hatsell to Ley, 26 July 1801; *Hatsell Papers*, p 126.

194 DHC, 63/2/11/1/78, Hatsell to Ley, 26 Dec. 1800; DHC, 63/2/11/1/83, Hatsell to Ley, 25 Jan. 1801.

John Henry Ley (referred to hereafter as J H Ley), was 21 years old in 1801, had recently graduated from Christ Church, Oxford and had just begun legal training at the Middle Temple.[195]

On 4 February, Ley met J H Ley and explained that "There is an idea of adding another Clerk to the House of Commons, the business being found too much for two". Ley stressed that nothing was yet settled, but sounded out his nephew as to whether he would accept the post. J H Ley made it clear that he would leap at the chance. He suggested that it might have been harder if he had been further advanced in his legal studies, and settled in that profession, but since he was not, he would gladly accept what seemed to be "a very respectable situation", even if "the salary should not prove very considerable"; Ley had suggested to him the annual salary would be no more than £500. Nevertheless, J H Ley decided that he "should have no scruple in relinquishing the Law". He emphasised to his father that "You must not mention a syllable of this, as it is very probable no such event may happen". Ley himself also wrote to his brother to reinforce that point: "It is highly probable that no such Event will be bro[ught] to maturity" and the matter had to remain "secret & Confidential".[196]

There the matter rested for some time. There were only two clerks at the table during the first Session of the new Union Parliament between January and early July 1801. However, by the end of that Session, Ley had clearly gained broader support for the proposition. Hatsell had been persuaded, and with their friend Addington as prime minister, and Mitford a relatively new Speaker, the remaining support necessary soon fell into place. In mid-July 1801, Hatsell wrote to Ley: "I am glad to hear, that Your Nephew had so pleasant a reception from M^{r} Addington, & that every-thing has been settled so much to Your & His satisfaction".[197] At this point, Hatsell clearly viewed this move as succession planning in the context of the possibility of both him and Ley stepping back from their current roles:

> "As You & I must retire soon, it is a good thing to provide, 'that there may not be wanting a succession of good & able Men' &c. &c."[198]

Hatsell evidently expected J H Ley to prepare properly for the role he was to assume. In mid-August, he wrote to Ley "I hope Your Nephew is studying the Journals hard".[199]

As the autumn meeting of Parliament drew closer, Hatsell expressed an interest

195 Williams, *Clerical Organization*, p 93.

196 DHC, 63/2/11/15, J H Ley to Henry Ley, 4 Feb. 1801; DHC, 63/2/11/15, Ley to Henry Ley, 4 Feb. 1801.

197 DHC, 63/2/11/1/85, Hatsell to Ley, 12 July 1801.

198 DHC, 63/2/11/1/85, Hatsell to Ley, 12 July 1801.

199 *Hatsell Papers*, p 126.

in "settling the etiquette of your Nephew's introduction".[200] Soon after, Hatsell wrote to Ley again, saying "I shall be glad to hear, how the matter respecting him, is arranged, between you, M^r^ Addington & The Speaker".[201] The next day, Hatsell expressed pleasure that Ley would "probably make the arrangement for your Nephew's attendance to your satisfaction", and concurred with Ley's view "that the ceremonial introduction should not be till the second day" of the new session.[202] On 1 November, Hatsell wrote:

> "I am glad to hear that the business of your Nephew went off so well on Frid^y^, & that Every body seem'd pleased: I have no doubt, but that he will do very well, & be a valuable acquisition at the Table."[203]

Hatsell also encouraged Ley to use the addition of a third clerk at the Table to reduce the burden that Ley faced and to rely more on Dyson and his nephew: "As there is to be *Three* at the Table, I should, in your case, retire in long nights of debate, & leave the conclusion of the Sitting to the two young men".[204]

J H Ley also evidently gave his own account of his introduction to his family, receiving warm congratulations from his mother and brothers.[205] He seemingly explained in a subsequent letter how formal terms of address were retained between him and Ley, of which his father approved:

> "There could not be a doubt of the fitness of adopting some degree of formality, in your address to each other—Uncle & John, at the Table, wo[ul]d not have done at all, nor in speaking to the inferior Clerks."[206]

Hatsell had noted in July that the appointment of a third clerk at the table would also have implications for the table itself:

> "It rests with You, to find a place for Him at the table, where He may be of use, & yet in nobody's way; This appears to me a matter of some difficulty."[207]

The table had been a substantial piece of furniture since Tudor times,[208] and had been through various incarnations. The table in use at the start of 1801 dated to around 1730 and was almost certainly the work of William Kent.[209] Ley

200 DHC, 63/2/11/1/90, Hatsell to Ley, 27 Sept. 1801.

201 DHC, 63/2/11/1/91, Hatsell to Ley, 23 Oct. 1801.

202 DHC, 63/2/11/1/92, Hatsell to Ley, 24 Oct. 1801.

203 DHC, 63/2/11/1/96, Hatsell to Ley, 1 Nov. 1801.

204 DHC, 63/2/11/1/92, Hatsell to Ley, 24 Oct. 1801; Williams, *Clerical Organization*, p 150. Lambert (*Bills & Acts*, p 31) overinterprets this letter as a more general invocation to Ley to delegate his duties.

205 DHC, 63/2/11/15: Henry Ley junior to J H Ley, 2 Nov. 1801; Mary Ley to J H Ley, 4 Nov. 1801; William Ley to J H Ley, Nov. 1801.

206 DHC, 63/2/11/15, Henry Ley to J H Ley, 5 Nov. 1801.

207 DHC, 63/2/11/1/85, Hatsell to Ley, 12 July 1801.

208 Lambert, *Bills & Acts*, p 29 n 4.

209 Notes from 2019 exhibition in Portcullis House, "Secrets Unveiled: Historic Furniture in the Speaker's House".

evidently sought ideas from Hatsell about possible options, and Hatsell replied as follows:

> "Nothing occurs to me, on the subject of a Place at the Table, unless two Flaps, of about six inches each, to turn down, could be added at each end, in the front next to the Chair."[210]

Hatsell accepted that this proposal would be problematic: "perhaps even that additional foot might make the passage, between the Seats & the Table, inconvenient to Members, coming up the House".[211] A week or so thereafter, Hatsell was informed of Ley's proposed solution, and wrote as follows: "I am glad to hear, that The Speaker & You have settled the size & shape of the Table, to both Your satisfactions."[212]

This has been interpreted by Clare Wilkinson as implying that Hatsell's solution had been adopted,[213] but physical evidence suggests another outcome. The table used until the autumn of 1801 survives, and shows no signs of the adaptations suggested by Hatsell. The architect James Wyatt had previously been commissioned to undertake extensive alterations to the chamber to allow for the expansion of the size of the House with the addition of Irish Members,[214] and he probably designed a new table suitable for three. On 5 November 1801, Henry Ley wrote to J H Ley to ask about the new arrangements: "Pray how does the table answer & have you all got Elbow room".[215] Further evidence that a new table was designed and installed is provided in pictures of the House of Commons in 1804 and 1807.[216] The creation of a new table would explain the survival of the table in use until 1801, which was moved to a part of the building which survived the fire of 1834.[217]

"Destroy the Comfort & Happiness I derive from you": Samuel Gunnell's second ordeal

The Act of Union was also the cause for a further dispute within the Clerk's Department, which sheds light on Hatsell's approach to the management of it after his partial retirement, and on some of the tensions and rivalries within

210 DHC, 63/2/11/1/86, Hatsell to Ley, 16 July 1801.
211 DHC, 63/2/11/1/86, Hatsell to Ley, 16 July 1801.
212 DHC, 63/2/11/1/87, Hatsell to Ley, 26 July 1801.
213 Wilkinson, "Practice and Procedure", pp 23–24.
214 On which, see Wilkinson, "Practice and Procedure", pp 8–13.
215 DHC, 63/2/11/15, Henry Ley to J H Ley, 5 Nov. 1801.
216 These are available at https://commons.wikimedia.org/wiki/File:Phillips(1804)_p295_-_The_House_of_Commons.jpg and https://artcollection.culture.gov.uk/artwork/12024/.
217 C Shenton, *The Day Parliament Burned Down* (Oxford, 2013 paperback edition), p 205. This accords with the statement that the surviving table was in St Stephen's Chapel until about 1800 on the plaque later affixed to it: Notes from 2019 exhibition in Portcullis House, "Secrets Unveiled: Historic Furniture in the Speaker's House".

that Department.[218] As part of the formation of his Ministry in March 1801, Addington chose his protégé Charles Abbot for the role of Chief Secretary in Ireland. Unsurprisingly for someone with a keen interest in parliamentary practice and the effective management of parliamentary business, Abbot soon identified challenges that would arise with the management of Irish parliamentary business at Westminster.[219] He was initially concerned about challenges faced by Irish private business, with promoters used to Dublin ways and unfamiliar with practices and fees at Westminster. He decided that Irish private bills would "proceed, as in the Irish Parliament, cost free this session, and the expense of commutation to clerks to be covered by an address, and put to the account of miscellaneous service for next year".[220]

Abbot had intended to attend each session at Westminster, alongside his duties in Ireland,[221] but Addington had advised him not to attend the short session in the autumn of 1801. Although Addington felt this was the right call,[222] it left Abbot in the difficult position of trying to establish arrangements for the conduct of Irish public and private business from afar. His distance from Westminster helps to explain the difficulties that were encountered. However, it is as a result of that distance that the correspondence shedding such light on the Clerk's Department took place.

In September 1801, Abbot stressed to Addington the need for a proper office to manage "all the inferior parliamentary business in Ireland—the bills of official detail, of local interest, of municipal regulation, &c.,—which the current business of a country, as yet, in many respects, unlike England, must constantly require". He also argued that "clerks and accommodation for them must be provided by him to do the business which he has to transact in respect of his official character".[223] Abbot soon identified the perfect person to take these administrative matters forward in his absence—Samuel Gunnell. On 12 October, Gunnell was able to write to Abbot to inform him that "Preparation is now making for an Office for transacting the Irish Business". The Speaker had agreed that part of one of his rooms would be partitioned off for the "Irish Office" and that a wall would be knocked down to enable this room to be accessed from the lobby via another office. Mitford had asked Gunnell to pass on apologies that the office was not larger and to stress that the solution was

218 The events are briefly considered by Williams (*Clerical Organization*, pp 150–151), but he relied only on the limited correspondence in the Ley papers and did not access the letters from Gunnell and Hatsell to Abbot.

219 *CDC*, I.237.

220 *CDC*, I.266

221 O C Williams, *Life and Letters of John Rickman* (London, 1912), pp 46–47.

222 TNA, PRO 30/9/115, fos 23–24, Corry to Abbot, 4 Nov. 1801.

223 *CDC*, I.320.

only temporary. Gunnell reported to Abbot with pleasure that "The Speaker has given directions that the Room may be filled up with every Convenience I can suggest & that the Space will admit of".[224]

At this point, Ley clearly became uneasy about some aspects of the preparations for the staffing of the office, and took these concerns to Hatsell, who replied on 7 November. Hatsell did not see any objection to permitting Abbot as Chief Secretary "to select out of the Clerks, Sam[uel] Gunnell to be at the head of that Office, or to be appointed *by me*, Clerk of the Irish Committees".[225] This was significant in the exchanges that were to follow. Hatsell accepted the right of Abbot to choose a clerk to conduct Irish business at Westminster, just as it had been for Pitt formally to choose Dorington as Treasury agent following his appointment as Clerk of Fees in 1796.[226] Hatsell also saw no problem in giving Gunnell additional responsibilities for Irish business alongside that, again following the pattern for Treasury business. However, dispute was to arise from two opinions of Hatsell already apparent in his letter to Ley. The first was that agency work could only be conducted by clerks within the Office. The second was that Hatsell alone could choose anyone not on the establishment who was to undertake such a role. As he put it to Ley:

> "It is impossible & inconsistent with the establish'd practice of the House & consequently an infringement of my Patent Rights for any person whatsoever to attend, as a Clerk in the Office, who is not appointed by The Principal Clerk."[227]

Thus, if Gunnell were to need additional staff, "I must also direct, who shall act under him". Hatsell encouraged Ley to tell Abbot, Addington as prime minister and the Speaker of their concerns, and did not rule out further escalation: "if any attempt is made, to interfere with what I think the rights of my Office, I shall think it my duty to state it to The House, & take their Opinion upon it". However, he thought that it would not come to this.[228]

The heart of the matter in dispute is evident from a letter which Samuel Gunnell wrote to Abbot on 12 November. Gunnell reported that he had met Isaac Corry, the Irish Chancellor of the Exchequer who was leading in the management of Irish parliamentary business while Abbot remained in Ireland. Corry had advised him "to act with great Caution" as agent for Irish Office business "so as not to give any Offence" to Dorington, as Treasury agent.

224 TNA, PRO 30/9/112, fos 131–132, Gunnell to Abbot, 12 Oct. 1801.

225 DHC, 63/2/11/1/96, Hatsell to Ley, 7 Nov. 1801.

226 *Hatsell Papers*, p 101. For other instances of agents for government departments, see Williams, *Clerical Organization*, pp 180–182.

227 DHC, 63/2/11/1/96, Hatsell to Ley, 7 Nov. 1801.

228 DHC, 63/2/11/1/96, Hatsell to Ley, 7 Nov. 1801.

Gunnell assured Abbot that he would be careful to follow Corry's guidance on the limits of his role, but then set out the extent of the difficulties he was encountering with his colleagues:

> "I wish Mr Dorrington & other Gentlemen about the House would act with the same Candour towards me—Your Goodness towards me I did expect would create some Jealousy, and I find myself not disappointed—I perceive that Every thing they can do they will to destroy the Comfort & Happiness I derive from you."[229]

Gunnell had learned from Corry, who had probably met Ley following Hatsell's letter, of the matter in dispute, namely the claim that Gunnell "had no Right to employ in Your Business any but the established Clerks of the House". The aim of this claim was "with the view of setting aside the two Young Men I had engaged" and on whom Gunnell felt he could depend. One of these was his nephew, John Gunnell, and another was the 16 year old son of a colleague, Henry Coles, chosen by Gunnell "upon Application from his Father, & upon my knowing him to be very good & expeditious Writer".[230] Samuel felt that he would need to avoid the inconvenience he had faced in the previous session

> "of hawking about your Business, & which must always be the case in employing the Clerks of the House having other Employments & whose dependance is upon those who are my Superiors in Office, the Whim & Caprice of whom I should always be in dread of at any particular press of Business".

He then went on to report that these superiors within the Department "have very cruelly started an Objection to one of the two I have engaged".[231]

To understand the nature of this objection, it is necessary to look at how some of the fees charged by clerks were calculated. In 1731, the House had resolved

> "that, if any Officer or Servant of this House shall presume to demand, or take, any greater Fee, than what shall be contained in the said printed Tables, this House will proceed against such Officer or Servant with the utmost Severity".[232]

John Gunnell had been engaged as a Clerk in 1799. At some point in 1800 or early in 1801, as Gunnell told Abbot, John was "unfortunately dismissed" from the Journal Office for "a fault I by no means can defend", namely charging for

229 TNA, PRO 30/9/112, fos 228–231, Gunnell to Abbot, 12 Nov. 1801.

230 TNA, PRO 30/9/112, fos 228–231, Gunnell to Abbot, 12 Nov. 1801. For the age of Coles junior and confirmation of John Gunnell's identity, see TNA, PRO, 30/9/112, fos 242–245, copy of draft of Gunnell to Hatsell, 14 Nov. 1801.

231 TNA, PRO 30/9/112, fos 228–231, Gunnell to Abbot, 12 Nov. 1801.

232 CJ (1727–32) 807; Williams, *Clerical Organization*, p 302.

more Votes than he had actually copied. Gunnell reported that

> "One of the most wicked Examples before in the conduct of another Boy then in the Office I am sorry to say corrupted his own Morals, otherwise naturally very good".

When Hatsell learned of John's overcharging, Hatsell had dismissed him, apparently with an assurance to Samuel "that the Circumstance should be, by him buried in Oblivion, and that it should never be known to [John's] Prejudice". Since then, John had been living in the country with his mother and was unemployed. Out of respect for Samuel's deceased brother, in considering the mother's circumstances and "upon the fullest Confidence of his future very good Behaviour … I did send for him up to Town with a promise of Employment".[233]

Samuel had hardly chosen a good time to bring his erring nephew back into the fold. On 5 June 1801, during a debate in the House of Lords on the General Enclosure Bill, Lord Romney said that he had learned that a Clerk in the Commons had charged £150 for two hours work receiving and entering consents for a single enclosure bill.[234] Hatsell was keen to preserve the integrity of the fee system, and had written to Ley soon thereafter urging him to investigate the claim and find out "who the Clerk is, that is so publicly charg'd; & the grounds on which so large a demand was made". Hatsell hoped that the allegation would prove false or the charges levied prove justified, but went on:

> "It is particularly necessary to be attentive, that no charges should be made beyond what are allowed by the Table of Fees; & more particularly important, for the credit of the office, that no unfounded reports of the rapacity of the clerks, should go unexplained or unexamined."[235]

With allegations of rapacity among clerks fresh in everyone's mind, it was hardly the time to restore to a quasi-clerkly role someone dismissed for overcharging. And, for Hatsell, the principle was what mattered: that the new work should be reserved for clerks on the establishment, and that he chose who was on the establishment. Gunnell's letter to Abbot nevertheless ended with Gunnell expressing the hope that the Chief Secretary might write to Hatsell "to remove any further Obstacles & to defeat the Motives of these envious Gentlemen" by expressing his support for Gunnell and his approbation of the two candidates chosen by Gunnell.[236]

233 McKay, *Clerks*, p 53; TNA, PRO 30/9/112, fos 228–231, Gunnell to Abbot, 12 Nov. 1801.

234 *Morning Chronicle*, 6 June 1801, p 1.

235 DHC, 63/2/11/1/90A, Hatsell to Ley, undated, but early June 1801, reproduced in Williams, *Clerical Organization*, p 149. See also the very good analysis of this letter by Wilkinson, "Practice and Procedure", p 29.

236 TNA, PRO 30/9/112, fos 228–231, Gunnell to Abbot, 12 Nov. 1801.

The next day, 13 November, Hatsell wrote to Gunnell. Hatsell had learned from his Deputy that Gunnell had told Ley that he—Gunnell—"was appointed *Clerk of the Irish Affairs*, & that he had receiv'd *orders* from M^r^ Abbott to appoint two Clerks under him".[237] Gunnell's own later account of the conversation with Ley was somewhat different, referring to Abbot as having appointed him to conduct Irish business and to have two Clerks under him.[238] However, Gunnell had overplayed his hand, not drawing a firm distinction between his role as agent for the Irish Office and his clerkly position. Hatsell's letter to Gunnell sought to put him right:

> "You know the constitution of the Office too well, not to know, that no Clerk can be appointed to transact any business there, *but by me*".[239]

Hatsell also made clear that the clerks attending on Irish private bill committees "*must be* of my appointment, as You well know". He said that he would be happy to receive recommendations from Abbot, which he would consider, although Gunnell must have sensed that the recommendation of a former clerk dismissed for overcharging was unlikely to be received favourably. The letter closed with an unmistakable rebuke to Gunnell:

> "You cannot be ignorant, that this is the constitution of my Office; & You have therefore done very wrong, if You have kept this Back from M^r^ Abbott; & led him, from not being inform'd upon the subject, to do, or to encourage You to do, what, I am sure, He never would have thought of."[240]

To rub salt into the wounds, Gunnell was instructed by Hatsell to forward the letter to Abbot. Later the same day, Hatsell decided this was insufficient, and he wrote directly to Abbot, enclosing a copy of his letter to Gunnell. Hatsell included an even more grandiloquent defence of his powers of appointment, stating of Gunnell:

> "He knew well, that, as well from the practice of the Office, (continued for as long as We have any Journals,) as from my Patent, as Chief-Clerk, I have the sole & exclusive nomination of all the other persons, who may be employ'd about any part of the business of the House, as Clerks; &, that, if it was my inclination, it would be inconsistent with my duty to my Successors in that Office, to permit any interference whatsoever."[241]

Gunnell received Hatsell's letter to him on Saturday 14 November, and

[237] TNA, PRO 30/9/112, fos 236–237v, Hatsell to Gunnell, 13 Nov. 1801. The folio numbering is transposed. This is the original letter, forwarded by Gunnell to Abbot with his letter of 14 November. A copy of Hatsell's letter, not in Hatsell's own hand, is at TNA, PRO, 30/9/112, fos 234–235, which was the copy enclosed with Hatsell's letter to Abbot.

[238] TNA, PRO 30/9/112, fos 240–241, Gunnell to Abbot, 14 Nov. 1801.

[239] TNA, PRO, 30/9/112, fos 236–237v, Hatsell to Gunnell, 13 Nov. 1801; emphasis in original.

[240] TNA, PRO, 30/9/112, fos 236–237v, Hatsell to Gunnell, 13 Nov. 1801.

[241] *Hatsell Papers*, pp 127–128.

prepared a draft reply the same day. Even in apologising, he sought to re-frame the matter in dispute:

> "I am extremely sorry that any Business, which Mr Abbot, in his Partiality towards me, has hitherto put into my Hands, and which by his Favour I am still continued to be employed in, should have given Rise to any Misunderstanding respecting my Conduct towards You."[242]

He explained that he had been employed in supporting Abbot in his parliamentary business "for a long time back", and, since Abbot had become chief secretary, this had included a whole range of agency work for the Irish Office. Abbot had then told him that the scale of the business would increase and asked Gunnell to find proper assistance. He then went to the heart of his case:

> "With this View, and begging most anxiously to be understood, that I only conceived myself acting in the Capacity of a parliamentary Clerk to Mr Abbot, I have recommended to him two persons for this Assistance."

Gunnell sought to assure Hatsell that "I do most seriously lament" John Gunnell's past conduct, and went on

> "but for Motives of Humanity & every Tie of Fraternal Regard come to do it, with the Hope that by once more restoring him to a little Employment I might render some Comfort and Consolation to his distressed Mother, who hitherto has not had it in [her] Power to procure him any Situation."

In closing, he denied any aspiration to a particular role in relation to Irish Committees, as Ley had alleged.[243] Gunnell then forwarded to Abbot both Hatsell's letter to Gunnell and the draft of Gunnell's reply to Hatsell, with a covering letter which closed as follows:

> "I make no Doubt but that upon your Explanation to Mr Hatsell every thing will be settled to the Satisfaction of all parties, till when I do confess myself in a new, awkward & difficult Situation."[244]

Although Gunnell had sent Abbot a copy of his proposed letter to Hatsell, he could not get the letter he had drafted ready for the Saturday evening post.[245] Having reflected further over the weekend, Gunnell, on Monday 16 November, sent a reply to Hatsell in slightly different terms to his draft. He stressed that his duties for Abbot were work for which Abbot could have employed "any one of his Clerks at the Irish Office or any other Out-Door person". Most importantly, he went on:

> "All *the Official part* of the Business has never been infringed upon—all has

242 TNA, PRO, 30/9/112, fos 242–245, copy of draft of Gunnell to Hatsell, 14 Nov. 1801.
243 TNA, PRO, 30/9/112, fos 242–245, copy of draft of Gunnell to Hatsell, 14 Nov. 1801.
244 TNA, PRO 30/9/112, fos 240–241, Gunnell to Abbot, 14 Nov. 1801.
245 TNA, PRO 30/9/112, fo 253, Gunnell to Abbot, 18 Nov. 1801.

> been done in the respective Offices—All Committees have been attended by the proper Committee Clerks—All Bills &c have been printed Under Mr Benson's directions—All Reports made out in Mr Dorrington's Office—And All Bills ingrossed in Mr Stracey's."[246]

If anything Gunnell had done was deemed an "offence", he had "erred most Unintentionally". He admitted he may have used the wrong terminology in conversation with Ley:

> "And as to the Term Clerk for Irish Affairs I very probably made less of it to Mr Ley but Sir, for the business I have been engaged in, Mr Abbot has been pleased to Style me in his own Official Establishment Parliamentary Agent."

Coles and John Gunnell were described as intended assistants to him in his capacity "of a parliamentary Clerk or Agent to Mr Abbot". In the final letter, John Gunnell was described as someone "whose penitent Behavior ever since" his dismissal "had evinced the truest contrition". Gunnell concluded by asserting:

> "I never have and never shall interfere with any Official business of either this or the other House."[247]

Hatsell received Gunnell's letter on Tuesday morning, and forwarded it to Ley. Gunnell's approach had paid dividends, because Hatsell had got down from his high horse. He sent a conciliatory reply to Gunnell, expressing the hope that, when Abbot returned to England, Abbot and Ley "will settle this business … to the satisfaction of all Parties".[248] Gunnell shared that hope when he wrote the next day to Abbot, enclosing the final version of his letter to Hatsell and Hatsell's reply, and flattering himself that he had removed from Hatsell's mind "the several misrepresentations that have been made to my Prejudice".[249]

Hatsell replied to Abbot on 21 November in conciliatory terms, repeating his belief that the matter could be settled between Abbot and Ley. The only remaining difficulty that he foresaw was about how Gunnell could combine his work for Abbot with his duties as "a Clerk of what is term'd, The Court of Wards"—as the Journal Office was still sometimes called on account of a previous location of the office[250]—since in that capacity "he must be always liable to be call'd off by Arthur Benson, who is at the head of the Office, for his immediate service in writing &c., & that may be at a time, very inconvenient & distressing to You". Hatsell then made a rather mischievous suggestion, perhaps reflecting Gunnell's role in the 1800 Act. He indicated that Gunnell's income

246 TNA, PRO, 30/9/112, fos 247–248, copy of Gunnell to Hatsell, 16 Nov. 1801.
247 TNA, PRO, 30/9/112, fos 247–248, copy of Gunnell to Hatsell, 16 Nov. 1801.
248 TNA, PRO, 30/9/112, fo 252, Hatsell to Gunnell, 17 Nov. 1801.
249 TNA, PRO, 30/9/112, fo 253, Gunnell to Abbot, 18 Nov. 1801.
250 Williams, *Clerical Organization*, pp 195–196.

in the Irish Office "may be of itself sufficient to satisfy all his wishes; in which case, he would quit us, where, I believe, his profits are inconsiderable, & become entirely devoted to Your service".[251]

Abbot forwarded Hatsell's letter to Gunnell for comment. Gunnell replied, expressing satisfaction that the dispute about his role in the Irish Office had been resolved. He suggested to Abbot that any doubts about his capacity to combine his duties as parliamentary clerk for the Irish Office and his official business would be removed over time. He also pointed out that Hatsell was simply mistaken about Gunnell's official duties: he was now "Half a Deputy Clerk", and had accordingly been relieved by Ley of any duties in the Journal Office, as was proved by the fact that he no longer received a share of the official Treasury allowance for clerks in that Office. He also noted tartly that Dorington and Benson seemed to combine their official duties and their "Special Situations" without it being commented upon. Gunnell expressed "some Anxiety" about the fact that Abbot's "Approbation of the two young Men I have before mentioned to you" was seemingly to await Abbot's return.[252] At this point, the paper trail ends, presumably because the final details of the matters were resolved when Abbot returned to England. Gunnell remained parliamentary agent to the Chief Secretary of Ireland until the 1830s.[253] It is not evident whether John Gunnell or master Coles found employment within the Irish Office; they certainly did not work as Clerks in the House from 1801 onwards.

Soon thereafter, there was a dramatic change in Abbot's own position. On 28 January 1802, the Lord Chancellor of Ireland, Lord Clare, died. This offered Addington a chance to strengthen his Irish administration and also bring about change at Westminster. Addington had indicated to Abbot in 1801 that Abbot might be considered for the role of Speaker in the future.[254] Mitford had been seen by some, including perhaps himself, as a stop-gap Speaker, and he was happy to accept the vacant role of Lord Chancellor of Ireland.[255] By 2 February, Abbot was able to tell the Lord Lieutenant in Ireland, the Earl of Hardwicke, that it was envisaged that Abbot would replace Mitford as Speaker.[256] Mitford resigned on 9 February after just under a year in the role of Speaker, and Abbot was elected in his place the following day.[257]

251 TNA, PRO 30/9/116, fo 16, Hatsell to Abbot, 21 Nov. 1801.
252 TNA, PRO, 30/9/112, fos 279–282, Gunnell to Abbot, 4 Dec. 1801.
253 Williams, *Clerical Organization*, pp 179–180; HC (1826) 403, pp 11, 14, 26.
254 *CDC*, I.227, 228.
255 *HoPT*, 1790–1820, John Mitford. For an assessment of his underwhelming Speakership, see Wilkinson, "Practice and Procedure", pp 306–307.
256 TNA, PRO 30/9/113, fos 208–209, copy of Abbot to Hardwicke, 2 Feb. 1802.
257 CJ (1801–02) 92, 93; *CDC*, I.284.

Among those most delighted by Abbot's appointment was Samuel Gunnell, who decided that it was not possible to lay it on too thick and wrote to congratulate Abbot

> "upon your Achievement of the greatest Boon in the Power of The Commons of the United Kingdom in parliament assembled to bestow upon an Individual—a Boon, from such a Source, most pre-eminently valuable —I congratulate The House of Commons upon the Selection—its Wisdom upon this Occasion will be daily exemplified, & the highest Gratification felt by every Member."[258]

The remainder of the letter made it evident that Gunnell hoped that the gratification might not be confined to Members alone. He thought it might be helpful "to present to you a very small Specimen of my Industry". What Gunnell was sending Abbot was an "alphabetical Arrangement, to make the Subjects contained in four Volumes more readily referred to". He does not name "the Author of the inestimable Work" which is "respected by every One, but most of all by the Learned, and the most zealous Friends of the Privileges of Parliament, and of the British Constitution", but it is evident that Gunnell was offering Abbot his own index to Hatsell's *Precedents of Proceedings*. The purpose of this offering is then made clear:

> "while my particular Duty has been the Out Door Business of the House, my Attention has not been altogether wanting to the Business of the House itself".[259]

In view of his enduring relationship with Abbot, it is hardly surprising that Gunnell viewed the coming of the Abbot speakership as opening up opportunities for advancement, including for a career beyond the "Out Door" business. At this point, he may have been aiming too high, but his career prospered in the years that followed. Later in 1802, Gunnell became a Deputy Committee Clerk. Hatsell was relieved at the news, telling Ley "I am glad to hear that Sam[l] Gunnel's business is settled without difficulty—the less puddled Waters are stirr'd, the better".[260] Gunnell wrote to Ley to thank him for the appointment, and asked Ley to pass on thanks to Hatsell "for his kind Approbation of this Favor, rendered so peculiarly valuable to me, on account of my Family".[261]

Gunnell's role as Parliamentary Agent to the Irish Office remained a source of tension within the Clerk's Department. The accommodation which he had been able to secure with the support of Mitford in 1801 fell victim to

258 TNA, PRO, 30/9/112, fos 383–385, Gunnell to Abbot, 12 Feb. 1802.

259 TNA, PRO, 30/9/112, fos 383–385, Gunnell to Abbot, 12 Feb. 1802.

260 DHC, 63/2/11/1/103, Hatsell to Ley, 14 Nov. 1802.

261 DHC, 63/2/11/1/106, Gunnell to Ley, 18 Nov. 1802; McKay, *Clerks*, p 54. Gunnell dated his official appointment from 1803: see HC (1833) 648, p 232.

an expansion of the Speaker's accommodation. Abbot found a new space for him, but after Abbot's speakership Gunnell's office was closed to make way for library accommodation. Thereafter, he had to conduct his Irish business from a desk in the office shared by the Committee Clerks. He told a Select Committee in 1826 that he was "extremely distressed to perform the business of the office" in such circumstances, and the Clerk of the House conceded that it was "a great nuisance" for Irish business to be conducted in this way.[262]

In July 1827, Gunnell finally secured one of the retiring positions of Principal Committee Clerk, after fifty years' service. In that capacity, he had annual earnings of £934 in 1829 and over £1,000 a year in 1831 and 1832. In addition, he continued to receive £200 a year as Parliamentary Agent to the Irish Office, although he delegated the work to one of his sons.[263] Several of his sons worked for the House, some on the formal establishment and some not.[264] Gunnell supplemented his salaries as a Deputy Committee Clerk and Parliamentary Agent to the Irish Office with an active agency business in relation to private bills.[265] Along with one of his sons, he also took over a printing company with the aim of securing business which might otherwise go to the official parliamentary printing enterprise built up by Luke Hansard and his son, Luke Graves Hansard. Little more than a day after Luke Hansard's death, Gunnell wrote to the solicitors for private business seeking to take on some of Hansard's business, and he seems also to have made an approach to the Speaker to be appointed printer to the House. These efforts were rebuffed, and Gunnell's printing business was bankrupted. The later assessment of Samuel Gunnell by Luke Graves Hansard is an interesting counterpoint to Gunnell's own correspondence:

> "Samuel Gunnell [was for] many years one of the committee clerks of the House of Commons, who with a large family and no prudence lived a life of needy showiness and consequent embarrassment".[266]

Conclusions

On a number of occasions in his writings, Hatsell makes plain the sense of comfort and good fortune he derived from the security and scale of his income. From July 1797 onwards, John Ley as Deputy Clerk was able to share that comfort. Principally as a result of their relationship with Henry Addington as

262 HC (1826) 403, pp 11, 14–15, 26.

263 *Return of Salaries, Emoluments and Fees of Officers of the House of Commons*, HC (1831–32), 398, pp 4, 9, 10; HC (1833) 648, QQ 187–188, 204–205, 210 and p 232.

264 McKay, *Clerks*, pp 53–55; HC (1833) 648, Q 3132.

265 *Report from the Committee on the Cambridge and London Junction Canal Bill*, HC (1814) 172, p 9.

266 *Luke Graves Hansard Diary*, pp 34–35, 47–53, 81.

Speaker and then as prime minister, they were both also able to draw upon powers of patronage to the benefit of their families. Hatsell's stepsons secured roles as chaplain to the House and a canon at Canterbury, and as a private secretary in 10 Downing Street respectively. Ley obtained for his eldest nephew a role of more lasting significance: J H Ley was appointed to the position that would come to be termed that of Second Clerk Assistant, and which would endure until the 1970s. J H Ley himself began a career at the table which was to last almost fifty years, the last thirty of them as Clerk of the House.

The prosperity and wider benefits available to Hatsell and Ley were in sharp contrast with the experience of the more junior members of the Clerk's Department. There was compelling testimony to the Select Committee of 1833 about the difficult circumstances of many more junior clerks at the turn of the century, but the contemporary evidence from Samuel Gunnell's letters to Charles Abbot is even more powerful. In 1800 legislation was passed to set a salary for the Clerk, Clerk Assistant and Serjeant at Arms, and limit the personal benefits from fee income. This was precipitated by Gunnell's testimony of personal hardship and Hatsell's claimed inability to remedy it, as well as the broader context of reform in public remuneration.

Although the change embodied in the 1800 Act was far-reaching, its impact on Hatsell and Ley was marginal, as it was designed to await their retirement or death. The first was never to happen, despite being foreseen by Hatsell in justifying to himself the appointment of J H Ley. The second was to prove some years off. Moreover, the 1800 Act did not seek to limit the way in which Hatsell was able to manage and control the Clerk's Department, even after his partial retirement, in a manner reminiscent of a personal fiefdom. The bluntness of Hatsell's assertion of his personal power and control in his correspondence with Charles Abbot in 1801 is striking, even if it was motivated in part by a desire to protect the integrity of the Department by preventing the return of a previously dismissed colleague to anything akin to an official role. Hatsell's assertiveness and desire for control were to remain very much in evidence in the coming years, and were to prove central to further difficulties and disputes.

SENDING FOR PAPERS: THE LAURENTIAN UNIVERSITY INQUIRY

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Introduction

As the "Grand Inquest of the Nation", Parliaments are authorised to "inquire into all alleged abuses and misconduct in any quarter".[1] In order to meaningfully engage in such inquiries, Parliaments need information and are granted the right to send for persons, papers, and things. This is not a contentious proposition. Parliament's constitutional power, moral authority, and democratic legitimacy means that Parliament almost always receives the information it requires without controversy. Consequently, it is rare for Courts to comment on the scope of this parliamentary privilege.

Recently, the Legislative Assembly of Ontario ("Assembly") was forced to defend Speaker's Warrants[2] ("Warrants") compelling the disclosure of (1) solicitor-client, litigation, settlement, and public interest privileged documents (collectively, "legally privileged documents") and (2) documents which were subject to judicial confidentiality orders ("sealed documents").[3] The events leading up to the Court's decision and the Decision itself may be of interest to parliamentarians, clerks, and scholars.

This article will review the events leading up to the issuance of the Warrants, then examine the litigation positions of the Assembly and the University, followed by an explanation of the Court's ruling and the aftermath, and conclude with a discussion of the ruling's implication.

The insolvency, the inquiry, and the request

Laurentian University ("University") is one of 23 public universities in the province. It is an integral part of the economic fabric of the Northern Ontario community and one of the largest employers in the City of Sudbury—the largest

[1] *Stockdale v. Hansard*, (1837) 9 AD & E 1112 at 1118.

[2] Since the instrument compels the disclosure of documents, it is formally a "Notice to Produce" and not a "Speaker's Warrant", the latter is reserved to compel individuals to appear before the Assembly or its committees. However, given that the Decision refers to the instrument as a Speaker's Warrant, the article will adopt this terminology.

[3] *Re: Laurentian University of Sudbury*, 2022 ONSC 429. ("Decision")

city in Northern Ontario.[4] The University is a bilingual (English and French) and tricultural (French, English and Indigenous) institution that receives approximately $80 million in provincial funding annually.[5] This funding represents approximately 40 per cent of the University's revenues. When the University declared insolvency, there were over 9,000 students enrolled in various courses and the University employed over 1,700 individuals.[6]

Insolvency of University and Access to the CCAA Process

On 1 February 2021, the University announced that it was financially insolvent and filed for protection under the *Companies' Creditor Arrangement Act* ("CCAA"). The CCAA is a federal statute employed by larger private distressed companies to restructure their debts and avoid bankruptcy and liquidation.[7] The CCAA grants the Court plenary power to make any order it sees fit in the circumstances.[8] While a company is negotiating with its creditors to come up with a Plan of Arrangement, it is protected from its creditors. This is the first time that this statute intended for private companies has been utilised by a publicly funded university in Canada.[9]

The Chief Justice of the Superior Court of Justice—Ontario granted the University's application for protection pursuant to the CCAA. Critically, the Court ordered that two exhibits appended to a supporting affidavit be treated as confidential, sealed, and not form part of the public record. The two exhibits were correspondence between the University and the provincial Ministry of Colleges and Universities.[10] The Court concluded that, if disclosed, the exhibits may jeopardise the viability of the CCAA process.[11]

Four days later, the Court appointed a mediator to assist the University and stakeholders during their negotiations of the Plan of Arrangement. The order appointing the mediator also sealed all communications and documents related to the mediation.[12]

Two months later, the University announced the termination of over 200

4 *Re: Laurentian University of Sudbury*, 2021 ONSC 659, at para. 2. ("Initial Order")

5 Auditor General of Ontario, *Preliminary Perspective on Laurentian University*, (Auditor General of Ontario, Toronto: 2022). ("Preliminary Perspectives").

6 *Re: Laurentian University of Sudbury*, Application Record dated 30 January 2021 (Court file: CV-21-656040-00CL).

7 In order to qualify for CCAA protection, a company must owe in excess of $5 million to creditors.

8 CCAA, s.11

9 Preliminary Perspectives, supra note 8, at pg. 1.

10 Initial Order, supra at note 4, at paras. 62–64.

11 Ibid., at para. 63.

12 *Re: Laurentian University of Sudbury*, Order dated 5 February 2021, at para 6 and Appendix A.

professors and employees and the elimination of 69 programmes.[13] On the same day, the ceremonial Chancellor of the University tendered his resignation.[14]

Standing Committee on Public Account's request

The Assembly was adjourned for its Winter recess when the University declared insolvency and did not reconvene until late February. When the Assembly reconvened, the Standing Committee on Public Accounts ("Committee" or "PAC") requested the Auditor General of Ontario ("Auditor") to conduct a value-for-money audit of the University's operations from 2010 to 2020.[15] Members of the Committee—including the Member who represents the riding where the University is located—highlighted the need to understand how the University ended up in such a situation and to bring a level of transparency to the process.

Disagreement over the Auditor General's statutory powers

As the audit proceeded in the Summer, it appeared that the Auditor did not receive the level of cooperation that they expected. A key disagreement between the Auditor and the University is whether the Auditor's governing statute, the *Auditor General Act* ("AGA"),[16] granted the Auditor the right to compel the disclosure of legally privileged document from a public body. The University refused to provide non-privileged documents contending it would be too resource intensive for an insolvent institution to review the documents for privileged information. The Auditor also alleged that the University discouraged its employees from cooperating with the audit.[17] The disagreements were unresolved by the Fall. On 29 September, the Auditor applied to the Superior Court for an interpretation of the AGA. The University contested the application.

Formally, the Auditor's application for a judicial interpretation of a statute is not directed at the on-going audit of the University. However, since the University contested the application and the Chief Justice (who is also the supervising judge of the insolvency process) presided over the application, the application and the audit became intermingled. The legal issues became even more tangled as the Auditor's application and the Assembly's process

[13] Julien Cayouette, "A look back at the first 365 days of Laurentian University's Restructuring", University Affairs (online: https://www.universityaffairs.ca/news/news-article/a-look-back-at-the-first-365-days-of-laurentian-universitys-restructuring/), Last Accessed: 27 May 2022.

[14] Hugh Kruzel, "Paikin resigns as LU chancellor", Toronto Star, (25 April 2021).

[15] Standing Committee on Public Accounts, Minutes of Proceedings, (28 April 2021) pg. 1.

[16] R.S.O. 1990, c. A.35.

[17] Auditor General of Ontario, *Update on the Special Audit of Laurentian University*, (Auditor General of Ontario, Toronto: 2022). ("Special Update").

proceeded in parallel. A few days before the court hearing on the Warrants, the Chief Justice ruled in favour of the University.[18] It is our understanding that (as of June 2022) the decision is currently under appeal by the Auditor.

PAC's involvement and request for Speaker's Warrants

The Auditor reported the obstacles they faced during the audit to the Committee when it returned from its Summer Recess. On 15 October, PAC wrote to the University to request certain documents from the University—including legally privileged and judicially sealed documents. The University's counsel responded to indicate their reluctance to provide documents because the disclosure may interfere with on-going CCAA mediation and negotiations. The Committee's attempts to address the University's concerns, including not exhibiting the documents the Committee received, were not accepted by the University. The discussions between the Committee and the University were complicated by the fact that the Committee only had standing authority to meet on Wednesdays while the House is sitting. Consequently, the Committee could only consider the matter once per week.

On 18 November, as the discussions between the University and the Committee came to a standstill, the Committee invited representatives of the University to appear before the Committee. The President of the University ("President") and the Chair of the Board of Governors ("Chair") appeared with counsel in a closed session meeting of the Committee in the afternoon of 1 December.[19] The testimony of the President and the Chair apparently did not resolve the issues of disclosure to the Committee's satisfaction as the Committee took decisive action at their next meeting on 8 December.

It is important to note that the Assembly was schedule to adjourn for its Winter Recess on 9 December and the Committee only had one meeting left on 8 December. Furthermore, pursuant to the *Elections Act*,[20] the 42nd Parliament was to be dissolved by 4 May 2022. There was significant time pressure if the Auditor was to receive the documents before the Assembly dissolved for the 43rd General Election.

On 8 December, the Government House Leader and the Acting Official Opposition House Leader were invited to appear before the Committee that afternoon.[21] Both House Leaders advised the Committee in a public session that, if the Committee requested the Speaker's Warrant, the House would consider the request before the House adjourned the next day. The Clerk of

18 *Auditor General of Ontario v. Laurentian University of Sudbury*, 2022 ONSC 109.
19 Standing Committee on Public Accounts, Minutes of Proceedings, (1 December 2021) pg. 1.
20 R.S.O. 1990, c. E. 6.
21 Due to COVID-19 cohorting, the Opposition House Leader was not available.

PAC was instructed to prepare a report to the House requesting that the Speaker be authorised to issue a Speaker's Warrant to the President and the Chair for all documents requested by the Committee by 1 February 2022. After receiving the House Leaders' assurances, the Committee adopted the draft report.

The Assembly's debate and issuance of Speaker's Warrants

On the final sessional day of 2021, the Chair of PAC presented the Committee's report to the Assembly during the afternoon routine proceeding "Reports by Committees". Normally, debate on substantive reports presented by committees during this proceeding are adjourned immediately after its presentation. However, the motion to adjourn the debate was defeated and the Committee's report was debated for approximately 30 minutes. The report was adopted and the Speaker executed the Warrants the next day.[22] Due to COVID-19, the Sergeant-at-Arms electronically served the Warrants on the counsels for the President and the Chair soon after.

Application to stay the Speaker's Warrants

The University launched its legal attack against the Warrants within a week. It filed an application to stay the enforcement of the Speaker's Warrant, pending a full constitutional challenge, at 5 p.m. on 15 December. At 9 a.m. the next day, the University was granted a case conference to set a schedule for the hearing before the Chief Justice. The case conference was set for 2 p.m. that day.

Due to the Warrants' 1 February 2022 deadline, the Court imposed an expedited hearing schedule and set the hearing date for 18 January 2022. It is important to note that the University did not actually file a constitutional challenge; the only question before the Court was whether the Speaker's Warrants should be stayed (suspended) pending a full hearing on their constitutionality. The Attorney General of Ontario, the Auditor General of Ontario, the Laurentian University Faculty Association, and the Canadian Association of University Teachers intervened in the stay motion.

In our summary of the University and the Assembly's legal submissions, we will only canvass the submissions related to parliamentary privilege. Other submissions, which are relevant to the legal test for granting a stay, will not be addressed. Both the University and the Assembly's written submissions to the Court are publicly available if readers are interested in the full submissions and authorities.[23]

[22] *Votes and Proceedings of the Legislative Assembly of Ontario*, 9 December 2021, at pgs. 4–5.

[23] All public documents related to the Laurentian Insolvency can be found on the Court Monitor's Website: https://documentcentre.ey.com/#/detail-engmt?eid=459.

The University's legal submissions

The University put forward three main challenges to the Speaker's Warrants.[24]

First, the University submitted that the Assembly's authority to compel the disclosure of legally privileged documents only applies to government.[25] The University submitted that since legally privileged documents are out of reach for the state, the Assembly could not possess the power to compel the disclosure of these documents. Furthermore, the Assembly's constitutional roles of debating legislation and holding the government to account do not require the power to compel legally privileged documents from a non-government entity. The University relied on various alternatives to the Speaker's Warrants that, it submits, would have allowed the Assembly to complete an inquiry into the University's insolvency. Consequently, the University submitted that the Speaker's Warrants were not necessary and therefore could not be protected by parliamentary privilege.

Second, the University asserted that the Assembly cannot compel an individual to contravene a court order made pursuant to a federal statute.[26] The University's submissions raised the constitutional doctrines of the division of powers and the separation of powers. The former arises from Canada's federal system of government; the latter addresses the relationship between the legislative and judicial branches. Since the federal government saw fit to grant plenary powers to the Court within a CCAA proceeding, the Speaker's Warrants impermissibly second-guess the Federal Parliament's policy choice and is disrespectful of the Court's judicial role.

Third, the University asserted that the Assembly does not have the authority to compel the disclosure of documents for the purpose of assisting the Auditor's inquiry.[27] Since the Court had, a few days prior, concluded that the Auditor does not have the statutory authority to compel the disclosure of legally privileged documents, the Auditor cannot do indirectly what they cannot do directly. By enacting the AGA without providing the Auditor with the statutory authority to compel the disclosure of legally privileged documents, the University asserts that this is tantamount to a waiver of parliamentary privilege.

The University also raised the specter that the Assembly would abuse the power to compel disclosure of legally privileged documents if the Court did not limit the scope of the Assembly's right to send for papers.[28]

24 *Re: Laurentian University of Sudbury – Factum of the Moving Party* (Stay of Enforcement of Speaker's Warrant), dated January 5, 2022, pg. 17. ("University Factum").

25 Ibid., pgs. 18–25.

26 Ibid., pgs. 25–29.

27 Ibid., pgs. 29–33.

28 Ibid., at para. 63.

The Assembly's legal submissions

The Assembly's chief submission was that the Speaker's Warrants fell within the scope of the Assembly's parliamentary privileges.[29] Consequently, the Court did not have the jurisdiction to adjudicate on the constitutionality of the Warrants or to issue a stay of the Warrants. Alternatively, should the Court conclude that it did have jurisdiction to grant a stay, the University's submissions raise no serious issue for the Court to consider. The Court should decline to issue a stay even if it did have jurisdiction to do so.[30]

The Assembly noted that the University's characterisation of the legislative role as debating laws and holding the government to account is unduly narrow. Specifically, the University failed to recognise the Assembly's deliberative role as the Grand Inquest of the Province. As the Supreme Court of Canada noted, "a functioning democracy requires a continuous process of discussion" and "our system (of governance) is predicated on the faith that in the marketplace of ideas, the best solution to public problems will rise to the top".[31] The power to send for persons, papers, and things is intrinsically linked to this process.

Moreover, this parliamentary privilege is "as old as Parliament itself" and remains a necessary power within the modern context.[32] While the Courts may consider, within the Canadian context, whether a parliamentary privilege continues to be necessary; it does not have the authority to consider whether an *individual* exercise of that privilege is necessary. The existence of alternative means of completing an inquiry does not impact on whether the Warrants fell within the scope of parliamentary privilege.

On whether parliamentary privilege permits the Assembly to compel the disclosure of judicially-sealed documents, the Assembly's position was that the judicial branch cannot limit—via court orders—the information that the Assembly may obtain.[33] If the judicial branch can limit the information the legislative branch may access, it would have the effect of permitting the judiciary to limit the topics that the legislature can effectively consider.

On the final question of whether the Assembly waived its privileges by enacting the AGA, it was submitted that there needed to be clear and unambiguous language in order for parliamentary privileges to be waived.[34] As there was no such language within the statute, a waiver of parliamentary privilege could not be substantiated.

29 Re*: Laurentian University of Sudbury – Factum of the Responding Party*, The Speaker of the Legislative Assembly of Ontario, dated 12 January 2022, at pgs. 4–29. ("Speaker's Factum")

30 Ibid., at pg. 31.

31 *Reference re: Succession of Quebec*, [1998] 2 S.C.R. 217, at para. 68.

32 Speaker's Factum, at pgs. 10–17.

33 Ibid., at pgs. 23–26.

34 Ibid., at pg. 28.

The Assembly also addressed the University's assertion that the Assembly would abuse this power if the Court recognised the full scope of the Assembly's power to send for persons, papers and things. The Assembly submitted that the Court should assume that the Assembly will exercise its powers for the public good. Should this not be the case, the remedy lies with the electorate and not the judiciary. In support of this position, the Assembly relied on two judicial comments spanning almost two centuries.

First, in 1830, the Chief Justice of the Court of King's Bench of Upper Canada, observed that:

> "The true point of view in which to regard the question is that these powers are required by the House in order to enable them to promote the welfare of their constituents; we are bound to suppose that they will use them with discretion and for good ends."[35]

Second, more recently in 2018, the Supreme Court of Canada observed that:

> "[W]hile legislative assemblies are not accountable to the courts for the ways in which they exercise their parliamentary privileges, they remain accountable to the electorate."[36]

The Attorney General of Ontario made broadly similar submissions. The other interveners were also supportive of the Assembly's legal position.

Judgment

The Court concluded that it did possess the jurisdiction to grant a stay.[37] Since the scope of parliamentary privilege falls within the judicial competence, the Court reasoned that it must possess the authority to issue a stay if there is a serious legal question as to whether the Speaker's Warrants falls within the scope of the privilege. However, the Court opined that, with the exception of judicially sealed documents, the Speaker's legal submissions "provided a complete answer" to the University's legal arguments.[38]

On judicially sealed documents, the Court ruled that whether the Assembly can compel the disclosure of judicially sealed documents is an "open question"[39] that fundamentally "affects the relationship between the three independent branches of government".[40] Additionally, the Court concluded that a full constitutional challenge could be heard within two months—thus providing

35 Ibid, at para. 79 citing: *McNab v. Bidwell and Baldwin* (1830), Draper 144 at 152 and 156-8 (KB).

36 Ibid., at para. 80 citing: *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39, at para. 24.

37 Decision, at para. 29.

38 Ibid., at para. 42

39 Ibid., at para. 64

40 Ibid., at para. 68.

adequate time for the documents to be disclosed prior to dissolution (should the Assembly's legal position prevail).[41]

The Decision was handed down on 26 January 2022, five days before the deadline set by the Speaker's Warrants.

Reconciliation and the Auditor General's preliminary view

The University's counsel informed the Speaker, via correspondence received at 5 p.m. on Friday, 28 January, that they were not able to separate the judicially-sealed documents from the other documents. The President was concerned that he would be held in contempt if all documents (except those that were judicially sealed) were not provided by 1 February.[42] Consequently, the University proposed to provide two hard drives to the Assembly. The first would include all documents, including those which were protected by a judicial order, but the hard drive would be password protected. The password would only be provided to the Speaker if the Court ruled in the Speaker's favour. The second hard drive would contain all documents that the President was certain did not contain any judicially sealed documents.

Since the Warrants required the document be provided to the Committee, the Speaker referred the correspondence to the Committee. However, the Committee was not scheduled to meet until 23 February. On Saturday 29 January, the Chair of the Committee received correspondence signed by nine of the 11 Members of the Committee requesting an emergency meeting to discuss the University's correspondence. The Chair then provided notice that he would convene a special meeting the next day at 11 a.m. (Sunday 30 January).

At the special meeting, the Committee agreed to the University's proposal—with the caveat that the University continue to separate the judicially-sealed documents and provide documents that the Committee is entitled to as they are reviewed. The Committee advised the President that the Committee reserved the right to recommend to the House that he be found in contempt of Parliament at a future meeting.

The University delivered the two hard drives on the afternoon of 1 February 2022 to the Clerk of the Committee.

One day before the Committee's scheduled meeting, the Committee received correspondence from the new Chair of the Board of Governors updating the Committee on the University's progress in separating the documents. The new Chair also offered to appear before the Committee the next day, which he did in closed session. The Committee and the University agreed to continue to work collaboratively. By the time the Assembly was dissolved in May, the

41 Ibid., at para. 70.

42 The Chair resigned from the position and the Board prior to the Court hearing.

Committee received hundreds of thousands of documents for its inquiry. This permitted the Auditor to issue a Preliminary Perspective prior to the Assembly's dissolution.[43]

Discussion

The Decision is significant as it is the first time that a Canadian Court has ruled that Parliament has the right to compel legally privileged documents as a part of its privileges. The Decision should limit the ability of any individual to reasonably argue against this point. It is our view that that the Decision has put beyond doubt that all sovereign Canadian Parliaments possess this right.

The question of whether Parliament can compel the disclosure of judicially sealed document remains unclear. In our (admittedly biased) view, there is no reason why the judiciary should be able to limit the documents that Parliament can access. If the judiciary had such a power, it must mean that the Court would be able to compel Parliament to not access documents already in its possession via the application of an interested party.

It has been suggested that the fact that Parliament was seeking to access documents *already* protected by a judicial order is significant. We disagree. Whether the Assembly is entitled to a document cannot depend on whether the Assembly or the Courts got to the document first. We cannot accept that the separation of powers insists on different branches of the state to 'race to the documents' in order to assert jurisdiction. Parliamentary privilege must mean that the Assembly is either entitled to the documents or not. Even if we accept that there may be limits to the power of parliaments to compel certain judicial papers (for example, a judge's private notes on a hearing): there is a qualitative difference between a class exemption and one where the right of the Assembly to receive a particular document is subject to the Court's discretion

A final observation we make is how time became a critical factor in the exercise of this privilege. Parliaments are bound by term limits and prorogation, while the Courts are not so bound. While the Court in this case accommodated the Assembly's upcoming dissolution, a party could avoid the enforcement of a Speaker's Warrant by delaying a judicial application until Parliament is prorogued or dissolved. Parliaments should be alive to this potential tactic when faced with a legal challenge to its authority.

Conclusion

While a significant question on the relationship between the Assembly and the Courts remains, the Warrants and the Decision has helped clarify Parliament's

[43] Preliminary Perspective, *supra* note 8.

power to access legally privileged documents. It is our hope that, in the future, no Parliament will have to wait for over a year in order to access documents it required. Regretfully, the question of how Parliament's powers to send for papers interacts with the Court's power to seal documents remains open. It would be useful to Parliaments, parliamentarians, clerks, and interested scholars to meaningfully discuss this question and how its impact on the separation of powers. After all, who knows where and when this question will need to be answered.

LEGISLATIVE CONSENT: A CONVENTION UNDER STRAIN?

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Introduction

The United Kingdom, as currently constituted, marked its centenary in 2022. While the devolution of power to legislatures in Wales, Scotland and Northern Ireland at the end of the twentieth century introduced significant changes to the UK's territorial constitution, these changes are still experiencing growing pains over two decades later.

The constitutional convention that the UK parliament will "not normally" legislate in areas of devolved competence—the Sewel, or legislative consent, convention—has become an increasingly important, but neglected, aspect of the legislative process.[2] The convention, which has statutory form in Scotland and Wales, largely functioned as was intended until it was placed under strain during the implementation of the UK's departure from the European Union ('Brexit') between 2018 and 2021. In response to specific bills, some, and sometimes all, the devolved legislatures chose to withhold their consent. Despite this, the UK parliament decided to legislate regardless. While perfectly legal, the political and constitutional fallout was significant. This approach also aggravated already delicate political relationships between the UK and devolved administrations, which are all led by different parties. Since the beginning of the 2019 parliament, the Conservative and Unionist party government at Westminster has also been more willing to raise its profile in the devolved nations to demonstrate its perceived benefits of the Union, particularly in Scotland where the SNP have led the Scottish government since 2007.

This article begins by providing a brief overview of the devolution

[1] The author is grateful to the following colleagues for feedback on earlier versions of this article: Andrew Makower, Clerk of Legislation, House of Lords; Graeme Cowie, Constitutional Law Researcher, House of Commons Library; David Torrance, Devolution and Constitution Researcher, House of Commons Library; Jim Johnstone, Clerk to the Constitution, Europe, External Affairs and Culture Committee, Scottish Parliament; Gareth Williams, Clerk to the Legislation, Justice and Constitution Committee, Senedd, and Emer Boyle, former Clerk to the Committee on Procedures, Northern Ireland Assembly.

[2] The convention applied to the Scotland and Northern Ireland from the beginning of the current devolution arrangements in 1999. It did not apply to Wales until 2007, when the then National Assembly for Wales was granted primary law-making powers for the first time. The National Assembly for Wales became known as the Welsh Parliament or Senedd Cymru from May 2020 onwards.

arrangements, before considering the historical precedents for the introduction of the Sewel convention. It describes the legislative consent process, including its operation pre- and post- Brexit, as well as the application of an analogous procedure in England before its repeal. It concludes by considering recent issues with the operation of the convention, and the various proposals for reform, including their feasibility.

The devolution arrangements

The devolution arrangements[3] differ between Scotland, Wales and Northern Ireland, and have evolved since their inception. They now share many broadly similar features. Some matters are reserved (and 'excepted' in Northern Ireland) and everything else is devolved (or 'transferred' in Northern Ireland). The devolution statutes specifically preserve the power of the UK parliament to make laws for Scotland, Wales and Northern Ireland.[4] While the merits of devolving more power *within* England, including to its major city regions, has gained a degree of cross-party support, there appears to be limited appetite for recognising England as a distinct entity in the UK's constitutional arrangements. The UK parliament continues to legislate for both England and the UK.

States with multi-level government, such as Australia, Canada and the USA, generally rely upon written constitutions to demarcate the boundaries between central and local legislative competence, which are policed and enforced by constitutional courts. This is not the situation in the UK due to the sovereignty of the UK parliament and its uncodified constitution. This means the autonomy of the devolved legislatures cannot be entrenched in law and disputes must instead be resolved politically, relying upon conventions and inter-governmental working arrangements.

Historical foundations

It is often forgotten that the UK had already experienced a substantial period of devolution during the twentieth century. A devolved Northern Ireland parliament existed from 1921 to 1972 when it was abolished because of The Troubles. A similar convention to the Sewel convention developed during that period. A 1953 Treasury document noted that, in practice, the UK parliament refrained from:

> "legislating on matters with which the Northern Ireland Parliament can deal, except at the request and with the consent of Northern Ireland. It is

[3] Commentators and academics usually refer to the devolution 'settlements' but they are anything but settled.

[4] See section 107(5) of the Government of Wales Act 2006, section 28(7) of the Scotland Act 1998, and section 5(6) of the Northern Ireland Act 1998

> recognised that any departure from this practice would be open to objection as impairing the responsibility which has been placed on the Northern Ireland Parliament and Government …"[5]

When taking the Scottish devolution legislation through the House of Lords in 1998, the then Scottish Office minister, Lord Sewel—the origin of the eponymous convention—noted the old Northern Irish precedent.[6]

Prior to the establishment of the old Northern Irish parliament, the UK parliament had adopted a similar self-denying ordnance in respect of the Dominions, as recognised by the 1918 Imperial Conference. This convention later became a statutory one as section 4 of the Statute of Westminster 1931, which declared that no act of the UK parliament "shall extend, or be deemed to extend, to a Dominion … unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof."[7]

Similarly, a separate and long-standing convention means that UK bills do not normally apply to the Crown Dependencies[8] without their consent. A Crown Dependency can request the extension of UK bills to their jurisdiction by way of a 'permissive extent clause' (PEC). However, the 1973 Royal Commission on the Constitution concluded that "in the eyes of the courts [the UK] parliament has a paramount power to legislate for the Islands in any circumstances".[9] The UK government reminded Jersey and Guernsey of this fact when it chose to include a PEC regarding both islands in the Fisheries Act 2020 despite their express opposition.[10]

Legislative consent process

The convention is mainly engaged when the UK parliament seeks to legislate in devolved areas, which is the narrow definition enshrined in law. A wider definition of the convention, which includes any changes to the powers of the devolved administrations and legislatures, is also now accepted.[11] Alan Trench has referred to the 'narrow' and 'wide' definitions of the convention as its

[5] David Torrance, House of Commons Library Briefing Paper, *Parliament and Northern Ireland, 1921-2021* (CBP-8884, 21 December 2020), p 99

[6] HL Deb, 21 July 1998, col 791

[7] This provision is still in force.

[8] The Bailiwick of Guernsey, the Bailiwick of Jersey, and the Isle of Man.

[9] *Royal Commission on the Constitution 1969–1973*, Volume 1, Report (Cmnd 5460, October 1973), para 1473

[10] David Torrance, House of Commons Library Research Briefing, *The Crown Dependencies* (CBP8611, 20 June 2022), pp 20-21

[11] Cabinet Office, *Guide to Making Legislation* (January 2022), chapter 14. The Cabinet Office's Devolution Guidance Notices provide further detail about the working arrangements between the UK and devolved administrations on consent matters, including recognising the wider definition of the convention.

'policy' and 'constitutional' arms, respectively.[12] As this piece shall explore, the constitutional arm is the more contested of the two. Professor Aileen McHarg has described the convention as fulfilling two important functions: a 'defensive function', reassuring the devolved legislatures that their "primary political authority" will be respected notwithstanding parliamentary sovereignty, and a 'facilitative function', enabling co-operation between UK and devolved bodies on areas of mutual interest or shared competence.[13] The convention applies to private members' bills, but not to secondary legislation.[14] The legislative consent process has two fundamental parts: pre-introduction executive-led discussions and post-introduction legislative consideration. These parts will now be considered in more detail.

The government's Cabinet Office *Guide to Making Legislation* describes the process the UK government should follow to try and secure the consent of the devolved legislatures. At an early stage before a bill's introduction, the UK government will assess the devolution implications of the bill and consult the relevant legal teams[15] and/or the Union and Constitution Group (UCG)[16] and the territorial offices. Once the UK government has reached a position on how the bill engages the convention, it should engage the relevant devolved administration to test this, as well as deciding its contingency position if consent is not forthcoming. As part of the clearance process for the bill's introduction, the Parliamentary Business and Legislation Committee, a Cabinet committee, will expect bill teams to have consulted the devolved administrations on relevant provisions and for all issues to have been "substantially resolved" unless there are "exceptional circumstances", which will be determined following discussions with the UCG, relevant territorial offices and business managers' offices.

Following a bill's introduction in the UK parliament, a devolved administration will usually lodge, or lay, a legislative consent memorandum, including an

12 Alan Trench, 'Legislative consent and the Sewel convention', *Devolution Matters blog* (March 2017)

13 See briefing by Professor Aileen McHarg in Scottish Parliament Constitution, Europe, External Affairs and Culture Committee, *Legislative Consent after Brexit* (13th Meeting, Session 6, 19 May 2022), Annex C, p 25

14 However, section 9 of the Public Bodies Act 2011 provides a bespoke procedure for the devolved legislatures to consent to orders laid under sections 1–5 of that Act.

15 The Office of the Advocate General, Wales Office Legal Advisers and Northern Ireland Office Legal Advisers. Scotland and Northern Ireland are separate jurisdictions which are historically distinct from England and Wales. While justice and policing are not devolved to the Senedd, devolution means a distinct corpus of 'Welsh law' has begun to develop.

16 The UCG is a team of officials supporting ministers on constitutional and devolution issues. It was previously known as the UK Governance Group and located in the Cabinet Office. In 2021, the team was renamed and became part of the Department for Levelling Up, Housing and Communities.

assessment of the bill's devolved implications and a draft motion, with its devolved legislature in line with its standing orders.[17] A UK bill's explanatory notes usually make it clear if legislative consent is being sought, although this is based on the UK government's assessment alone.[18] The memorandum will then be scrutinised by the relevant committees of the devolved legislature to consider and report on,[19] which may involve evidence being sought from the relevant devolved administration minister and the production of a report, after which the motion is tabled and voted on by the devolved legislature in plenary, either approving or rejecting it. Supplementary memorandums and motions may be necessary on any subsequent amendments, but usually not ones of a purely consequential nature or ones the UK government intends to overturn. Approvals or rejections are notified by the clerk of the devolved legislature to the clerks of both Houses at Westminster, with the correspondence and memoranda published on the bills section of the UK parliament website.[20]

Since 2006, both Houses have formally notified their members about consent decisions by the devolved legislatures. In the House of Lords, the approval or refusal of consent by a devolved legislature is noted by way of an italic note in the 'Bills in Progress' section at the back of the *House of Lords Business* paper.[21] In the Commons, such decisions receive slightly greater prominence by 'tagging' them against the relevant bill item in the Order Paper.[22]

The *Guide* says a motion should normally be laid in a devolved legislature no later than two weeks after the bill's introduction, but acknowledges the timing

17 The procedures adopted by the three devolved legislatures are substantively the same. See Rule 9B, Standing Orders of the Scottish Parliament, Standing Order 29, Standing Orders of the Welsh Parliament, and Standing Order 42A, Standing Orders of the Northern Ireland Assembly. For a comparison of the different standing orders, see Northern Ireland Assembly Research and Information Service Research Paper NIAR 87-2020, Legislative Consent Motions (25 September 2020)

18 Helpful 'territorial extent' tables have formed part of the UK government's explanatory notes since session 2015–16.

19 The committee stage may be dispensed with if the devolved legislature is required to consider a motion to an expedited timescale.

20 Correspondence and memoranda from devolved legislatures have been made available on the UK parliament website since session 2014–15. However, whereas correspondence is always made available, the provision of memoranda is inconsistent. Copies of the Scottish and Welsh government's memoranda, among other materials, are also available on the websites of the Scottish Parliament and the Senedd. There is no central repository on the Northern Ireland Assembly's website, but individual memoranda can be found on the webpages of its individual committees.

21 Until 2014 the House of Lords only noted motions when consent was provided by a devolved legislature. In response to representations by the Presiding Officer of the then National Assembly for Wales, the House agreed to also note rejections. See House of Lords Procedure Committee, *Legislative Consent Motions* (1st Report, Session 2014–15, HL Paper 20)

22 See House of Commons Scottish Affairs Committee, *The Sewel Convention: the Westminster perspective* (Fourth Report, Session 2005–06, HC 983), paras 18–20

is ultimately a matter for the relevant devolved legislatures to determine.[23] The UK government's preference is for any motion to be considered during the bill's consideration in the first House or, at the latest, before the final amending stage of the bill in the second House. This is so that the UK government has enough time to make amendments and update the UK parliament on the state of play.

In 2020, the House of Lords Constitution Committee recommended procedural changes to give greater prominence to the legislative consent process in the House of Lords.[24] In response, the Procedure and Privileges Committee recommended, and the House agreed, that "when legislative consent has been refused, or not yet granted by the time of third reading, a minister should orally draw it to the attention of the House before third reading commences. In doing this the minister should set out the efforts that were made to secure consent and the reasons for the disagreement."[25] Such statements are not required when consent is withheld by a devolved legislature when it has not been sought by the UK government but is required in situations when the Northern Ireland Assembly is unable to consider a motion because it is not functioning. Third reading statements are now an established part of the House's legislative procedure. The practicality of such statements has proved trickier in relation to bills which start their legislative journey in the Lords as this does not always provide sufficient time for each devolved legislature to consider memoranda and motions by the time of the third reading statement. In the light of this, the procedure has been disapplied to Lords-starting private members' bills.[26]

A third reading statement is not required in the House of Commons, but an ongoing inquiry by its Procedure Committee has considered how that House's practice and procedure engages with the UK's territorial constitution.[27] Some of the inquiry's witnesses have supported the introduction of an equivalent procedure in the Commons.[28]

In 2013, the McKay Commission (which is considered further below) proposed establishing a House of Commons committee to consider Sewel

23 This timescale is rarely met in practice.

24 House of Lords Constitution Committee, *Brexit legislation: constitutional issues* (6th Report, Session 2019–21, HL Paper 71), para 60

25 See *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (26th edition, 2022), para 8.156

26 See Procedure and Privileges Committee, *Legislative Consent Motions for Lords Private Members' Bills* (2nd Report of Session 2021–22, HL Paper 61), para 11

27 While this inquiry commenced on 24 September 2020, with oral and written evidence concluding in summer 2021, the committee has not yet produced a report.

28 See written evidence from Presiding Officer of the Senedd (TTC 7) and Northern Ireland Assembly Committee on Procedures (TTC 12)

motions passed by the devolved legislatures and cross-border spill overs in UK bills, but there has been little interest in following this up.[29] In the House of Lords, the Constitution Committee scrutinises all public bills for their constitutional implications, and this regularly involves consideration of devolution issues such as consent.

The operation of the convention before Brexit

After devolution, at least in Scotland, it was not anticipated that many consent motions would be required. This did not prove to be the case and the UK parliament proceeded to legislate in devolved areas on a regular basis. Since 1999, more than 200 UK bills required the legislative consent of at least one devolved legislature. Consent was not withheld by any devolved legislature until 2011.[30] During the 2019–21 and 2021–22 sessions more than half the UK government bills which received royal assent required legislative consent to some degree.[31] The high number of motions granting consent has tended to work in the interests of the UK and devolved administrations. The devolved administrations have sometimes found it expedient to allow the UK parliament to legislate in devolved areas and it also means they do not need to find time to legislate in their own legislatures.[32] However, UK bills have been regularly amended, or provisions removed, in response to the lack of consent from devolved legislatures.[33]

Before the European Union (Withdrawal) Bill was introduced in 2018,

29 House of Commons Political and Constitutional Reform Committee, The future of devolution after the Scottish referendum (Eleventh Report, Session 2014–15, HC 700), para 53

30 The first occasion was in February 2011 when the Welsh Assembly withheld its consent to provisions in the Police Reform and Social Responsibility Bill. The second occasion was in December 2011 when the Scottish Parliament withheld its consent to the Welfare Reform Bill. In response to both situations, the UK government amended the bills to address the devolved legislatures' concerns.

31 From session 2014–15 to session 2017–19, 35% of UK government bills per session, on average, engaged the legislative consent procedure. Perhaps because of the volume of Brexit legislation, this average has increased to over 50% per session since the beginning of the 2019 parliament.

32 During the early years of devolution this included potentially contentious bills like the Civil Partnership Act 2004 and Gender Recognition Act 2004. A more recent example is the Domestic Abuse Act 2021. A letter to Huw Irranca-Davies MS, the Chair of the Senedd's Legislation, Justice and Constitution Committee, from Mick Antoniw MS, the Counsel General and Minister for the Constitution, on 22 October 2021, set out the Welsh government's principles for UK bills, including that "Taking provision in a UK bill can enable pragmatic solutions to be reached in a timely fashion, while simultaneously respecting the legislative competence of the Senedd through the legislative consent process".

33 See the annex to Graeme Cowie & David Torrance, House of Commons Library Briefing Paper, *Devolution: The Sewel Convention* (CBP-8883, 13 May 2020), which provides key examples.

consent had only been withheld on ten occasions: eight times by the then Welsh Assembly and once each by the Scottish Parliament and Northern Ireland Assembly.[34] By the end of 2021, consent had been withheld on a similar number of occasions during a significantly shorter period.[35]

On four occasions pre-2018, the UK government proceeded without the consent of the Welsh Assembly as it disagreed with the Welsh government's assessment that provisions in the bill related to devolved competences and therefore required consent. The Enterprise and Regulatory Reform Bill was an example of this during the 2012–13 session, and the Supreme Court ultimately disagreed with the UK government's assessment.[36]

The convenience of the process for the executives can sometimes undermine the role of the devolved administrations, who are denied the opportunity to scrutinise and propose amendments to changes to devolved law, beyond the brief process of approving a Sewel motion. Devolution was supposed to increase accountability rather than diminish it. In 2004 Lord Sewel considered that the process had been 'hijacked' by the UK and Scottish administrations with only a 'perfunctory' role for the Scottish Parliament, which he suggested should establish a committee to monitor the process.[37] The Senedd's Legislation, Justice and Constitution Committee has also criticised the Welsh government's preference for the UK parliament to legislate in what it considered to be clearly devolved areas, including agriculture, because it circumvented the Senedd's ability to scrutinise the relevant provisions in the UK bill.[38]

The devolved legislatures usually agree with the terms of a motion tabled by their respective administrations, but there have been a few instances of a committee, or legislature, disagreeing with their administration's suggested approach.[39] In the 2015–16 session, the Scottish government submitted a

34 The high level of rejections by the Welsh Assembly may be explained, in part, by the 'conferred powers' model of devolution which applied until the Wales Act 2017 replaced it with the 'reserved powers' model. The previous model was more ambiguous about the exact division of responsibilities between London and Cardiff.

35 See House of Lords Constitution Committee, Respect and Co-operation: Building a Stronger Union for the 21st century (10th Report, Session 2021–22, HL Paper 142), appendix 6. The author of this article served as the clerk to the Constitution Committee when it produced this report.

36 Agricultural Sector (Wales) Bill – Reference by the Attorney General for England and Wales [2014] UKSC 43

37 See House of Commons Standard Note, *The Sewel Convention* (SN/PC/2084, 25 November 2005), pp 11-12

38 Senedd Legislation, Justice and Constitution Committee, *Fifth Senedd Legacy Report* (March 2021), para 118

39 See Annex to House of Commons Library Briefing Paper, Devolution: The Sewel Convention. Non-government members of the Scottish Parliament and Senedd can also lodge consent motions but only after they have lodged a related memorandum, which they can only do after the government memorandum has been lodged.

memorandum to the Scottish Parliament on provisions in the Trade Union Bill, which it believed would impact upon the functions of Scottish ministers. The UK government's position was that the bill only concerned reserved matters. The Scottish Parliament's presiding officer agreed with the UK government's position, and the Scottish Parliament did not consider the memorandum as a result.[40] The Scottish Parliament has also agreed reasoned amendments to motions, which raise broader concerns about a bill beyond the devolved provisions.[41]

In the Northern Ireland Assembly, consent issues are more complicated due to the nature of the power sharing arrangements at Stormont. Suffice to say, when power sharing breaks down and the Assembly is not fully functioning, the UK parliament sometimes feels compelled to legislate in devolved areas without the Assembly's consent as a result, including contentious areas like abortion and the Irish language.[42] In contrast to the political situation in Scotland, the UK government's decision to intervene sometimes attracts the support of Northern Ireland's nationalist parties, while provoking the chagrin of the unionist parties.

Miller I

There have been periodic disputes between the UK and devolved legislatures about whether UK legislation engages a devolved competence or not. These have sometimes been resolved by the Supreme Court—not always in the UK government's favour.[43]

In the wake of the 2014 independence referendum, the Smith Commission recommended placing the convention on a statutory footing.[44] Provisions were

[40] See House of Commons Library Briefing Paper, Devolution: The Sewel Convention

[41] See Scottish Parliament, Guidance on Motions (5 May 2021), para 22.7.5. The procedures of the Senedd and Northern Ireland Assembly do not appear to preclude amendments to consent motions.

[42] Constitution Committee, Respect and Co-operation: Building a Stronger Union for the 21st century, paras 142-148

[43] For an overview of relevant judgments see Hazel Armstrong & Jack Simson Caird, House of Commons Library Briefing Paper, *The Supreme Court on Devolution* (Number 07670, 27 July 2016). Relevant judgments after the date of this paper include The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill – A Reference by the Attorney General and the Advocate General for Scotland [2018] UKSC 64 and The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill – A Reference by the Attorney General and the Advocate General for Scotland [2021] UKSC 42

[44] The Smith Commission, Report of the Smith Commission for further devolution of powers to the Scottish Parliament (27 November 2014), para 22. The Calman Commission recommended recognising the convention in the standing orders of both Houses of the UK parliament. See Commission on Scottish Devolution, Serving Scotland Better: Scotland and the United Kingdom in the 21st Century (Final Report, June 2009), para 4.141

inserted in Section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006 saying "it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent" of the Scottish Parliament or Senedd.[45] While the convention also clearly applies in Northern Ireland it does not have an equivalent statutory basis. When amending the Scotland Act the UK government made it clear they did not consider that this change would make the convention justiciable.[46]

Following the leave vote in the 2016 Brexit referendum, the UK government believed it could notify its intention to leave the EU to the European Council under the royal prerogative. In *R (Miller) v Secretary of State for Exiting the European Union*[47] the Supreme Court found that primary legislation was required to do so. The Scottish and Welsh government's law officers intervened in the case to argue that the convention would also apply to any such legislation, which they agreed was required for the notification.

Notwithstanding the convention's statutory form in Scotland and Wales, the Supreme Court declined to make these provisions justiciable, and confirmed the convention continued to be politically, rather than legally, binding. It said (with emphasis added):

> "In reaching this conclusion we do not underestimate the importance of constitutional conventions, some of which play a fundamental role in the operation of our constitution. The Sewel Convention has an important role in facilitating harmonious relationships between the UK parliament and the devolved legislatures. *But the policing of its scope and the manner of its operation does not lie within the constitutional remit of the judiciary*, which is to protect the rule of law."

The Supreme Court's judgment also led to the passage of the European Union (Notification of Withdrawal) Act 2017. The consent of the devolved legislatures was not sought by the UK government.

Brexit

When the UK became a member of the then European Economic Community in 1973, it did so with one sovereign legislature. When it left what became the EU in 2020 in addition to Westminster there were three devolved legislatures, all of which had a significant interest in the implementation of the post-Brexit regulatory arrangements. In implementing Brexit, the UK government emphasised that this would expand devolved competences, but the Scottish and

45 The statutes therefore adopted the narrow definition of the convention.
46 HL Deb, 8 December 2015, col 1502
47 [2017] UKSC 5

Welsh governments were critical of what they regarded as greater constraints on their ability to exercise devolved competences in the interests of maintaining a uniform UK approach. The resulting disagreements led to the UK parliament legislating in devolved areas without the consent of one or more of the devolved legislatures on several occasions.

The European Union (Withdrawal) Act 2018 temporarily restricted the ability of the devolved legislatures to modify retained EU law.[48] After concessions were made in response to concerns raised by the Scottish and Welsh governments about the bill, the Welsh Assembly provided its consent, but the Scottish Parliament refused to do so. This marked the first time in the history of the consent process that the UK government had acknowledged a bill engaged the consent process, and consent was then withheld, but the UK parliament passed the bill regardless. In response, the Scottish government announced a 'Sewel strike' – refusing to recommend consent to any other Brexit bills during the 2017–19 session, although it did make exceptions.

The European Union (Withdrawal Agreement) Act 2020, which needed to be enacted before the Government's withdrawal agreement with the EU could be ratified, marked the first time that all three devolved legislatures withheld consent.[49] However, the Scottish and Welsh government's decision to recommend withholding consent was made for more general and political reasons, as well as the bill's devolved implications.[50] While acknowledging the significance of proceeding without the devolved legislatures' consent, the then Chancellor of the Duchy of Lancaster, Michael Gove, nevertheless defended this approach as being necessary in exceptional circumstances. He said it was:

> "a significant decision and it is one that we have not taken lightly. However, it is in line with the Sewel convention […] The Sewel convention — to which the government remain committed — states that the UK parliament 'will not normally legislate with regard to devolved matters without the consent' of the relevant devolved legislatures. The circumstances of our departure from the EU, following the 2016 referendum, are not normal; they are unique."[51]

48 Retained EU law is former EU-derived law which has been incorporated into UK domestic law.

49 As the Northern Ireland Assembly had only recently returned from a period of suspension, it expressed its opposition to the bill by way of an ordinary motion, as there was insufficient time for its legislative consent standing orders to apply.

50 Akash Paun and Kelly Shuttleworth, Institute for Government, *Legislating by consent: How to revive the Sewel convention* (September 2020), p 20

51 Written Statement HCWS60, Update on the EU (Withdrawal Agreement) Bill (23 January 2020). The then Secretary of State for Exiting the EU, Steve Barclay, also referred to the circumstances as "specific, singular and exceptional". See letter from Steve Barclay to Michael Russell, the then Cabinet Secretary for Government Business and Constitutional Relations (17 January 2020)

In 2020, the United Kingdom Internal Market Act 2020 was introduced and passed very quickly, and it is doubtful whether the devolved administrations were engaged in line with the *Guide*. The Act included provisions to allow the UK government to provide financial support in devolved areas. The Scottish Parliament and Senedd withheld their consent, but as the Northern Ireland Assembly was not functioning at that time, it was unable to consider its consent. In evidence to the Constitution Committee in 2021, the First Minister of Wales, Mark Drakeford, said this Act was "the single most damaging act to the Union in the whole 20-plus years of devolution".[52] In a similar vein, the Scottish government felt the Act demonstrated the UK government's willingness to "reshape the devolution settlement, unilaterally and in the most fundamental way, setting aside any rules of the UK constitutional system that it finds inconvenient".[53]

On 30 December 2020, the European Union (Future Relationship) Act 2020 was introduced and passed on the same day. The speed of its passage meant that both Houses of the UK parliament had almost no time to scrutinise it. Despite the speed of the bill's passage, the Scottish Parliament managed to withhold consent and the Northern Ireland Assembly agreed a (non-Sewel) motion making the same decision. The Senedd noted that the expedited timeframe meant it was unable to determine consent.

By 2022, there were signs that the convention was functioning well again in relation to non-Brexit UK bills. Having had concerns about the original version of the Trade Bill, which the UK government took account of, the Scottish and Welsh governments recommended that consent be provided to what became the Trade Act 2021. The UK government tabled amendments to remove provisions from the Covert Human Intelligence Sources (Criminal Conduct) Bill after the Scottish Parliament withheld its consent. The opposition of the Scottish Parliament and Senedd to the devolved provisions in the Elections Bill also resulted in the UK government tabling amendments to remove those provisions from the bill. However, Brexit bills continued to prove contentious, with the Scottish Parliament and Senedd both withholding their consent to the Professional Qualifications and Subsidy Control Acts in 2022.

English Votes for English Laws

In 2015 a legislative consent mechanism called the English Votes for English Laws (EVEL) procedure was adopted by the House of Commons. This was

[52] Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century*, para 114

[53] Scottish Government, *After Brexit: The UK Internal Market Act and devolution* (March 2021), pp 36–37

ostensibly an answer to the West Lothian Question, i.e. why should Scottish MPs vote on English policy matters which are devolved to the Scottish Parliament.

The impact of the question crystalised during the 2001–05 parliament, when non-English votes carried proposals for foundation hospitals and top-up tuition fees. The coalition government established the McKay Commission in response. Its 2013 report[54] considered maintaining the status quo would be risky and proposed adopting a constitutional principle that bills which mainly affected England (or England and Wales) should normally be passed only with the consent of a majority of English (or English and Welsh) MPs. However, the Commission was clear that non-English MPs should not be barred from voting on any bill as this would create two classes of MPs.

The procedure eventually adopted by the House of Commons was complex. The stages of relevant bills proceeded in the usual manner, with the most significant change being the introduction of an additional legislative stage before third reading, which required a majority of MPs representing English (or English and Welsh) seats—depending on the certificates issued by the Speaker on the territorial extent of bills, or provisions of bills[55]—to provide their consent via a legislative grand committee. Only the relevant MPs could vote in the grand committee, but this was followed by a vote by all MPs on the bill's final stage. In contrast to the Sewel convention, the EVEL procedure had no impact in the House of Lords, but Lords amendments engaged the procedure when considered by the Commons. EVEL also applied to secondary legislation.

The operation of the procedure, and its inherent complexities in practice, created an unorthodox alliance of SNP and Conservative MPs in seeking its repeal, on the grounds that it created two classes of MP. Initiated by the UK government, EVEL was initially suspended at the onset of the COVID-19 pandemic and then repealed by the House of Commons on 13 July 2021.[56] The UK government justified its repeal on the grounds that it complicated the legislative process and failed to strengthen the Union.[57]

Recent issues

Erskine May helpfully provides a model consent motion for the devolved legislatures, the terms of which are very clear.[58] However some recent motions

[54] The McKay Commission, *Report of the Commission on the Consequences of Devolution for the House of Commons: Executive Summary* (March 2013)

[55] With respect to finance bills, a majority of MPs representing English, Welsh and Northern Irish seats was required.

[56] See HC Deb, 13 July 2021, cols 306–26

[57] See Written Statement HCWS169, English Votes for English Laws (12 July 2021)

[58] See Erskine May Online (25th edition, 2019), para 27.6. The model motion appears to presuppose approval.

passed by the devolved legislatures are more ambiguous and do not strictly concern devolved matters. This presents challenges in communicating consent issues to the UK parliament accurately, particularly when the need for providing consent is contested.

Notable developments during the 2021–22 session arose in all three devolved legislatures. During the UK government's third reading statements on the Building Safety Bill and the Nationality and Borders Bill, it noted that the Northern Ireland Executive had chosen not to lay a motion before the Northern Ireland Assembly. While the Senedd considered a significant number of consent motions about devolved matters, granting consent to the Armed Forces Bill and withholding consent to the Nationality and Borders Bill and parts of the Police, Crime, Sentencing and Courts Bill. The Scottish Parliament also withheld its consent to the Nationality and Borders Bill and granted consent to provisions in the Judicial Review and Courts Bill and, in the 2022–23 session, to provisions in the Social Security (Additional Payments) Bill. After having agreed a motion providing consent to the devolved provisions in the Environment Bill, the Scottish Parliament then agreed a supplementary motion, which raised more general concerns about the bill but did not withhold or rescind consent. The Scottish Parliament also withheld its consent to the Elections Bill, with the motion taking the opportunity to criticise several reserved provisions in the Bill. The UK government did not consider these bills, or specific provisions, required consent, as its assessment was that they concerned wholly reserved matters.

Since the passage of the EU (Withdrawal) Act 2018, the need for the consent of devolved administrations, or legislatures, when UK government ministers exercise delegated powers in devolved areas has also become increasingly contentious. This arose in relation to the Professional Qualifications Bill, during the 2021–22 session, where the Scottish government asked for the bill to be amended to require its consent, but the UK government was only willing to concede that it would consult them. Other Brexit legislation has created bespoke and inconsistent consent mechanisms for the devolved administrations and legislatures to consider the exercise of such delegated powers.[59] On a more general basis, the Welsh government has adopted the principle that: "Delegated powers, including Henry VIII powers, in UK bills in devolved areas should be

[59] Briefing by Professor Aileen McHarg in Scottish Parliament Constitution, Europe, External Affairs and Culture Committee, *Legislative Consent after Brexit* (13th Meeting, Session 6, 19 May 2022), Annex C, pp 27–28. The Scottish Parliament and Senedd have adopted procedures to manage consent in relation to some of this secondary legislation, but the Northern Ireland Assembly has not.

conferred on the Welsh ministers alone".[60]

Proposals for reform

In its first report on devolution in 2002 the House of Lords Constitution Committee said it found "it strange that an issue which is fundamentally about co-operation between legislatures has turned in practice into co-operation between executives."[61] Twenty years later, the process remains executive dominated.

Until the contentious Brexit legislation, the operation of the convention received little attention in the UK parliament or the devolved legislatures and beyond. Since 2018, committees of both Houses, the devolved administrations, think tanks and academics have made various recommendations to improve the operation of the convention, including an enhanced scrutiny role for the UK and devolved legislatures.

In a 2018 report,[62] the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) noted the "erosion of trust" between the UK and devolved administration during Brexit and made the following recommendations to address this:

- Draft legislation should be shared far enough in advance for a devolved administration to work through any issues it may have with the UK government.
- Noting the lack of procedures in the UK parliament to recognise the convention in the legislative process, or effective means for the devolved legislatures to communicate their consent decisions and have these taken account of as a bill progresses through Westminster, both Houses should consider establishing clearer procedures to acknowledge consent issues, including what happens if consent is not forthcoming.
- Noting the ambiguity about the interpretation of the convention, the UK government should clarify the circumstances in which consent will not be required.

In a 2020 report, the Institute for Government cautioned that: "if the UK government decides to make a habit of legislating without consent in devolved areas, without making serious attempts to secure that consent, then the

[60] See letter to Huw Irranca-Davies MS, the Chair of the Senedd's Legislation, Justice and Constitution Committee, from Mick Antoniw MS, the Counsel General and Minister for the Constitution, on 22 October 2021

[61] House of Lords Constitution Committee, *Devolution: Inter-Institutional Relations in the United Kingdom* (2nd Report, Session 2002–03, HL Paper 28), para 130

[62] Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationships* (Eighth Report, Session 2017–19, HC 1485), chapter 4

implications for the stability of the Union could be severe."[63] The Institute made the following recommendations to strengthen the convention:

- The UK and devolved administrations should agree the 'limited circumstances' in which consent will not be required.
- Whitehall departments should share draft legislation with their devolved counterparts for an agreed minimum period before bills are introduced in the UK parliament.
- When a bill is introduced, the minister should lay a 'devolution statement' before the UK parliament which should be referred to parliamentary committees to scrutinise and take evidence on, as well as seeking expert advice on any contested consent.
- If the UK government wishes to legislate without consent, they should make a statement to the UK parliament justifying this decision, and the decision to proceed should be debated and voted on by both Houses as an additional stage in the legislative process.
- The UK parliament should provide more public information about each bill's consent status, including reports from committees of the devolved legislature, on its website.

In September 2021 the SNP and Scottish Green Party entered into a power-sharing agreement at Holyrood. As part of their joint policy programme they agreed that: "to protect the powers of the Scottish Parliament, [they] will press for the Sewel convention to be strengthened and legally defined, and for the UK Government to respect the legislative consent decisions of the Scottish Parliament."[64] However, when the Constitution Committee invited the Scottish Government's Constitution Secretary, Angus Robertson, to provide greater detail about this proposal, his response struck a very downbeat note, saying it was "important to recognise that the claim of unlimited sovereignty by the Parliament at Westminster makes it virtually impossible to guarantee the Sewel convention, or any other aspect of the devolved settlement, or indeed the wider UK constitution".[65]

In June 2021, the Welsh government published its vision for a reformed Union, including a proposal that the "not normally" qualification to the convention should be removed to establish a "simpler and clearer relationship" between

63 Institute for Government, *Legislating by consent: How to revive the Sewel convention*

64 Scottish Government and Scottish Green Party, *Shared Policy Programme* (1 September 2021), p 7

65 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century*, para 125. See also letter from Angus Robertson MSP, Cabinet Secretary for Constitution, External Affairs and Culture to Baroness Taylor of Bolton, (then) Chair of the Constitution Committee (4 November 2021)

the UK and devolved institutions."[66] On 15 December 2021 the Senedd agreed a motion noting the increased number of consent motions it was being invited to consider. The Senedd believed this was "both a consequence of Welsh ministers seeking to use UK parliament legislation to enact Welsh government legislation and the UK government seeking to override our democracy, erode the devolution settlement and diminish the powers of the Senedd" and that "all substantial and significant primary legislation should be enacted by the Senedd rather than through the [consent] process." The motion also called on the Welsh government to work with the Senedd to review its consent process to ensure it is fit for purpose and to clarify the principles of when consent motions are used.[67]

The Northern Ireland Assembly's Committee on Procedures conducted an inquiry into the legislative consent process in Northern Ireland, which concluded in early 2022. The Committee's report[68] noted the Northern Ireland Executive had routinely failed to inform the Assembly when motions were required on bills subsequently passed by the UK parliament. When the Executive did inform the Assembly, it usually failed to lay the requisite memorandums within the stipulated timescales and, more generally, Assembly committees did not have sufficient time to scrutinise them. The report directed the following recommendations to the UK parliament:

- When consent is granted or withheld by a devolved legislature it should receive greater prominence in the proceedings of both Houses.
- It would be desirable for the Assembly to be informed directly about any bills being introduced to the UK parliament that engage the consent process.

In January 2022, following a wide-ranging inquiry into the future governance of the Union, and having considered the above proposals, the House of Lords Constitution Committee made the following conclusions and recommendations for improving the operation of the convention.[69]

- For the convention to operate well, constructive relationships and good faith are required between the UK government and the devolved administrations. The convention is undermined both if the UK government chooses to act without consent and if devolved administrations recommend the refusal of consent for purely political reasons.

66 Welsh Government, *Reforming our Union: Shared Governance in the UK* (second edition: June 2021)

67 Senedd Record of Proceedings, Member Debate Under Standing Order 11.21(iv): The legislative consent process (15 December 2021)

68 Northern Ireland Assembly Committee on Procedures, *Inquiry into Legislative Consent Motions* (28 February 2022)

69 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century*, chapter 4.

- Other than in exceptional circumstances, the UK government should not seek to legislate in devolved areas without consent.
- The *Miller 1* judgment was sound as it endorsed the established constitutional principle that conventions are not enforceable by the courts. As any breach of the convention will have political consequences, the UK parliament, rather than the courts, was the appropriate forum to scrutinise its operation.
- The absence of any meaningful dialogue between the UK and devolved legislatures on legislative consent matters is a gap in the legislative process.
- To strengthen the UK parliament's scrutiny of bills that engage the convention:
  - On introduction of a relevant bill to the House of Lords, the UK government should submit a memorandum to the House about the devolution implications, including its engagement with the relevant devolved administrations.
  - In its scrutiny of the bill the Committee should consider this memorandum and the views of devolved legislature committees, among other sources, and advise the House on proceeding with a bill in the absence of consent.
  - The Procedure and Privileges Committee should consider if a devolved legislature's consent, or lack of consent, should receive greater prominence in *House of Lords Business* by tagging this, once notified to the House, against each stage of the Bill's consideration by the House.
- There should be greater parliamentary scrutiny of any disagreements surrounding the UK government's assessments that consent is not required from a devolved legislature.
- There should be greater interparliamentary engagement on areas of common interest, including the legislative consent process.

In May 2022, the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee held a roundtable evidence session on the consent process after Brexit. As part of that discussion Professor McHarg told the Committee that Brexit had "recast" the convention "from an obligation to obtain consent, subject to exceptions, into an obligation to seek consent, leaving it up to the UK government to decide whether consent has been reasonably or unreasonably withheld." In response, and to restore the convention's defensive and facilitative functions, she proposed the following changes to the process:

- An agreed statement by the UK and devolved administrations, endorsed by the UK and devolved legislatures, recognising the convention's "obligatory" nature, and set out the scenarios in which a lack of consent can legitimately be overridden.
- A procedural mechanism in the UK parliament for justifying and scrutinising decisions by the UK government to proceed with legislation in the absence of consent.

- A mechanism for resolving disputes between the UK and devolved administrations about whether the convention applies to specific bills, or provisions thereof.
- Agreement between the UK and devolved administrations, endorsed by the UK and devolved legislatures, on a "consistent, principled, and mandatory approach" to the making of secondary legislation by the UK government in devolved areas.[70]

Conclusion

While the convention undoubtedly came under pressure during Brexit, reports of its death have perhaps been exaggerated. There are signs it is beginning to operate as it did pre-Brexit and even political opponents can agree that the circumstances of Brexit were unique and are unlikely to be repeated. However, the UK government's reliance on exceptional circumstances to justify its approach to Brexit legislation was more convincing in relation to its implementation of international treaties than purely domestic matters.[71] It is notable that while COVID-19 was also undoubtedly exceptional it did not place the convention under strain like Brexit did.[72] It remains to be seen how the current UK government will choose to handle the devolved implications of its Northern Ireland Protocol and Retained EU Law (Revocation and Reform) Bills,[73] which has significant implications for the devolution statutes. The potential for further significant political disagreement on consent issues therefore remains.

Some of the proposed reforms to the convention, particularly from the Scottish and Welsh governments, challenge the supremacy of the UK parliament, and reflect wider differences between London, Belfast, Cardiff and Edinburgh about the principles of how the devolution arrangements should operate after Brexit. As a result, the more radical reforms that have been proposed are unlikely to be adopted, and the UK government will also be wary of any procedural changes which will impede their ability to get their legislative agenda through both Houses. Reforming the operation of the convention within the parameters

70 *Legislative Consent after Brexit*, Annex C, pp 28–29

71 In Professor McHarg's view, making an exception to the convention was justified in relation to the European Union (Withdrawal Agreement) Act 2020 and European Union (Future Relationship) Act 2020, on the grounds of "necessity", but less justifiable in relation to the United Kingdom Internal Market Act 2020, Professional Qualifications Act 2022 and Subsidy Control Act 2022. See *Legislative Consent after Brexit*, Annex C, p 27

72 The Coronavirus Act 2020, which was passed by the UK parliament in a matter of days, received the consent of all three devolved legislatures in short order.

73 This bill was due to receive its second reading in the House of Commons on 12 September 2022.

of the current constitutional arrangements may bear more fruit, including a greater focus on, and scrutiny of, consent issues in the UK parliament and through interparliamentary engagement.

Since the late 1990s there have been consistent calls for greater interparliamentary dialogue, but this has not been realised to any significant degree, most likely due to the time constraints and logistical barriers, as well as a lack of political will. At the beginning of 2022 the intergovernmental relations infrastructure was overhauled, having long been considered not fit for purpose, particularly during Brexit and COVID-19. Shortly afterwards a new Interparliamentary Forum was launched, including representatives of the UK and devolved legislatures. Among other things the Forum's delegates agreed it should focus on the "impact of the new [post-Brexit] constitutional arrangements on the legislative process including … legislative consent".[74] How successful the new intergovernmental and interparliamentary arrangements will be, including any appetite to consider the operation of the convention, will—again—be contingent on political appetite.

Future UK parliaments, particularly if there is a change of administration, may be more comfortable reforming the convention, perhaps as part of a wider constitutional change agenda. A Labour constitutional commission chaired by the former prime minister, Gordon Brown, is expected to report by the end of 2022.[75] While the current UK government's majority of English seats means that the circumstances EVEL was designed to address are unlikely to arise for the remainder of the 2019 parliament—and there is no significant political support for the revival of the procedure—this may become a live political issue again in future parliaments, exposing the lack of safeguards for the English 'voice' in Westminster.[76]

[74] UK Parliament, *Launch of the Interparliamentary Forum* (25 February 2022)

[75] 'Gordon Brown to lead commission "to settle the future of the union" — Starmer', *The Herald* (29 September 2021)

[76] In this respect, the Constitution Committee received evidence that the repeal of EVEL was "short-sighted and created future constitutional risks to the Union". See Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century*, para 114. See also Daniel Gover and Professor Michael Kenny, The Constitution Unit, 'Deliver us from EVEL? Is the government right to abolish 'English Votes for English Laws'?' (27 June 2021)

LIBRARY RESEARCHERS AND SELECT COMMITTEES

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This paper focuses on a collaboration project in the New Zealand House of Representatives between Select Committees and Parliamentary Library researchers to give select committees better access to high-quality and independent research and advisory services.

Background

Select committees in New Zealand

The New Zealand Parliament has a system of multi-function select committees. They consider bills, budget estimates, the performance of public agencies, petitions from the public, and undertake inquiries and briefings, among other types of business. They cover almost all the functions performed by the House of Representatives.[1]

There are currently 12 subject committees and eight specialist committees. Subject committees are assigned to deal with business in specified subject areas. They are established at the start of each new Parliament. Specialist committees oversee the procedures of the House or are formed ad hoc for a specific purpose (such as a bill or an inquiry).

The current committees vary in size of between five and 11 members of Parliament (MPs). Standing Orders require that the overall allocation of members across all subject committees must be proportional to party membership in the House, as far as is practicable. This means the parties in Government typically have a majority on some but not all committees. There are 120 MPs, and committee members are drawn from a pool of about 90 non-executive members.

Each select committee is serviced by a secretariat from Select Committee Services, part of the Office of the Clerk. The secretariat provides procedural and legislative scrutiny advice, and report writing and administrative support to each committee.

[1] M Harris & D Wilson (eds), *Parliamentary Practice in New Zealand*, 4th ed. (2017) at 280, https://www.parliament.nz/media/4113/parliamentary-practice-in-nz-final-text.pdf.

Parliamentary Library Te Pātaka Rangahau

The Parliamentary Library Te Pātaka Rangahau (the Library) is part of the Parliamentary Service. This is a separate agency to the Office of the Clerk, the organisation that provides the secretariat services to committees. Library staff have not historically been involved with committees—only providing advice on the rare occasions it was requested by a clerk on behalf of a committee. It was a service that was available but was very rarely used or promoted.

The Library provides a research service to the New Zealand Parliament. Parliamentary research services contribute to a parliament's autonomy by providing a reality check on the perspectives put forward by the executive branch of government, lobby groups and the news media.[2] The Library is a source of independent, neutral and non-partisan analysis. It supports MPs in executing their legislative, scrutiny and representative functions. Most of the Library's research work is answering requests made by MPs and their staff.

Origins of the programme

It has long been recognised that for select committees to be effective they need high quality and independent research and advisory services. The review of Standing Orders in 1995 noted the need for an 'enhanced level of independent advice to assist [committees] for both their scrutiny and legislative functions'.[3] The review of Standing Orders in 2003 similarly noted that a review of services to select committees had identified 'the need for permanent access to professional research' and independent advice to contest advice from the Executive.[4] The recent initiative can be seen as part of an ongoing process of enhancing the services available to committees.

In the past the Library would give advice to a committee if it was requested. On the rare occasions such requests were made they often lacked context. Researchers did not have access to all the material before the committee and were not present for any of the committee's deliberations. In 2002, Library staff were linked with committees to give advice for the scrutiny of a bill and for an inquiry. This was limited to specific pieces of work and was not an ongoing relationship.

Sporadic discussions continued about building a closer working relationship with an aim to enhance the scrutiny role of committees. The focus was trying

[2] Inter-Parliamentary Union (IPU) and the International Federation of Library Associations and Institutions (IFLA), *Guidelines for parliamentary research services* (2015) at 4, https://repository.ifla.org/bitstream/123456789/1177/1/guidelines-for-parliamentary-research-services-en.pdf.

[3] Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 45.

[4] Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 24.

to link subject matter experts in the Library with clerks and deputy clerks and build a community of practice among them.

In 2019, a report was prepared for the Office of the Clerk that reviewed administrative aspects of the select committee operating model and processes. Among its findings, it noted that a lack of independent advice to committees was seen as creating a risk of undue influence from the Executive on committee processes.[5] Similarly, the report, *Foresight, insight and oversight: Enhancing long-term governance through better parliamentary scrutiny*, identified the provision of additional research, analysis and advisory support for subject select committees as an option to enhance parliamentary scrutiny.[6]

Library supporting committees in a structured way

The Library researchers are now formally appointed by the Clerk of the House of Representatives and form part of the secretariat, alongside a Clerk, Deputy Clerk and Parliamentary Officer.[7] Researchers have access to all the information available to the committee.

The Library promotes the researchers on the committee secretariats as skilled researchers able to draw on support across the Library, rather than as subject matter experts working alone with the committee.

Researchers attend most, but not necessarily all, committee meetings and sit in on closed and public proceedings. It is largely left to the relevant clerk and researcher to work out when it is best for the researcher to attend. Some clerks prefer not to specify when a researcher should attend but want the researcher to decide based on the agenda. Deciding when to attend a meeting has been one of the challenges faced by researchers, as they balance the time spent with committees against the Library's other request work.

The work Library researchers do for committees

MPs have unique scrutiny, legislative, and representative roles that they must perform in a parliamentary democracy. Library research staff are trained to analyse and synthesise information to support MPs to be effective in their work.

At its core, researchers forming part of a committee's secretariat is a structured way for the Library to offer support to committees. The formalisation and consistency of a researcher's presence has built better working relationship with

[5] Martin Jenkins, Review of *Select Committee Operating Model* (an internal report prepared for the OOC, May 2019).

[6] Jonathan Boston, David Bagnall and Anna Barry, *Foresight, insight and oversight: Enhancing long-term governance through better parliamentary scrutiny*, (2019), https://www.victoria.ac.nz/__data/assets/pdf_file/0011/1753571/Foresight-insight-and-oversight.pdf.

[7] s 12(1A)(c) of the Clerk of the House of Representatives Act 1988, https://legislation.govt.nz/act/public/1988/0126/latest/DLM135677.html

clerks and committees than earlier efforts.

It was thought the Library would add most value to the committees' scrutiny of bills and inquiries. The experience in the more recent programme to date has been that the Library's contribution is more relevant to petitions, briefings and inquiries, rather than bills.

Government advisers assist the committee when considering bills. In the case of Government bills (which make up the bulk of a select committee's legislative workload) they will have done the policy work behind the bill. They have access to the information and depth of knowledge needed to address specific, often technical, questions about a bill. Departmental officials also generally have access to information about the operationalisation of the legislation. However, government officials are not able to provide free and frank advice to the committee, as they serve the committee at the pleasure of their Minister. While they are expected to serve the committee in good faith and manage the wearing of two different hats, they generally cannot make recommendations that the Minister will not approve. This is widely acknowledged and is perhaps less of a concern than any unconscious bias that might creep into departmental officials' advice when supporting a committee that is scrutinising the officials' work in preparing the legislation. Committees are supported in conducting legislative scrutiny with technical legislative advice from committee clerks.

Petitions have become increasingly demanding on committees' time as the number of petitions increases. In the three years of the last parliament, 217 petitions were presented or reported on. In the two years of this parliament, there have already been 406 petitions presented or reported on.[8]

Committee inquiries take two forms: formal inquiries and briefings. Formal inquiries usually have a terms of reference, witnesses are invited, advice is sought from independent sources, and a report is prepared for the House. Briefings allow the committee to inform itself about an issue in a less formal manner than an inquiry.[9]

The Library can add value through its advice to committees, particularly in the early stages of an inquiry or when a petition is first considered. The Library has, for example, provided general background information, information about how an issue has developed over time, provided examples of how other jurisdictions deal with an issue, and provided information on what is considered international best practice. Much of what the Library has provided to committees to date has been descriptive rather than analytical.

An advantage of the Library service is that it is responsive, timely, and a safe

[8] New Zealand Parliament, *Petitions*, https://www.parliament.nz/en/pb/petitions/.

[9] M Harris & D Wilson (Eds), *Parliamentary Practice in New Zealand*, 4th ed. (2017) at 493, https://www.parliament.nz/media/4113/parliamentary-practice-in-nz-final-text.pdf.

place to ask questions. The Library often responds more quickly than public agencies and can do so with less bureaucracy and publicity. Committee sessions with officials are generally held in public and committee members often need to prepare ahead of time in order to question officials. When requesting information from the Library, the researcher can simply be asked to find out about an issue and report back to the committee. The Library will generally work to the deadline given and is a confidential research service, although most of its work for committees is eventually made public by the committee. The committee can ask the Library to research basic or complex questions to better understand an issue without fear of being judged for the extent they understand an issue. MPs come from various parts of society and cannot be expected to be familiar with everything considered by the committee.

In 2021, the Library provided about 95 reports to committees. While the number of requests has increased steadily it has been a modest increase. Some of the challenges discussed below help to explain why growth has not been greater. The extent to which committees have made use of the Library has been mixed. A few have made extensive use of the Library while most committees have only commissioned a small number of research reports.

Challenges

Several factors stand out as affecting the extent to which committees have made use of their researcher.

Established ways of working

The presence of a researcher is still relatively new. Committees are used to asking for information from government officials when they are appointed to advise the committee or seeking assistance from an independent adviser. Committee members themselves have prompted the requesting of information from researchers relatively infrequently. The committee secretariat do remind the committee the researcher is available, but this is often after the committee has identified the information need itself.

Clerks are fiercely impartial and offering suggestions to the committee that it may benefit from considering certain information is always filtered through this lens. This does not mean that specific suggestions are never made by clerks, only that clerks are not unconstrained in championing the potential of the research services available. Researchers are encouraged to work with the clerks to proactively find where they can add value.

Members may also be more accustomed to asking the Library for information as an MP rather than through the committee process. All MPs can lodge research requests directly and confidentially with the Library, which may be seen as preferable in some cases. Members also receive information from their

staff and party research units, who make use of the Library.

The nature of committee business

Select committees in New Zealand cover a wide range of business. Only some types of business seem to lend themselves to requests for Library research. Experience so far shows that the Library is more likely to assist with petitions and inquiries and is less well placed to support committees to scrutinise bills or with financial scrutiny. Committees invariably appoint public sector officials as advisers on bills and the Office of the Auditor-General for financial scrutiny work. While in the past it has been hoped that committees would use independent services to challenge Government advice,[10] this has not been one of the apparent uses of the research services so far.

But we can also acknowledge that much select committee consideration is not an in-depth affair. Committees dive deep on legislation but are usually too busy to do the sort of highly detailed work that would lend itself to requests for research. This is largely a function of the fact that New Zealand has a unicameral legislature for a unitary state, with roughly 90 non-executive members to populate the select committee system.

Building relationships during COVID-19

Building relationships between the researcher and the clerk and between researchers and the committee has been more difficult with remote meetings over Zoom. Several of the current researchers have only met their committee over Zoom and have limited interaction with them. Committee staff other than the clerk usually have their video turned off so as not to crowd the screen, so new people can literally go unseen. Moreover, some staff have noticed that their committee has made less use of a new researcher compared to a previous, well-established researcher. This too suggests that relationships and trust matter.

The relationship between the researcher and the rest of the secretariat has been key to the success of the programme to date. Much of how the Library's service to select committees would work in practice have been left to clerks and researchers to sort out. To help troubleshoot issues and share from one another, the Library researchers on committees meet at the end of each sitting block to discuss their experiences. This has allowed researchers new to committees to learn from their colleagues. A common theme is sharing tips about where they can add value to the committee's work and how to raise their visibility with the committee members.

When committees return to in-person meetings the researcher will sit with

[10] Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 24.

the rest of the secretariat in the room. The experience to date has been that in-person meetings are more likely to lead to better working relationships between clerks and researchers and between researchers and the committee.

Subject matter expertise and the nature of library research services

The Library has subject matter experts but these are experts in the context of a research service of about 23 people, only eight of whom are senior researchers. It is not possible for the Library to offer the depth of expertise available from the public sector or the Office of the Auditor General. Even within this limitation, not all researchers are experts on the subject areas of the committee to which they are attached.

Additionally, most committees have a broad collection of subjects in their terms of reference. For example, the subject areas of the Economic Development, Science and Innovation Committee are: business development, tourism, Crown minerals, commerce, consumer protection and trading standards, research, science, innovation, intellectual property, broadcasting, communications, and information technology. No one can be an expert on all these topics. But committees may be less likely to think of asking the researcher for input if they are not considered an expert.

Aware of these limitations the Library has started to describe the researchers as expert researchers who can draw on the subject matter knowledge from across the Library and are able to access relevant information, using their experience as information and research professionals.

Capacity and other work

A challenge for the Library has been balancing committee work with its other work. Committees tend to meet when the House sits. This is often the busiest period for the Library with larger volumes of requests for information coming from MPs and their staff.

Managing the flow of requests and allocating them to researchers had been a source of frustration for Library staff when researchers were first attached to committee secretariats. The Library is addressing this with the introduction of four senior coordinator roles to manage workflow. Having dedicated staff focused on this was in part driven by the greater complexity of workflow when researchers were involved with committees.

The future

It is early days for a programme but the signs are promising. We believe that the arrangements will continue to develop and improve as initial lessons are learned, and the opportunities for library research are brought more into focus for committees.

We believe that attaching researchers has increased committees' access to independent information and research. The task now is to build on what we have put in place with a sharp focus on meeting committees' needs. This is likely to involve both listening to 'the customer', as well as thinking proactively about how to contribute to select committee inquiries.

MISCELLANOUS NOTES

AUSTRALIA

House of Representatives

Resignation of the Speaker and election of a new Speaker

In October, the Hon Tony Smith announced his intention to resign as Speaker before the end of the Parliament. He told the House that he wished to end his parliamentary career focused on representing his constituents as a backbench Member. Speaker Smith presided over the House for the last time on 22 November and made a statement thanking colleagues after Question Time that day. The Prime Minister, the Leader of the Opposition and other Members also made statements, commending his service to the Parliament. This was only the fifth time a Speaker has announced during a sitting of the House his or her intention to resign.

When the House met the following day, the Clerk read a communication from the Governor-General: that the Hon Tony Smith had tendered his resignation as Speaker earlier that day, that he had accepted it, and that he invited the House to elect a new Speaker. The House elected government Member Mr Andrew Wallace as Speaker. He acknowledged the honour and took the chair as the 31st Speaker of the House of Representatives.

Free vote on mitochondrial donation bill

The House voted to legalise mitochondrial donation with the passage of the Mitochondrial Donation Law Reform (Maeve's Law) Bill 2021 on 1 December. In summing up the second reading debate, the Minister for Health and Aged Care indicated that procedural questions on the bill would be decided by 'free votes'—that is, Members would be enabled to vote in accordance with their conscience, free from party guidance. Such votes are uncommon in the House.

During the consideration in detail stage, the House divided on amendments moved by a government backbencher and the amendments were disagreed to. All other questions were decided on the voices.

Procedure Committee report on Question Time

The House Procedure Committee conducted an inquiry into the practices and procedures related to Question Time and presented its report on 13 May. The Committee recommended several changes intended to improve the efficacy of Question Time, including a minimum number of questions each day, allowing for supplementary questions and reducing the time limit for answers from three to two minutes. The government did not accept the changes.

Safety and respect in Commonwealth parliamentary workplaces

A number of measures were introduced throughout the year to promote safety and respect in Commonwealth parliamentary workplaces. This initiative was in response to an allegation made in February of a sexual assault in Parliament House two years ago.

Initially, the Department of the Prime Minister and Cabinet undertook a review of the procedures for responding to serious incidents in parliamentary workplaces (the Foster Review). In implementing recommendations made by the review, a Parliamentary Workplace Support Service was established, including an independent workplace complaints mechanism to review complaints about serious workplace incidents, such as bullying, sexual harassment and sexual assault. On 18 October, the House agreed to a resolution setting out a process for referral of a report to the House Standing Committee of Privileges and Members' Interests where a Member has not cooperated with a review under the complaints mechanism. The committee must report to the House within 30 days of the referral.

On 29 November, the House adopted another resolution, encouraging Members to participate in a Safe and Respectful Workplaces Training Program. The resolution requires a public register to be maintained publishing the statements of Members who have completed the training program.

Over the course of the year, the Australian Human Rights Commission conducted its Independent Review into Commonwealth Parliamentary Workplaces. Its report, presented on 30 November, made 28 recommendations to ensure that parliamentary workplaces are safe and respectful, and reflect best practice in the prevention and handling of bullying, sexual harassment and sexual assault. One of the recommendations proposed that a Joint Standing Committee on Parliamentary Standards develop a draft code of conduct for parliamentarians, and that both Houses adopt a code of conduct within 12 months. The report proposed a two-year timeframe for the implementation of all recommendations.

COVID-19 and remote participation

Attendance in the House varied over the year, reflecting the changing COVID-19 situation across the country. The Federation Chamber did not meet in August or September, when attendance was low and several members of the Speaker's panel were absent. When required, an 'Agreement for members to contribute remotely to parliamentary proceedings' for a particular period was presented to the House, allowing Members unable to attend sittings because of COVID-19 to speak in proceedings via the official video link. Members participating remotely were not permitted to vote, to move or second a motion or to move or second an amendment. They were also not recorded as having attended the

sitting due to constitutional requirements.

Senate

Remote participation in Senate proceedings

The Senate adopted rules allowing senators to participate in proceedings by video link for the sitting week beginning 15 February, after a lockdown was implemented in the state of Victoria. The rules were updated in May to allow the President and Deputy President of the Senate to determine jointly whether they should apply during particular sittings. Under the revised rules, and due to multiple lockdowns across Australia, around 25 senators participated in proceedings by video link during the August sittings after the President and Deputy President determined that the system should be available during the sitting fortnight. Senators from different states attended Parliament in person subject to agreed conditions, including quarantine and testing requirements, and restrictions on their movements while in Canberra. Parliament House operated strictly in accordance with conditions agreed with health officers in the Australian Capital Territory (ACT) to protect building occupants and the broader community.

A COVID-19 case detected in the ACT in mid-August led to a local lockdown. Before rising on 12 August, the Senate agreed to a resolution allowing the President, with the concurrence of the government and opposition, to alter the date and time of the next sitting day, should that be required. The resolution also allowed the Procedure Committee to formulate rules for those sittings, should they be required, following the template of the motions moved at the onset of the pandemic.

Extensions of time to report authority

In February, the Senate revoked a resolution agreed to on 23 March 2020 to empower committees to extend the duration of their own inquiries. The measure had been put in place in the early stages of the pandemic when it was unknown how often the Parliament might meet to consider requests for committee inquiry extensions.

Recording divisions

In the first sitting week of 2021 the Senate commenced recording its divisions on tablet devices and reporting the results in real time on the Dynamic Red and elsewhere on its website.

Independent Parliamentary Workplace Complaints mechanism

In July 2021 the Australian Government published the report of its *Review of the Parliamentary Workplace: Responding to Serious Incidents*. In moving to implement

some of the recommendations of the review, the Senate adopted a resolution on 19 October recognising the duties and responsibilities of senators and their staff, including their obligations to comply with applicable work health and safety laws, and noting the establishment of the Parliamentary Workplace Support Service which provides an independent complaints mechanism for serious incidents in a parliamentary workplace and is overseen by the Parliamentary Service Commissioner. The service had been established in September under a determination made by the then Presiding Officers.

The resolution provides an avenue for the Privileges Committee to receive and consider reports from the Parliamentary Service Commissioner finding that a senator has not cooperated with a review under the complaints mechanism or acted on its recommendations. The resolution explicitly provides that a senator who fails to comply with the committee's recommendations may be found guilty of a serious contempt.

Orders and accountability

Under Senate practice there is no category of documents considered to be beyond the reach of the Senate's investigative powers, but a minister may seek to withhold documents by specifying the harm to the public interest that may be occasioned by providing them. It is a matter for the Senate whether to accept such claims and it has often accepted an argument that documents that would reveal cabinet deliberations may be withheld. During the COVID-19 pandemic, the former Council of Australian Governments—an intergovernmental forum comprising the Prime Minister, the State Premiers and Territory Chief Ministers—was refashioned as 'the National Cabinet', with attendant claims that principles of cabinet confidentiality applied to its work.

On 23 November the Senate resolved that it 'will not countenance' public interest immunity claims made on the grounds that the provision of information ordered by the Senate relating to the National Cabinet would reveal cabinet deliberations. The resolution also prevents committees accepting public interest immunity claims made on this ground. It was prompted by evidence at estimates hearings that government decision-makers were disregarding an Administrative Appeals Tribunal finding that National Cabinet was not a committee of Cabinet for the purposes of the *Freedom of Information Act 1982* and by ministers continuing to assert public interest immunity claims on this ground after they had been rejected by the Senate.

On 24 November, the Senate made a further order to require the production of documents in respect of which a public interest immunity claim had previously been made on the now 'unacceptable' national cabinet ground, including 'material required under questions on notice asked in the Senate or in the course of a committee inquiry'. However, statements by a government

minister in response to the respective orders indicated that the view of the government remained that 'national cabinet was established as a committee of cabinet and its documents and deliberations should remain confidential'.

Australian Capital Territory Legislative Assembly

Bills automatically referred to committee

The Assembly established seven general-purpose standing committees through the resolution of appointment on 2 December 2020. A provision was included requiring that all bills, upon presentation, be automatically referred to the relevant standing committee for inquiry and report.

The requirement has now been in place for a full calendar year (as well as 2 months of November/December 2020). Of the 43 bills introduced to the Assembly (excluding the Appropriation Bills and one bill that was referred to a select committee), the committees have conducted inquiries into six bills (14 per cent). This increases to 21 per cent when the appropriation bills are taken into account.

Review of Assembly's code of conduct

On 30 March, the Speaker tabled Report No 3 of the Standing Committee on Administration and Procedure on the members code of conduct and the declaration of members interests' form. The committee report considered the findings of a review of these matters undertaken by the Assembly's Ethics and Integrity Adviser. The committee's report recommended several changes to the code of conduct, which were subsequently agreed to by the Assembly. The Speaker also tabled a new streamlined declaration of interests form which was also adopted.

Later that day the Deputy Speaker moved the following motion:

"That we, the members of the 10th Assembly for the Australian Capital Territory, having adopted a code of conduct for members, reaffirm our commitment to the principle, obligations, and aspirations of the code."

The question was put and passed with no debate.

Territory rights—co-sponsorship of motion

On 31 March, the Assembly considered a motion on the issue of Territory Rights and the current restrictions within the ACT Self Government Act on legislating in relation to voluntary assisted dying. The motion was co-sponsored by 3 members—the Minister for Human Rights, the Attorney-General (who is an ACT Greens MLA), and the Leader of the Opposition.

This is the second motion co-sponsored by representatives of all 3 party groupings in the Assembly. The motion, which was passed, invited the leaders of the respective parties in the Assembly, responsible spokespersons, and any

other interested members to sign a letter by the end of the sitting week to all members and senators of the Federal Parliament.

COVID-19 lockdown arrangements

The Territory went into lockdown on 12 August 2021. On 16 September the Assembly passed a resolution resolving that, acknowledging that the Assembly was meeting during a lockdown period, there should be a minimal number of members and staff in the chamber while still allowing for the conduct of business. Questions without notice would still be asked but the whips would notify the Manager of Government Business one hour prior to question time which ministers would be asked questions. The resolution also resolved that, as at 16 September, in circumstances where a standing order or resolution of the Assembly required a response (for example, an answer to a question on notice or a response to a committee report) in August, September or October 2021, so much of the standing orders be suspended as would enable such responses to be lodged within two months of the stipulated date.

Resolutions requiring MLAs to correspond with federal parliamentarians and to make certain declarations

During the reporting period, the Assembly has passed several resolutions variously requiring MLAs to write to federal parliamentarians and to make certain declarations. These have included:

- a motion was passed calling on the leaders of all parties represented in the Assembly to write to the federal leaders of their respective political parties calling for an increase to, and an indexation of, all social security payments so that these can be above the Henderson Poverty Line, and that copies of these letters shall be tabled in the Assembly by 11 November 2021
- a motion was passed referring the text of the motion being debated to all senators and members of the Commonwealth Parliament which, among other things, condemned the removal of the ACT from the Ensuring NT Rights Bill 2021 (which had been introduced in the Senate) and denouncing correspondence received from the Commonwealth Attorney-General 2021 regarding Territory rights
- a motion was passed calling on the relevant minister and the leaders of all the parties represented in the Assembly to write to the federal leaders of their respective parties to take certain action in relation to climate
- change including legislating interim targets for 2030 and 2040 and ending public subsidies to coal and gas exploration, and for the leaders to table copies of the letters in the Assembly by the first sittings of 2022
- a motion was passed inviting the leaders of the 3 parties represented in the Assembly to write, if they choose, to all federal Greens representatives

and express their concern for that party's defence policies and the possible effect on the safety and lives of Australian Defence Force personnel, and oppose the economic and job losses the planned defence cuts would cause
- a motion was passed inviting leaders of ACT Labor, ACT Greens and the Canberra Liberals and other MLAs to sign a letter to the Australian Government Minister for Industrial Relations calling on the Australian Government to include 10 days of paid domestic and family violence leave in National Employment Standards
- a motion was passed calling on members of the Assembly, in an amendment to a motion calling for a review of an alleged serious data breach, to declare whether they or their offices accessed a spreadsheet that raised privacy concerns on data for 30,000 public sector employees before a certain date, and whether they had provided copies of the spreadsheet—or any links to it—to any third person external to their offices.

Sitting pattern proposing 35 sitting days for 2022 agreed

On 25 November, the Assembly passed a motion agreeing to the sitting pattern for 2022. The opposition moved an amendment to the motion to sit an extra three days, which was defeated. On 25 November, the opposition moved to amend the sitting pattern to include an additional 12 sittings (all on a Friday). That motion was also defeated.

The adopted sitting pattern led to media reports of the opposition whip's comments during debate when he accused the ACT Government of being a group of 'lazy lefties' who want to 'knock off… so they can get away on holiday.'

New South Wales Legislative Assembly

National Apology to the Stolen Generations anniversary

On 16 February, the Speaker made a statement in relation to the 13th anniversary of the National Apology to the Stolen Generations, a historic acknowledgment of the systemic wrongs that were done to the Stolen Generations. The Speaker also acknowledged the presence of Uncle Michael Welsh in the Advisors' Gallery. Mr Welsh is a Stolen Generations survivor from the Kinchela Boys Home Aboriginal Corporation.

Review into Parliament's handling of bullying, harassment and serious misconduct

On 17 March, in response to a question without notice, the Premier, the Hon. Gladys Berejiklian, advised the House that she had requested the Hon. Pru Goward to review the processes in place for staff in relation to complaints about bullying, harassment or sexual assault.

Additionally, on 23 March, the Speaker made the following statement to the

House:

> "As previously advised, a meeting of the Parliament's executive group was held yesterday to consider the Parliament's approach to bullying, sexual harassment and other serious misconduct. The decision was taken to establish a working advisory group comprising members, members' staff, parliamentary staff, relevant managers, and other representatives and stakeholders. To facilitate establishing such a group, the Presiding Officers have appointed the Deputy Speaker in the Legislative Assembly, Leslie Williams, MP, to act as the initial Chair and bring together a number of key people for preliminary meetings and discussions. This will include members in each House who have expressed an interest in assisting with these matters."

Subsequently, the Parliamentary Executive Group, with the support of the Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, commissioned an independent review into bullying, harassment and sexual misconduct in NSW Parliament by former Sex Discrimination Commissioner, Elizabeth Broderick. The findings and recommendations are expected to be delivered in 2022.

Legislation to extend emergency measures in response to COVID-19

In 2020 a number of bills were introduced by the Attorney General and the Treasurer to respond to the impact of COVID-19. The bills enabled NSW services and institutions to continue functioning and provide services safely throughout the pandemic and provided forms of financial assistance. As the pandemic entered its second year, the Attorney General and the Treasurer introduced additional bills to extend the emergency measures put in place in 2020:

- The COVID-19 Legislation Amendment (Stronger Communities and Health) Bill 2021 extends a number of emergency measures implemented in 2020 until September 2021, with an option to extend for a further six months by regulation.
- The COVID-19 Recovery Bill 2021 extends a number of existing emergency financial measures by up to 12 months and supports the transition back to normal commercial and residential tenancy laws.

Both bills were assented to in March 2021.

Death of His Royal Highness the Prince Philip, Duke of Edinburgh

On 4 May, the Speaker reported a letter from the Governor, advising of the death, on 9 April, of His Royal Highness the Duke of Edinburgh. Members and officers stood in their places as a mark of respect. On 5 May, the Premier, the Hon. Gladys Berejiklian MP, moved that the House send an Address to

Her Majesty the Queen, conveying its condolences on the passing of Prince Philip. The motion was seconded by the Leader of the Opposition, Ms Jodi McKay MP, and a number of Members spoke in support of the motion over the following four sitting days.

New Leader and Deputy Leader of the Opposition

On 8 June Mr Chris Minns MP informed the House of the resignation on 28 May of Ms Jodi McKay MP and Ms Yasmin Catley MP as Leader and Deputy Leader of the Opposition. Mr Minns further advised of the election, on 4 June, of himself as Leader and Ms Prue Car as Deputy Leader of the Opposition.

Delivery of the 2021–2022 Budget

On 22 June the Treasurer introduced the Appropriation Bill 2021, together with four cognate bills. The Treasurer moved that the bills be read a second time and gave the Budget speech. At the conclusion of the speech, debate on the bills was adjourned until Thursday 24 June, and the Treasurer tabled the Budget Papers for 2021–22.

By Thursday 24 June a Member of the Legislative Assembly (a Minister) had tested positive for COVID-19 and arrangements for the passage of the Budget Bills needed to be altered to accommodate a possible COVID-19 exposure at Parliament House.

The start of Thursday's sitting was delayed while Members and parliamentary staff were tested for COVID-19. The House met at 4pm (postponed from the usual 9.30am starting time) with 20 Members present in the Chamber (satisfying quorum requirements) and agreed to a motion of the Leader of the House that the remainder of the sitting would be largely devoted to specific business, including the passage through all the remaining stages of two of the five Budget Bills, the Appropriation Bill 2021 and the Appropriation (Parliament) Bill 2021. The House also agreed that the Leader of the Opposition's speech in reply would be postponed until Thursday 5 August 2021.

The Leader of the House moved that Standing and Sessional Orders be suspended so that two of the five cognate Budget Bills could be separated (the Appropriation Bill 2021 and Appropriation (Parliament) Bill 2021) and be able to be presented to the Governor for assent. The motion was agreed to on the voices.

The second and third readings of the Appropriation Bill 2021 and Appropriation (Parliament) Bill 2021 were agreed to on the voices, and the Bills were forwarded to the Legislative Council for concurrence. The Treasurer then moved that the House take note of the Budget Estimates and related papers for 2021–22.

Later that day the Speaker, after resuming the Chair on the ringing of a

long bell, reported a message from the Legislative Council returning the Appropriation Bill 2021 and the Appropriation (Parliament) Bill 2021 without amendment. The House then rose: in total, the proceedings in the House on 24 June were completed in less than twenty minutes.

Review of a Proposed Resolution for the Establishment of a Parliamentary Compliance Officer

During 2021, the Legislative Assembly Committee on Parliamentary Privilege and Ethics undertook a Review of a Proposed Resolution for the Establishment of a Parliamentary Compliance Officer, and reported to the House on 16 July. In reviewing the proposed resolution for a Compliance Officer the Committee recommended the establishment of an Independent Complaints Officer to receive and investigate complaints about Members in a number of areas. These areas include more minor breaches around Member entitlements and requirements for the disclosure of pecuniary interests; and bullying, harassment and inappropriate behaviour matters. In so recommending, the Committee also highlighted the importance of education for Members and staff about their legal rights and obligations in creating a safe, secure and respectful workplace.

A resolution for an Independent Complaints Officer was subsequently agreed to by the House in 2022.

Hybrid sittings in October and November 2021

The sitting periods scheduled for August and September 2021 were postponed due to the COVID-19 pandemic. Following this, the Legislative Assembly returned to sit in October and November. In a historic first, the House met in a hybrid arrangement, with some Members participating remotely via video link and others participating in person in the Chamber.

When the Assembly first met at midday on Tuesday 12 October it resolved that any Member not vaccinated against COVID-19, or who declined to disclose their vaccination status, could not enter the Chamber, except in the course of walking through to vote. The conditions and provisions for remote participation included:

- Members not physically present in the Chamber could only participate remotely by using the official video facility from their electorate office, parliamentary office or another location following consultation with the Speaker.
- The contributions of any Member participating via the official video facility would be recorded, published and broadcast as if the Member had been in the Chamber.
- The Standing and Sessional Orders of the Legislative Assembly would continue to apply except by resolution of the House.

- Members participating by official video facility could move any motion or amendment to a bill in consideration in detail.
- Members participating by official video facility could not vote, be counted for quorum, call for a division, call for a quorum to be counted, interject, or take or speak to a point of order (unless the point of order related to a question the Member had asked or answered during Question Time, or to an item of business in their name on the Business Paper).
- The Speaker would use a formal call list to allocate the call for each debate, on the advice of the Whips in consultation with the crossbench.

The House also agreed to an amended Routine of Business for the October and November sittings which provided for certain items of business (such as General Business Notices of Motions and Community Recognition Statements) to be given in writing only, (rather than orally in the Chamber).

Accounting for the missed sitting days in August and September 2021

To account for the lost opportunities to put questions to the Executive as a result of the cancelled August and September sittings, House agreed for the remainder of the 2021 sitting year to allow Members to lodge up to 16 (rather than nine) written questions per sitting week, with the Leader of the Opposition able to lodge up to 21 (rather than 12) written questions per sitting week.

Additionally, the House sat for an additional six days in November 2021 (to make up a total of 12 sitting days over that month), including sitting over three Fridays. The last time the House sat on a Friday was 25 November 2011.

Appointment of new Premier and Ministry

On 12 October, the Leader of the House, the Hon. Mark Speakman MP, informed the House that on 5 October the Hon. Gladys Berejiklian MP had resigned as Premier, and that the Hon. Dominic Perrottet MP had been subsequently elected and sworn in as the new Premier.

The Leader of the House provided details of the new Ministry formed by the Premier including the appointment of the Hon. Paul Toole MP as Deputy Premier, Minister for Regional New South Wales, and Minister for Regional Transport and Roads on 6 October. Further changes to the Ministry were announced on 21 December.

Jubilee Room sitting

On the morning of 19 November, the sitting commenced in the Chamber as usual, with the second reading debate on the Voluntary Assisted Dying Bill the principal item of business. Technical difficulties arose which impacted the broadcast and Hansard recording of the proceedings in the Chamber. Following consultation with Members, the proceedings were momentarily

adjourned. When the House resumed proceedings, it met in the Jubilee Room at Parliament House instead of in the Chamber. The House suspended Standing and Sessional Orders to authorise the sitting in the Jubilee Room. Mr Speaker made the following statement:

> "We are experiencing another historic first. To my knowledge, this is the first time, certainly in any of our lifetimes, that the Parliament of New South Wales will meet outside the Chamber….For the benefit of members, I confirm that there is no difficulty in conducting proceedings outside of the Chamber, in that the proclamation by which the Governor calls the House to meet at the opening of the session calls the Legislative Assembly and the Legislative Council together to assemble for the dispatch of business within the premises known as Parliament House. Relocating proceedings within the Parliament building is a decision that the House can authorise."

Once the technical difficulties had been resolved, the House resumed proceedings in the Chamber in the afternoon.

Motion regarding ensuring procurement free from products of modern slavery

On 25 November the Assembly agreed to a motion requiring the Parliament's Department of Parliamentary Services to take reasonable steps to ensure goods and service procured by and for the Houses of Parliament are not the product of modern slavery. The motion, moved by the Leader of the House by leave, also required the Department to report annually on several matters, including a statement of steps taken to ensure procured goods and services were not the product of modern slavery.

New South Wales Legislative Council

Election of President

The Honourable John Ajaka resigned as President of the Legislative Council of New South Wales on 24 March 2021. Mr Ajaka, a member of the Liberal Party, was a member of the Legislative Council from 24 March 2007 until 31 March 2021 and served as President from 21 February 2017 to 24 March 2021. Mr Ajaka was elected Vice Chairperson of the Commonwealth Parliamentary Association International on 28 September 2019.

The resignation of Mr Ajaka as President triggered examination and varying interpretations of a standing order, and required the Clerk to preside over the House and make a ruling during a controversial and prolonged election of the new President.

At the commencement of the sitting on Wednesday 24 March 2021, the Clerk announced the resignation of Mr Ajaka as President, and called for nominations for the office. Legislative Council elections are governed by Standing Order 13.

One Government member (the Honourable Natasha Maclaren-Jones) and one Opposition member (the Honourable Peter Primrose) were nominated. A ballot was conducted, resulting in 20 votes for Mrs Maclaren-Jones, 14 votes for Mr Primrose and eight informal votes. The Clerk informed the House that as neither candidate had received "a majority of the votes of members present" in accordance with SO13(3), neither candidate could be declared President. The Clerk then left the Chair until the ringing of a long bell.

The House resumed later that afternoon and the Clerk made a statement on the procedures for electing a President, noting advice received from the Crown Solicitor in 1966, that stated "the practical necessity of having a President chosen … must be the overriding consideration", and if a President cannot be elected, "a further attempt should be made to put the same question as it may have a successful result". With both candidates still before the House, the Clerk called for a second ballot, which yielded the same result. The Clerk left the Chair until the ringing of a long bell (to occur at a time suggested by the Leader of the Government). The House did not sit again until Tuesday 4 May 2021.

While the sitting was suspended, the Government obtained advice from the Crown Solicitor which expressed the opinion that according to standing order 13(2) Mrs Maclaren-Jones had received the greater number of votes and was therefore elected. The Clerk sought advice from Bret Walker AO SC, who stated that "a so-called "informal vote" is not a vote at all, within the meaning of the governing standing orders", and that Mrs Maclaren-Jones had received the greater number of votes and was therefore elected. The advice also noted that the standing order was likely drafted on the assumption that all members present would cast an effective vote.

When the House resumed, the Leader of the Government took a point of order to the ruling of the Clerk, stating that the Clerk's ruling that neither candidate had received a majority of votes was not consistent with the legal advices, which he then tabled. The Clerk advised the House that in order for him to declare a different outcome the House would need to dissent from his ruling, something which did not eventuate. On the request of the Leader of the Government, the Clerk again left the Chair until the ringing of a long bell.

On resumption, the Leader of the Government declared that Mrs Maclaren-Jones had been elected President. Government members conducted her to the Chair, where she commenced proceedings. The Opposition and Crossbench objected strongly. The Leader of the Opposition moved a matter of privilege suddenly arising, stating that the requirements of the standing order had not been met, that the House had no confidence in Mrs Maclaren-Jones, and that she be removed from the Chair. The motion was amended to require the Clerk to hold a fresh ballot which was agreed to on division.

The Clerk once again called for nominations. At this point another

Government member, the Honourable Matthew Mason-Cox nominated himself. The Government maintained their support for Mrs Maclaren-Jones. With 23 votes to 18, Mr Mason-Cox was declared President and conducted to the Chair.

Valedictory speech at the bar of the House

As the election for a new President was delayed, former President Ajaka did not have the opportunity to give a valedictory speech before resigning as a member of the Council. The House therefore resolved that the former President be heard at the bar of the House to give his valedictory speech and he did so on 9 June 2021. This procedure is used very rarely, and in the past has only been used to call witnesses to be examined by the House. Its use to facilitate Mr Ajaka's speech can be seen as a mark of the high regard in which he was held by members.

Sittings during COVID-19

Sittings in June to consider the 2021–2022 budget coincided with the rise of the Delta strain of COVID-19 in New South Wales and the first positive case in Parliament. On 24 June 2021, the date set aside for the budget, a Legislative Assembly member tested positive to COVID-19 and some members of both Houses and staff were required to isolate. Parliament House closed to all but party-nominated members and essential staff and the scheduled sitting was postponed for a number of hours. A quorum of members as well as staff underwent rapid COVID-19 testing before conducting a brief ten minute sitting late in the afternoon to pass the Appropriation Bill 2021 and the Appropriation (Parliament) Bill 2021.

Sittings scheduled for August were postponed until September using a sessional order adopted in March 2020. Throughout the August and September 2020 lockdown in Sydney, the President met regularly with members to discuss health advice and options for sittings of the House. It was unclear whether a virtual sitting could be held as the terms "present" and "presence" in the Constitution Act 1902 (NSW) arguably require the physical presence of members in the Chamber. Rather than a virtual sitting, a temporary hybrid model was adopted on 14 September 2021 with a quorum of eight members attending proceedings in the Chamber and other members "attending" via videoconference. The hybrid sitting on 14 September did not proceed past a debate on a point of order as a Minister was not present (see below) but when the House returned in October, it agreed to a number of temporary orders and motions to authorise and facilitate remote participation in House proceedings.

As the COVID-19 wave eased through October and November 2021, proceedings transitioned back to the in-person, socially distanced practices

adopted at the start of the year. An additional five sitting days were held in November in lieu of the postponed August and September dates.

Absence of a Minister

In early September 2021, the Leader of the Government indicated to the President that no Minister or Parliamentary Secretary would attend the scheduled September sittings until public health advice confirmed it was safe to do so. (Standing order 34 provides: "The House will not meet unless a Minister is present in the House".) The sessional order concerning postponement required the President to consult with members before postponing a sitting. While a majority of members agreed to postpone the sittings scheduled for the first week of September, a majority did not agree to postpone a later sitting scheduled for 14 September and so the sitting commenced as scheduled.

At the commencement of the sitting on 14 September, the Deputy President drew attention to the absence of a Minister or Parliamentary Secretary in the House and took a point of order that, under standing order 34, the House could not presently meet. The President allowed debate on the point of the order and the members present then debated the operation and applicability of the standing order as well as the rights, powers and privileges of the House. At the end of the debate the President upheld the point of order but gave a statement highly critical of the use of the standing order "to subvert" the will of a majority of members to meet. The President highlighted the Council's constitutional role as a House of review and its independence from Executive Government. He concluded by noting a number of proposals to amend the standing order but held that: "For today, I am left with standing order 34 in the form that I find it" and left the chair until the ringing of a long bell.

When the House returned on 14 October, the House agreed to modify standing order 34. A new proposed standing order now provides that, in the absence of a Minister of Parliamentary Secretary, a member may move a motion without notice that the House may continue to sit but will not consider Government business in their absence.

Appropriation (Parliament) Bill 2020 sent for assent

In 2020, the Council amended the Appropriation (Parliament) Bill 2020 but the Council's amendments were not included in the bill sent to the Governor for assent. (Under s 5A of the Constitution Act 1902 (NSW), the Legislative Assembly may forward bills "appropriating revenue or moneys for the ordinary annual services of the Government" for assent even when the Council has not agreed to the bill in the same form.)

On 17 February 2021, the House agreed to a private members' motion noting its disagreement with the action taken and maintaining the Council's position

that the annual Appropriation (Parliament) Bill is not a bill "appropriating revenue or moneys for the ordinary annual services of the Government" within the meaning of s 5A, as "the Legislature is not an instrument of the Government and the Government does not provide services through the Legislature". The Council forwarded the resolution to the Assembly by message.

Independent Complaints Officer

Progress on the adoption of an Independent Complaints Officer continued in 2021 but was not concluded. The Privileges Committee tabled its report on a proposal for a Compliance Officer for the NSW Parliament in May, recommending that a Compliance Officer be appointed to investigate "low level, minor misconduct" such as misuse of entitlements and bullying, and recommending changes to the Members' Code of Conduct. The Legislative Assembly's Privileges Committee then tabled its own report on the same subject in August. As there were differences between the two committees' recommendations, the President referred a further inquiry to the Legislative Council Privileges Committee to resolve the differences. The committee's report, tabled in November, recommended a revised resolution to establish a position of "Independent Complaints Officer", rather than a Compliance Officer, and incorporating most of the recommendations of the Legislative Assembly committee. Debate on the motion to establish the position continued into 2022 and both Houses have now agreed to establish the role and the position has been advertised.

Management of bill inquiries

In June 2021, the Chairs' Committee agreed to a number of proposals to manage the increasing number of, and workload involved in, bill inquiries, particularly those with short timeframes. These proposals included the use and promotion of a standardised online questionnaire to gather views from the general public. While members of the public are still able to provide a formal submission to a bill inquiry, they are encouraged to instead participate via a questionnaire. In addition, committees invite nominated stakeholders to make a submission and appear as a witness, and pro forma submissions (the same text submitted by multiple stakeholders) are not accepted.

Broadcast of committee hearings

The Legislative Council began broadcasting regional hearings in May 2021 after complaints from members of the media about access to hearings of an inquiry into health and hospital services in rural, regional and remote New South Wales. (Previously, committee hearings held at Parliament House were broadcast live on the Parliament's website but not offsite hearings.)

Committee hearings also moved online in July due to the COVID-19 Delta strain and associated lockdown, with members and witnesses appearing via Webex. In July committees also began broadcasting their proceedings live on YouTube where the recordings remain available.

e-Petitions

On 19 October 2021, the Council agreed to a sessional order authorising electronic petitions, or "e-Petitions". The sessional order is similar to the Council's standing orders relating to standard petitions in its rules about the form, content and presentation of petitions and adds that an e-Petition must be supported by at least five people before it is open to the public for signatures and may be open for signatures for a period of one, three or twelve weeks.

Constitution Amendment (Virtual Attendance) Bill 2021

The Constitution Amendment (Virtual Attendance) Bill 2021 was introduced by a crossbench member in October 2021. The bill seeks to amend the Constitution Act 1902 (NSW) to allow remote participation of members in House proceedings by audio visual link in the event of a public emergency. Though not supported by the government, the bill passed the House with minor amendments, including that remote participation can only be authorised when requested by a majority of members. It was forwarded to the Legislative Assembly in October 2021, where it was passed and assented to in 2022.

ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2021 (No. 2)

The ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2021 was re-introduced by a crossbench member in October 2021. (The bill was identical to a previous bill that was passed by the Council but subsequently defeated in the Assembly in 2020.) The bill aimed to ensure that certain independent statutory authorities be funded independently through dedicated appropriations legislation subject to parliamentary oversight.

On its introduction, the Leader of the Government took a point of order that the bill was a money bill which, under the Constitution should have originated in the Assembly. The President took submissions from members and sought legal advice. On 9 November, the President ruled that, while much of the bill could be introduced in the Council, a clause seeking to establish a contingency fund was an appropriation and therefore the bill had to originate in the Assembly. The bill was withdrawn and a new version without the offending clause was introduced a few days later. The new bill, the ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2021 (No. 2), included roles for parliamentary committees in recommending funding for independent

agencies and added the Audit Office, the Department of the Legislative Council and the Department of Parliamentary Services as additional entities covered by the bill.

The House passed the bill and included a suggested amendment in the message to the Assembly that the Assembly consider amending the bill to constitute a parliamentary committee to review budget information and recommend the annual appropriations for the Department of the Legislative Assembly.

Queensland Parliament

Same question rule

Standing Order 87(1) states that, unless the Standing Orders otherwise provide, a question or amendment shall not be proposed which is the same as any question which, during the same session, has been resolved in the affirmative or negative.

Standing Order 150 also provides that no amendment, new clause or schedule to a bill shall be moved which is substantially the same as one already negatived by the House unless there has been an order of the House to reconsider the Bill.

On 2 December 2020 the House passed the COVID-19 Emergency Response and Other Legislation Amendment Bill 2020 without amendment. The bill received assent on 4 December 2020. The amendment bill amended the COVID-19 Emergency Response Act 2020 by inserting s.4A into the principal act. Section 4A provided the meaning of 'COVID-19 legislation expiry day' as being the earlier of 30 April 2021 or another day prescribed by regulation.

The COVID-19 Emergency Response and Other Legislation Amendment Bill 2021 was introduced on 11 March 2021. The bill sought to amend s.4A by providing that the meaning of COVID-19 legislation expiry day is the earlier of 30 September 2021 or another day prescribed by regulation. In substance, the bill sought to extend the operation of COVID-19 legislation by six months.

In a ruling on 20 April 2021 the Speaker noted that at the first instance this appeared to be an example of a particular clause of a government bill seeking to repeal or amend a clause of a government bill passed earlier in the session. However, in this case the amending act essentially set a sunset provision of 30 April 2021 which affected by definition a range of legislative provisions. The bill before the House seeks to extend that sunset provision to 30 September 2021.

The Speaker noted that in public policy a sunset provision is a relatively unusual measure within a statute, regulation or other law which provides that the law shall cease to have effect after a specific date. Unless further legislative action is taken to extend the law, it will cease on that date. A sunset provision essentially means that legislation must be introduced anew to extend the date of

application of the law and ensures public and parliamentary debate on the need for the powers will be regularly held.

The Speaker ruled that the same question rule was not enlivened by an amendment to a sunset provision or a new sunset provision where the question was whether to extend the sunset provision because the question posed was essentially a different expiry date to that originally fixed. It is substantially a new or different question.

The Speaker advised that the position might be different if the original sunset clause had been subject to amendment to either lengthen its term to the new date (and such amendment was defeated at the time) or shorten the time from the proposed new date (and such amendment was accepted at the time).

South Australia House of Assembly

Minority Government

A House of Assembly Government Member (Liberal Party) moved to the cross-bench after allegations of inappropriately touching another Member at a Christmas Party in December 2019. In 2020, six more Government members were caught up in an Independent Commission Against Corruption (ICAC) investigation into the misuse of Country Members Accommodation Allowance. In the face of an ICAC investigation, Members repaid various amounts, one resigned as Whip, two stood down from the Ministry and one resigned as President of the Upper House. One of the accused, now facing court, resigned from the Liberal Party and moved to the cross bench.

The culmination of these events effectively placed the Government in minority, (Liberal 23, Labor 19 and Independents 5). In early October 2021, another Liberal Member (Member for Kavel) left the Party to become an Independent and sit on the cross bench.

Government loses Control

The next sitting day after the resignation of the Member for Kavel from the Liberal Party, following several suspensions of standing orders which the Government was unable to prevent, the following resolutions were passed:

- To introduce and enable the passage through all stages of the Constitution (Independent Speaker) Amendment Bill;
- To introduce a sessional order empowering the Speaker to nominate alternative sitting days to the sitting calendar in the public interest, without a written request from a Minister;
- To establish a quasi-privilege committee, assisted by senior legal counsel, to investigate whether the Deputy Premier (in her capacity of Minister for Planning) had misled the House and had a conflict of interest in her decision not to approve a deep-sea port on Kangaroo Island;

- Resolved to remove the Speaker pursuant to the Constitution Act; and
- To install the Member for Kavel as the new Speaker.

With only 22 Members on the floor of the House (from 47 Members in total), the Government was powerless to stop the Opposition and Cross Bench Independents from controlling the agenda.

Constitution (Independent Speaker) Amendment Act and Sittings

The Constitution (Independent Speaker) Amendment Act requires the Speaker to be an independent member other than during a relevant election period and removed the power of the Government to prorogue the parliament during the relevant election period. The Bill was assented to in November 2021, with a general fixed term election scheduled for 19 March 2022.

An independent Speaker is defined as one who must not, while occupying that office be a member of a political party or actively participate in the votes and proceedings of a political party. The relevant election period is from 1 July in the year immediately before a general election. A general election is set as a fixed date, being on the third Saturday of March, every four years.

The removal of the ability to prorogue parliament during the relevant period will result in the lower House being dissolved without the parliament being prorogued.

The sessional order empowering the Speaker to rearrange the sitting calendar had the potential to enable sittings of the House of Assembly to be held right up to the issuing of the writs for the 19 March 2022 state election.

In November 2021, a motion moved by a Minister to adjourn the House until 3 May 2022 (after the state election) was defeated on the casting vote of the new Speaker. The House subsequently adjourned to 30 November 2021 and sat for an additional week beyond the calendar set out by the Government.

Removal of Speaker

In October 2021 an opposition member moved that the Speaker be removed from the office of Speaker. On a division, the motion was passed. Before vacating the Chair, the Speaker made a brief statement. This is the first time that the Speaker of the House of Assembly, has been removed from Office, pursuant to the Constitution Act.

An Independent cross bench Member was nominated (Mr Cregan) as Speaker. A government Member was also nominated (Mr Treloar). Following a secret ballot, the Clerk declared Mr Cregan the duly elected Speaker.

Code of Conduct

Over the past 20 years several attempts had been made to adopt a Code of Conduct for Members of the South Australian Parliament. Efforts included a

Joint Committee report tabled in 2004 recommending a Statement of Principles. It was only in 2016 that the Statement of Principles was adopted.

In 2021 the Equal Opportunity Commissioner's Report into Harassment in the Parliament Workplace found that the Statement of Principles did not amount to a Code of Conduct for the purposes of the Independent Commission Against Corruption Act. Nor did the Statement clearly address behavioural expectations.

In October 2021, a Joint Committee was convened in response to the tabling of the Commissioner's report . The report recommended a Code of Conduct and the Joint Committee also recommended the adoption of a Code of Conduct. A draft Code was formulated with reference to the previous Statement of Principles and Codes of Conducts adopted in other jurisdictions. Both Houses adopted the Committee's recommendations, and the Code of Conduct was adopted and incorporated into Standing Orders in November 2021.

Select Committee with Senior Counsel

A Select Committee on the conduct of the Deputy Premier regarding an unsuccessful port application was established which could be regarded as a quasi-privilege committee. The Select Committee was assisted by senior legal counsel, with the power to examine witnesses, attend all meetings and participate in committee deliberations.

The Committee's final report included recommendations highly critical of the Deputy Premier. Following the tabling of the Report, the Opposition moved a motion of no confidence in the Deputy Premier. The motion passed with the support of Opposition and Cross Bench Members.

In the sitting week following the Report's tabling, the Speaker gave precedence to a motion to consider the recommendations arising from the Committee's inquiry. The House resolved that the Deputy Premier had misled the House on three occasions and that she be suspended from the service of the House for six days (two days for each finding). The House also found the Deputy Premier guilty of contempt for having an actual and perceived conflict of interest. Further, the House agreed that the Deputy Premier breached the Ministerial code of conduct and considered that breach of sufficient severity to amount to a contempt. The Select Committee referred the consideration of any breach of the Ministerial code of conduct to the Ombudsman, pursuant to the Ombudsman Act.

The Deputy Premier did not attend the House during the debate and the House of Assembly was dissolved before the six days suspension could be fully applied. While the Deputy Premier stood aside as Attorney General and Minister for Planning pending the Ombudsman's inquiry, she maintained a membership of Executive Council.

Early recall of the House

In November 2021, the new Speaker made a statement regarding the parliamentary sitting programme predicting extra sitting days for the current session with further detail to be advised.

It was questionable whether the sessional order, passed in October 2021, actually allowed the Speaker to propose new sitting dates or to simply bring forward the next sitting day to an earlier time, with subsequent sitting dates to be decided by the House, however, this was never tested. Later in November the House rescinded the sessional order, the Government having temporarily regained the support of former Liberal independents for this purpose.

The House currently stands adjourned (nominally) to 3 May 2022. Although this date may be changed by the incoming Government should it wish to.

As a postscript to these events, in early January 2022, the Speaker presented a letter signed by 25 Members (majority plus one) of the House of Assembly calling on the Government to recall the House to debate the Government's response to the COVID-19 situation. The Premier refused.

Victoria Legislative Council

Regional sitting

On 29 April 2021 the Legislative Council held a regional sitting in Bright in North East Victoria. The regional sitting was originally intended to be held in October or November 2020 but due to COVID-19 restrictions it was pushed back into 2021. The purpose of the regional sitting was to acknowledge the significant impacts of the 2019–20 bushfires in that part of the state and provide bushfire affected communities with direct communication with members of Parliament. Bright was chosen as it was a central hub for bushfire response and had a role in the recovery of the region.

The House agreed to three separate motions to set up the regional sitting. The first motion agreed to on 6 February 2020 set the original time frame of October or November 2020 in which the regional sitting should be held and specified it would be held in North East Victoria. The motion also set out the process for choosing the specific location and date for the regional sitting. The second motion agreed to on 2 June 2020 amended the initial resolution of the House to require the sitting to be held by 30 June 2021. The third motion agreed to on 17 March 2021 set the order of business for the regional sitting.

This was the first time a regional sitting had been held in Victoria since 2012.

Remote participation of Members

On 15 September 2021 the Legislative Council agreed to temporary orders which allowed members to participate in sittings remotely until 31 December 2021. Members were able to participate using an audio-visual link as long as the

link was stable enough that the chair could verify the identity of the Member. Members were able to participate in the same way as if they were present in the Chamber, with some exceptions. Members participating remotely could not:

- chair the debate;
- refuse leave;
- take, or speak on, a point of order unless the point of order was taken during their contribution;
- call for a quorum or a division;
- vote in a division;
- move a closure motion or be counted in support of a closure motion; and
- be counted to satisfy an absolute or special majority requirement.

To facilitate remote participation additional screens were installed in the Chamber to allow the Chair and Members to view remote participating members.

COVID-19 vaccination requirements for members of the Legislative Council

On 14 October 2021 the House agreed to a motion to impose proof of vaccination requirements on members of the Legislative Council. The stated purpose of the motion was to protect the health and safety of members and parliamentary staff and reduce the risk of transmission of COVID-19. The motion required proof of vaccination to be provided to the Clerk by the following deadlines:

- Proof of a first dose of a COVID-19 vaccine by 15 October 2021 or proof of an appointment to receive a first dose between 15 and 22 October 2021.
- Proof of a second dose of a COVID-19 vaccine by 26 November 2021.

If a member did not comply with the terms of the resolution of the House by these dates the member was suspended from attending the Chamber or Parliamentary Precinct until the second sitting day of 2022 and had their security pass revoked for that period. The Clerk was required to advise the House and members of any members suspended. If a member provided proof of vaccination after being suspended, then their suspension was lifted and the Clerk informed the House and members accordingly. Amendments were moved by two members to the motion to:

- allow members to attend the Chamber or Parliamentary Precinct regardless of vaccination status if they produced a negative PCR test or Rapid Antigen Test prior to attending;
- remove the requirement for the Clerk to report the details of members who did not meet the requirements of the resolution; and
- place an expiry on the resolution tied to the rate of double dose vaccinations of the members of the Legislative Council.

The amendments were defeated.

On 26 October 2021 the Clerk informed the House of the suspension of four

members from the Chamber and the Parliamentary Precinct for not providing proof of vaccination within the required timeframe. These members were still able to participate remotely during their suspension due to temporary orders agreed to by the House on 15 September 2021. The temporary orders allowed members to participate using an audio-visual link with some exceptions to their usual participation had they been able to attend in person.

On 28 October 2021 the Clerk notified members that the suspension of one of the four members had been lifted. On 16 November 2021 the suspension of two more members was lifted and on 17 November the suspension of the final member was lifted. All members of the Legislative Council complied with the Order of the House by 17 November 2021.

CANADA

House of Commons

Appointment of 30th Governor General of Canada

On 26 July 2021, Her Excellency the Right Honourable Mary Simon was sworn in as Canada's first Indigenous governor general. She is the 30th governor general since Confederation. Ms. Simon has had a long career in journalism, diplomacy, and advocacy, and has worked on Arctic and Indigenous issues at institutions such as Inuit Tapiriit Kanatami, the Inuit Circumpolar Council, the Arctic Children and Youth Foundation (which she founded) and the National Committee on Inuit Education.

Dissolution, general election, and opening of Parliament

On 15 August 2021, Parliament was dissolved. A general election was held on 20 September 2021. It resulted in a 44th Parliament that looks similar to the 43rd, with four recognised parties: the Liberal Party of Canada (forming a minority government with 159 seats), the Conservative Party of Canada (119 seats), the Bloc Québécois (32 seats) and the New Democratic Party (25 seats). The remaining three seats are held by two Green Party members and one independent member.

On 26 October 2021, the cabinet was sworn in at Rideau Hall. The 44th Parliament convened on 22 November and re-elected Anthony Rota (Nipissing—Timiskaming) as Speaker of the House of Commons. On 23 November, Governor General Mary Simon delivered the Speech from the Throne in Inuktitut, English and French. It was the first time an Indigenous language had been used in a Speech from the Throne.

Financial procedures

Due to the COVID-19 pandemic, no budget was presented in 2020. On

19 April 2021, Finance Minister Chrystia Freeland presented the first budget since 2019. A motion to adopt, in general, the budgetary policy of the government was adopted on 26 April, after four days of debate.

On Monday 6 December 2021, the House adopted a motion by unanimous consent to allow the Deputy Prime Minister and Minister of Finance, Chrystia Freeland (University—Rosedale) to present an economic and fiscal update on Tuesday 14 December 2021. Accordingly, Ms. Freeland gave notice of a ways and means motion and presented the economic and fiscal update on that day.

Committees

In 2021, three special committees were created:

- On 16 February 2021, the House adopted an opposition motion from Tracy Gray (Kelowna—Lake Country) to establish a special committee that would examine and review all aspects of the Canada–United States economic relationship. The Special Committee on the Economic Relationship between Canada and the United States met for the first time on 23 February 2021.
- On 16 April 2021, the House adopted a motion by unanimous consent to create a special joint committee of the Senate and the House of Commons to review the provisions of the Criminal Code related to medical assistance in dying and their application. The committee was created pursuant to subsection 5(1) of An Act to amend the Criminal Code (medical assistance in dying), and its membership consists of ten members of Parliament and five senators.
- On 8 December 2021, the House adopted a motion moved by Erin O'Toole (Durham) to create a Special Committee on Afghanistan (AFGH). The order intends AFGH to hold hearings on the events surrounding the fall of Afghanistan to the Taliban in 2021.

Points of order: use of masks

In 2021, on account of the ongoing pandemic, more members began wearing masks during proceedings. This has led the House to consider procedural and logistical questions related to their use.

The matter of masks as props was first raised on 25 January 2021, through a point of order by Chris Bittle (St. Catharines), comparing the masks being worn by some members at the time to buttons or stickers, which are forbidden. Assistant Deputy Speaker Carol Hughes (Algoma—Manitoulin—Kapuskasing) requested that masks with sayings on them not be used in the House because they are props. The matter was raised again on 27 January 2021, when Mark Gerretsen (Kingston and the Islands) rose on a point of order to indicate that certain members were still wearing masks with logos. Some members argued

that the House's practice on the use of props has been variable in the past. On 2 February 2021, the Speaker ruled on the matter, reiterating that the use of props to illustrate a point has always been contrary to the rules and practices of the House. Thus, masks should be plain and neutral, and should not be used to deliver a message or express an opinion. The Speaker asked the members to take this ruling into account in their choice of masks to wear in the House.

On 25 February 2021, Andréanne Larouche (Shefford) rose on a point of order to signal that there were problems with simultaneous interpretation: the interpreter was having difficulties hearing Marie-France Lalonde's (Orléans) remarks due to the thickness of her mask. Deputy Speaker Bruce Stanton (Simcoe-Nord) informed Ms. Lalonde of the issue and suggested she speak without a mask. Claude DeBellefeuille (Salaberry–Suroît) encouraged Ms. Lalonde to instead use one of the surgical masks available at the entrance to each party's lobby. Ms. Lalonde sought and received unanimous consent to change her mask, and the House took a short break to allow her to do so. On 8 March 2021, Ms. DeBellefeuille rose on a question of privilege following the above point of order, asking the Speaker to rule on the appropriate balance between the use of masks and the right to interpretation services. The Speaker delivered his ruling on 11 March 2021, stating that an agreement among parties had been reached. Members who want to wear a mask during their interventions in the House and in committee must use surgical masks, which are available in the lobbies. At any other time, members may wear any mask they prefer.

Point of order: rule of anticipation

Following the vote at second reading of Bill C-218, An Act to amend the Criminal Code (sports betting), and its referral to the Standing Committee on Justice and Human Rights on 17 February 2021, Mark Gerretsen (Kingston and the Islands) rose on a point of order and requested unanimous consent for Bill C-13, An Act to amend the Criminal Code (single event sport betting), to be discharged and withdrawn from the Order Paper. He reasoned that the bills had similar aims, and in the interest of moving forward with legislation efficiently, the government would focus its energy on supporting Bill C-218. Unanimous consent was denied.

On 18 February 2021, Mr. Gerretsen rose on a point of order and requested that the Speaker rule on the impact the second-reading vote on Bill C-218 has on Bill C-13 and the similarity between the two bills. The Speaker delivered his ruling later that day, stating that Bill C-13 may not be proceeded with. He explained that both bills seek to amend the same paragraph in the Criminal Code as it pertains to sports betting, with C-218 proposing to repeal paragraph 207(4)(b) completely and C-13 amending the paragraph. The Speaker further explained that, by adopting C-218 at second reading, the House had approved

the principle of the bill and, thus, approved the intention to repeal paragraph 207(4)(b) of the Criminal Code. He expressed the opinion that it would be impossible for Bill C-13 to proceed, as it seeks to amend a paragraph that would no longer exist with the adoption of C-218. The Speaker encouraged members wishing to participate in deliberations related to the provisions of C-218 to do so in committee.

Contravention of the Conflict of Interest Code

On 15 June 2021, the Speaker tabled a report from the Conflict of Interest and Ethics Commissioner entitled "Ratansi Report" which concluded that Yasmin Ratansi (Don Valley East) had contravened section 8 of the Conflict of Interest Code for Members of the House of Commons, but determined Ms. Ratansi acted in good faith after becoming aware of the situation. The Commissioner recommended that no sanction be imposed. On 22 June 2021, pursuant to subsection 28(9) of the Code, Appendix I of the Standing Orders, Ms. Ratansi addressed the House.

Update on COVID-19 measures

The House returned from its winter adjournment on 25 January 2021. At the beginning of the sitting, Mona Fortier (Ottawa—Vanier) sought and received unanimous consent for the adoption of a motion organising parliamentary proceedings until 23 June 2021. The motion was similar to the special order adopted in September 2020, with additional provisions for an electronic voting application.

The first sitting of the 44th Parliament occurred on 22 November 2021, and on 24 November, Mark Holland (Ajax), Leader of the Government in the House of Commons, put forward a motion to manage House proceedings until 23 June 2022. The motion, as amended by Gérard Deltell (Louis-Saint-Laurent), was adopted on 25 November. It includes provisions for virtual and hybrid proceedings of the House and its committees as well as for electronic voting. The House was still sitting in a hybrid format at the end of 2021.

Senate

Opening of Parliament

The opening of the Forty-fourth Parliament occurred on 23 November 2021. Her Excellency Mary May Simon, who was sworn in as Canada's first Indigenous Governor General on 26 July 2021, delivered her first Speech from the Throne in the Senate Chamber. Portions of Her Excellency's speech were read in Inuktitut.

Election of Speaker pro tempore

On 8 February, the Senate adopted the fourth report of the Committee of Selection. That report recommended that, for the remainder of this parliamentary session, the position of Speaker pro tempore be filled by means of a secret ballot, using a process to be established by the Speaker after consulting with the Leader of the Government, the Leader of the Opposition, and the leader or facilitator of any other recognised party or recognised parliamentary group. On 5 May, Speaker George Furey made a statement at the start of the sitting announcing that senators who wished to be candidates had until 10 May to communicate their interest to the Clerk of the Senate. On 25 May, the Speaker announced that only one had expressed interest, and therefore an election was not required, and the post was filled by acclamation. Senator Ringuette was named Speaker pro tempore for the remainder of the session.

On 23 November, in the new Parliament, the Senate adopted a motion to fill the position of Speaker pro tempore by means of a secret ballot, using the process established in the previous session. In this instance, on 7 December, the Speaker announced that the Honourable Senators Patricia Bovey and Pierrette Ringuette had put their names forward and each made a short statement, following which senators had until 6pm. the following day to cast their vote. On 9 December, the Speaker announced the results of the election, whereupon a motion that the Honourable Senator Ringuette be named Speaker pro tempore for the remainder of the session was deemed moved, seconded and adopted.

Senators

Eight vacancies were filled in 2021. All new senators were selected using the Senate appointment process established by Prime Minister Justin Trudeau in 2015, which allows Canadians meeting the assessment criteria to apply for a seat in the Senate. The Prime Minister then selects individuals from a list of candidates recommended by the Independent Advisory Board for Senate Appointments.

The standings in the Senate at the end of 2021 were as follows: 42 senators with the Independent Senators Group (ISG), 18 senators from the Conservative Party of Canada, 14 senators with the Progressive Senate Group (PSG), 12 senators with the Canadian Senators Group (CSG), six non-affiliated senators and 13 vacancies. The ISG, therefore, represented 46 per cent of sitting senators.

Hybrid sittings

On 17 December 2020, the Senate adopted a motion to extend the provisions concerning hybrid sitting of both the Senate and committees from 1 February to 23 June 2021, subject to some additional conditions. On 23 June, as the Senate had not yet risen for the summer, it adopted a motion stipulating conditions for

sittings scheduled to occur on 28 and 29 June.

On 25 November, at the beginning of the new Parliament, the Senate adopted a motion allowing for hybrid sittings of both the Senate and committees until 31 March 2022. The content of the motion was similar to that of motions adopted in the previous Parliament, and included provisions relating to the technological requirements to participate in hybrid sittings or committee meetings, modifying the Senate's sitting hours, outlining the process for votes and allowing for documents to be deposited electronically with the Clerk of the Senate. After the adoption of the motion, the Speaker advised the Senate that the first hybrid sitting of the Senate would be on 30 November.

As hybrid sittings continued and senators were able to participate via Zoom, the Speaker also presided over the sitting virtually on a few occasions for the first time. The Speaker pro tempore attended in person and took the chair on occasion.

Physical distancing in the chamber

In order to facilitate physical distancing, the Senate adopted a motion on 8 February that allowed senators to speak and vote from a seat other than their assigned place, including a seat located in the Senate galleries; required them to remain seated when speaking from a seat located in the Senate galleries; and allowed them to speak while either seated or standing on the floor. This motion renewed the provisions of a similar motion that expired at the end of 2020, and its provisions were in place until late June.

Standing Committee on Audit and Oversight

On 1 October 2020, the Senate created the Standing Committee on Audit and Oversight with a mandate to provide oversight to the Senate's operations and expenditures. The committee is responsible for overseeing the Senate's external and internal audit functions, and for reporting publicly to the Senate with its observations and recommendations. One unique feature for this new committee is that for the first time in the Senate's history, a committee has been created which formally includes non-parliamentarians in its membership. The committee is currently composed of four senators, representing each of the Senate's current recognised parties or recognised parliamentary groups, and two external members, selected after a competitive search which included over 200 applicants. The two successful nominees were selected for their extensive experience in accounting, audit, financial oversight and good governance practices. The external members join the senator members in providing independent oversight and advice.

Vaccine policy

On 28 October, following consultations between the leaders and facilitators of all recognised parties and parliamentary groups, the Speaker released a statement advising that senators would need to be fully vaccinated against COVID-19 in order to participate in Senate proceedings in person, effective 22 November. On 4 November, the Steering Committee of the Standing Committee on Internal Economy, Budgets and Administration approved the Senate Policy on Covid-19 Vaccination, which came into effect on 5 November. The policy mandated that all Senate staff be vaccinated, effective 22 November. Members of the Parliamentary Press Gallery, visitors, contractors, volunteers and interns are also required to be fully vaccinated in order to have access to Senate workplaces.

Harassment policy

The Senate Harassment and Violence Prevention Policy was tabled in the Senate on 16 February 2021. This revised policy, which implements the requirements of Part II of the Canada Labour Code and the Work Place Harassment and Violence Prevention Regulations in relation to a workplace harassment and violence prevention policy, came into effect on 12 August. The policy describes the roles and responsibilities of every person at the Senate in ensuring the Senate workplace is welcoming, professional and respectful.

Alberta Legislative Assembly

Hybrid voting

In May, the Legislative Assembly of Alberta adopted temporary amendments to its Standing Orders to permit "hybrid" voting. That is, to adhere to the public health measures in light of the COVID-19 pandemic, Members were permitted to choose to vote on matters before the Assembly in person, in the Chamber, or virtually, using electronic means via Microsoft Teams.

The temporary amendments provided that the interval between the division bell for all recorded votes remained at 15 minutes (instead of being reduced to a one-minute interval after the first recorded vote in the Committee of the Whole). In addition, Members moving an amendment were required to provide electronic copies of the amendment (in addition to paper copies) to the Clerk of the Assembly for distribution to all Members so that Members voting remotely could see the amendment on which they were voting.

The hybrid recorded vote was conducted such that the Members who were present in the Chamber were counted first, according to the usual procedure, and then those voting remotely were counted alphabetically through a roll-call vote. When voting remotely, Members were required to have their cameras on and their faces visible for the duration of the voting process.

The temporary amendments lapsed at the end of the spring 2021 sitting of the Assembly (June 2021).

British Columbia Legislative Assembly

COVID-19 pandemic

Following a brief sitting in December 2020, the House resumed sitting on 1 March 2021, and adopted a new Sessional Order to continue with hybrid proceedings (the previous Sessional Order expired on 31 December 2020). The Sessional Order was similar to previous orders with some minor changes. This included a provision that if a division is requested on a closure motion (as set out in Standing Order 46) or a time allocation motion (as set out in Standing Order 81.1), the division would not be deferred, as with other divisions under the Sessional Order, but would proceed forthwith 15 minutes after the division is called, unless the House or the Committee (as the case may be) unanimously agrees otherwise. For this spring sitting period, the majority of Members attended Chamber proceedings virtually through Zoom, with only a limited number attending in person.

On 3 September 2021, the Legislative Assembly Management Committee (LAMC) agreed to implement a proof of COVID-19 vaccination programme applicable to all Members, caucus staff, and employees working on the Legislative Precinct, as well as visitors to the Parliament Buildings. In alignment with the broader provincial proof of vaccination requirement, all persons aged 12 and older seeking entry into buildings on the Precinct were required to have proof of at least one dose of a COVID-19 vaccine by 13 September and proof of two doses by 24 October.

For the most part, there was a return to pre-pandemic procedures during the fall sitting period. When the House resumed on 4 October 2021, it marked the first time since March 2020 that all Members could attend Chamber proceedings in person. This was also the first time since 5 Marchh 2020, that the usual three Table Officers were present at the Table during Routine Business and formal divisions. Members still had the ability to attend proceedings virtually as required and safety protocols, including proof of vaccination and the requirement to wear a face covering in common areas, remained in place.

Administration and governance

On 27 May 2021, the Clerk reported to LAMC that the Legislative Assembly Administration had completed all of the action plan commitments in response to the nine recommendations from the 2020 Workplace Review report. This includes the release of an Internal Communications Plan on 29 April 2021, that seeks to improve coordination and transparency throughout the organisation and foster collaboration. In addition to enhancing existing communication

mechanisms and practices, the plan incorporates best practices, standardises expectations, and outlines key responsibilities to address identified gaps. These include interdepartmental information-sharing sessions, processes to address access issues and share information with employees who do not routinely use devices, and virtual panels and discussions on new policies and initiatives.

Another document created in response to the Workplace Review report is the *Legislative Assembly Administration Governance Framework*. Released on 4 May 2021, the framework provides clarity on how decisions are made at the Legislative Assembly, and outlines roles and responsibilities for those who serve in a senior decision-making capacity and the structures that exist to support decision-making. The framework also references an Employee Engagement Committee which has been established to develop an action plan based on the results of the first annual employee engagement survey distributed to all Assembly employees on 6 April 2021. The survey, which had an 85 per cent response rate, was also issued in response to the Workplace Review report and was developed by Human Resource Operations in consultation with an external service provider.

On 8 July 2021, LAMC formally adopted a revised Respectful Workplace Policy that is applicable to all Legislative Assembly employees, caucus staff, and Members. This policy builds on existing workplace policies and standards of conduct and replaces the Respectful Workplace Policy that the Committee approved in principle on 3 July 2019. It establishes shared workplace standards of conduct among different participant groups who do not share an existing workplace conduct policy and identifies roles and responsibilities for preventing and addressing incidents of bullying, harassment, discrimination and violence within the Legislative Assembly.

An initial 2021–22 Legislative Assembly Administration strategic plan was approved in principle by LAMC on 17 November 2021. Once in final form, the 2022–23 strategic plan will be a three-year rolling plan, updated regularly with input from Administration staff and leadership. The initial plan outlines the Administration's purpose, principles and sets out key priorities: enhance the Legislative Assembly's organisational capacity to provide unified, innovative and seamless support to the Legislative Assembly and Members; invest in modern secure and sustainable infrastructure; and promote engagement, diversity, equity, inclusion and accessibility, and learning.

Residential School Memorial

Following the announcement by the Tk'emlúps te Secwe'pemc Nation that it had located the remains of 215 children in unmarked burial sites at the former Kamloops Indian Residential School in May 2021, several items including shoes and stuffed toys, were placed on the front steps of the Parliament Buildings as a

memorial. Over the weeks that followed, hundreds of additional mementos were added to the display. The Assembly committed to caring for these memorial items and keeping them undisturbed during this period of mourning. These items were then carefully removed in October under the guidance of Lou-ann Neel, a residential school survivor and Curator, Indigenous Collections, at the Royal British Columbia Museum. Community volunteers and Assembly employees took home shoes and stuffed toys to be washed and dried with care. All the salvaged items are being repackaged and distributed to Indigenous organisations, while some will be incorporated into the museum collection or burned in a sacred fire in memory of those whose lives were impacted. In addition, a ceremony to honour the memory of residential school survivors and those who did not return home was held in the Hall of Honour within the Parliament Buildings on 27 October 2021. The ceremony opened with blessings from Indigenous Elder Butch Dick and included remarks by the Speaker, Hon. Raj Chouhan, and residential school survivors. The event featured the commemoration of a framed children's orange shirt and a book of condolences to enable the sharing of words of sympathy or support for survivors and their families.

Manitoba Legislative Assembly

Changes related to the COVID-19 pandemic

Further to the changes adopted in 2021, spring 2021 involved more steps taken to minimise unnecessary contact:

- Members in the Chamber were limited to four Government Members, two Official Opposition with everyone else attending virtually.
- Committee of Supply and Crown Corporation meetings had only the Committee Clerk and Chair Member in the Committee room with other Members attending virtually.

Autumn 2021 saw increased membership in the Chamber with the Caucus sending weekly seating plans with the seating arrangements adjusted as follows:

- 24 Government MLAs;
- 12 Official Opposition MLAs; and
- 2 Independent Liberal MLAs.

150th anniversary of the first Sitting Day of the Manitoba Legislature

15 March 2021 marked the 150th anniversary of the first Sitting Day of the Manitoba Legislature. The Speaker made a statement to the House noting that the First Manitoba Legislature sat from 15 March 1871 to 16 December 1874. The following is an excerpt from that statement regarding those early days:

"It is fascinating to peruse the estimates of Expenditure for the year ending December 31, 1872. Members may be interested to know that the total

budget for the Province of Manitoba that year was $81,425. Line items in the budget included the following:

- $10,000 for roads and bridges
- $6,000 for public buildings
- $7,000 for education
- $2,000 for immigration and agriculture
- $500 for the Hospital of St. Boniface
- $9,330 for the operation of the 24 Member Legislative Assembly, including allowances for the Speaker, The Clerk and the Sergeant-at-Arms.
- $3,395 for the seven Member Legislative Council.

From 1871 to 1873 the Assembly met in a modest log house in the red river settlement owned by A.G.B. Bannatyne (near the current corner of Main Street and McDermot Avenue). The Assembly met on the main floor, while the "Upper Chamber" Legislative Council met upstairs."

Historic speech from the Throne

The Fourth Session of the 42nd Legislature commenced on 23 November, 2021 with a historic Speech from the Throne delivered by Her Honour Janice C. Filmon, Lieutenant Governor of Manitoba. This was expected to be Her Honour's last Throne Speech, having served in the position since June 2015. It marked the first time that the Speech from the Throne was delivered by a woman, on behalf of a governing party led by a woman, to a Legislative Assembly presided over by a woman, with a woman as the chief procedural expert overseeing the services and supports for the Members and the Assembly. Heather Stefanson became the province's first female Premier officially on 2 November 2021, the Honourable Myrna Driedger was elected to the role of Speaker in May 2016 and Patricia Chaychuk became the first female Clerk of the Manitoba Legislative Assembly in the year 2000. The Speech was also historic for another reason as an Indigenous drummer played an Honour Song while the Lieutenant Governor and the official party entered the Chamber. In addition four Grand Chiefs were seated in the Speaker's Gallery to observe proceedings

Land acknowledgement

On 29 November 2021, Speaker Myrna Driedger delivered the first ever land acknowledgement at the beginning of a sitting of the Legislative Assembly of Manitoba. On the previous day, the Assembly granted leave to include a land acknowledgement as part of the daily proceedings immediately following the Prayer, for the remaining sitting days in the Fall Sittings. Many special guests attended this monumental day including: Manitoba Chiefs Grand Chief Arlen

Dumas; MKO Grand Chief Garrison Settee; Manitoba Metis Federation President David Chartrand; Assembly of First Nations Regional Chief Cindy Woodhouse; Executive Director of the Manitoba Inuit Association, Rachel Dutton and; Treaty Commissioner Loretta Ross.

The Land Acknowledgement currently commencing proceedings reads as follows:

"We acknowledge we are gathered on Treaty 1 Territory and that Manitoba is located on the Treaty Territories and ancestral lands of the:

- Anishinaabeg
- Anishininewuk
- Dakota Oyate
- Denesuline and
- Nehethowuk Nations.

We acknowledge Manitoba is located on the Homeland of the Red River Métis.

We acknowledge northern Manitoba includes lands that were and are the ancestral lands of the Inuit.

We respect the spirit and intent of Treaties and Treaty Making and remain committed to working in partnership with First Nations, Inuit and Métis people in the spirit of truth, reconciliation and collaboration."

Government motions relating to COVID-19

On 2 December 2021, the Assembly passed the following motion:

"THAT effective no later than December 15, 2021, all current and future Members of the Legislative Assembly must be fully vaccinated against COVID-19 to enter the Legislative Assembly Chamber, Committee Rooms and all other rooms under the jurisdiction of the Legislative Assembly within the Manitoba Legislative Building, including MLA and caucus offices, with this requirement to be reviewed before the completion of the 4th session of the 42nd Legislature."

This latter motion ultimately coincided with a Government policy announcement made on 10 December, that effective 15 December 2021, all individuals, including staff and MLAs, entering the Manitoba Legislative Building would be required to be fully immunised and provide proof of vaccination. The requirement was to last until a subsequent change in the Public Health Orders.

Cyprus House of Representatives

In February 2021, a Code of Conduct and Ethics for MPs and their staff was approved and put into effect by the House of Representatives. The Code of Conduct has been compiled by the competent Services of our House in consultation with academics, legal experts and other stakeholders. The Code

of Conduct deals, inter alia, with various conflicts of interest, including, issues of personal/private interests, incompatibility, gifts and other benefits, third party contacts and lobbying. The Code provides clear guidelines regarding the obligation of MPs to disclose accurately all relevant information to the House. Particular focus is placed on the relations of MPs with organised groups, pressure groups and NGOs, introducing rules on the interaction of MPs with third parties, that may seek to influence the parliamentary process.

Moreover, in 2021 consultations continued on the formulation of various bills aimed at combatting corruption and improving transparency, including legislation on the protection of whistleblowers, legislation on lobbying and legislation for the establishment of an Independent Authority against Corruption. These have been forwarded to the House for adoption in early 2022.

STATES OF GUERNSEY

Hybrid sittings

Given an increase in COVID-19 cases in the Island, the States of Deliberation exceptionally agreed to enable two 'hybrid' sittings in November and December 2021. A revised version of the Rules of Procedure for the States of Deliberation for 'hybrid' Meetings were agreed by the States at each Meeting. The revised version enabled Members attending remotely to make statements, ask and answer questions (including supplementary questions), speak in respect of any proposition and vote on any proposition. Members attending remotely could raise points of order and correction by notifying the Presiding Officer electronically that they wished to do so however the rule permitting "give way" interjections was removed. The rule governing the procedure for voting by secret ballot to fill committee vacancies was amended to allow the Presiding Officer to propose a deferral of the vote or to allow a ballot to take place by way of electronic ballot for those members not attending by way of an e-mail to the Clerk.

Complaint under the Code of Conduct

A Code of Conduct complaint was made against a People's Deputy to the States' Members Conduct Panel which resulted in the Panel recommending that the Deputy was suspended for a year. The complaints made against the Member chiefly concerned posts made on a Twitter account of which they were not readily identifiable as the holder. Breaches of the Code of Conduct were found in respect of public duty, objectivity, accountability, openness, honesty and leadership, of bringing the States into disrepute and in failing to show courtesy and to act with diligence.

The Panel's recommendation was approved by the States of Deliberation in July 2021 and the Deputy in question, who was elected to the States in the October 2020 General Election, was suspended and will return to the Assembly in July 2022.

STATES OF JERSEY

To some extent 2021 saw the Assembly return to normal, after the disruption and additional activity arising from the COVID-19 pandemic in 2020. However, the meetings of the Assembly remained on Microsoft Teams throughout the year, with most meetings using a hybrid format with some Members in the States Chamber and others online.

Teams permitted Members to play a full role in the Chamber, and in committees and panels, during periods of ill health. Combining the positive use of new technology with the need for Members to be present in the Chamber when possible will be an interesting challenge for the new Privileges and Procedures Committee and Assembly to deal with after the election in 2022.

There were significant debates on matters of interest and concern to the whole population during 2021—for example, on COVID-19 rules and our borders policy, the budget and funding for the new hospital project, housing, and assisted dying. Scrutiny assisted the Assembly in considering legislation and also conducted major policy reviews, including a report on maternity services, which engaged a substantial number of women who had experience of the Island's maternity services in recent years. The important work of the Public Accounts Committee unravelling the States' accounts for 2020–21 and considering deficiencies in the management of the States' property assets should also be highlighted.

The Privileges and Procedures Committee was also busy and completed work on electoral reform and responding to the report of the CPA election observers mission in 2018, making the legal changes required to alter the composition of the States Assembly, setting up an independent Jersey Electoral Authority, and restricting the Assembly's activities during the pre-election period. The move to a three-weekly cycle of States meetings, piloted at the start of 2021, was confirmed, new arrangements for States Members' pay were agreed, and we also passed legislation to ensure that the Jerseylaw.je website was kept up-to-date as new legislation comes into force.

The Assembly returned to a more settled phase of working in 2021, following the disruption caused by COVID-19. The number of meeting days fell back from 60 to 44, close to the 20-year average, as it was no longer necessary to requisition meetings for urgent debates. The Assembly started the year meeting entirely on Microsoft Teams but, as public health restrictions eased, moved to

a hybrid format with some Members (usually no more than ten) present in the Chamber and others online. In September, restrictions had been relaxed to the extent that it was possible for the Assembly to meet fully in the Chamber but an emergency proposition was lodged to revert to a hybrid model and this was adopted. 'Normality' had lasted around 90 minutes. As COVID-19 cases increased again, the Assembly ended the year with the vast majority of Members working from home.

In 2020, the Assembly had agreed in principle to amend the composition of the States so that the Assembly would, from the 2022 election, comprise the 12 Connétables and 37 Deputies elected from nine newly-constituted districts. That principle was confirmed with the adoption of the Constitution of the States and Public Elections (Jersey) Law (P.17/2021) on 22 April 2021. Also lodged by the Privileges and Procedures Committee, the Elections (Miscellaneous Amendments) (Jersey) Law (P.56/2021), adopted on 21 July 2021, made changes to the way in elections would be held in Jersey. In particular, the Law established the Jersey Electoral Authority that would in future oversee the administration of elections. Amendments to Standing Orders were also agreed (with the adoption of P.66/2021) to ensure that parliamentary activity would effectively cease during the election period and could not therefore be used (or be seen to be used) to influence the election campaign.

KENYA NATIONAL ASSEMBLY

The National Assembly overhauled its staff performance management system from the usual appraisal system and adopted Balance Score Card (BSC) as its performance management tool. This shift was necessitated by the desire by the institution to transform parliamentary service into a highly performing, effective service driven by excellence in service delivery. Importantly, the initiative was driven by the Speaker of the National Assembly, the Hon. Justin B.N. Muturi, EGH, MP as Speaker and Chairperson of the Parliamentary Service Commission, who spearheaded the review of the Parliamentary Service Strategic Plan (2019–2030) and ensure "Excellence in Service Delivery" was one of the Seven Pillars of the Strategic Plan.

The tool was rolled out on 3 May 2021 when the Clerks to Parliament, Deputy Clerks, and senior staff at the level of Director and Deputy Director signed performance contracts committing to deliver on the four perspectives (namely Customer Internal Processes, Financial Efficiency and Learning and Growth/Institutional Capacity). The BSC is gradually being cascaded down to the lowest ranks in the institution. The ultimate intention is to build and maintain a highly engaged team of staff that will ably facilitate Members of Parliament to effectively and efficiently discharge their constitutional mandate

of representation, legislation and oversight. Once it is fully implemented, it is envisaged that the BSC will transform parliamentary staff into a results-driven team.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Special debates

The Standing Orders Review 2020 recommended that seven hours of House time each year must be allocated to special debates. This ensures that there is dedicated time set aside in the House to focus on these debates and issues, alongside the long list of work that Parliament is required to consider.

In 2021 there were seven special debates on:

- The report of the Foreign Affairs, Defence and Trade Committee: Inquiry into New Zealand's aid to the Pacific;
- The twelve petitions related to COVID-19 immigration and border policies considered by the Petitions Committee;
- The Zero Suicide Aotearoa report;
- The Education and Workforce Committee's report on the inquiry into student accommodation;
- The Dawn Raids petition;
- The report on the Māori Affairs Committee's 150th anniversary; and
- Current issues and priorities (four-hour debate to replace the end of the Estimates debate, which was cut short by a lock-down).

Justice Committee alternative engagement

The Parliamentary Engagement team and the Justice Committee piloted an alternative engagement process to complement the usual call for public submissions. This followed a suggestion made by the Standing Orders Committee in 2020 for committees to use alternative forms of engagement to reach a wider range of New Zealanders. The Parliament's social media accounts were used to gather public responses to an anonymous survey on the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill. The Justice Committee wanted to hear from youth on the bill in particular, so most of the social media content was focused on Instagram stories that then directed people to the survey. Responses to the survey were collated to present to the committee.

The report was well-received by MPs. The outcome was that the committee resolved to ask departmental officials to scan the report for novel issues not already raised in submissions, and to cover those matters in their departmental report.

Updates to the members' bill ballot process

Members' bills are introduced after being drawn in a ballot whenever places for new bills arise. This process can garner considerable public interest. To cater better for this, in 2021 the member's bill ballot draw was held in the former Legislative Council Chamber and livestreamed to Parliament's Facebook page. As part of increasing public engagement the ballot will now be drawn by a student visiting Parliament on an education visit, when possible.

Secondly, as a result of the changes to the Standing Orders, a member's bill can be introduced without needing to be drawn from the ballot if it meets a threshold of cross-party support. If 61 or more members (of the House's total membership of 120 members)—not counting Ministers or Parliamentary Under-Secretaries—indicate their support for a proposed member's bill, the Clerk will notify all members of Parliament that the bill is to be introduced on the next sitting day.

As part of this package of changes, the House established a new rule to allow two or more members to jointly sponsor a member's bill. Any one of the joint sponsors can take any action that may be taken by a member in charge of a bill, such as moving a debate about the bill, or withdrawing the bill from the Order Paper.

TANZANIA NATIONAL ASSEMBLY

Death of the President

The Tanzanian Parliament comprises the National Assembly and the President of the United Republic of Tanzania as stipulated in Article 62 (1) of the Constitution of the United Republic of Tanzania that, there shall be a Parliament of the United Republic which shall consist of two parts, the President and the National Assembly.

Tanzania's leadership faced calls for a smooth President's succession following the death of former President Dr. John Pombe Magufuli which was announced on Wednesday 17 March 2021, in a speech on national TV by then-Vice President Samia Suluhu Hassan. The death of President John Pombe Magufuli marked the first time Tanzanians had to confront the reality of the death of a sitting president in the country's 60 years of independence.

However, Article 37(5) of the Constitution stipulates that, where the office of President becomes vacant by reason of death resignation, loss of electoral qualifications or inability to perform his functions due to physical infirmity, or failure to discharge the duties and functions of the office of President, then the Vice-President shall be sworn in and become the President for the unexpired period of the term of five years and in accordance with the conditions set out in Article 40, and, after consultation with the political party to which he belongs,

the President shall propose the name of the person who shall be Vice-President and such appointment shall be confirmed by the National Assembly by votes of not less than fifty per cent of all the Members of Parliament.

Tanzania therefore strictly followed these constitutional guidelines. President Samia Suluhu, Hassan who had been serving as the Vice President since 2015, was sworn in as the sixth President of Tanzania on Friday 19 March 2021. President Samia Suluhu Hassan made history as Tanzania's first female president. The President will serve the remainder of the current term which expires in 2025.

Further, the new President appointed the name of Minister of Finance and Planning, Hon. Dr. Philip Isdor Mpango who later, was confirmed by the National Assembly to be Vice President as per Article 37(5) of the Constitution. This appointment also rendered his parliamentary membership vacant.

TRINIDAD AND TOBAGO HOUSE OF REPRESENTATIVES

The Leader of the Opposition filed a constitutional motion to remove the President of the Republic of Trinidad and Tobago from office. Such a motion must be submitted in writing, include in full particulars the grounds on which the removal of the President is proposed and be supported (signed) by one-third of the membership of the House of Representatives. The signed motion together with the full supporting particulars must be circulated to all members of the Electoral College (an Assembly of the Members of both Houses).

The Constitution requires the Electoral College to be summoned by the Speaker to vote on the motion. No debate on the Motion is allowed in the Electoral College at this stage, however, if approved by the vote of two-thirds of the members of the Electoral College, the question of the removal of the President is forthwith referred to a Tribunal headed by the Chief Justice for investigation and report.

However, the motion failed as it was not supported by the required number of members of the Electoral College (two-thirds of the College). This event was the first to ever occur in the history of the Parliament.

UNITED KINGDOM

House of Commons

Permanent pass-reader voting in the House of Commons

Last year's edition of The Table noted that the UK House of Commons had dropped many of the temporary arrangements which were put in place to manage the impact of the COVID-19 pandemic, but that an exception was the use of Members' security passes to record their names in divisions (votes)

which we decided to retain. But we needed a more resilient system than the four pass readers which had been installed at great speed over a single weekend in the spring of 2021. In an impressive display of multi-disciplinary working, colleagues from the Public Bill Office (which manages the voting process), the Parliamentary Digital Service, the Parliamentary Security Department and In-House Services and Estates came together in a project team to design and build a wholly new system. This involved building new software, and laying a lot of new power and data cables, which is always a challenge in a 19th century building. The new system came into operation in the autumn of 2021 and has proved a great success.

Under the new arrangements there are five stands in each division lobby which house a pass reader unit and a tablet device. The Member taps their pass and the tablet screen confirms they have recorded their name. The Member interface is greatly improved on the earlier version; for instance, the screen now shows the Member the subject of the vote as well as confirming they have recorded their name once their pass has been tapped on the reader. It makes a loud pinging noise at the same time, to help reassure Members the system has definitely captured their name. We were able to adjust the font size on screen to make it as easy as possible to read for partially-sighted Members—another improvement. Members can also use the new pass readers to record the names of any Member for whom they hold a parental proxy vote (which Members on maternity or paternity leave can request), which has greatly simplified that aspect of our procedures.

Table Clerks now use their laptops to activate the pass readers at the start of each division, and to stop the division once all Members have voted. The tablets are directly connected to the Commons Division System, unlike the old ones, which means that as soon as the division is closed, officials can quickly publish the online lists of how Members voted. Reaction from Members to the improved system has been very positive. We had a series of teething troubles, as with all new systems, but the arrangements are now generally working well, and there has been only one incidence when we had to activate our emergency plan and bring division clerks back into the Lobbies to record Members' names. The only other recurring issue is with Members who fail to tap their passes properly, or whose pass has not been properly registered or has expired. Occasionally Members simply do not have their passes on them when voting. In such cases they are asked to contact the Public Office who add their names to the record.

Despite these changes, the definitive record of the outcome of the division for procedural purposes remains the numbers announced by the Tellers, who count Members as they exit each Lobby, rather than the published of Members' names.

The House of Lords—which had continued to use remote electronic voting

throughout 2021 and into the spring of 2022—also decided to adopt the pass-reader system and the project expanded its scope to deliver for both Houses. The Lords started using pass-readers to record Members' names in divisions from May 2022, with the exception of a very small number of Members who for reasons of disability have been allowed to keep using the electronic remote voting system.

House of Lords

Virtual participation by eligible disabled members

As a result of the COVID-19 pandemic, from 21 April 2020 until 6 September 2021 sittings of the House of Lords were either fully virtual (all participants contributing remotely) or hybrid (a maximum of around 30 members socially-distanced in the Chamber and other members taking part remotely).

The House's procedures during virtual proceedings and hybrid House were necessarily more scripted than fully-physical sittings, and since the end of COVID-19 restrictions the House has largely reverted to pre-pandemic procedures. But they also allowed a greater level of participation by members with physical difficulties, who could take part from their own home or office without needing to travel to Westminster and sit in a Chamber that is not designed to current accessibility standards.

As a result, when the House authorities started to discuss how and when the House would return to pre-pandemic procedures, remote participation by members with disabilities was high on the list of hybrid House procedures which might be retained. On 15 June 2021 the House of Lords Commission, the House's main governance body, agreed to ask the Procedure and Privileges Committee (PPC) to explore a model by which a small number of members who might be unable physically to access the Chamber on grounds of long-term disability could continue to participate virtually.

The PPC duly did so and set out its recommendations in its report published on 6 July 2021:

" • Subject to being deemed eligible according to the procedure agreed by the Commission, members who were unable physically to attend the House on grounds of disability should be able to continue to participate virtually in the Chamber when they choose to.
• Eligible members should be able to participate virtually in all business in the Chamber where there is sufficient notice. In business without speakers' lists, eligible members would need to indicate their wish to take part by a given time the previous working day. In all such business, there would be a fixed point at which eligible members participating remotely were called by the Chair.
• Eligible members should be able to continue to vote remotely when not

present on the Parliamentary Estate."

To give effect to these recommendations, the Committee recommended that the House agree to a new Standing Order.

The House debated and agreed the Committee's report on 13 July 2021. It then agreed the following new Standing Order to allow eligible members to take part remotely:

"24A Arrangements for virtual participation by disabled members [13 July 2021]

(1) Members who may be physically unable to attend the House on grounds of long-term disability and may be eligible under the procedure agreed by the Commission can apply for eligible member status and if granted they may choose to participate virtually in proceedings in the Chamber.

(2) Eligible members may choose to participate virtually in all business of which there is sufficient notice:

(i) in business with a speakers' list, eligible members should indicate that they wish to take part remotely when signing-up to speak;

(ii) in business without a speakers' list, eligible members should indicate their wish to take part remotely by a given time the previous working day. In such business there will be a fixed point at which eligible members participating remotely are called to speak by the Chair.

(3) Eligible members may vote electronically or by telephone whether on or off the Parliamentary Estate."

When the House returned from its summer recess on 6 September 2021, eligible members were able to participate remotely if they so wished, while other members took part in debates in person.

At the same time, the House continued to use the electronic voting system introduced during the pandemic, to avoid crowded division lobbies. But whereas eligible disabled members could use the remote voting system to vote from anywhere on or off the Parliamentary Estate, other members were allowed to vote only from a place of work on the Parliamentary Estate. On 25 October, once technical upgrades to the House's 'second chamber', the Moses Room, had been completed, the House agreed that remote participation by eligible members should also be extended to proceedings in Grand Committee.

Since then, the House has made two tweaks relating to the remote participation of eligible members. First, on 1 December 2021 the House agreed the PPC's recommendation that the use of speakers' lists for oral questions (a necessary adaptation introduced for virtual proceedings and hybrid House) should be discontinued and that the House should return to the pre-pandemic position, where there were no speakers' lists for oral questions and therefore no

selection of supplementary questions.[1] This recommendation was the result of widespread feeling that the continued use of speakers' lists was removing an element of spontaneity from the House's procedures and limiting Members' ability to hold ministers effectively to account.

To allow the continued remote participation of eligible members in oral questions, the House agreed to amend SO 24A by removing the requirement that remote participants be called at a "fixed point" in proceedings without speakers' lists. Instead there would be the normal rotation of supplementary questions between the parties and groups, and at an appropriate point the Leader of the House (on the basis of prior consultation with the usual channels) would stand and indicate that the House might wish to hear from an eligible Member belonging to the party or group whose turn it was.

The latest adjustment to the remote participation of eligible members was made on 22 February 2022. The House debated a PPC report proposing that the procedure to enable disabled members, who have been deemed eligible to participate remotely in accordance with SO 24A, to ask supplementary questions during oral questions, should be extended to oral statements and repeated urgent questions. While there was no opposition to the essential principle, the House agreed this report with a small but symbolically significant amendment, which moved the responsibility for indicating to the House when an eligible remote member might contribute in oral questions, oral statements and repeated urgent questions from the Leader of the House to the Lord Speaker.

Northern Ireland Assembly

Vacancies in the offices of the First and deputy First Minister

On 14 June 2021, *Arlene Foster* MLA resigned as First Minister. Mrs Foster had been replaced as DUP leader three weeks earlier.

Under the relevant provisions of the Northern Ireland Act 1998, if either the First Minister or the deputy First Minister cease to hold office at any time, whether by resignation or otherwise, the other shall also cease to hold office at that time. Therefore, upon Mrs Foster's resignation, Michelle O'Neill MLA also ceased to hold office as deputy First Minister.

At the time of Mrs Foster's resignation, the Northern Ireland Act provided that where the offices of the First Minister and the deputy First Minister become vacant they must be filled within a period of seven days. It also provided that no

[1] Members wishing to ask a supplementary question stand and began putting their question. If more than one Member stands, they give way to each other; if there is a dispute about who should give way, the sense of the House, interpreted by the Leader of the House if necessary, determines which Member should speak.

person may take up office as First Minister or deputy First Minister after this period of time. If the offices were not filled within this period, the Secretary of State for Northern Ireland would have a duty to call an Assembly election.

There was speculation as to whether the offices would be filled within the statutory period given political tensions surrounding the implementation of the New Decade, New Approach (NDNA) deal, which had enabled the restoration of the devolved institutions in January 2020.

In light of these concerns, the Secretary of State announced that, if the Assembly had not progressed before October 2021 the language and culture legislation envisaged in NDNA, the UK government would instead seek to legislate on these matters through Parliament. This reassured Sinn Féin.

Further to this announcement, the Assembly met on 17 June 2021, when the new leader of the Democratic Unionist Party (DUP), Edwin Poots MLA, nominated Paul Givan MLA to be the new First Minister. Mrs O'Neill was re-nominated by Sinn Féin to be deputy First Minister. Both Mr Givan and Mrs O'Neill accepted their nominations and affirmed the pledge of office, thus ensuring that both offices were filled within the statutory deadline.

Later that day Mr Poots announced that he was resigning as leader of DUP after just 21 days in the job. It emerged the party had not supported his decision to proceed with nominating a First Minister. Mr Poots was replaced as leader by the Rt Hon Sir Jeffrey Donaldson MP.

It should be noted that in May 2021 the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill had been introduced in the UK Parliament. The Bill sought to deliver aspects of the NDNA deal. Amongst other things, the bill provided up to four, 6-week periods for appointing a First Minister and deputy First Minister after they cease to hold office (in the case of one of them resigning for instance). Had these provisions been in place at the time of Mrs Foster's resignation it would have been possible for the offices of First and deputy First Minister to have remained vacant until December 2021.

Hybrid proceedings

On 1 February 2021, the Assembly voted to put in place temporary arrangements to allow Members to participate remotely in Assembly business. The Assembly agreed to do so in response to the prevailing rates of COVID-19 and the public health guidance, which had encouraged everyone to work from home where possible.

These arrangements supplemented a range of other temporary provisions which the Assembly had already agreed in response to the pandemic. These included arrangements for remote participation in committee meetings, social distancing in the Chamber and committee rooms, and widespread proxy voting. The Assembly agreed that the temporary arrangements should continue until

the end of the mandate (March 2022).

Simultaneous interpretation

The New Decade, New Approach (NDNA) deal addressed a range of rights, language and identity issues. In respect of the Assembly it said:

> "the Assembly's Standing Orders will be amended to allow any person to conduct their business before the Assembly or an Assembly Committee through Irish or Ulster Scots. A simultaneous translation system will be made available in the Assembly to ensure that a person without Irish or Ulster Scots is not placed at a disadvantage."

On 15 June 2021, the Assembly, as a result of a motion from the Committee on Procedures, noted this agreement in NDNA and directed the Assembly Commission (the corporate body responsible for providing the Assembly with property, staff and services) to provide a simultaneous and passive system for interpretation in the Assembly that was capable of supporting one meeting at any one time. However, further to an amendment from the Ulster Unionist Party, the Assembly qualified this by saying the system should only be provided where there is appropriate demand and would be subject to review after six months.

It is expected that a new simultaneous interpretation system will be in place for the beginning of the next mandate (May 2022).

Members' statements

In July 2021 the Assembly agreed to introduce a new category of business called "Members' Statements". The purpose of its introduction was to create an opportunity for Members to raise topical issues in plenary session.

A member who wishes to make a statement must rise in his or her place, and may be selected by the Speaker. A statement must relate to a topical matter of public interest and must not:

(a) exceed three minutes in duration;

(b) relate to a matter scheduled for debate in the Assembly;

(c) address a question that has already been decided by the Assembly within the previous 6 months; or

(d) be used to impugn or to attack another member.

Members' Statements have become a popular item of business and are usually scheduled on a weekly basis as the first item of business on Monday's order paper.

Review of Opposition entitlements

The NDNA deal provided that there should be an independent review of the entitlements for an official Opposition. Following a public procurement exercise,

the Assembly and Executive Review Committee (the AERC) appointed Trevor Reaney, former Clerk of the Assembly, as the independent person to undertake the review exercise.

Mr Reaney consulted and engaged extensively with the political parties represented in the Assembly during the consultation phase of his review exercise. He submitted a report to the AERC which included 18 recommendations. These included the general principle that that the resources, profile and status provided for the official Opposition should not of themselves be an incentive or a disincentive to opt for official Opposition, as well as a number of recommendations that specific entitlements should be strengthened.

The AERC reported to the Assembly in October 2021 and recommended that all of Mr Reaney's recommendations be approved, which the Assembly resolved to do. The Committee on Procedures consequently brought forward the agreed amendments to Standing Orders to provide for enhanced entitlements for the Opposition for the Assembly's approval. While most of these were agreed, the DUP objected to the proposal to enhance the Opposition's entitlement to ask additional listed and topical oral questions. This meant there was not cross-community support for these proposals and they were therefore not agreed.

Scottish Parliament

2021 Election Planning Programme

In January 2020, we kicked off the Election Planning Programme for the election due in May 2021 and the start of the 6th Parliamentary Session. One week after the Programme was commenced came the first news of the pandemic. This meant that the programme was a massive logistical challenge with all planning being done remotely against an ever-changing set of scenarios for induction and First Days of the new Session. Perhaps the biggest complication arose from the cancellation of the traditional six-week dissolution period. This change, made by an Act of Parliament, gave us contingency arrangements for the Parliament to be recalled during the election period, should COVID-19 circumstances have necessitated. By agreement among the political parties, no business was scheduled for the normal dissolution period. Thankfully, the Parliament did not need to be recalled to consider matters relating to the COVID-19 and the election. It was, however, recalled on 12 April 2021 to debate a motion of condolence on the death of His Royal Highness, the Duke of Edinburgh.

With dissolution only taking place the day before the election many Finance, HR, IT and Allowances processes had to be massively condensed. These processes had to be completed a mere 48 hours or so before the newly elected class of 2021 (129 Members) were set up on these same systems.

Chamber business had been hybrid from around May 2020 with Committees being a mix of virtual and hybrid at various times. The upshot was that the

Parliament had felt much emptier with many fewer Members routinely around the campus, and very much reduced staffing levels. There was strong political support for seeking to achieve in-person delivery of some of the key early parliamentary events but this was against the prevailing 'work from home' regulatory framework. Our solution was having a multi-option solution ranging from a full virtual programme to a heavily modified in-person option, with several in-between hybrid permutations. This massively complicated the Election Planning Programme and meant that decisions were taken only very late-on. Around 25 risk assessments had to be undertaken with the final clearance of an in-person programme being agreed only the day before the election itself. The plans paid off and all bar one Member participated in-person.

The election result itself was not very different from the previous election in 2016, with the SNP securing another big victory with 64 of the 129 seats, one more than the position in 2016 but one seat short of an overall majority. Also interesting was the increase in turnout: at 63% it was up 10% on the previous election. Also, this is a notably more diverse Parliament: there are record numbers of female MSPS (58/129), plus the first women of colour to be elected as well as the first permanent wheelchair user. There were 45 new Members, broadly in line with turnover at previous elections.

Returning to the election programme, the previous scripts for Member induction and First Days were thrown away as we delivered bespoke arrangements, notably in relation to the oath-taking and the election of the Presiding Officer (PO) and two deputies. The PO election was particularly novel given that it involves a secret ballot and that was simply not possible to organise within the confines of the Chamber. As such, an 'over-flow Chamber' was set up in our visitors' hall, with Members being given designated seats. Perhaps it was only fitting that in these hopefully never-to-be-repeated circumstances, that it was one of the Members seated in the overflow Chamber that was elected to be the Presiding Officer. Alison Johnstone, returned as a Scottish Green Party MSP, was elected as the Parliament's sixth Presiding Officer. As with all her successors, the Presiding Officer now has no party affiliation.

Having formed an administration on its own in the first instance, the SNP government entered into a co-operation agreement with the Scottish Green, which it described as being short of a coalition. The co-operation agreement between the parties contained a large number of areas on which they were committed to agree, a number of areas where they had yet to settle a position but would work towards doing so, and a much smaller number of excluded areas where they agreed to disagree. It also committed both parties to a "no surprises" approach to parliamentary business, including on motions for debate and amendments to motions, and to formulate an agreed position on these, other than in relation to excluded matters. Two Green junior Ministers

were appointed. As a consequence of the deal, the Green members are treated in the same way as SNP Members when it comes to parliamentary proceedings, except when excluded matters are being discussed.

Throughout 2021 and into 2022, because of ongoing COVID-19-related restrictions, the Parliament and its committees continued to operate on a hybrid basis. Full occupancy of the Chamber and committee rooms was only possible after Easter recess 2022. Since then, although the number of Members making use of the ability to participate in debates and questions remotely has reduced, many more continue to vote remotely. Our Standards, Procedures and Public Appointments Committee is currently considering the future practices and procedures with a view to recommending whether hybrid and virtual meetings should continue.

EU EXIT

One of the most contentious issues arising from EU exit has been the Protocol on Ireland/Northern Ireland. The Protocol essentially creates an All-Ireland regulatory zone for all goods (i.e. Northern Ireland aligns with EU rules on goods) - this means new arrangements for goods coming from GB to Northern Ireland, new arrangements on customs, VAT and excise and effectively a customs and regulatory border in the Irish Sea.

Northern Ireland is to continue to follow the rules of the Single Market, and will have to transpose any new legislation added to the Annexes to the Protocol as agreed by the UK-EU Withdrawal Agreement Joint Committee. The annexes to the Protocol list more than 300 regulations and directives that will continue to apply in Northern Ireland, approximately half of which fall within, or partially within, the devolved competence of the Assembly. Given that Northern Ireland will still implement EU law, it is unclear as to how Northern Ireland (or indeed the UK) will make its voice heard at an EU level in upstream policy and legislative development.

In February 2021, a judicial review challenge to the Protocol on Ireland/Northern Ireland was launched by a number of unionist politicians. They argued that the Protocol contravenes the Act of Union 1800, the Northern Ireland Act 1998 and the Belfast/Good Friday Agreement. The Court of Appeal in Belfast later dismissed the challenge. The judgement stated:

> "The Acts of Union are not repealed and the same footing clause in Article VI must be read subject to the NI Protocol…There is no conflict with section 1(1) of the Northern Ireland Act 1998 as the constitutional status of NI within the United Kingdom has not changed and cannot change other than by virtue of the mechanism provided by section 1(1) of the NI Act 1998 by way of democratic consent."

The group of unionist politicians who pursued the case intend to take it to the Supreme Court.

Committees of the Assembly continue to scrutinise the impacts of EU exit and of the Protocol. The Committee for the Executive Office, which leads on EU matters, took evidence from EU Commission Vice-President Šefčovič in June 2021 and again in December 2021. Professor David Phinnemore of Queen's University Belfast described it as "unprecedented" that member of the European Commission would appear before a committee of a sub-national legislature of a non-member state.

Lord Frost also gave evidence to the Committee in July 2021.

The Northern Ireland Executive attends meetings of the Withdrawal Agreement Joint Committee (which is co-chaired by the Foreign Secretary Rt Hon Liz Truss MP and Vice-President Šefčovič) when Northern Ireland related issues are on the agenda. The Assembly's Committee for the Executive Office has been critical of the lack of transparency of this Joint Committee, and its sub-structures which are attended by Executive officials, and has been pressing for the release of more information – particularly in relation to the work of the Joint Consultative Working Group which serves as 'a forum for the exchange of information and mutual consultation", including in relation to the implementation of EU law in Northern Ireland, and amendments or replacements to applicable EU legislation.

The European Commission published a set of non-papers in October 2021 on outstanding issues relating to the Protocol, one of which proposed more engagement with Northern Ireland stakeholders and authorities, and greater transparency regarding EU law which applies to Northern Ireland. Regarding a stronger link between the Northern Ireland Assembly and the EU-UK Parliamentary Partnership Assembly (PPA), the Commission said

> "further contacts with Parliament colleagues would be needed to see how the ideas of a Northern Ireland sub-structure could work."

The Commission proposed more structured dialogue with stakeholders, including Northern Ireland civic society, business, and authorities, including with the co-chairs of the Joint Committee, and in the Specialised Committee. The Commission pointed out that:

> "primarily it would be for the UK Government to engage the Northern Ireland authorities in the work of joint bodies established under the Withdrawal Agreement and the Protocol. Any solution on this point should be in line with the UK's constitutional order."

Speaking at the Committee for the Executive Office in December 2021, Vice-President Šefčovič referred to proposals in the EU's non-paper on inter-parliamentary cooperation and said it would be good to find solutions "within the UK on how it would be more appropriate for these discussions to take

place". He added that the EU was suggesting a special consultative process for Northern Ireland on current or future legislative proposals,

> "where we would pay particular attention to your comments in our public consultations". He concluded: "I really would like to reassure you on our goodwill to be as close to you as possible, as acceptable to the UK Government."

In same month, Lord Frost was asked about addressing the democratic deficit and a decision-making role for MLAs in relation to EU legislation. He said:

> "it would not be a good solution to give the Northern Ireland Assembly or Executive decision-making roles in the European Union. The UK is not a member of the European Union, and therefore it would not be right or appropriate to try to resolve these questions in that way".

In October 2021, the Assembly agreed the following private members' motion brought by Sinn Féin:

> "That this Assembly welcomes Vice-President Šefčovič support for formal dialogue between the Assembly and the European Parliament; supports this effort to include the perspectives of local elected representatives and stakeholders on matters relating to the protocol on Ireland/Northern Ireland and the broader peace process; and calls on the President of the European Parliament to undertake, immediately, work to set up direct inter-parliamentary dialogue between the two institutions."

COMPARATIVE STUDY: COMMITTEE POWERS TO ASSIST SCRUTINY OF GOVERNMENTS

This year's comparative study asked, "What powers do committees scrutinising the work of government for your assembly have to compel information or participation from your government? Have there been any challenges to the operation of such powers? What plans, if any, are there to review or change any such powers?".

AUSTRALIA

House of Representatives

The functions and powers of committees of the House of Representatives, and of both Houses, derive, variously, from enabling statutes, resolutions of the House and the House standing orders. The standing orders provide that a House committee may call for witnesses to attend the committee or for documents to be produced, in relation to matters under consideration by the committee. If the request is refused, the committee has the power to direct the committee secretary to summon the witness or require that the documents be produced. In practice, committees rarely use their powers of compulsion. Instead, there is a strong preference for voluntary participation and cooperation. With regard to participation by government, requests for submissions or attendance at a committee hearing may be made to a Minister, a departmental secretary or another government official.

Members of the House of Representatives, including Ministers, may voluntarily contribute to a committee inquiry by appearing as a witness or otherwise providing information. However, a committee itself cannot compel a Member to attend or to provide evidence. Under the standing orders a committee Chair may write to a Member inviting them to attend as a witness. If the Member refuses to attend, or to give evidence or information as a witness, the committee may not summon the Member again, but should advise the House. It is then up to the House to determine the matter. These procedures have never been exercised in the House.

Similarly, a House committee cannot compel a Senator to appear before it or to provide evidence. If a Senator will not voluntarily appear before a House committee, the House may send a message to the Senate requesting it to give leave to the Senator to attend. The Senate may then authorise the Senator's attendance. Such a request is rare.

House committees also seek evidence from government officials. Importantly, however, the resolution of the House on procedures for dealing with witnesses provides that a departmental officer 'shall not be asked to give opinions on

matters of policy, and shall be given reasonable opportunity to refer questions asked of him or her to superior officers or the appropriate minister'. On rare occasions, government officials have been summonsed to appear before or provide certain documents to parliamentary committees. If an official refused such a summons, the issue could be raised in the House as a matter of privilege.

Committees of the House have not typically sought to compel government Ministers or officials to participate in committee inquiries. This may be partly explained by the fact that, normally, House committees have a government Member as Chair and are made up of a majority of government Members.

There are no current indications of any plans to change the powers of committees to compel information or participation by government.

Senate

The Senate has delegated considerable powers to its committees, including the power to compel the attendance of witnesses, the giving of evidence, and the production of documents (standing order 25(14)). Generally, however, committees are not delegated the power to enforce these orders, but report non-compliance to the Senate.

Compelling the participation of, or information from, a Minister

The Senate can judge the conduct or performance of any minister acting in a ministerial capacity regardless of whether the minister is a member of the House or the Senate.

If a committee requires the attendance of a minister in the Senate as a witness, the chair shall, in writing, request the senator to attend. Under standing order 177, if the senator declines to attend or give evidence, the committee shall report the matter to the Senate as a committee has no power to summon a senator. Under standing order 177(3), the Senate may order a senator to attend a Senate committee and to give evidence to the committee.

As a matter of comity between the houses, committees do not summon ministers in the House. If a Senate committee requires the attendance of a minister in the House, standing order 178 requires a message to be sent to that House. The message is framed as a request that the House give leave for the member to attend.

Compelling the participation of, or information from, public servants

As set out in Privilege Resolution 1, witnesses are normally invited to attend a committee meeting to give evidence in the first instance. A witness may be summoned by a committee if they refuse to attend voluntarily or attend but refuse to answer particular questions.

When inviting public servants to attend a public hearing, witnesses are

usually nominated by the department or agency based on their area of expertise. However, a committee may request particular officers to appear. If a request for a particular officer is refused, a committee should seek to resolve the matter with the relevant minister or agency head before proceeding to other actions such as reporting the matter to the Senate or issuing a summons.

Public servants are expected and encouraged to provide full and accurate information to the committees about the factual and technical background to proposed items of expenditure but are not expected to give opinions on matters of policy: Privilege Resolution 1(16). The advocacy and defence of government policies is properly the role of ministers.

Only a minister can make the decision to decline to provide information to a committee, and therefore accept political responsibility for any subsequent dispute between the committee and the executive government.

Orders for the production of documents

Another method available to Senate committees to compel information from the executive government is through orders for the production of documents.

Orders for the production of documents may relate to existing documents held by ministers, government departments and agencies, or can require the creation of new documents containing the requested information. Orders may require the regular production of documents to improve transparency and accountability in government departments and agencies or the production of documents on a single occasion.

There are no limits on the documents which may be ordered to be tabled. There are no exemptions or exceptions for cabinet submissions or national security documents or other classes of documents for which governments have traditionally claimed public interest immunity, although it is a matter for the committee (and ultimately the Senate) whether to accept such claims.

In 2021, the Senate made 59 orders for the production of documents. Of the 59, 11 orders were moved by chairs or deputy chairs on behalf of committees. Any senator, whether a committee member or not, can also seek the Senate's agreement to order the production of documents relevant to committee inquiries. There were four such Senate orders in 2021.

In addition, there are 18 orders of continuing effect which requires ministers in respect of departments and agencies administered by them to produce information to the Senate on a quarterly, annual or biannual basis.

The Senate has long taken the view that there is no category of documents that is immune from production and insists that it is for the Senate (and not the government) to determine claims to withhold documents in the public interest.

The Senate has not delegated the power to enforce compliance to committees in circumstances where a committee concludes that a PII claim does not justify

the withholding of the information sought. A 2009 order of continuing effect requires the committee to report the matter to the Senate.

Australian Capital Territory Legislative Assembly

Standing order 239, which empowers committees to send for persons, papers and records, is the basis of Assembly committees' evidence-gathering power. This is a very extensive power. It is supported by standing order 240, which enables committees to summon witnesses. They can also order the production of documents.

A refusal to appear as a witness, to provide a document or to answer a question may be found to be a contempt of the committee and be punishable by the Assembly. In practice, committees of the Assembly have relied on cooperation and negotiation in gathering evidence and their powers have rarely been tested.

Committees do not make findings of contempt. Where a committee believes that a contempt may have occurred, the matter is reported to the Assembly, which decides the matter. Note that there are limitations to the power of the Assembly to punish contempts.

A range of claims may be made by parties who do not wish to comply with a committee's request for documents. It is necessary for committees to deal with them on a case-by-case basis. The most common situation in which such claims arise is when a Minister of the ACT executive declines to provide a committee with documents or other information, claiming 'public interest immunity'. As the term suggests, the claim argues that it would not be in the public interest to make available the information in question. Issues such as the confidentiality of Cabinet deliberations, potential prejudice to law enforcement investigations, damage to commercial interests and unreasonable invasion of privacy can underpin such claims.

The Assembly and its committees should always consider whether there is a competing, and greater, public interest in information being made available. Odgers' summarises the issues concisely: While the public interest and the rights of individuals may be harmed by the enforced disclosure of information, it may well be considered that, in a free state, the greater danger lies in the executive government acting as the judge in its own cause, and having the capacity to conceal its activities, and, potentially, misgovernment from public scrutiny.

Committees should, at the very least, require a Minister to provide a clear statement of the grounds on which a claim of immunity is being made. Where a committee decides that the grounds are reasonable it should explore with the Minister alternative means of gaining access to the information—for example, by editing out names or personal details and protecting or receiving material in confidence.

Where a committee does not accept a claim of immunity, it may persist

with its request but the practical reality is that, in conflict with the executive, the coercive powers of committees and the Assembly are limited. The adverse publicity surrounding a Minister's refusal to cooperate with a committee or the threat of proceedings in the Assembly for contempt may lead the Minister to reconsider his or her position, but the outcome of such a dispute will often be determined by political circumstances rather than obscure considerations of the public interest.

It is always open for the committee to report the matter to the Assembly and recommend either that the executive provide the documents or that the chair move the appropriate motion.

A further area of contention in the ACT Legislative Assembly, and other parliaments, has been the capacity of the legislature and its committees to examine the management and operations of statutory authorities, government business enterprises and the like. These bodies operate at arm's length from government; they may not be accountable to the legislature through a responsible Minister; and the commercial areas of their activities may give rise to claims that they are not required to answer questions or provide documents in relation to their activities. These claims should be resisted by committees. If an agency is in public ownership, operates under a statutory scheme or is underwritten by the public revenue, its activities should be open to public scrutiny.

New South Wales Legislative Assembly

The powers of the NSW Legislative Assembly committees reside in a combination of statute, standing order and the common law power of reasonable necessity. However from the outset it should be stated that the exercise of a coercive power by a committee would be unusual. Information sought from the Executive and its agencies, is usually provided voluntarily (albeit after some discussion), or it can be obtained by other means.

If necessary, the *Parliamentary Evidence Act 1901* (PEA) provides a committee with the power to compel persons within the jurisdiction of NSW (Members of Parliament excepted) to attend before it and answer any lawful question.

NSW Legislative Assembly Standing Order 288 (SO 288) provides that "A committee shall have power to send for persons, papers, records, exhibits and things"; and most of the acts establishing parliamentary oversight committees (the "committee acts" hereafter) provide an express power to call for "persons, papers and records". Though the exercise of that power would be confined by the committee's functions under the Act (and other relevant provisions of the

Act).[1]

In relation to the extent of the powers under the PEA, the NSW Solicitor General is of the opinion that:

> "… it is "more likely than not" that if the question were to be the subject of a decision of a court, a finding would be made that a committee of the NSW Parliament has the power to call for a witness to attend and give evidence, including by the production of a document."[2]

While the NSW Solicitor General considered that there may be some argument as to whether such a power resides in the PEA, Standing Order, or a power based on reasonable necessity; they noted that if the power did exist, then the basis of it would be likely to emerge in any court proceedings.

New South Wales Legislative Council

Under the *Parliamentary Evidence Act 1901* (NSW), all public officials, other than ministers and members of Parliament, may be summoned to attend and give evidence before a committee of the Legislative Council and be compelled to provide answers to "lawful questions". The Act sets out various procedures and penalties should witnesses fail to do so.

Other than the stated exemption of ministers, there are no other exemptions to this power. In the past Legislative Council committees have used the power in respect of both ministerial staff and former members, including former ministers.

However, the power has not been used in respect of members of the judiciary. In modern times, under the doctrine of the separation of powers and the constitutional provisions which recognise the independence of the judiciary, it may be argued that it would not be appropriate for the House or a committee to seek to summon the attendance of a judicial officer to give evidence.

[1] The provisions of S31G of the Ombudsman Act 1974 that "The Joint Committee has power to send for persons, papers and records" are replicated in other statutes establishing committees. See also the Independent Commission Against Corruption Act 1988 (s69(1)); the Health Care Complaints Act 1993 (s 71); the Crime Commission Act 2012 (Part 5); the Advocate for Children and Young People Act 2014 (Schedule 2. cl 6) and the Legislation Review Act 1987 (s 11). In all these cases, the relevant sections of the legislation require the production of documents to "be the same as for the production of documents to select committees of the Legislative Assembly" (currently SO 288). In contrast to the legislation establishing the other statutory committees, the Government Sector Audit Act 1983 (GSA) does not have the same provision, for the Public Accounts Committee (PAC) to call for persons, papers and records. Instead section 58 cl 11 of the GSA states that 'The production of documents to the Committee shall be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.'

[2] See 'Appendix Two – Legal Opinions' of *Report on State Finances* by the Audit Office of New South Wales, published on 19 October 2018.

There have been no real challenges to the use of the power. The *Parliamentary Evidence Act 1901* was drafted at a time (originally early 1880s) when the Houses of the NSW Parliament were experiencing real difficulties in securing the attendance of witnesses. By modern standards it could be said that it is an extraordinarily uncompromising piece of legislation. It would be unlikely that it would be enacted in its current form today.

From time to time there have been suggestions that the powers, rights and immunities of the Houses, including those flowing from the *Parliamentary Evidence Act 1901*, should be reviewed and reformed. Nothing has come of those suggestions however.

In addition to the power of committees of the Legislative Council to compel witnesses (other than ministers and members) to attend and given evidence and to answer "lawful questions", committees of the Legislative Council have asserted a right to compel the production of state papers.

There is some legal advice that this power also sits under the Parliamentary Evidence Act 1901. But the better view appears to be that the power is a common law power based on reasonable necessity.

Readers would perhaps be aware of the famous Egan decisions of the late 1990s which found that the Government is compelled to provide state papers in response to orders of the NSW Legislative Council. The Government now routinely complies with such orders for papers.

However, in respect of committees, the Government has contested this power, and refuses to provide documents to ordered by committees. This is despite Solicitor General advice to the Government that the power likely exists.

Northern Territory Legislative Assembly

Standing Order 190, Power to Call for Witnesses and Documents, provides that:

> "(1) A committee or subcommittee may call for witnesses to attend and for documents to be produced.
>
> (2) The Member chairing a committee or subcommittee will direct the Secretary of the committee or subcommittee to invite or summon witnesses pursuant to Standing Order 202 and section 18 of the Legislative Assembly (Powers and Privileges) Act 1992 and to request or require documents to be produced as determined by the committee or subcommittee."

Standing Order 202, Summons, clarifies that the power to summons witnesses does not apply to Members of the Assembly:

> "The Assembly or a committee may order a witness, not being a Members, to attend before it or to produce papers to it by summons issued pursuant to section 18 of the Legislative Assembly (Powers and Privileges) Act 1992. The Clerk, or in the case of an order form a committee wither the Clerk or

the Secretary of the committee, will issue the summons so ordered."

These Standing Orders are most explicitly enlivened by section 18 of the Legislative Assembly (Powers and Privileges) Act 1992:

"18 Summons to witness

(1) On the order of the Assembly or of a committee which has been authorised by the Assembly to send for persons, papers and records, the Clerk or in the case of a committee, either the Clerk or the clerk of the committee, may issue under his or her hand a summons to a person (not being a member) to attend before the Assembly or the committee to give evidence before the Assembly or the committee or to produce to the Assembly or the committee the papers, books, documents or articles specified in the summons.

(2) A summons under subsection (1):

(a) may be in or to the effect of the appropriate form in Schedule 3; and

(b) shall be served personally on the person to whom it is directed."

Under section 21 of the Legislative Assembly (Powers and Privileges) Act 1992, failure to comply with a summons issued under section 18 is an offence and, in the case of a natural person, carries a maximum penalty of 40 penalty units (6,280 AUD) or 6 months imprisonment. Section 25 also provides the Assembly with its own prosecution power for contempts.

In practice, the use of summonses has been rare.

To date there have been no challenges to the operation of such powers and there are no plans to review or change them.

Queensland Parliament

Under section 25 of the Parliament of Queensland Act 2001 (POQA), a committee may order a person, other than a member, to attend before the committee and also to produce to the committee any document or other thing in the person's possession. The Assembly may order a Member to attend before a committee and to produce documents or things.

Under section 26 of the POQA a committee may request the Clerk to issue a summons to order a non-member to attend before a committee and produce documents or things.

Under section 30 of the POQA a person ordered to attend before a committee must not fail to attend as ordered. If a person fails to attend the committee may report the failure to the Assembly. The Assembly may then order the person to attend before the committee.

There has not been any challenge to the operation of the above powers and there are no plan to review such powers.

South Australia House of Assembly

The powers of House of Assembly Committees to compel information or participation from the government are the same as the House of Commons as at 24 October 1856, pursuant to section 9 of the Constitution Act 1934. Standing Committees established under the Parliamentary Committee Act 1991 have specific 'power to send for persons, papers and records'. Select Committees may be given the 'power to send for persons, papers and records' by the House, pursuant to Standing Order No. 335. These powers were recently tested following the government's loss of a majority in the House, leading to the establishment of two Select Committees, chaired by non-government Members (Select Committee on Land Access and Select Committee on the conduct of the Hon. Vickie Chapman MP regarding the Kangaroo Island Port Application).

Most evidence from government agencies requested by Committees is given willingly without resorting to these powers. The two recent Select Committees requested lists of specific documents from a range of government agencies and ministerial offices. Most of the documents were provided in full and unredacted form. However, a number of documents were withheld or redacted, on the basis of either legal-professional privilege, Cabinet-in-confidence or commercial-in-confidence. For most documents, the Committees adhered to the practice of the House of Commons and other Westminster Parliaments and did not challenge the right of the Executive to claim privilege over such documents. Where one Select Committee requested an unredacted copy of a particular document, the agency again refused and the matter was not pursued.

Requests for public servants to appear before Committees are almost always complied with, often at short notice. However, if necessary, the Chairperson may direct the Secretary to issue a summons requiring attendance, pursuant to Standing Order No. 336. The Select Committee on the conduct of the Hon. Vickie Chapman MP regarding the Kangaroo Island Port Application summoned one witness (an adviser to the Minister being investigated by the Committee) to appear at a public hearing, who declined the Committee's initial invitation to give evidence. The summons was complied with and the witness appeared and gave evidence. This was the first instance of a House of Assembly summoning a witness since the nineteenth century.

The power to summon witnesses does not apply to other Members. Pursuant to Standing Order No. 384, where a Committee wishes another Member to attend, the Chairperson makes a request in writing. If the Member refuses, the Committee takes no further action and reports the matter to the House. The Deputy Premier, Attorney-General and Minister for Planning, Hon. Vickie Chapman MP, accepted the invitation of the Select Committee investigating her conduct to appear at a public hearing and gave evidence. When the Committee invited the Deputy Premier to give further evidence at the conclusion of the

inquiry, the Deputy Premier declined and instead provided a written statement, prepared by legal counsel.

There are no plans to review or change these powers. The composition of the House has significantly changed following the recent election and the establishment of further non-government dominated Committees is unlikely in the next 12-month period.

Victoria Legislative Assembly

In Victoria, Legislative Assembly standing and select committees are established by the House under standing orders, and joint investigatory committees are established under statute. All committees are able to send for persons, documents and other things, which includes materials and documents held by the government—although the government has generally refused to provide documents that are considered cabinet-in-confidence. All ministers of the government are also members of the Victorian Legislative Assembly or the Legislative Council, respectively. Legislative Assembly standing and select committees can require Legislative Assembly ministers to attend hearings, and joint investigatory committees (comprising members from both Houses) can require any minister to attend hearings.

If committees are not provided with evidence sought from government, or if a person or minister does not attend when summonsed, committees are able to report that matter to the relevant House or Houses. The House may then consider whether a contempt has occurred, and whether any other action is appropriate.

Generally, parliamentary committees and government negotiate informally for the provision of documents, persons and other evidence, so that formal summons are rarely required. The last time a failure to respond to a summons for a document was considered by the Legislative Assembly was in 1968, and in that case, the relevant document was provided before the House resolved the motion.

No plans have been made public to change or review the powers of committees to compel information or participation from government.

Victoria Legislative Council

Victorian Parliamentary committees comprise five joint-House investigatory committees with their powers and functions described by statute. The two Houses have separate standing committees established by respective standing orders. Both Houses may also establish select committees on occasions.

All committees are able to send for persons, documents and other things, which includes materials and documents held by the government—although the government has generally refused to provide documents that are considered

cabinet-in-confidence. All ministers of the government are also members of the Victorian Legislative Assembly or the Legislative Council, respectively. Legislative Council standing and select committees are able to require Legislative Council ministers to attend hearings, and joint investigatory committees (comprising members from both Houses) are able to require any minister to attend hearings. On occasions, the Council has sent a Message to the Assembly seeking leave for an Assembly minister to give evidence to a Council committee, however leave is always either denied or not dealt with.

If committees are not provided with evidence sought from government, or if a person or minister does not attend when summonsed, committees are able to report that matter to the relevant House or Houses of parliament. The relevant House may then consider whether a contempt has occurred, and whether any other action is appropriate.

The Legislative Council committees are, for the most part, non-government controlled. As such, there have been times in the past where the government has challenged a call for documents or certain witnesses. One notable case occurred in 2010 when the then Attorney-General intervened to prohibit a ministerial staff member to attend a standing committee hearing and give evidence after the committee had summonsed the witness to attend. The matter was reported back to the House and while no specific action took place in regard to the witness and Attorney-General's actions, the House eventually referred the broader inquiry matter to the Ombudsman for review.

The Legislative Council, through motions in the House, has an active production of documents procedure and standing orders. Often if a committee is unable to access documents, a member may move a production of documents motion in the House. Sanctions can, and have been, applied to the Leader of the Government in the Legislative Council for failure to comply with a production of documents motion

No plans have been made public to change or review the powers of committees to compel information or participation from government.

Western Australia Legislative Council

The Parliamentary Privileges Act 1891 (the Act) empowers Parliament to summons persons and papers. A failure to comply with a Committee summons can be reported to the Legislative Council who can decide to excuse the non compliance or order production or attendance.

A Committee may issue a summons to a government department to attend or produce documents. This is a rare occurrence as most government departments provide witnesses and papers on request. On occasions public servants may request to be summonsed rather than invited to attend before a Committee. This may occur for example where statutory or contractual privacy provisions

apply.

The only expressly stated ground for an objection to the production of a document under the Act is that the document is of a private nature and is irrelevant to the subject of the Committee's inquiry.

Objections

The Legislative Council does not accept that any of the objections to production discussed below provide a valid ground to resist production of information to a Legislative Council Committee.

Objections have been raised by Ministers and Government Departments to the production of documents or provision of evidence including claims of:

- commercial-in-confidence or commercial sensitivity (commonly, the disclosure of tenders for a contract before the call for tenders is closed)
- legal professional privilege
- cabinet-in-confidence
- public interest immunity (formerly known as executive or crown privilege)
- statutory secrecy provisions.

The first three of these grounds are discussed in the Western Australian Standing Committee on Estimates and Financial Operations Report 64 *Inquiry into the Provision of Information to the Parliament*.

Members

In relation to Members, a Committee of the Legislative Council can only request a Member of the Legislative Council to provide it with evidence and if the Member declines, the Committee may report the matter to the Council. The Legislative Council has the power to order one of its Members to appear before a Committee. A Council Committee has no power to summons a Member of the Western Australian Legislative Assembly it can, however, recommend that the Legislative Council seek an order from the Legislative Assembly for one of their Members to attend before the Committee.

CANADA

House of Commons

Powers of committees

Committees of the House of Commons of Canada have considerable, but not unlimited, powers to compel information or participation from government. Specifically, committees, like the House of Commons, have the power "to institute [their] own inquiries, to require the attendance of witnesses and to

order the production of documents".[3] These powers stem from the Constitution Act, 1867. Though they are given constitutionally to the House of Commons as a branch of Parliament, they are extended to committees through the Standing Orders. Indeed, it is most often committees that exercise the powers to conduct inquiries and send for witnesses and documents, while the House itself uses these rights largely in response to reports from committees. Regardless of whether they are wielded in the House or in committees, these powers are considered to form part of parliamentary privilege. Though many powers are delegated to committees, only the House has the power to discipline individuals for breaching parliamentary privilege. Additionally, it should be noted that committees must stay within their mandates as indicated by the Standing Orders or motions of instruction from the House.

Summoning witnesses

The power to summon witnesses is a privilege of the House, delegated to its committees. Committees regularly hear from witnesses, who usually appear voluntarily at the committee's invitation. Sometimes, however, a committee elevates the request to a summons, effectively compelling the individual to appear at a specific date and time. As a rule, committees may summon any person that they wish. In practice, members of the House of Commons (including cabinet ministers) and members of provincial legislatures are exempt from this obligation because of their parliamentary privilege. This would appear to dampen committees' powers to compel participation from government. However, Ministers often appear as witnesses voluntarily, and representatives from government departments (including the Prime Minister's Office and the Privy Council Office) are not exempt from committees' powers to summon witnesses.

When a committee wishes to summon a witness, the individual is served a summons by a bailiff. Challenges to this practice have occurred: in 2010, a bailiff was unable to serve a summons to two witnesses. Because the matter had been well publicised, the committee adopted a motion considering the summonses duly served. The witness did not appear at the appointed time, but in this case, the committee did not pursue the matter further.

When witnesses do not appear as ordered, or are unable to be served with a summons, committees do not have the power to punish the person in question. Instead, they must report the non-compliance to the House, as described in the section "Reporting to the House".

[3] *House of Commons Procedure and Practice*, 3rd edition. Chapter 3, "The Rights to institute Inquiries, to Require the Attendance of witnesses and to Order the Production of Documents".

Procuring documents

Committees may also order the production of documents. This, too, is a power arising from the Constitution and forming part of parliamentary privilege (delegated to committees by the Standing Orders). It is nearly without restriction, though the information must be located in Canada. As when they invite witnesses, committees often request documents and receive them willingly from their owners or authors. If a request is denied, however, a committee may adopt a motion ordering that the documents be produced within a specific time frame.

Committees sometimes do not receive the documents they order, for various reasons, including a conflict with a real or perceived legal duty not to release information. For example, in 2021, the Public Health Agency of Canada (PHAC) refused to release unredacted information requested by the Special Committee on Canada-China Relations (CACN), citing national security concerns. Though the committee twice ordered the production of documents and reported the matter to the House, which also ordered that the documents be produced, they were not handed over as required. This resulted in the House using certain disciplinary powers, as described below.

Reporting to the House

When a committee encounters challenges in applying its powers, it must report the matter to the House, who can decide how to enforce its parliamentary privilege. The non-appearance of witnesses and the failure to produce documents are regularly reported to the House. For example, in 2021, three government representatives were summoned to appear before the Standing Committee on Access to Information, Privacy and Ethics (ETHI). The witnesses did not appear, a report to the House was made, and a question of privilege was raised (the Speaker did not rule on whether it constituted a *prima facie* breach of privilege before Parliament was dissolved in August 2021). Historically, the House has ordered recalcitrant witnesses to appear at the Bar of the House to be reprimanded. On two occasions in the 1890s, witnesses were taken into the custody of the Sergeant-at-Arms.[4]

The House can take similar steps when committees require access to documents. For example, when CACN's attempts to procure documents in the spring of 2021 were unsuccessful, the matter was reported to the House, a question of privilege was raised, and the Speaker found that there was a *prima facie* breach of privilege. As a result of the subsequent privilege motion, a private citizen (the president of PHAC) was reprimanded at the Bar of the

[4] *House of Commons Procedure and Practice*, 3rd edition. Chapter 20, "Committee Powers".

House for the first time since 1913. In this case, the issue was not resolved even then: the government initiated legal proceedings intended to seal the documents and prevent them from being released to the committee. This legal action was withdrawn when Parliament was dissolved in August 2021.

Committee reports may take various forms, but when the committee is reporting a matter of privilege, it often includes a recommendation worded in such a way that, if the report were to be concurred in, it would constitute an order of the House. For example, committees may request additional powers or instructions, that the House order the production of documents or the appearance of witnesses, or that the House find an individual to be in contempt of Parliament for refusing to appear or produce documents. For such a recommendation to become an order of the House, the report must be concurred in or a motion must be adopted. Frequently, opposition parties use allotted days to put forward motions originating in committee reports. On the supply day of 25 March 2021, the House adopted an opposition motion ordering witnesses to appear before ETHI and the Standing Committee on National Defence. When the witnesses scheduled to appear before ETHI did not do so, Michael Barrett (Leeds—Grenville—Thousand Islands) rose on a question of privilege in the House based on language contained in ETHI's report on the subject. A similar procedure was followed in May and June 2021, when CACN presented its third report to the House. Michael Chong (Wellington—Halton Hills) moved an opposition motion on 1 June 2021, using the precise wording set out in the committee's report (the motion was adopted).

The above powers are limited to those issues that fall within the committee's mandate, as determined by the House. If a report to the House, for example, is outside of the committee's jurisdiction, the Speaker may rule a report (or one of its parts) out of order. Similarly, a committee can only order the production of information that relates to its mandate.

Challenges to committee powers

As mentioned above, committees alone cannot exercise the full disciplinary powers of the House. The main challenge to a committee's powers, therefore, is non-compliance with orders to produce documents or provide witnesses. It takes time for a committee to report to the House; furthermore, attempts to turn a report into an order of the House may face political obstacles. And once an order has been made, it may not result in the required information being produced. If Parliament is dissolved, the order may lapse, as happened in 2021. If Parliament is prorogued, committee orders for the appearance of witnesses or the production of papers cease to exist. Finally, drawing once again on the events of June 2021, the House may use its considerable disciplinary powers, but still fail to obtain exactly what it ordered. Though the House has the power

to go so far as to take individuals into custody and even to imprison them, this rarely occurs (the most recent example dating back to 1913).

Generally, challenges to committees' orders occur when there is a real or perceived statutory requirement that documents not be released. For example, in the case of CACN's order that PHAC produce certain documents in 2021, the government considered that the requested information could not be released to committee members because of statutory requirements and national security concerns. In 2009, a similar situation arose respecting documents about Afghan detainees.[5]

Plans to review or change committee powers

There are currently no plans to review or change these powers. If the House were to decide to initiate a review, the Standing Committee on Procedure and House Affairs (PROC) could be instructed to study the issue. Indeed, in his question of privilege on 21 June 2021, Gérard Deltell (Louis-Saint-Laurent) indicated that should a *prima facie* case be found, a privilege motion could include having PROC consider the enforcement mechanisms available to the House in cases where documents were not produced. In the absence of a specific request for such a study, PROC could also take the initiative to study and produce a report on the issue, as it relates to the committee's mandate.

Senate

In the *Rules of the Senate*, rule 12-9 grants various powers to standing Senate committees. Once a committee has received an order of reference (mandate) from the Senate, it is empowered to inquire into and report on the matter. While conducting a study, a standing committee has the power to send for persons, papers and records (rule 12-9(2)(a)). This includes the power to issue a summons insisting that certain persons or material be made available. This power is only very rarely exercised by committees, as most witnesses appear voluntarily. However, if a summons is used and a person refuses to appear or deliver the material in question, this can constitute a contempt of Parliament and could be reported to the Senate by the committee, with a recommendation as to how to proceed. Only the Senate itself can punish for contempt. A committee has neither the power to reprimand nor the power to enforce penalties.

One of the clear limitations on the powers of committees in this regard is that they cannot compel the attendance of members of either house, which would include ministers and parliamentary secretaries and, according to rules and practices, they can only send for documents that the Senate itself can

[5] At that time, parliamentarians were able to come to a compromise that allowed members of a newly created *ad hoc* committee to see the documents without breaching confidentiality concerns.

demand. With respect to the attendance of members of either house (House of Commons or Senate), members may choose to appear voluntarily, or the house of which they are a member can order them to appear.

For a committee to be able to exercise its power to send for persons or papers, the following conditions should be met:

- the persons, papers or records must be relevant to the order of reference;
- the Senate must have the power or authority to order the presentation of the papers or the presence of the persons;
- when the Senate can obtain the required document only by an address to the Governor General, this address must originate in the Senate; and
- a summons cannot be issued by the committee against a senator or member of the House of Commons, although the Senate or House of Commons can order one of its members to attend a committee.

Once witnesses are before a committee, they are bound to answer all questions put and cannot be excused on such grounds as solicitor-client privilege, self-incrimination or that they have taken an oath not to disclose information. A witness can, however, appeal to the chair and request that a response not be insisted upon, giving reasons. In practice, these issues rarely arise.

With regard to government participation in Senate committees, when a committee begins its public hearings on a government bill, the sponsoring minister is typically invited to appear first.

On occasion, a minister or the parliamentary secretary may be invited a second time just prior to clause-by-clause consideration of the bill. Ministers and public servants are also invited to appear before committees studying the expenditures set out in the main estimates, supplementary estimates and budget implementation bills. Committees undertaking special studies that relate to matters that fall within a minister's responsibilities may also from time to time invite said minister to appear. When ministers appear before committees, they are usually accompanied by public servants. Committees often accommodate the special position of public servants and refrain from questioning them on issues that would normally fall within the realm of subjects for which their minister is answerable (e.g., the reasons for a policy). However, there is no formal protection allowing public servants to refuse to answer questions.

Although there have been no specific challenges to these powers in the Canadian Senate, committees have been unable to meet as frequently in the past few years, due to technical and logistical challenges related to the COVID-19 pandemic. Some senators have expressed frustrations about changes to the schedule of meetings and sittings of the Senate, which some have argued has negatively impacted their ability to scrutinise government bills. Other committees have sometimes expressed frustration at what they perceive to be delays in receiving information from government departments. However, none

of these frustrations have led to challenges to the fundamental powers held by Senate committees to call for persons and papers.

Alberta Legislative Assembly

The Assembly has the inherent power to conduct inquiries, require the attendance of witnesses and to order the production of documents. The power for the Assembly and its committees to send for persons, papers and records applies to government organisations and is outlined in section 14 of the Legislative Assembly Act as well as Standing Order 69(1):

"Compelling attendance of witnesses:

14(1) The Assembly or a committee of the Assembly may by order summon before the Assembly or the committee, as the case may be, any person as a witness and require the person to give evidence on oath orally or in writing and to produce any documents and things the Assembly or committee considers necessary in any of its proceedings or deliberations.

(2) If the Assembly or the committee requires the attendance of a person as a witness by an order under subsection (1), the Speaker may issue a warrant directing the person to attend and produce any documents and things mentioned in the order.

(3) An order or warrant under this section may command the aid and assistance of a peace officer."

Committee witnesses

Standing Order 69(1) also states that "No witness shall be summoned to attend before any committee of the Assembly except by order of the committee or the Assembly." These powers have been very rarely used at the Legislative Assembly of Alberta. Instead of compelling attendance or the production of documents or records, almost invariably Committees invite witness to appear or make a request that documents be produced. This is often done through a resolution of the committee. The practices of the Standing Committee on Public Accounts are illustrative. This committee meets with Government departments and entities on a regular basis, inviting rather than compelling them to appear. Similarly, the committee requests that these same entities provide for written responses to queries made at committee meetings and to provide for other documentation.

At the present time, there are no plans in place to re-evaluate these powers.

British Columbia Legislative Assembly

The powers of parliamentary committees are set out in the provincial Constitution Act (R.S.B.C. 1996, c. 66, s. 53), the Legislative Assembly Privilege Act (R.S.B.C. 1996, c. 259, ss. 2, 3), Standing Order 72(1), the

motion appointing the select standing committees of the Legislative Assembly that is moved at the beginning of each Session of a Parliament, and in the terms of reference for special committees. These include the power to summon witnesses and request the production of papers and records.

The Constitution Act states:

"53 (1) A select standing or special committee of the Legislative Assembly may, if authorized by resolution of the Legislative Assembly, sit

(a) during a period in which the Legislative Assembly is adjourned, or

(b) during the recess after prorogation until the next following session.

(2) A committee authorized to sit under subsection (1) must report to the Legislative Assembly on the matters referred to it following the adjournment, or at the next session, as the case may be.

(3) A select standing or special committee of the Legislative Assembly authorized under subsection (1) may sit at times and places and examine witnesses and documents and hear representations from persons and organizations

(a) as the Legislative Assembly, by resolution, may direct, or

(b) as the committee decides, if there is no direction by the Legislative Assembly.

(4) For the purposes of subsection (3), the committee

(a) may compel the attendance of witnesses and the production of documents, and

(b) has all the powers and privileges of the Legislative Assembly under the Legislative Assembly Privilege Act.

(5) A warrant or subpoena issued by the chair of the committee has the same effect as if it were issued by the Speaker under section 3 of the Legislative Assembly Privilege Act."

Standing Order 72 states that:

"(1) Witnesses may be summoned to attend before any Committee of the House upon a motion to that effect being passed by the Committee.

(2) The Clerk of the House may authorize the payment to witnesses so summoned of a reasonable sum per diem during their travel and attendance, to be determined by the Speaker (the daily rate if allowed to be the same in all cases), and a reasonable sum for travelling expenses.

(3) The claim of a witness for payment shall state the number of days during which he or she has been in attendance, the time of necessary travel, and the amount of his or her travelling expenses, which claim and statement shall, before being paid, be certified by the Chairperson and a Clerk of the Committee before whom such witness has been summoned, and no such payment shall be made in any case without the authority of the Speaker, which shall be signified by his or her endorsement upon such certificate.

In accordance with Standing Order 72(1), a committee can adopt a motion to order or compel a witness to appear. The adopted motion gives the Chair the power to issue a warrant or subpoena, as provided by the provincial Constitution Act (s. 53(5)).

Following a summons, should an individual still refuse to appear before the committee, fail to respond to the summons or not provide a reason for declining to appear that is deemed acceptable to the committee, the committee may seek recourse from the Legislative Assembly (parliamentary committees do not hold punitive powers in British Columbia).

A committee can also adopt a motion to produce a document if a private citizen or public official is reluctant to provide information that the committee has determined is critical to its work. If the document is still not produced, there are three possible courses of action available to the committee: accept the justification for refusal; seek a compromise, such as an in-camera review of the document; or report the matter to the Legislative Assembly to seek an order of the Assembly to produce the document. Should the document still not be produced, the Legislative Assembly may find the individual or entity from whom the document is being sought in contempt of the Legislative Assembly.

Parliamentary committees in British Columbia are also empowered by the provincial Constitution Act (s. 54) to examine witnesses under oath. The form of the oath that may be administered to a witness is prescribed in section 52(2) of the provincial Constitution Act:

> "The evidence that I am about to give to the committee concerning the Bill entitled "[insert the title here]," which has been referred to this committee, will be the truth, the whole truth and nothing but the truth; so help me God."

The form of the oath may be modified if the matter on which the witness is appearing before the committee does not relate to a bill or if the witness chooses to make a solemn affirmation rather than swear an oath. The administration of an oath to a witness appearing before a parliamentary committee is a rare occurrence in British Columbia.

In practice, witnesses, including public servants and other officials, appear before a committee willingly. Similarly, most documents and information requested by a committee are provided willingly. There are no current plans to review or change committees' powers in this area.

Manitoba Legislative Assembly

The Legislative Assembly and its Committees have the ability to command and compel attendance of persons and the production of papers and things as the Assembly or Committee may deem necessary for any of its proceedings or deliberations as per The Legislative Assembly Act. The Assembly does have

the ability to request the Speaker to issue a warrant or subpoena to require attendance and for the production of papers.

The Public Accounts Committee (PAC) routinely invites Deputy Ministers and Ministers for questioning on reports issued by the Office of the Auditor General, although recently PAC has taken to invite Deputy Ministers and not Ministers. PAC also has the ability to obtain information regarding government operations through Freedom of Information and Protection of Privacy Act requests.

There have not been challenges to these authorities or uses. Initially Deputy Ministers were apprehensive, but with PAC continuing to operate in a non-partisan manner, these concerns have been ameliorated. There are no current plans to review these powers.

Ontario Legislative Assembly

The committees of the Ontario Legislative Assembly have the power under the Standing Orders "to send for persons, papers and things." The right to institute inquiries; to require the attendance of witnesses and to order the production of documents is a parliamentary privilege. In practice, a committee can request the appearance of witnesses or the production of documents with the passage of a motion by majority vote. If such a request is declined, the committee may also enlist the assistance of the House to ensure compliance. This also requires the passage of a motion by a majority vote.

These rights extend to information or participation from the government, but they are usually only exercised when there is an appetite and an opportunity. This combination presented itself in the form of a minority parliament in 2012–2013.

During the 2011 provincial election, the Liberal Party won its third consecutive term but in a minority situation. The Progressive Conservatives as the Official Opposition and the New Democratic Party as the Third Party collectively had the numbers—and therefore the power—to demand answers from the government. They not only had this power in the House, but it extended to committees as well.

The issue of the day was the cancellation and relocation of two natural gas-powered electricity generation power stations (gas plants) located in Liberal-held ridings. These actions were said to be made due to political reasons: the Liberals were at risk of losing these ridings but ultimately won them in the election. In the House and in a number of committees, the opposition questioned the rationale for, and the cost of, the cancellations of these gas plants.

In particular, the Standing Committee on Estimates became centre stage for these questions during its consideration of the estimates of the Ministry of Energy in May 2012. The committee's opposition members asked questions

regarding the cancellation of the gas plants. The questions were accompanied by requests for documents, the provision of which was customary for Ministers to undertake. In this case, the Minister declined to discuss the issue and provide documents, citing commercial sensitivity and solicitor-client privilege as reasons due to negotiations still taking place.

On 16 May 2012, the committee adopted a motion to direct the Minister of Energy, the Ministry of Energy and the Ontario Power Authority (a government agency) to produce, within two weeks, all correspondence, in any form, related to the cancellation of the Oakville power plant as well all correspondence, in any form, related to the cancellation of the Mississauga power plant.

On 30 May 2012, the day of the two-week deadline, the Minister of Energy and the Chief Executive Officer of Ontario Power Authority each wrote letters to the Committee that they respect the committee's authority and interest in receiving the information, but that the information requested was of a confidential, privileged and commercially sensitive nature. As a result, a motion was moved in Committee to report to the House the Minister's refusal to provide the information as ordered by the Committee. After eight hours of debate in a span of four meetings that continued into the summer adjournment, the Committee adopted the motion which formed the text of its report to the House. It included a recommendation that the Minister of Energy be compelled to provide to the Committee, without delay, the documents and information it ordered and if the Minister refused, that he be held in contempt of Parliament for breach of privilege.

When the House resumed sitting on 27 August 2012, the Standing Committee on Estimates presented its report to the House and moved the adoption of its recommendations. That same day, the Member for Cambridge, who was the member of the Standing Committee on Estimates who moved the motion in Committee to report to the House, rose on a question of privilege on the same matter.

On 13 September 2012, Speaker Dave Levac ruled that a *prima facie* case of privilege has been established. He affirmed that committees are empowered to order the production of documents, as prescribed in the Standing Orders, and non-compliance can constitute a matter of privilege. In this case, the Standing Committee on Estimates ordered the production of documents relevant to its mandate. While it was the committee's right to order the documents, the Speaker indicated that committees often accommodate or respect security, legal and public policy considerations; but whether to do so was the committee's decision to make.

Notably, the Speaker cited a ruling made in the Canadian House of Commons by Speaker Peter Milliken relating to the request of information regarding the treatment Afghan detainees during the war in Afghanistan. Speaker Milliken

indicated that "no exceptions are made for any category of government documents, even those related to national security." Speaker Milliken had also asked the House to find a way to work together to allow the documents to be made available without compromising the security and confidentiality of the information. In the same vein, Speaker Levac asked the three House Leaders to find a solution by 24 September 2012, that can satisfy the request of the Committee.

While the Ministry of Energy and the Ontario Power Authority provided documents in response to the Committee's 16 May motion by the Speaker's deadline, the three House Leaders did not communicate to the Speaker that a compromise had been reached. It was evident that there were still concerns about the Minister's initial refusal and the time it took to provide the documents. As such, the Member for Cambridge moved a motion to direct the Minster of Energy and Ontario Power Authority to table immediately all remaining documents ordered by the Standing Committee on Estimates; that the matter of the Speaker's finding of a *prima facie* case of privilege be referred to the Standing Committee on Finance and Economic Affairs. Debate on the motion took precedence over regular business. Following four sessional days of debate and the passage of a closure motion, the House proceeded to pass the motion moved by the Member for Cambridge and the matter of privilege was referred to the committee.

The House prorogued on 15 October 2012, before the committee had the opportunity to meet. When the House returned to a new session on 19 February 2013, the Speaker allowed the matter of privilege to be raised again. He confirmed his previous ruling that *prima facie* case of privilege was established and allowed the Member for Cambridge to move a motion to refer it again to a committee. This time, the matter was referred to the Standing Committee on Justice Policy. The Committee's mandate was also expanded to include consideration of the tendering, planning, commissioning, cancellation and relocation of the gas plants.

The committee presented an interim report on 27 May 2013, which contained a summary of testimony from 25 witnesses. The Committee continued to meet after that and eventually shifted its focus on reviewing all other aspects of the cancellations rather than the matter of privilege until the House dissolved on 2 May 2014.

While the committee did not come to a direct conclusion relating to the matter of privilege, this process confirmed a committee's powers to scrutinise the work of government and, under the right circumstances, compel its participation.

Prince Edward Island Legislative Assembly

The Legislative Assembly Act (for Prince Edward Island) states:

"Section 12

Committee commanding attendance

(1) A committee of the Legislative Assembly may, by order at any time, command and compel the attendance of the persons, and the production of the records and things, before the committee that the committee considers necessary.

Warrant or subpoena

(2) For the purpose of subsection (1), the committee chair may issue a warrant or subpoena directed to the person named in the warrant or subpoena requiring the attendance of that person, and the production of any records and things indicated in the warrant or subpoena, before the committee.

Administration of oath or affirmation

(3) A committee of the Legislative Assembly may cause an oath or affirmation to be administered by the committee chair, or a person appointed for that purpose by the committee chair, to a witness examined by the committee."

The Rules of the Legislative Assembly of Prince Edward Island Rule 94(2) states: "Committees shall report to the House from time to time their observations and opinions with power to send for persons, papers and records."

Since 2000, a standing committee has twice used its power to compel the attendance of persons and the production of records. In 2001, a committee issued a warrant to compel the attendance of a federal government agency. The federal government filed an application to have the warrants stayed. Legal arguments were heard in 2002, and in 2003, the Supreme Court of Prince Edward Island ruled that committees of the Legislative Assembly are extensions of the Legislative Assembly itself and enjoy a constitutional power to compel the attendance of witnesses and this power exists notwithstanding the witnesses sought to be compelled to appear are employees of another level of government.

In 2021, a standing committee subpoenaed a provincial government department for the production of records, and the department met the deadline set by the committee.

Québec National Assembly

Section 51 of the Act respecting the National Assembly provides that the "Assembly or a committee may summon and compel the appearance before it of any person, either to answer questions put to him or to produce such papers and things as it may deem necessary for its acts, inquiries or proceedings."

These powers are rarely used in practice. The committees that have oversight and accountability mandates can usually count on the collaboration of government departments and public bodies when the time comes to hear

witnesses or order the production of information or documents.

Saskatchewan Legislative Assembly

Committees of the Legislative Assembly have the authority to call for witnesses, records, or papers. This authority is set out in section 35(1) of The Legislative Assembly Act, 2007:

> "The Legislative Assembly or a committee of the Legislative Assembly may, by order:
>
> (a) summon before the Legislative Assembly or the committee, as the case may be, any person as a witness; and
>
> (b) require the person summoned pursuant to clause (a):
>
> (i) to give evidence on oath or under affirmation orally or in writing; and
>
> (ii) to produce any documents and things the Legislative Assembly or committee considers necessary in any of its proceedings or deliberations."

Section 24(1) of the Act also states that "The Legislative Assembly is a court and has all the rights, powers and privileges of a court of record for the purpose of summarily inquiring into, judging and punishing breaches of the privileges of the Legislative Assembly and contempts of the Legislative Assembly."

Section 25(1) of the Act outlines penalties for breaches of privilege, including imprisonment, fine, or suspension of member rights in the Assembly for a stated period of time.

Standing orders 132(1) and 132(2) of the Rules and Procedures of the Legislative Assembly of Saskatchewan allow for committees to request the attendance of specific witnesses or the production of papers. Committee members may make such a request in the form of a motion. With unanimous approval, the motion becomes an order of the committee. If the order is not complied with, the committee can report the matter back to the Assembly under standing order 132(12).

The committee may also request a Speaker's warrant. Section 35(2) of the Act states that "the Speaker may issue a warrant directing the person to attend and produce any documents and things mentioned in the order." If the documents are still not produced or the witness still fails to appear before the committee, the Speaker "may command the assistance of all sheriffs, bailiffs, constables, peace officers, and others" to ensure compliance under section 35(3).

In 1998, the Crown Corporations Committee followed a formal subpoena process to request cabinet and legal opinions from the government. A Speaker's warrant was issued to avoid breaching terms of the government's liability insurance and not because the government was reluctant to provide the documents. The committee adopted a report recommending a subpoena be

issued to request documents and summon a government official to attend. The report instructed the Speaker to issue the subpoena, which was then served by the Sergeant-at-Arms to the individual.

In 1916, a member of the public was imprisoned for refusing to testify before a committee. The individual refused to answer questions when called as a witness before a select committee inquiring into allegations of bribery. The committee presented a report to the House, and the Assembly moved a motion that the individual appear before the bar of the House. When he refused to answer questions in the House, a motion was moved that he "be committed for his contempt of this House in refusing to answer the questions put to him to the custody of the Sergeant-at-Arms during the pleasure of this House." The individual apologised to the House about a week later and answered questions in front of the committee. A motion was later moved in the House that he be released from custody.

There are no plans to review or change these powers.

Yukon Legislative Assembly

In each of the motions establishing the five standing committees there is a line that reads: "THAT the committee ["board", in the case of the Members' Services Board] have the power to call for persons, papers, and records and to sit during intersessional periods." There have been no recent cases where persons or documents have been refused and additionally there have as result been no cases where a refusal has been challenged. At this time there are no plans afoot to review or change such powers and the line above is often used in special or select committees established by the Assembly.

FALKLAND ISLANDS LEGISLATIVE ASSEMBLY

The Public Accounts Committee is the main scrutinising committee for the work of the Government. There is a clear process in place for the PAC to obtain information relating to areas of work being scrutinised, there has been no challenges toward the operating of that process.

STATES OF GUERNSEY

At a statutory level Guernsey has the Scrutiny of States and Public Bodies (Guernsey) Ordinance, 2020 which enables the Scrutiny Committee, in certain circumstances to apply for a court order imposing a formal requirement to appear before a scrutiny panel or produce documents or both.

As yet these powers have not been used in Guernsey (in Jersey where similar powers exist they have never been used in the 10 years they have been in place).

In practice there seems to be a convention that people required to attend a scrutiny hearing will do so. People believe they must attend without really querying the position. Elected Members often feel they will fall foul of the Code of Conduct if they refuse to attend.

GUYANA NATIONAL ASSEMBLY

Sectoral Committees have the authority to determine areas of Government activity for scrutiny or specific examination and can request the Minister assigned responsibility for the sector to submit written or oral information, including government documents and records about any specific area of government policy and administration. In addition to their determination of areas of the policy or administration by the Government within their terms of reference or scrutiny, the Committees at the request of the National Assembly, will inquire and report on any aspect of the policy or administration by the Government within their terms of reference.

Committees also have the power to review existing legislation on government policy and administration for any of the sector and can make recommendations to the Assembly on Legislation or any other action to be taken on matters falling within their purview.

Committees are authorised to summon persons to give evidence in accordance with the Legislative Bodies (Evidence) Act, Cap. 1:08 of the Laws of Guyana, scrutinise government documents, papers and records and visit any government activity or project in Guyana.

In the discharge of their mandates, the Committees are authorised to utilise the services of experts, specialists and other sources of advice as determined by them.

Sectoral Committees are authorised to submit special and periodic reports to the National Assembly on their work.

Sectoral Committees are further empowered to request the Government to table a comprehensive response to any of their reports within sixty days of the presentation of the reports to the National Assembly.

In light of the frequent misunderstandings that occur during visits by Parliamentary Committees, the Clerk of the National Assembly, Mr. Sherlock.E. Isaacs A.A has provided the following guidelines for visits of Parliamentary Sectoral Committees to Government Ministries, Departments or Agencies:

1. The prior approval of the Speaker of the National Assembly must be obtained in all cases, in accordance with Standing Order No. 95 (8).
2. The necessary funds for travel, meals, et cetera, will be made available by the Clerk of the National Assembly, subject to the approval of the Speaker for Committees to visit.

3. Expenditure for visits must be kept to the minimum.
4. Terms of reference for visits should be precise and laid down in writing.
5. The visits should be undertaken for the absolutely minimum necessary period.
6. Sufficient notice of the visits should be given to the Ministry, Department or Agency to be visited. It is not advisable that impromptu visits be made to Government Ministries, Departments and Agencies.
7. There should be no last-minute changes in the programme for the visits, as these result in difficulties to the Government Ministry, Department or Agency to be visited.
8. Intermediate journeys should be avoided during visits.
9. At all times during visits, the Committee should maintain a quorum. However, the Committee may appoint a Subcommittee, consisting of not less than two (2) Members, to visit specific areas (in keeping with the Committee's terms of reference). The Subcommittee must report back to the Committee.
10. When transportation is provided by the Parliament Office/Government for visits by Committees, the transportation should be used for the Committees' work only and not by individual Members for private visits.
11. During visits, Members should take particular care to maintain proper dignity and decorum so that no criticism is made of the Committee in any manner.
12. No Member should give Press Statements regarding Committees' proceedings to the Press. Whenever any briefing to the Press is to be done, the same should be done by the Chairperson or another Member authorized by the Committee in the presence of the other Members of the Committee.
13. It is important to note that Parliamentary Sectoral Committees do not need the approval of a Minister, Permanent Secretary or any Head of Department to visit and Ministry, Government Department or Government Agency. It must also be noted that Parliamentary Sectoral Committees are established by Article 119B of the Constitution and, in accordance with paragraph 4 (v) of Resolution No. 9 of 2003, have the power to visit any Government activity or project in Guyana as agreed by the Sectoral Committee.
14. It should be further noted that Standing Order No. 86 (5) (f) of the Standing Orders of the National Assembly states that Sectoral Committees shall have the authority to visit any Government activity or project in Guyana as agreed by the Sectoral Committee.

JAMAICA PARLIAMENT

The Senate and House of Representatives (Powers and Privileges) Act empowers the Senate, the House of Representatives and their standing committees to "order any person to attend before such House or before such committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person" (section 5). There are exceptions in respect of papers, books, records, documents or evidence relating to "the correspondence of any naval, military, air force or civil department or to any matter affecting the public service" (section 9). There were no challenges to these powers in 2021.

KENYA NATIONAL ASSEMBLY

Power of the House to compel information/participation of other arms of government

Article 125 of the Constitution gives Committees of the House and its committees the power to summon any person to appear before it to give evidence or provide information. The power so granted is same as the High Court in –

- enforcing attendance of witnesses and examining them on oath/affirmation
- compelling production of documents; and
- issuing commission to examine a witness abroad.

The foregoing constitutional power is replicated in section 18 of the parliamentary Powers and Privileges Act, 2017 and Standing Order 191 of the National Assembly Standing Orders Challenges in compel information/ participation of other arms of government

The Presidential system whereby Cabinet Secretaries are not Members of Parliament has posed a challenge in enforcing appearance of Cabinet Secretaries before select committees. Although the Parliamentary Powers and Privileges Act, 2017 provides for fining a non-co-operative government official, enforcement of such fines remains a challenge.

There are no plans to review of change the power. However, there is a proposal to establish a Committee on General Oversight before which Cabinet Secretaries can appear for more accountability to the House, sitting as a Committee of the Whole House. This would enhance compliance by Cabinet Secretaries by requiring them to appear before a mini-House, which would be construed as more powerful than the select committees.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Select committees have relatively limited coercive powers to obtain information or participation from the government. Most information and participation from government is provided willingly to committees in response to requests and invitations. No committee has a majority of members from Opposition parties, and party discipline is relatively strong; these factors may limit controversial requests for information or participation from the Government.

The power to require the attendance of witnesses or the production of documents or records (commonly known as the power to send for persons, papers, and records) is not delegated to the subject-area focused select committees (called "subject select committees) that conduct regular scrutiny of government in New Zealand. The only one of the permanent select committees delegated this power is the Privileges Committee. Any subject select committee wishing to call upon this power must apply to the Speaker for the issue of a summons. The Speaker must be satisfied that the evidence sought is necessary to the committee's proceedings and that the committee has taken all reasonable steps to obtain the evidence (Standing Order 200). There are no other powers related to compelling participation from government in scrutiny activities.

There is only one known example of the summons power being used by a committee in the course of scrutinising government. In March 2020 the House established an ad hoc committee called the Epidemic Response Committee, for the purpose of scrutinising the Government's response to the COVID-19 pandemic. The committee was delegated the power to send for persons, papers, and records, was chaired by the Leader of the Opposition, and had an Opposition majority. The committee did not need to apply to the Speaker to use the power to send for persons, papers, and records. The committee used its power to summon evidence once, summoning legal advice provided to government concerning the legality of the first national lockdown of the COVID-19 pandemic.

Select committees also have the power to require a witness to answer a question that the witness has objected to answering during a hearing of evidence (Standing Order 231). The witness may still refuse to answer the question after having been compelled to; in this case the committee can report the matter to the House, and the House may take action as it sees fit. The power is used very infrequently. There is one only recent example: in 2019, the Governance and Administration Committee required the Chief Statistician to answer a question she had refused to answer during a hearing of evidence, about data for the 2018 Census. The Chief Statistician provided a written response to the committee after the committee invoked its power to require her to answer the question.

No committee in New Zealand has the power to punish a witness or

prospective witness. The penal powers of the House are exercised by the House only, by convention on the recommendation of the Privileges Committee, following investigation of a charge of contempt. The House's contempt jurisdiction underpins both the power to require a witness to answer a question and the power to send for persons, papers, and records; failure to comply with a legitimate exercise of either power may result in a charge of contempt of the House (Standing Order 418(s) and (v)).

Select committees have the power to require a witness to take an oath or make an affirmation before giving evidence (Standing Order 234). While this is not in itself a power to compel the provision of information, it could contribute to the provision of truthful information. However, there is no known recent example of this power being used by a committee.

Powers to compel information or participation are used very rarely; consequently, challenges are similarly rare.

The Epidemic Response Committee's use of the power to send for persons, papers, and records to summon legal advice provided to government was challenged by the Government on the basis that the power could not be used in respect of advice covered by legal professional privilege. Eventually, the legal advice documents were provided to the committee, but all the substantive content of the advice was redacted.

There was no formal resolution of the question of whether the committee had the power to summons legal advice. However, a 2003 report of the Standing Orders Committee articulated the position that while legal advice is not beyond the reach of the summons power, legal professional privilege may operate to prevent the document being provided to the committee. A legal opinion is the property of the person who commissioned it, and without that person's consent, a select committee cannot expect an opinion to be furnished by the person who prepared it. Legal professional privilege in respect of legal advice provided to the executive branch is held by the Attorney-General. The Attorney-General refused to waive legal professional privilege in the advice summoned; consequently, the individuals who had been issued summons (various departmental chief executives) could not provide the legal advice. The House and its committees are obliged to respect and observe the law; the Standing Orders Committee stated in its 2003 report that committees should not undermine the duty of other persons to comply with the law. Legal professional privilege may thus practically limit the exercise of the power to send for persons, papers, and records, even if it does not necessarily constitute a limit on the scope of the power itself.

The Governance and Administration Committee's decision to require the Chief Statistician to answer a question she had refused to answer during a hearing of evidence was not itself challenged; once the committee exercised

its power to require an answer, the Chief Statistician responded in writing to the question. The committee's question had been initially resisted by the Chief Statistician on the ground that they considered answering the question to be inconsistent with their responsibilities under the Statistics Act 1975 to maintain the integrity and independence of the official statistics system. This did not amount, however, to a challenge to the power to compel the production of information.

There is an acknowledged limitation on the power to compel information in cases where a relevant statutory secrecy provision is in operation and the provision is explicitly framed as applying to the legislative branch of government.

Select committees' power to inquire is limited in certain ways. The power to inquire is separate to the powers to compel information and participation from witnesses, but restrictions on the power to inquire may in practice constitute limits on the power to obtain evidence. For example, a committee is prohibited from inquiring into allegations of criminal-wrongdoing against named or identifiable persons unless authorised by the House to do so. It would therefore be out of order for a committee to seek to require a witness to answer a question that amounted to inquiring into such an allegation. Committees other than the Privileges Committee are similarly prohibited from inquiring into charges against the private conduct of members.

There are no plans to review or change the powers committees have to compel information or participation from the government when scrutinising the government. The Standing Orders are reviewed once a parliamentary term; this review would provide an opportunity to consider any proposals should they emerge.

TANZANIA NATIONAL ASSEMBLY

Article 96 of the Constitution of the United Republic of Tanzania confers on the National Assembly the power to establish various Standing Committees as it may deem appropriate for the better discharge of its functions. The Standing Orders of the National Assembly provide for the composition and functions of the Standing Committees established pursuant to the provisions of this Article.

The Parliament has the right to make rules or orders concerning its powers and conduct of business. This power extends to committees and is delegated to a committee by the standing orders. A parliamentary committee discharges its functions on behalf of the Parliament and it possesses no authority except that which it derives by delegation from the House. Powers which Parliament may delegate to its committees are limited to matters on which the Parliament may legislate.

Powers explicitly granted to a committee by the standing orders are the

ability:

(a) to conduct any inquiry into any matter in the public interest and to exercise powers to obtain evidence in any such inquiry; and

(b) to compel witnesses to attend and give evidence before it/ power to compel witnesses to give oral or documentary evidence.

TRINIDAD AND TOBAGO PARLIAMENT

Select Committees can issue summons to compel Government entities/ officials and other persons to produce information or appear before them. The summons, under the direction of the Speaker, is signed by the Clerk and served by the Marshal, seven days before the evidence is required.

There have been challenges to the operation of this power by a private person. During a 2018 inquiry by the Joint Select Committee on State Enterprises into the efficiency and effectiveness of the Education Facilities Company Limited (EFCL) in managing the construction and repair of Government and Government Assisted Schools., an individual submitted that his eventual appearance was by reason of voluntary action and not via summons as the Parliament had no authority to summon his appearance.

There are no current plans to change the power to summon persons, papers and records.

UNITED KINGDOM

House of Commons

House of Commons committees with an investigative role, including those responsible for scrutinising government departments, are given by standing order the power "to send for persons, papers and records". This traditional formula (often abbreviated to "PPR") means committees can require the attendance of witnesses to give oral evidence, and the production of written evidence or specified documents. While the power is theoretically unlimited in relation to private individuals and bodies (albeit with recent concerns about enforceability), it cannot be exercised to secure the attendance of Ministers as witnesses or the production of documents by government departments against their wishes.

With regard to the attendance of Ministers, PPR powers do not extend to Members of either House of Parliament, which includes all Ministers. (The attendance of named civil servants is a more contested issue. The Government's internal guidance states that a Minister will usually agree to a request from a committee to take evidence from a particular named official, but retains the right "to suggest an alternative civil servant, or additional civil servant(s), to

the person named by the Committee if the Minister believes that would be a better way to represent them", and that if "there is no agreement about which official should most appropriately give evidence, the Minister can offer to appear personally before the Committee". However, this internal guidance has not been approved by Parliament and has no parliamentary status.)

With regard to the production of papers, Erskine May (25th edition, 2019) states that:

> "A select committee has no power to send for any papers which, if required by the House itself, would be sought by Address. Consequently, a select committee is not capable of taking the formal step of ordering a Secretary of State to produce papers. Nor can a committee require an officer of a public department to produce any paper which, according to the rules and practice of the House, it is not usual for the House itself to order to be laid before it. Select committees have occasionally argued that there should be a procedure to enable them to challenge in the House a department's decision to withhold papers. Governments have opposed recommendations for a formal procedure to give them that opportunity, but have instead relied on the terms of the House's Resolution on Ministerial Accountability of March 1997, and in particular its provision that 'Ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest'. In addition, the Government has given an undertaking that 'where there is evidence of widespread general concern in the House regarding an alleged Ministerial refusal to divulge information to a select committee', time would be provided for a debate in the House. (Paragraph 38.32)."

The House itself has resolved by Address for papers to be provided to a specified select committee, without a request from the committee; where there was uncertainty as to whether the obligation had been complied with, the Speaker was guided by the opinion of the committee itself.

The House's Committee of Privileges in a recent report recommended legislation to create a criminal offence of refusing without reasonable excuse to obey a committee's request to give evidence or supply papers when that request has been endorsed by the House through a statutory summons. In its report the Privileges Committee considered whether Ministers should be included within the ambit of this proposed legislation. It concluded that Ministers should be excluded, not least because this "would be a major constitutional change which in our view should only be proceeded with following extensive consultation, including with the Government, the House of Lords and the Procedure Committee" (Committee of Privileges, First Report of Session 2022-23, Select committees and contempts: review of consultation on Committee proposals (HC 401), para 104).

House of Lords

House of Lords Committees are given the power to "send for persons, papers and records". Ordinarily, witnesses attend and documents are produced voluntarily. However, the existence of this power means that, should it be necessary to issue a formal summons for the attendance of witnesses or the production of papers, the Chair may put a motion before the committee that such a summons be issued. The issuing of a summons is to be used as a last resort, and only where a witness has refused repeated invitations, and their evidence is vital to an inquiry in progress. Refusal to attend in response to a formal summons would be reported to the House as a *prima facie* contempt.

Members (including ministers) or staff of the House of Commons, and persons outside United Kingdom jurisdiction, may give evidence by invitation, but cannot be compelled to do so.

In practice, although on occasion House of Lords committees have come close to issuing a formal summons, no such summons has ever been issued. From time-to-time committees have been frustrated by difficulties in obtaining participation by ministers, particularly Secretaries of State, whom they invite to give evidence. Committees have also from time to time considered that the information provided by government departments has been inadequate. Complaints are usually taken up behind the scenes, sometimes by issuing a formal letter, which may be published. Committees might seek the help of the Leader of the House, whose responsibilities include oversight of the Government's engagement with the Lords, in the event they are not able to secure what they think is a reasonable level of cooperation from a department with a piece of scrutiny. There are no plans to change the already wide powers which committees enjoy.

The Government has undertaken to respond in writing to the reports of select committees, if possible, within two months of publication (*Departmental evidence and response to Select Committees*, Cabinet Office, October 2014). In order to encourage timely responses and to highlight any delays in such responses, reports to which a Government response has not been received within two months are listed in *House of Lords Business* every Monday when the House is sitting.

Northern Ireland Assembly

Northern Ireland Assembly committees have the power, under section 44(1) of the Northern Ireland Act 1998 and Assembly Standing Orders, to require the attendance of a witness and/or the provision of documents. section 44(6) of the 1998 Act states that the power may be exercised only if a committee is expressly authorised to do so by Standing Orders. In fact, all statutory, standing and ad hoc committees at the Assembly have been expressly authorised in Standing

Orders to call for persons and papers.

Committees always seek in the first instance to reach agreement with an individual required to attend or to produce papers. Recourse is only be made to exercise the powers under the Act as a last resort. A committee will always be clear as to why the attendance of a particular individual or access to particular papers is necessary and will make the reasons clear in its deliberations and in any correspondence about the matter. A request for papers will specify the particular papers required and the date by which they should be produced. A request for an individual to attend will specify the particular matters about which the committee wishes to question them.

If a person refused to attend or to provide the documents requested and the committee considered that his/her attendance/information was indispensable, the committee would pass a motion to that effect. However, the committee itself cannot serve a notice calling for persons and/or papers. The procedure for giving such notice is outlined in sections 44(7) and 44(8) of the Northern Ireland Act 1998 and it is the responsibility of the Speaker to give the notice.

The power to call for persons and papers is wide-ranging in nature but may only be exercised in defined circumstances set out in section 44. Section 44 provides that the power may be exercised in relation to:

- transferred matters concerning Northern Ireland; and
- other matters in relation to which statutory functions are exercisable by Ministers or Northern Ireland departments.

Under sections 44(4), 44(4A) and 44(4B) of the Northern Ireland Act 1998, restrictions are placed on the section 44(1) power to call for persons or papers. Ministers of the Crown and Crown employees cannot be compelled in respect of those functions which they discharged prior to 2 December 1999. Nor are Ministers of the Crown and Crown employees compellable in respect of functions which were discharged during a period of direct rule or a period of suspension, even where the relevant ministerial functions are now discharged by a Minister of a Northern Ireland Department.

Under section 44(5) of the Act the power is not exercisable in relation to a person discharging functions of any body whose functions relate to excepted or reserved matters or a judge of any court or a member of any tribunal which exercises the judicial power of the State.

A committee may require the production of confidential documents (for example, commercial, personal or medical records) where it is satisfied that the discharge of its functions necessitate production of those documents. Where issues of confidentiality arise, it may be possible to take practical steps to ameliorate these difficulties—for example hearing evidence in closed session and/or sidelining evidence. It is emphasised that under section 44(9) of the Northern Ireland Act 1998, the Assembly cannot compel a person to produce

documents or answer questions in circumstances where he or she could not be compelled to do so by a Northern Ireland court.

These powers have only ever been exercised infrequently and there are no current plans to review them.

Scottish Parliament

Committees of the Scottish Parliament have the power under sections 23 and 24 of the Scotland Act 1998 to require persons (including the government) to attend proceedings for the purpose of giving evidence, or to produce documents regarding any subject for which any member of the Scottish Government has general responsibility. The Parliament's power in section 23 of the Scotland Act is applied to committees by section 23(8) of the Scotland Act and Rule 12.4.1 of the Parliament's Standing Orders, which permit a committee to exercise these powers in relation to "any competent matter", i.e. any matter within its remit. This power is subject to a number of statutory limitations related to the rights of individuals and the separation and integrity of the justice system. These include that the power (i) is limited in relation to the criminal justice system where its use might prejudice criminal proceedings in a particular case or otherwise be contrary to the public interest; (ii) cannot be imposed on the judiciary; and (iii) cannot oblige a person to answer any question or produce any document which they would be entitled to refuse to answer or produce in proceedings in a court in Scotland, for example where legal professional privilege applies.

This power is exercised by means of a notice issued by the Clerk of the Parliament, under section 24 of the Scotland Act, specifying (i) the time and place at which attendance is required and the matters upon which evidence is required, or (ii) the documents, or types of documents, which must be produced, the date by which they must be produced and the particular subjects concerning which they are required. Non-compliance carries criminal sanctions set out in section 25 of the Scotland Act. In the absence of a reasonable excuse, refusal or failure to attend proceedings, answer any question or produce any document is a criminal offence punishable by a fine of up to £5,000, or three months' imprisonment. The same applies where a person deliberately alters, suppresses, conceals or destroys any document which requires to be produced by a s.24 notice.

In practice, witnesses provide evidence to and participate in committees in response to an invitation. To date no committee has sought or required to use the power to compel a person to attend for the purpose of giving evidence. Any issues that have arisen concerning availability of witnesses have been resolved through dialogue. The power to require the production of documents was used for the first time in early 2021, when the committee examining the Scottish Government's handling of harassment complaints against the former First

Minister issued four notices requiring production of documents by the Crown Office and Procurator Fiscal Service. Notices were served primarily to provide a clear legal basis for the Crown Office to lawfully share data which it held in connection with criminal proceedings. These notices are public and further explanation is available in the Committee's report (paras 117 – 124). There has not been a challenge to the use of the power, however, this same Committee was keenly aware of the limitations of this power in relation to production of legal advice. The Committee went through a long frustrating process before the Scottish Government decided to waive privilege in relation to some of the advice following Parliamentary resolutions requiring it to do so.

There are currently no plans to review or change this power.

The General Election for the 6th Session of the Scottish Parliament took place on 6 May 2021. Given it was expected that the campaign period for the election would take place under ongoing COVID-19 pandemic restrictions, the Scottish General Election (Coronavirus) Act was passed.

The Act allowed the election to be planned and made it possible for plans to be altered ahead of time if necessary. As well as changing the deadline for postal vote applications, the Act gave the Scottish Ministers power to hold an all-postal election and to hold polling over multiple days, if appropriate. The Act also change the date of dissolution to the day before the election, to allow the Parliament to be recalled make decisions if the election needed to be postponed. By agreement among the political parties, no business was scheduled for the normal dissolution period. In the event the Parliament did not need to be recalled to consider matters relating to the election. It was, however, recalled on 12 April 2021 to debate a motion of condolence on the death of His Royal Highness, the Duke of Edinburgh.

The Act also allowed greater flexibility in the timing of the first meeting of the Parliament and the election of a new Presiding Officer.

PRIVILEGE

AUSTRALIA

House of Representatives

Parliamentary privilege likely to attach to Member's correspondence

In June, independent Member Mr Andrew Wilkie raised a matter of privilege regarding a Federal Court of Australia decision to grant the Registered Clubs Association of New South Wales (ClubsNSW) access to correspondence between himself and a former ClubsNSW employee who had contacted him as a whistle-blower. The Member had relied upon the correspondence to speak in the House, establishing a link between the documents and proceedings in parliament. While not satisfied that there was prima facie evidence of contempt or a breach of privilege, as required by the standing orders for precedence to be granted, the Speaker gave precedence to a motion to refer the matter to the Committee of Privileges and Members' Interests, noting that the House would benefit from the Committee's advice in this case. The matter was subsequently referred to the Committee on the motion of Mr Wilkie.

In its report, presented on 26 October, the Committee found that parliamentary privilege was likely to attach to some of the documents in question. It recommended that the House agree to a motion authorising the Speaker to act to ensure that the interests of the House were represented in the matter before the courts such that parliamentary proceedings were appropriately protected by the *Parliamentary Privileges Act 1987*. The next day, the Deputy Chair of the Committee moved the motion in the terms set out in the report and the motion was agreed to.

In November, the Speaker informed the House that, as a first step, he had instructed a solicitor to write to the parties involved in the legal matter about the interests of the House and potential issues of parliamentary privilege.

Declaration of funds received from 'blind trust' on Register of Members' Interests

On 18 October, the Manager of Opposition Business raised a matter of privilege regarding a declaration made by a government Member on his statement of registrable interests that a 'blind trust' had paid for his personal legal fees. He proposed that, by not including detail of the source of the donated funds, the Member had not complied with the resolution of the House regarding the registration of Members' interests.

The Speaker responded later in the week. He informed the House that he was satisfied that a *prima facie* case had been made out and gave precedence to a motion to refer the matter to the Committee of Privileges and Members'

Interests. He explained that the Speaker's opinion that a prima facie case had been made out did not imply a conclusion that a breach of privilege or contempt had occurred, that was a consideration for the Committee. The Manager of Opposition Business then moved that the matter be referred to the Committee, but the motion was disagreed to on division.

The committee did, however, consider the related alteration by the Member to his statement of interests, having received a complaint in writing from the opposition Shadow Attorney-General. (The standing orders provide for the committee to consider specific complaints about registering or declaring interests.) In its report, presented on 30 November, the Committee found that the declaration was consistent with the Member's obligations under the resolution of the House regarding the registration of Members' interests. However, it described the current arrangements as inadequate and committed to changing the requirements for Members to better reflect the intent and integrity of the Register.

Unauthorised disclosure of committee report

After presenting the above report on the registration of Members' interests, the Chair of the Committee of Privileges and Members' Interests raised a matter of privilege regarding the unauthorised disclosure of the report. He explained that a news article published the previous day contained details of the report and of the Committee's private deliberations. He stated that the Committee would investigate the apparent breach in the first instance and report back to the House. Later in the week, the Chair informed the House that the Committee had been unable to identify the source of the unauthorised disclosure. He explained that, while the Committee considered the incident as potentially damaging to its ongoing operations, the disclosure was unlikely to have caused substantial interference to the work of the Committee such as would amount to a potential contempt under the *Parliamentary Privileges Act 1987*. As a warning to the media, he added that publishing material from parliamentary committees which had not been authorised for publication was a serious matter and could amount to contempt.

Senate

Execution of search warrants where parliamentary privilege is involved

On 24 November the Presiding Officers tabled a new memorandum of understanding (MOU) with the Attorney-General and Minister for Home Affairs on the execution of search warrants where parliamentary privilege is involved.

At the Commonwealth level, the protection of parliamentary material from seizure under search warrant has been governed by an MOU between the

Parliament and the Executive signed in 2005. The scope of that protection, and how it is secured, are set out in an AFP *National Guideline on Investigations where Parliamentary Privilege may be involved* (Guideline). The MOU and Guideline were updated in response to recommendations of the Senate Privileges Committee agreed to by the Senate. The new MOU and Guideline provide more detailed procedures and additional requirements on training, oversight and reporting.

The President noted in a statement that more work was required to extend the approach of the MOU to the exercise of covert powers, particularly in relation to telecommunications data and the quarantining of material, while at the same time ensuring that agreed procedures do not unduly hamper investigations. The President said that negotiations on these procedures would be conducted in the next parliament.

Australian Capital Territory Legislative Assembly

Breach of code of conduct—apology by a member

On 9 February, the Speaker presented Report No 2 of the Standing Committee on Administration and Procedure concerning the conduct of an MLA. The Committee found that the conduct at issue, which had been investigated by the Assembly's Commissioner for Standards (the Hon Ken Crispin QC), amounted to a breach of the Code of Conduct for all Members of the Legislative Assembly for the ACT. The Assembly accepted the Committee's recommendation that the member apologise in writing to the Speaker.

On 30 March the Speaker tabled the letter of apology (the member had resigned from the Assembly on 12 March due to unrelated matters).

Report by Standing Committee on Administration and Procedure on the conduct of a member

On 5 August, the Speaker tabled a report from the Standing Committee on Administration and Procedure concerning the conduct of an Assembly member. The incident that the Commissioner for Standards investigated related to a Member of the Legislative Assembly (MLA) posting a video on TikTok showing him, as Deputy Speaker in the Chair, suspending Assembly proceedings for lunch and then crossing to footage displaying a well-known fast-food supplier. Subsequently, the Commissioner for Standards received a complaint from another MLA alleging that the footage promoted a commercial product, contravened the Assembly broadcasting guidelines, and compromised the credibility of the role of Deputy Speaker.

The Commissioner for Standards investigated the matter and concluded that, in his opinion, the member's conduct constituted a breach of the Broadcasting Guidelines. It was, accordingly, also in breach of the code of

conduct. The Commissioner observed that the member clearly misunderstood the requirements of the broadcasting guidelines. He advised that the Standing Committee on Administration and Procedure (the Committee responsible for considering the Commissioner's report) may wish to take this into consideration in recommending further action to the Assembly.

The Committee agreed to the Commissioner's findings and recommended to the Assembly that the member apologise for breaching the code of conduct to the Assembly, which the member did.

The Committee also recommended that:

(1) members familiarise themselves with the Broadcasting Guidelines and be mindful of those conditions when considering broadcasting Assembly and committee related footage; and

(2) the Committee undertake a review of the Broadcasting Guidelines with a view to clarifying the guidelines and the matters raised in the Commissioner's report.

New South Wales Legislative Council

Censure of the Leader of the Government for non-compliance with standing order 52

The House censured the Leader of the Government on two separate occasions for failure to table documents ordered by the House relating to the business cases for the Parramatta Light Rail project. The House had ordered the production of the final business cases for stage two of the project in November 2019 and for stages one and two of the project in November 2020, and again on 17 February 2021. The resolution agreed to on 17 February also stated that, should the Leader of the Government fail to table the documents, it would be a matter for the House to take necessary actions and further steps to address.

On 18 March, the House censured the Leader of the Government, as the representative of the Government in the House, for failure to produce the business cases, and again re-ordered the production of the documents by the morning of next day, with the Leader of the Government ordered to attend in his place in the event of continued non-compliance. The Leader of the Government did so on the next sitting day, 23 March, explaining that the business cases were Cabinet documents but would nevertheless be provided voluntarily. However, the documents later provided were heavily redacted and the House agreed to censure the Leader of the Government for non-compliance with an order of the House a second time on 11 May.

Attendance in Place of the Leader of the Government for non-compliance with requirement for government to respond to a committee report

The Public Accountability Committee tabled its first report into government

grant programs in March 2021, with a response due by the end of September. In September, the government indicated that its response would not be provided within the deadline but would be provided once the committee had tabled its final report. This triggered a process set out in a sessional order adopted at the start of the current Parliament where, if a government response to each committee recommendation is not provided within six months, the Minister "must immediately explain to the House the reason for non-compliance". The Leader of the Government was called on to explain his reasons for non-compliance in the House on 12 October and, as a response had not been received within the next month, again on 16 November.

Attendance in place of the Leader of the Government for non-commencement of the Modern Slavery Act 2018

On 18 February, the House agreed to a resolution ordering the Leader of the Government to attend in his place on the next sitting day to explain why the Government had failed to commence the Modern Slavery Act 2018. The resolution also noted that, if the House was not satisfied with the Leader's explanation, it would require the President to seek legal advice on the powers of the House to compel commencement of the Act. (In 2019 and 2020, a parliamentary committee had examined the Act along with consultation drafts of an amendment bill and regulation, and recommended that the Act should be commenced with some amendments.)

Accordingly, on the next sitting day, 16 March, the Leader of the Government addressed the House from his place at the Table. The Leader of the Government noted that the House does not have the power to direct or compel Ministers to recommend the Act commence, as the bill passed by Parliament provided for commencement on a date to be proclaimed by the Governor. He also argued the House did not have the power to suspend or expel him for failure to commence the Act.

In June, the Leader of the Government introduced the Modern Slavery Amendment Bill 2021, which amends the Modern Slavery Act 2018. The amendment bill was agreed to by both Houses in November and the amended Modern Slavery Act 2018 was finally commenced by Governor's proclamation on 1 January 2022.

Cabinet documents received by committee

In October 2021, as part of its inquiry into the Transport Asset Holding Entity, a state-owned corporation set up by the NSW Government to manage rail property assets, the Public Accountability Committee published on its website a number of documents tabled by a member of the committee which were marked cabinet-in-confidence. Following publication of the documents, the

Secretary of the Department of Premier and Cabinet wrote to the Committee Chair advising that disclosure of the documents had not been authorised by the Premier or Cabinet and requesting they be removed immediately from the website and destroyed. The committee sought further information from the Secretary and was briefed by the Clerk. The committee then resolved to prepare a special report to the House, recommending that the matter be referred to the Privileges Committee for inquiry and report on the right of committees to examine, publish and use cabinet documents as part of an inquiry. The committee's special report was tabled in the House in November 2021 and the matter referred to the Privileges Committee for inquiry and report by the first sitting day in 2022.

Queensland Parliament

Ethics Committee Report 206

In its Report No. 206, the Ethics Committee made a finding of contempt concerning the disorderly conduct of a visitor signed into the parliamentary precinct by a member. The Ethics Committee recommended that the House take no further action and that the Speaker ban the individual from the Parliamentary Precinct under s.50 of the Parliamentary Service Act 1988. The House noted the finding of contempt. The Speaker made a direction that the individual not be permitted to enter the parliamentary precinct effective from 16 July 2021 to apply indefinitely until revoked.

Ethics Committee Report 208

In its Report No. 208, the Ethics Committee made a finding of contempt concerning the unauthorised disclosure of committee proceedings by a member. The Ethics Committee recommended:

- that the House make a finding of contempt against the member for the unauthorised disclosure of committee proceedings;
- that the member take it upon himself as soon as practicable to unreservedly apologise to the House, on the floor of the House, for the unauthorised disclosure of committee proceedings; and
- if the House considers the apology tendered is adequate, that the House accept the member's apology as the appropriate and final penalty in accordance with section 39 of the Parliament of Queensland Act 2001.

The member in question apologised to the House on the same day. On the motion of the Leader of the House on 27 October, the House accepted the recommendations and noted the members' apology.

Victoria Legislative Assembly

On 16 November 2021, the Assembly referred a member's complaint of an

alleged breach of privilege to the privileges committee for investigation and report. The Member for Polwarth's complaint centred on whether the release by parliamentary staff to police of CCTV footage from outside his electorate office, and police seeking to interview constituents attending his office, amounted to improper interference with a member's duties. The committee is yet to report on the allegation.

Victoria Legislative Council

On 5 August 2021 the Legislative Council resolved to refer a matter involving the premature publication of some contents of a committee report and deliberations to the Privileges Committee for investigation including whether any persons had committed contempt of parliament and any sanctions recommended. This followed a newspaper article divulging report contents and private committee deliberations prior to the tabling of the committee's report in the House. The Privileges Committee has yet to conclude its investigations at the time of completing this questionnaire.

Western Australia Legislative Council

On 13 July 2021 the Supreme Court of Western Australia handed down a major decision reaffirming the primacy of parliamentary privilege. The decision arose from the issuing of notices to produce documents, by the Western Australian Corruption and Crime Commission (the CCC), a subsequent refusal to produce the documents by the Clerk on order of the Legislative Council and a purported determination of privilege made by the Executive.

The court held, among other things, that the Corruption and Crime Commission did not have power to require the production of privileged documents and until a proper determination of which documents were protected from production had been made by the Legislative Council any documents possibly covered by privilege should not have been produced.

The background to the case and summary of relevant case law is set out in the Western Australian Legislative Council, Procedure and Privileges Committee Report 61 *Progress Report: Supreme Court proceedings and matters of privilege arising in the 40th Parliament*.

CANADA

House of Commons

Conduct during virtual proceedings

On 14 April 2021, Claude DeBellefeuille (Salaberry—Suroît) rose on a point of order to indicate that the member for Pontiac was seen to be disrobed when participating in the sitting remotely via video conference. The following day,

after it came to light that a screenshot of the incident existed, the Leader of the Government in the House, Pablo Rodriguez (Honoré-Mercier), rose on a point of order. He requested that the Speaker commence an immediate investigation to determine the provenance of the image and allow the House to then determine appropriate action.

On 21 April, Sébastien Lemire (Abitibi—Témiscamingue) rose on a point of order to apologise for having taken the screenshot and mentioned that he was uncertain how it was provided to media. On 26 April, the Speaker reiterated the seriousness of the issue and reminded members and staff with privileged access to the video conference that photos and screenshots of proceedings are absolutely prohibited.

A second, similar incident involving the same member occurred on 26 May. Two days later, on 28 May, Karen Vecchio (Elgin-Middlesex—London) rose on a question of privilege regarding the conduct of the member for Pontiac. On June 7, the Speaker returned to the House with a ruling. He concluded that there was a *prima facie* breach of privilege, noting that the events constituted a serious breach of the rules of decorum and an affront against the dignity of the House. Mrs. Vecchio moved that the *prima facie* contempt concerning the misconduct of the member be referred to the Standing Committee on Procedure and House Affairs. The motion was adopted on division.

Orders of the Special Committee on Canada-China Relations

In 2021, the Special Committee on Canada-China Relations (CACN) undertook a study respecting two matters:

1. Virus samples that had been transferred to the Wuhan Institute of Virology in March 2019; and
2. the subsequent revocation of security clearances for, and termination of the employment of, two scientists at the National Microbiology Laboratory.

On 31 March 2021, CACN moved to send for all unredacted documents relating to these events that were in the possession of the Public Health Agency of Canada (PHAC). On 10 May, when the documents were not provided within the allotted 20 days, the President of the Public Health Agency of Canada and the Acting Scientific Director General of the National Microbiology Laboratory appeared before the committee to explain why they had not complied with the order. On that day, the committee had in its possession the relevant documents, but they contained redactions. After questioning the witnesses, CACN moved again that PHAC provide the unredacted documents to the law clerk and parliamentary counsel within 10 days. The motion stated that if the documents were not provided as ordered, the committee would report to the House recommending that an order of the House be made for the relevant documents.

As the unredacted documents were not provided within the 10 days, the

report was tabled in the House on 26 May. On 1 June, a supply day, Michael Chong (Wellington—Halton Hills) moved an opposition motion to obtain the unredacted documents within 48 hours of the motion's adoption. It was adopted the following day.

On 7 June, the Speaker confirmed that PHAC had met the deadline, but that the documents sent contained redactions; unredacted documents were sent to National Security and Intelligence Committee of Parliamentarians (NSICOP), which is not a committee of the House but rather a committee of parliamentarians established pursuant to statutory provisions of the National Security and Intelligence Committee of Parliamentarians Act.

In response to these events, Gérard Deltell (Louis-Saint-Laurent) rose on a question of privilege regarding the government's alleged non-compliance with the order of the House. On 16 June, the Speaker ruled that there was a *prima facie* breach of privilege, and Mr. Deltell moved to find PHAC to be in contempt of Parliament. The motion ordered the president of PHAC to attend the Bar of the House to receive an admonishment and to deliver the documents ordered on 2 June. The motion was adopted on 17 June. On 21 June, Iain Stewart, President of the Public Health Agency of Canada, appeared at the Bar of the House. It was the first time since 1913 that a private citizen had been reprimanded in this way. Mr. Stewart was admonished as per the order but did not deliver the documents.

On 21 June, the government filed an application before the Federal Court of Canada to prevent PHAC from producing the unredacted documents that had been requested by the House and CACN. The government took the position that the Canada Evidence Act prevented disclosure of the documents. The Speaker of the House of Commons was the named respondent in the application. On 13 August, the Speaker filed a motion to strike the government's application, arguing that the executive and the judiciary do not have the jurisdiction to question, overrule, modify, control or review the exercise of the House's parliamentary privilege to send for persons, papers and records it deems necessary to conduct its work.

Two days later, on 15 August, the House's order to produce the documents lapsed when Parliament was dissolved. On 17 August, the government advised that following the dissolution of the House, it was discontinuing its application before the Federal Court.

Questions of privilege spanning two Parliaments

In November 2021, two questions of privilege that had been raised during the 43rd Parliament were renewed at the beginning of the 44th Parliament. The first, brought forward by Gérard Deltell (Louis-Saint-Laurent), reiterated the Public Health Agency of Canada's failure to produce certain unredacted

documents on the order of the Special Committee on Canada-China Relations in June 2021 (see above). The second, first raised by Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes) on 10 June 2021, and taken up by John Brassard (Barrie—Innisfil) on 23 November 2021, was related to the non-appearance of certain witnesses before the Standing Committee on Access to Information, Privacy and Ethics during the 43rd Parliament. The Speaker had not ruled on Mr. Barrett's question of privilege before Parliament was dissolved.

On 9 Deecmber 2021, the Speaker ruled on both questions of privilege and noted a lack of precedent for questions of privilege raised in one Parliament being taken up in a subsequent Parliament. He found that in the absence of new information being presented or the relevant orders being renewed, the questions of privilege related to these matters were dissolved along with the previous parliament. The Speaker therefore concluded that there was no *prima facie* breach of privilege in either case.

COVID-19 safety measures

On 23 November 2021, Blake Richards (Banff—Airdrie) rose on a question of privilege regarding the Board of Internal Economy (BOIE) decision of 19 October 2021, which required that all individuals (including members) must be fully vaccinated against COVID-19 by 22 November 2021, to gain access to the parliamentary precinct. Mr. Richards argued that the BOIE's decision constituted a violation of members' rights to have unfettered access to the precinct.

On 2 December 2021, the Speaker delivered his ruling. He first noted that the House has complete and sole authority to regulate and administer its precinct, including controlling access to its buildings. However, the Speaker noted the unique context of the situation: the BOIE had made the decision whose goal was to limit the spread of COVID-19 at a time when the House was not in session and therefore could not pronounce itself on the matter immediately. He also noted that the House had since adopted a motion to explicitly endorse the BOIE's decision and the conditions it imposed on members' participation.

The Speaker ruled that, while the issue of mandatory vaccinations had been settled, interplay between the rights and privileges of the House and the jurisdiction of the BOIE remained an issue. As the BOIE appeared to have exceeded its authority in a way that conflicted with the House's privileges, the Speaker was prepared to rule that a *prima facie* question of privilege existed. The final ruling was reserved until the member moved the appropriate motion. Mr. Richards declined to move the appropriate motion, and the Chair considered the matter closed.

Manitoba Legislative Assembly

Privilege and complaints against members

On 2 December 2020, Mr. Sala (Member for St. James) rose on a Matter of Privilege alleging that he was the victim of intimidation by Mr. Paul Beauregard, secretary of the Treasury Board. Mr. Sala argued that by lodging a respectful workplace policy complaint against him, Mr. Beauregard was attempting to infringe upon his privilege of free speech in the House and stop him from asking legitimate questions regarding allegations of misconduct against Mr. Beauregard. Mr. Sala concluded his remarks by moving: "THAT this matter be immediately referred to a Special Committee of this House so the privileges of all Members may be respected and the Government be properly held to account." The Speaker took the matter under advisement.

On 11 Marcch 2021, the Speaker delivered her ruling and concluded that there was a *prima facie* breach of Mr. Sala's privileges, as Mr. Beauregard's actions were tantamount to intimidation and obstruction of the Member's parliamentary privilege of freedom of speech in the House. She stated that, "a Member's Privileges in this House take constitutional precedence over any other process or complaint raised outside of this place. This means that having a Respectful Workplace complaint raised against a Member does not supersede that Member's right to ask questions or speak on any topic in this House. Members of the Legislative Assembly of Manitoba are governed in this House by our Rules and Practices, and by the rulings of their Speaker, but while they are in this place they are in no way governed by the opinions or directives of Civil Servants or other individuals outside of this Legislature." The Speaker also added that, in light of this situation, she had asked Legislative Assembly Administration staff to review its respectful workplace policies and recommend improvements.

A *prima facie* case of privilege having been established, Mr. Sala's motion was in order and debatable. The motion was debated and defeated on a recorded vote of Yeas 19, Nays 33.

Information made available by the government

On 10 May 2021, Ms. Fontaine (Member for St. Johns) rose on a Matter of Privilege arguing that her ability to perform her duty as an MLA to hold the Government to account was impeded by the Government's failure to table the 2018, 2019, and 2020 reports required by Section 43(1) of The Fatalities Inquires Act in accordance with the statutory tabling provisions. The Speaker took the matter under advisement.

On 26 May 2021, the Speaker delivered a ruling of no *prima facie* case of privilege, explaining that, while it is correct that the Government failed to table reports required by The Fatalities Inquiries Act in contravention of statutory

tabling provisions, in the case of this matter raised, the test of timeliness was not met. The oldest report that the Government failed to table ought to have been tabled in 2019; therefore, Ms. Fontaine had months if not years to raise the matter.

Leak of the Throne Speech

On 24 November 2021, Ms. Fontaine (Member for St. Johns) rose on a Matter of Privilege regarding the leak of the 4th-42nd Throne Speech text to the media by an unknown person or persons prior to it being delivered in the House the previous day. Ms. Fontaine contended that this leak constituted a breach of privilege, saying, "The authorities are clear on this question. The text of motions, bills and other matters for this House must be presented to the House itself first." The Speaker took the matter under advisement.

On 2 December 2021, the Speaker delivered a ruling of no *prima facie* case of privilege. She concluded that, while Ms. Fontaine did meet the test of timeliness, it is a convention rather than a requirement that documents such as the Throne Speech be kept secret until they are delivered in the House. The Speaker cited previous rulings by Speaker Hickes in Manitoba and Speaker Milliken in the House of Commons concurring that there are no formal rules and practices of the House that dictate when the government is free to release the Throne Speech.

Social media

On 25 November 2021, Mr. Lamont (Member for St. Boniface) rose on a Matter of Privilege regarding a post made by a member of the public, the president of the United Fire Fighters of Winnipeg, on his personal social media account. Mr. Lamont tabled a screenshot of the since-deleted post, which divulged details of the contents of the upcoming Bill 6—The Workers Compensation Amendment Act, which had not yet been introduced in the House. Mr. Lamont argued that the details of Bills should not be shared with members of the general public or posted about on social media prior to being introduced in the House. The Speaker took the matter under advisement.

On 2 December 2021, the Speaker delivered a ruling of no *prima facie* case of privilege, stating that it is common for Governments to consult with interested groups before introducing legislation and, while it is unfortunate that the social media post was made, this is not something that is controlled or directed by government. However, she added, "In the future, it may be wise for MLAs and Ministers bringing in legislation to ask those with whom they consult to refrain from social media comment, at least until the legislation is introduced in the House, as an issue of courtesy."

Québec National Assembly

Disclosure of information regarding a bill before its introduction

During the introduction of bills for the 15 April 2021 sitting, immediately after a bill was introduced by a Member from the Second Opposition Group, the Government House Leader raised a point of privilege or contempt with the Chair. He alleged that a third party had had access to the bill's text before the bill's introduction, which would constitute contempt of Parliament. To support his allegation, he stated that, on the day before the bill was introduced, a union had published a press release on its website that made reference to the bill's title and number, the measures it contained and its date of introduction.

In its ruling, the Chair reiterated a cardinal principle that emerges from parliamentary jurisprudence in this regard: Members should be the first to be apprised of information that is intended for them. This information should remain confidential until it is officially disclosed, in accordance with the rules of parliamentary procedure. As regards legislative matters, all bills must remain confidential until the Assembly agrees to their introduction.

The bill's title was included under "Notices Appearing for the First Time" on the Order Paper the day before the bill's introduction. It therefore became public at the time the Order Paper and Notices were published on the Assembly's website. As it happened, the press release in question was published after the Order Paper. The Chair therefore could not conclude that the Assembly's rights had been breached on this basis.

As for the bill's content, the Chair recalled that great caution must be taken when a parliamentarian communicates information about what a bill contains. Special caution is called for when the title provides a good overview of the content of the legislative measures, as is the case for this bill, which consists of three sections. In this context, there may not be much difference between the general policy directions and the bill's text. It is not reprehensible to want to inform the public about parliamentary proceedings; on the contrary, it is a legislator's duty to do so. However, it is important to ensure that the communication of a bill's general policy directions does not lead to the disclosure of all or most of its contents. Each Member is responsible for ensuring that the rules of confidentiality are well understood and applied by every person involved in parliamentary work. According to the Chair, this also applies to Opposition Members and it is important to avoid compromising the confidentiality of specific legislative measures contained in a bill.

In the Chair's opinion, the confidentiality of a bill's contents does not extend to the author's intentions regarding the date of its introduction. Each Member is free to choose the most appropriate time to submit a proposal to the Assembly for consideration and he or she is also at liberty to announce or not to announce the date on which he or she wishes to do so. Of course, such

information is strategic, and the timing of the bill's introduction requires some degree of confidentiality because a group may want to keep it secret until the last minute. However, this strategic aspect of a bill's date of introduction is not of the same nature as other information that is reserved first and foremost for parliamentarians and whose disclosure may constitute contempt of Parliament.

Regarding the question of communicating the bill's number, the Chair conceded that the number alone does not reveal any of the substance of the bill to which it is assigned. However, the number is assigned near the end of the drafting process and appears on the cover page of the official document tabled in the Assembly. Parliamentarians therefore do indeed have reason to be concerned that a third party may have had access to this information before them. Some may assume, rightly or wrongly, that a third party had access to the bill's final draft. In this case, the Chair noted that the bill's number was leaked as a result of a mistake made while texting rather than a deliberate attempt to undermine the authority or dignity of the Assembly and its Members by sending a copy of the bill. The Chair also took into account the apology of the House Leader of the Second Opposition Group, which was appropriate in the circumstances. That said, given that the bill number becomes public only once the introduction stage is completed and copies of the bill on which the number appears are made available to Members, the Chair made a cautionary remark: such a disclosure should not be made again.

As to whether the union had access to the bill's text before the bill's introduction, the House Leader of the Second Opposition Group categorically stated that the text was not provided to the union. The reason the union had been able to write the press release in question was because it relied on documents it had published several months, and even years, ago on the topic, the matter being the subject of a long-standing union request. The Chair acknowledged these explanations, which were corroborated by the documents tabled, and observed that, in light of the facts and explanations provided, there was no reason to believe that the House Leader of the Second Opposition Group should not be taken at his word when he affirmed that the Member or the staff of the Second Opposition Group did not breach the bill's confidentiality.

In light of all the facts submitted, the Chair could not conclude that the Member had acted in contempt of Parliament in the circumstances and therefore declared that the point of privilege or contempt was out of order.

GUYANA NATIONAL ASSEMBLY

During the Sitting of the National Assembly on 29 December 2021, Hon. Christopher A. Jones, M.P., Opposition Chief Whip, asked that the Natural Resource Fund Bill (Bill No. 20 of 2021) be sent to a Special Select Committee.

Hon. Manzoor Nadir, M.P., Speaker of the National Assembly, responded to say that he prefers listening to the arguments of both sides, before determining whether the Bill should be sent to a Select Committee.

Hon. Dr. Ashni K. Singh, M.P., Senior Minister in the Office of the President with Responsibility for Finance then took to the podium to move the second reading of Natural Resource Fund Bill (Bill N. 20 of 2021). His presentation was interrupted by members of the APNU+AFC Opposition who kept banging on their desks, chanting the words, "no thieving bill must pass."

The uproar continued for several minutes, even as Minister Singh pressed ahead to make his presentation. As the chaos grew, the Speaker rose from his seat and asked that order return to the House. "I am on my feet," Mr. Nadir cautioned.

However, the protest from the Opposition grew, as the Opposition MPs, armed with placards, converged at the centre floor of the Dome of the Arthur Chung Conference Centre where the National Assembly was being held.

The Speaker, in a bid to carry on the business of the House, advised Minister Singh to proceed. The growing uproar eventually forced Speaker Nadir to call for a short suspension, during which, the Opposition continued their protest.

The Speaker returned to the Dome several minutes later, and Mr. Singh was asked to continue, but in doing so, he was gradually surrounded by the opposition MPs who continued their loud chants and whistle-blowing. This forced the government Members of the National Assembly to form a human barricade around the Minister as he continued his arguments in favour of the Bill. By this time, Parliamentary staff had already formed a shield around the Speaker.

A few minutes later, a brazen attempt was made by Opposition Member of Parliament, Hon. Annette N. Ferguson, M.P., to steal the Speaker's mace; she was immediately joined by some of her other colleagues. This unprecedented act was foiled by a staff of the House, who managed to secure the instrument, which he held on to tightly as he laid on the floor of the Conference Centre.

At the 35th Sitting of the National Assembly held on 24 January 2022, Hon. Gail Teixeira, M.P., obtained leave of the Speaker to raise a matter of privilege on the above matter. The Hon. Speaker, in accordance with Standing Order 32(4), decided that a prima facie case had been made out and referred the matter to the Committee of Privileges.

The matter is still before the Committee of Privileges.

KENYA NATIONAL ASSEMBLY

Breach of privilege by voting virtually in the company of a crowd

Following the outbreak of the COVID-19 pandemic that limited physical

gatherings of the House, the National Assembly amended the Standing Order and introduced virtual attendance of House and Committee Sittings. On Thursday 6 May 2021, when the House was voting on a Question for Second Reading of the Constitution of Kenya (Amendment) Bill, 2020 promoted by the Building Bridges Initiative through a Roll-Call Vote, the Speaker allowed permitted virtual attendance and voting due to the weighty nature of the Bill. One Member participated in the voting virtually while in the company of a crowd of supporters outdoors.

Although the vote was initially recorded, the Speaker reviewed the conduct and flagged it out as breach of privilege that was not in keeping with the decorum of the House. Consequently, in a subsequent Sitting held on 11 May 2021, the Speaker ruled that while he had permitted the Clerk to record the said vote, neither such manner of voting nor the conduct by the Member would be permitted in subsequent virtual proceedings. The Speaker cautioned the Member for breach of privilege and directed the Clerk to make the necessary corrections to the records of the House to exclude the vote cast by the Hon. Member outside the privilege of voting virtually.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Question of privilege arising from use of official television coverage of the House

The Privileges Committee has since 2020 been tasked with considering breaches of the conditions for the use of official television coverage of parliamentary proceedings. Under these rules the Speaker of the House may make a direction to any person to stop use of official coverage if the Speaker considers the conditions for use have been breached. The Speaker may additionally determine that the use of coverage involves a question of privilege. In such cases, the question of privilege stands referred to the Privileges Committee, which must commence consideration of the question within two working days. The Privileges Committee may recommend that the Speaker's direction be revoked or that it remain in effect, and may make any other recommendation in respect of the question of privilege.

On 11 February 2021 the Speaker of the House issued the second-ever such direction, to Chris Bishop MP. Mr Bishop was directed to stop usage of official television coverage of the House in a video posted on Twitter and authorised by Mr Bishop. The video was a satirical advertisement for a Member of Parliament newly elected at the previous general election several months earlier, and it made use of video of a speech given by that member in the House. The video was removed from Twitter within the time specified in the direction.

The committee reported to the House on 19 February 2021. In its report

on the question of privilege the committee recommended by majority that the direction issued to Mr Bishop remain in effect. The committee agreed unanimously that the advertisement aspect of the video was clearly satirical, and the video was not misleading on that count. However, members of the committee had differing views about the manner in which the video spliced parts of the member's speech together. A majority of the committee were of the view that the video conveyed a misleading account of what the member said in the House. Some of the committee members believed the edited footage was not misleading when considered in the context of the member's whole speech. These members also considered that the standard for "misleading" should include consideration of how material the substance of the misrepresentation is. In this instance, the excerpts of the member's speech did not involve their view on a matter of policy or legislation.

The committee outlined how the video in question could be edited so as not to be misleading, and invited Mr Bishop to do so. The committee also encouraged the Speaker to seek amendment to a video before referring a question of privilege concerning misleading use of official coverage of proceedings to the committee.

Question of privilege concerning the defamation action Staples v Freeman

The Speaker of the House referred a question of privilege to the Privileges Committee on 22 June 2021, concerning the High Court's use of parliamentary proceedings in its judgement in the defamation action Staples v Freeman. In referring the matter to the committee, the Speaker ruled:

> "The decision in Staples v Freeman [2021] NZHC 1308, dated 4 June 2021, relates to an action for defamation and substantively considers a speech made in the House on 23 July 2014. The issue for consideration by the Privileges Committee is whether the court's treatment of the member's speech in its determination of the action for defamation compromises the House's privilege of free speech as described in the Parliamentary Privilege Act 2014 and in article 9 of the Bill of Rights 1688."

On 30 November 2021, the High Court issued a judgment ([2021] NZHC 3237) recalling its earlier judgment in respect of the defamation action. The application for re-call of the judgment was made by Rt Hon Winston Peters, whose speech in the House was subject to substantive consideration in the High Court's original judgment. Mr Peters was not a party to the original proceedings, but was granted leave to apply "on the basis that neither counsel for the plaintiffs nor the Court referred to the provisions of the [Parliamentary Privilege Act 2014] and the Court would have proceeded differently had it been made aware of the Act".

No formal action had been taken by the Privileges Committee at the time the

judgment was recalled. The precise extent to which the judgment will be revised remains under consideration by the court. The question of privilege remains before the Privileges Committee, which has not yet reported to the House on the question.

TRINIDAD AND TOBAGO SENATE

A Member of the Senate reflected on the character and conduct of the Presiding Officer using satirical subtext in a video recording outside of the Parliament. The Committee of Privileges of the Senate (the Committee) found the Member to be in breach of privilege as it was determined that such subtext would be reasonably understood by persons hearing them as a reflection on the President of the Senate. The Committee held that the specific utterances were critical of the conduct and character of the Presiding Officer and had the effect of creating the impression that the President of Senate was not impartial, thereby bringing the Senate into ridicule and odium.

The Committee emphasised that criticisms of the actions of any Presiding Officer should be raised via the filing of a substantive motion. The Committee recommended that the offending Member apologise via Personal Explanation to the entire Senate.

UNITED KINGDOM

House of Commons

The Committee of Privileges published a report on Committee powers to compel the production of documents or to ensure the attendance of witnesses for consultation in May 2021. It has now agreed a further report recommending that there be a statutory mechanism to compel witnesses to give evidence to select Committees. The Committee rejected the option of doing nothing, on the grounds that It also concluded that "reassertion of the House's historic powers to fine and imprison by resolution or in Standing Orders no longer offers a workable solution to the problems facing select committees. The risk is that it would be regarded as an empty gesture and only add to the present confusion."

The Committee's report contains a draft bill which would make failure to comply with a summons issued by the Speaker (without reasonable excuse) a criminal offence, with the person ultimately liable to a fine or imprisonment for a maximum of six months, as determined by the courts.

STANDING ORDERS

AUSTRALIA

Senate

On 2 December, a temporary order adopted at the end of the June sitting, which added a 30-minute period for two minute statements in the lead up to question time each day, was made permanent. Also made permanent was a temporary order which amended standing order 66(5) to restrict the types of general business notices that may be dealt with as formal and an amendment to standing order 76(8) to provide that the President may use powers under that standing order to 'ensure that motions…are eligible for consideration as formal business'.

Australian Capital Territory Legislative Assembly

On 29 March 2021, the Assembly adopted Report No 4 of the Standing Committee on Administration and Procedure. This proposed new standing orders for the 10th Assembly. Some of the main changes included:

- removing the time allotted for crossbench executive members' business;
- discontinuing the matters of public importance;
- making provision for private member's business to be debated each sitting day after question time and the presentation of papers—instead of the full day (Wednesday) that was previously allocated to this item of business;
- including provisions for a committee to present a report to the Speaker when the Assembly was not sitting; and
- changing the time for reviewing the implementation of the Latimer House Principles from once per Assembly to once every two Assemblies.

New South Wales Legislative Assembly

Measures in place to support COVID-19 safe sittings of the Legislative Assembly

In 2021, further new sessional orders were adopted to allow the Assembly to continue certain 'Covid-safe' practices adopted in 2020. The changes increased the number of total written Community Recognition Statements permitted per Member per sitting day and allowed the Speaker to direct a Member to leave the Chamber if they exhibit COVID-19 symptoms or have not cleared temperature screening.

Formalisation of Sessional Orders into Standing Orders

On 24 November, the House agreed to make a number of amendments to the Standing

Orders, including formalising 62 Sessional Orders into Standing Orders. The amendments were recommended to the House by the Standing Orders and Procedure Committee, and formalise much of the Assembly's current practice and procedure. In addition to the adoption of Sessional Orders as Standing Orders, some other minor changes were agreed to, including to the routine of business, to the rules concerning debates on e-Petitions; and to divisions to reflect the new 'walk through' process.

A Broadcast of Proceedings Resolution

On 12 October, the Standing Orders and Procedure Committee tabled a report in which it:

- recommended the suspension of SO 368 concerning the broadcast of proceedings and
- the adoption instead of a Broadcast of Proceedings resolution, which would include
- provision for the broadcasting of proceedings over the internet, including livestreaming and
- video-on-demand services.

On 19 October, the House resolved to adopt a Broadcast of Proceedings Resolution as recommended by the Standing Orders and Procedure Committee.

New South Wales Legislative Council

On 9 June 2021, the House agreed to refer an inquiry on the current standing and sessional orders to the Procedure Committee. The committee was to inquire into and report on whether the current sessional orders should be adopted as standing orders; whether any current standing orders require amendment; and whether any additional standing orders should be adopted. This was the first major review of the Council's standing orders since they were first adopted in 2004. The review also considered the Council's sessional orders, particularly a number of sessional orders adopted in 2019 which significantly reformed the operations of the House. A sub-committee of the Procedure Committee undertook the evaluation of the standing and sessional orders throughout 2021 and reported in early 2022.

South Australia House of Assembly

New Standing Order—Code of Conduct

On 16 November 2021 the House agreed to a new Code of Conduct Standing Order. The stated objective of the Code was to ensure that the responsibilities and obligations of Members reflected community expectations and community standards. The Code can be found in the Standing Orders.

Maternity Leave for Members and Admittance of Infants into the House

Sessional orders were proposed and adopted by the House to provide for maternity leave for Members (20 weeks) and for the admittance of infants onto the floor of the Chamber, under the care of a Member (infants no longer considered strangers). These changes provide for a more family friendly environment which it was hoped may encourage more women to become Members and to participate in the democratic process. These sessional orders were recommended to be made permanent by the Standing Orders Committee, but the matter never made it before the House prior to the end of the Parliament.

Admission of other advisers, Private Members' Bills

An adviser may be seated in a chair on the floor of the House adjacent to the seat assigned to the Leader of the Opposition for the purpose to advise a Private Member in whose name the Bill stands during the consideration in the Committee stage of a Bill. This sessional order was recommended to be made permanent by the Standing Orders Committee, but the matter never made it before the House prior to the end of the Parliament.

Question Time and Grievance Debate

On 2 March 2021 the House adopted two new sessional orders to allocate time during Question Time and the following Grievance Debate for contributions by Independent Members. This was considered proportionate to take account of the increase to six Independent Members sitting in the House at that time.

Victoria Legislative Assembly

The Standing Orders Committee tabled a report in June 2021 recommending that the House adopt electronic petitions. The House adopted sessional orders, effective from 1 August 2021, providing for e-petitions. E-petitions are presented in most sitting weeks now. The provision will lapse at the end of the Parliament, unless adopted in standing orders.

Western Australia Legislative Council

The Legislative Council Procedure and Privileges Committee tabled its Report 64 *Review of Standing Orders on 2 September 2021*. Minimal changes to the Standing Orders have been made since 2011. The report made 38 recommendations, all of which were adopted on 9 September 2021. Of note was the dispensing with unlimited speaking times (with the exception of budget debates) and the introduction of an urgent Bill's process (Standing Order 125A)

Standing Order 125A

A Minister or Parliamentary Secretary may now declare a Bill an urgent Bill

any time after the moving of the Second Reading of the Bill. The declaration of urgency allows a Minister to move a motion specifying a maximum debate time to apply to each stage of the Bill (debate on this motion is limited to 30 minutes). If the Motion is successful it triggers the Presiding Officers obligations to enforce the maximum debate times by putting the question at various stages of the Bill's progress. The Standing Order prohibits the moving of a closure motion once the Bill has been declared urgent.

Infants in the Chamber

The definition of 'strangers' in the Standing Orders was amended with the effect that a Members' infant requiring immediate care can be present in the chamber at any time.

CANADA

House of Commons

On 26 May 2021, the House adopted a motion moved by Kirsty Duncan (Etobicoke North) under Private Members' Business. The motion modified Standing Orders 104(2) and 108(2) to create the Standing Committee on Science and Research (SRSR), effective in the 44th Parliament. SRSR met for the first time on 14 December 2021.

Alberta Legislative Assembly

Interventions on Government motions and bills at second and third readings

In June, the Assembly adopted a Motion other than a Government Motion that amended the Standing Orders such that interventions were allowed during debate on Government motions and Government bills at second and third readings. These amendments eliminated the five-minute question-and-comment period following speeches that had previously been available and instead permitted Members to make up to three interventions of up to one minute during speeches on Government business provided that the Member speaking agrees to the intervention. During a speech a Member wishing to intervene must rise to request that the Member speaking cede the floor. If the request is accepted then the intervening Member may speak for up to one minute after which the original Member may resume their speech without any time lost. If a Member accepts more than one intervention, an additional two minutes is added to their speaking time. A maximum of three interventions may be made during a single speech, and a Member may request more than one intervention during the same speech. Requesting to intervene during an intervention is not permitted, and Members who intervene must keep their remarks focused specifically on the speech in progress.

The interventions procedure is under review by the Standing Committee on Privileges and Elections, Standing Orders and Printing, which must report any recommendations on the procedure back to the Assembly within one year.

Requests to move a motion without notice

The Standing Order relating to Members making a request to move a motion without notice and through the unanimous consent of the Assembly was amended. Members making such a request are now limited to five minutes of speaking time to express the "urgent and pressing necessity of the motion" (Standing Order 42(1.1)). In addition, a member of the Executive Council, in the case where the request is being made by the Opposition or an Independent Member, or a Member of the Opposition, in the case where the request is made by a member of the Executive Council or a Private Member of the Government caucus, may make a statement in response to the request for a period of up to five minutes (Standing Order 42(1.2)).

Public hearings on bills

Standing Order 78.2(2) was amended to clarify that a committee of the Assembly could engage in public hearings on bills referred to it during second reading consideration if no such committee hearing had already occurred at committee. Previously, Standing Order 78.2(2) provided that no public hearings would be permitted in such a situation if the bill had previously been "subject to committee consideration after first reading".

Manitoba Legislative Assembly

COVID-19 sessional order

The Sessional Order passed on 7 October 2020 which allowed for virtual hybrid sitting in order to cope with sittings during the COVID-19 pandemic, described in considerable detail in volume 89 of The Table, was amended on 19 November 2020, 3 December 2020, 18 May 2021 and 1 December 2021 which extended the expiry date into March 2022. All of the amendments essentially only involved an extension of the expiry date of the Order save for the 19 November 2020 substantive amendment (which was related to enabling public presentations and appearances of representatives of a Crown Corporation or an Office of the Assembly before committees to happen remotely).

Amendments to the Rules, Orders and Forms of Proceedings

On 12 October 2021 the Standing Committee on the Rules of the House met to consider amendments to the Rule Book. The new Rules came into force at the commencement of the Fourth Session of the Forty Second Legislature. Some of the major changes include:

- Replace all gender specific language with gender neutral language;
- Changes to the Sessional Calendar to provide sufficient sitting days for the completion of Designated Bills during the Fall Sittings;
- Clarification of terminology and additional definitions for better certainty;
- Changes allowing Opposition staff to be present at tables placed immediately before the front row on the Opposition side of the House during consideration of Estimates meeting in the Chamber;
- Including the names of individuals in Hansard referenced by MLAs making Members' Statements without leave of the House being required;
- Clarification of speaking times in debate;
- Removing the ability to challenge rulings from Supply Chairs;
- Allowing House Leaders to alter the Estimates sequence without requiring leave;
- Clarification of Supply terminology; and
- Streamlining the Main and Capital process with the Capital Supply Resolution to be considered in Estimates.

Ontario Legislative Assembly

In 2021, the Legislative Assembly of Ontario adopted permanent amendments to the Standing Orders as well as provisional changes in response to the COVID-19 pandemic. These Orders were adopted on 16 February, 23 March and 21 October 2021.

Permanent changes

One of the most significant amendments to the Standing Orders was a change to the process for the deferral of votes, which previously required the Whips to submit formal requests to the Speaker referred to as "deferral slips". Now, any vote requiring a recorded division is automatically deferred to the next sessional day, with certain divisions excepted as non-deferrable.

The Standing Orders were also amended to allow the Government House Leader to give notice of a temporary change to the meeting schedule of the House, providing an additional two hours for the consideration of the Orders of the Day on the following Wednesday.

The amendments also included changes to committee procedures. Previously, the Standing Orders provided for the distribution of Committee Chair positions amongst recognised parties but were silent regarding the allotment of Vice-Chair positions. The new provision specifies that when the Chair of a standing committee is a member of the government party, the Vice-Chair should be a member of a recognised opposition party or an independent Member, and vice versa. A further amendment allows a majority of the Members of a committee to submit a request for the committee to meet to consider a motion. Should the

motion carry, the committee can continue to meet to study the matter proposed in the motion, even during an adjournment of the House. This adds a new mechanism for committees to initiate studies independently of the House and to meet during adjournment periods.

Provisional changes in response to COVID-19

On 16 February2021, the House unanimously adopted two Orders regarding pandemic safety protocols. The first Order instituted mandatory mask-wearing in the Legislative Chamber and allowed Members to speak and vote from any desk in the Chamber in order to facilitate social distancing, along with other pandemic-related protocols. The Order specified that these measures would be in effect until the Government House Leader advised otherwise or until the end of the 42nd Parliament.

The second Order permitted the House Leaders (including representatives of small parties in the House) to jointly direct during any adjournment that the Assembly stay adjourned for up to 30 days, with the option to extend the adjournment for further 30 day periods, or to inform the Speaker that the adjournment was no longer necessary, thereby returning the House to its regular schedule. This Order expired at the end of the Spring 2021 meeting period.

Prince Edward Island Legislative Assembly

The Rules of the Legislative Assembly of Prince Edward Island were amended significantly in 2021. In 2020, the Standing Committee on Rules, Regulations, Private Bills and Privileges presented two significant reports, both which took effect on 1 January 2021.

The committee's report on the "Parliamentary Calendar" amended the rules relating to the hours of the House, and effectively eliminated the evening sittings (with provisions to extend the hours of the House by passing a motion with proper notice).

The committee's report titled: "Motion No. 71: Motion respecting virtual hybrid proceedings" made the necessary changes to allow virtual hybrid proceedings. The rules indicated that the Speaker may invoke the rules regarding virtual hybrid proceedings in urgent or extraordinary circumstances. As mentioned, the rules were effective 1 January 2021 and were not used during 2021.

In addition to the two reports there were adopted in 2020, the committee also made changes to the rules in 2021, which included the following significant additions: adding a 45 day deadline for answers to written questions; and requiring a written response by government within 14 days of a petition being presented in the House.

Saskatchewan Legislative Assembly

Due to COVID-19, modifications to the parliamentary calendar were again implemented on a temporary basis to facilitate sittings during the spring 2021 sitting period of the first session of the 29th Legislature. The modifications were implemented following the Assembly's concurrence of two reports by the Standing Committee on House Services, which met on 1 February and 6 April 2021 respectively.

The parliamentary calendar designates the Assembly's regular sitting days to be Monday through Thursday, and it identifies the week following Easter Sunday as a week that the Assembly shall not sit. However, the standing orders for the normal parliamentary calendar do not apply to the first session after a general election. Because a general election was held in 2020, the government had the option to choose when the first session would resume. The government requested that the Assembly be recalled on the Tuesday of Easter week and that the Assembly sit five days a week for 30 days.

On 6 April 2021, the Standing Committee on House Services met again to consider additional modifications. At that time, there was a province-wide recommendation against unnecessary travel to Regina due to a COVID-19 outbreak. The committee recommended that Members of the Legislative Assembly (MLAs) be strongly discouraged from travelling to and from constituencies outside of Regina. In extenuating circumstances, caucuses were permitted to approve a member's travel if it did not contravene a public health order. With the possibility of having all MLAs in Regina for the duration of session, the committee proposed a 30-day sitting period, incorporating Friday and Saturday sittings during Easter week and sitting every subsequent Friday during the spring sitting period.

The committee also recommended that, following the budget debate, the regular order of business be modified so that government business would be considered on Monday through Thursday instead of Monday through Wednesday, and private members' business be considered on Friday instead of Thursday. 10 April 2021 was the first time that the Assembly sat on a Saturday since 1991. Committees also worked on several additional Saturdays to consider the estimates and bills during the spring sitting period.

The House Services report also reinstated and updated the temporary modifications to the Assembly's processes, practices, and standing orders from 2020 to facilitate sittings in the context of COVID-19. The committee recommended that only 50 per cent of members be present in the Chamber at one time; therefore, recorded votes were held in two tranches and tallied prior to being reported back to the Speaker. To mark the unusual circumstances, the Assembly took commemorative photos of the modified sitting arrangement. Rule modifications also permitted absences by members unable to attend due

to COVID-19 and allowed absent members to vote by proxy.

Throughout 2021, the requirement that MLAs and officials wear a mask at all times in the Chamber and in the committee room continued. However, individuals were allowed to remove their masks when recognised to speak during Assembly or committee proceedings in the Chamber. Masks continued to be mandatory at all times in the committee room because of the more confined space.

Committees only met in the Chamber during the spring sitting to maximise physical distancing. Remote participation by one member in committee proceedings in the committee room was tested, although it was not utilised.

In October, the Assembly passed a sessional order to update COVID-19-related modifications to the rules and procedures for the fall sitting of the second session of the 29th Legislature. The sessional order established masking requirements in the Chamber and committee room and introduced a COVID-19 vaccination requirement or proof of negative test policy for MLAs. The sessional order also reinstated permitted absences of members isolating due to COVID-19 exposure and permitted proxy voting on recorded divisions for the same reason.

The sessional order stipulated that the measures be enforced by the Speaker and presiding officers for the duration of the fall period of the parliamentary calendar. These measures expired at the conclusion of the fall sitting on 9 December 2021.

JAMAICA SENATE

The Standing Orders of the Senate were amended through the insertion of a new provision to enable Senators to attend and participate in meetings of the Senate from remote locations using information and communications technologies and to enable committees to hold virtual meetings.

The Senate has by motion charged its Standing Orders Committee with a comprehensive review of the Standing Orders. The Committee meets regularly and examines the orders chronologically. Where necessary, they request research into the background to particular provisions, or investigations on the practice in other jurisdictions. In such cases, the findings are presented to the Committee, carefully considered by them and taken into account in decisions on the relevant Order(s). The review, which was mandated in November 2020, is still in progress.

UNITED KINGDOM

House of Commons

The last update on Standing Orders in the House of Commons was in volume 88 of The Table. It announced the promulgation of the new November 2019 edition of standing orders to accompany the opening of the 2019 Parliament in December of that year. The years leading up to that edition had seen some small but significant procedural innovations and much imaginative use of existing procedure in the parliamentary warfare over the UK's withdrawal from the EU. It was hoped that the new Parliament would usher in a period of relative procedural stability and the new edition of standing orders would suffer only occasional slight amendment over the next few years.

However, this 2019 edition experienced an early challenge to the procedural stability it represented, in the form of the COVID-19 pandemic. As was reported in volume 89 of *The Table*, in the section on responses to that pandemic, the Government's and Parliament's actions to ensure the continuity of procedural and political business—debate, scrutiny and decision making—under the very complicating factors of the pandemic were complex, occasionally tortuous and in continual evolution. Significant temporary alterations were made to the standing orders in force at any time: a considerable number were set aside for a period, which period was then extended from time to time as the pandemic dragged on, and a series of temporary orders were agreed to supplant or supplement existing provisions. Much of what these provided for has been set out in that study in the 2021 edition and does not need repeating here. Moreover, with the effect of the pandemic significantly reducing towards the end of 2021, all of these temporary orders and all of the temporary suspensions of standing orders have come to an end.

It is however worth noting that during this period the need for Members and Clerks—and others —to have to hand a volume setting out what was in force and what not in terms of standing and temporary orders of the House was even greater than usual. As the response to the COVID-19 pandemic changed over those eighteen months, there was a need regularly to update volumes of orders in force, in print and online. There were no fewer than eight addenda and two additional 'mini-addenda' (containing 'just' the Pandemic-related orders) following the publication of the November 2019 edition, the largest of which contained 48 pages of new material. Ensuring that each of these accurately reflected recent and often complex decisions of the House was no simple task.

The end of 2021 was marked by the issuing of a new volume of standing orders (in December, just before the House went into recess) which also marked the end of the COVID-19 period of procedural paroxysms. So how does this volume differ from the pre-COVID-19 volume? What of permanent

effect happened between November 2019 and December 2021?

The current edition of standing orders (to which no addendum has yet been published) is a slimmer volume than its predecessor by some 24 pages: the November 2019 edition ran to 209 pages; the new volume is only 185 pages. The principal reason for this is that the standing orders relating to English Votes for English Laws—which had anyway been suspended for a good deal of the last two years under Covid proceedings (for reasons relating to the added complexity of Legislative Grand Committee and the processing of division results process)—have been formally rescinded and have thus vanished from the volume (Standing Orders 33J to 83X inclusive). I think it would be fair to say that this excision was accompanied by a good deal of cheering and relief, as these standing orders, designed to ensure that matters affecting England could only be passed by a majority of English MPs, were unloved by many for different reasons. As an attempt to deal with West Lothian question, they were cumbersome and ungainly. Whether some fresh procedural attempt will be made by the current Government to resolve the perceived imbalance between the voting rights of English MPs and those from territories with a devolved assembly or parliament remains to be seen.

Standing Order No. 39A, on proxy voting, is now a permanent fixture of the volume, an earlier version having been included in the Appendix to the previous edition as a temporary standing order; in that form it was amended a number of times over the last two 2 years to allow proxies for pandemic-related reasons, before returning closer to its original form, permitting the use of proxies only for parental leave. The Procedure Committee reported on 4 July on a possible extension of proxy voting to cover Members with serious illness, so we might see a change to this standing order quite soon.

Also, we have important new standing orders establishing the Independent Complaints and Grievances Scheme (ICGS) and the Independent Expert Panel: Standing Orders Nos 150A to 150E inclusive. This is a mechanism to deal with issues of bullying, harassment or sexual misconduct. The ICGS covers everyone on the Parliamentary estate, but the Standing Orders relate only to the regulation of the conduct of Members, with the Independent Expert Panel deciding on sanctions for those found to be in breach of rules on conduct. These Standing Orders cover the role, powers and membership of the Panel, the establishment of sub-panels, the implications of its recommendations for sanctions for the provisions of the Recall of MPs Act 2015, and how the House deals with motions tabled before it which are consequent upon the Independent Complaints and Grievance Scheme.

Additionally, the powers of the Regulatory Reform Committee in relation to the Government's powers to amend primary legislation by delegated legislation in certain cases, where the primary legislation is deemed to impose

an unnecessary burden on business, were commuted, with some tweaks, to the Business, Energy and Industrial Strategy Committee by amendment to Standing Order No. 18; and the Regulatory Reform Committee was thus condemned—with few tears, I fear—to the waste-paper basket of history.

As usual we have also taken the opportunity to reflect in the relevant standing orders the renaming in statute of the National Assembly for Wales to the Welsh Parliament/Senedd Cymru, to amend the name of the Housing, Communities and Local Government Committee to the Levelling-Up, Housing and Communities Committee to reflect a change in the machinery of government, and to correct a few typos (including a vexatious comma in Standing Order No. 24).

The Appendix to the volume of Standing Orders contains any temporary standing orders, or other orders and resolutions of the House which are intended to have a lasting effect (perhaps for a Session, or for a Parliament, or indefinitely). The House has of course passed many such motions in its time, most of which have expired and many of which have been superseded, formally rescinded or would no longer apply because the way the House does things has materially changed.

The Appendix is not exhaustive. It does not contain some things which are still in effect and have been subsumed into the standard practice of the House, but it contains some important elements and recently agreed material that is felt useful to have to hand—this is particularly the case in respect of the resolution on matters sub judice which has featured in volumes of standing orders, in its current form, since it was adopted in 2001 (replacing an earlier resolution on the same subject).

The Appendix in the 2021 volume has grown from 10 to 15 pages, largely to accommodate some important resolutions on confidentiality in the House's standards system and sanctions in respect of Members, and one on the independent determination of complaints of bullying and harassment. In addition, a resolution from May 2014 on Parliamentary Privilege (application of legislation) has been disinterred from the Journal and included in the Appendix:

> "Resolved, That, in light of the recommendations contained in paragraphs 226 and 227 of the Report of the Joint Committee on Parliamentary Privilege, HC 100, this House resolves that legislation creating individual rights which could impinge on the activities of the House should in future contain express provision to this effect."

It remains to be seen what further changes there are to standing orders over this Parliament, Interestingly, perhaps one of the most significant, if superficial, changes to the general practice of the House—the retention of pass-reader voting in division lobbies which was the last of the many variant processes for divisions the House used during the COVID-19 pandemic—required no

amendment to standing orders at all. As a record of changes in practice and procedure, volumes of the standing orders can never tell the whole story.

Northern Ireland Assembly

On 1 February 2021, Standing Order 110A was adopted, and which related to temporary provisions enabling the Speaker to make provision for hybrid proceedings of the Assembly. Hybrid proceedings are proceedings of the Assembly in which one or more members of the Assembly are present remotely by a video-link.

On 13 October 2021, Standing Order 24A was agreed, and which related to provision for a new category of business entitled "Members' Statements". When Members' Statements are scheduled, there is a period of up 30 minutes when the Speaker may call Members to make a statement. A statement must relate to a topical matter of public interest and must not:

(a) exceed three minutes in duration;

(b) relate to a matter scheduled for debate in the Assembly;

(c) address a question that has already been decided by the Assembly within the previous six months; or

(d) be used to impugn or to attack another member.

SITTING DAYS

Figures are for full sittings of each legislature in 2021. Sittings in that year only are shown. An asterisk indicates that sittings were interrupted by an election in 2021.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Aus South Australia HA	0	5	5	5	3	7	5	0	6	3	5	3	47
Aus Tasmania HA	0	0	9	1	3	4	0	6	6	3	6	4	42
Aus Victoria LA	0	6	6	1	0	6	0	0	4	6	6	3	38
Aus Victoria LC	0	6	6	1	0	6	0	2	4	8	6	3	42
Aus Western Australia LC	0	6	7	4	6	9	0	6	9	7	9	0	63
Bangladesh	15	13	0	1	0	7	2	0	5	0	10	0	53
Can HC*	5	14	6	3	3	2	4**	1**	6	17	16	9	81
Can Senate	0	9	5	1	2	7	1	0	2	5	6	10	48
Can Alberta LA	0	3	9	5	5	16	14	1	0	7	13	5	78
Can British Columbia LA	0	10	5	0	0	3	12	5	0	0	0	8	43
Can Manitoba LA	0	0	10	1	4	0	0	0	0	11	12	3	41
Can Ontario LA	0	7	10	1	5	6	8	0	11	13	13	5	79
Can PEI LA	0	0	0	0	4	16	7	0	0	0	10	4	41
Can Québec NA	0	10	4	0	4	8	0	0	8	10	9	8	61
Can Saskatchewan LA	0	0	11	0	0	12	2	0	0	0	1	7	33
Can Yukon LA	0	0	9	0	0	0	0	0	0	16	15	14	54
Cyprus HR	2	3	3	3	2	2	4	0	3	3	2	6	33
Guernsey	3	5	5	7**	4**	6**	7	5	0	4	2	4	52
Guyana	0	0	0	0	0	0	0	0	13	0	0	2	15
India LS*	1	8	14	0	0	0	0	0	10	0	0	0	33
India RS	1	8	14	0	0	0	0	0	10	0	0	0	33
Jersey	2	3	6	4	7	4	6	0	6	4	9	9	60
UK HC*	15	12	16	5	9	17	13	0	18	15	17	12	149
UK Lords	15	13	16	6	9	18	20	0	20	18	17	12	164
UK NIA	4	5	8	2	4	6	5	1	8	7	9	7	66
UK Scottish Parliament	12	9	10	9	13	12	4	9	14	8	12	12	124

** remote

UNPARLIAMETARY EXPRESSIONS

AUSTRALIA

House of Representatives

"It's a bloody disgrace!"	3 February
"…the recent intervention by the Premier of Victoria was to say to Australians living overseas, 'Go and get stuffed,' giving them the one-finger salute…"	22 February
"You can't even get the number right—it's over 500!"	22 February
"…had it been someone who wasn't bankrolling either the Australian Labor Party or the Greens, he might have somehow had an issue…"	15 March
"Minister, this is what we can give you, but we need that NAIF, so please take your gun down, put it at the head of the Treasurer and get that money."	25 March
"…as we've heard from these almost sociopathic contributions…"	27 May
"This is some form of mendacity, deceit and duplicity when in fact the ad was on behalf of the Liberal Party and authorised by the Liberal Party and the homepage solicited donations to the Liberal Party—"	27 May
"I thank the shadow of a shadow Treasurer for his question."	16 June
"I ask the government opposite: how do you leave the Prime Minister in his job when he has continued to lie and fail the Australian people?"	17 June
"Treasonous I would call that—absolute traitor!"	17 June
"He is a shyster and a conman whose broken promises left Australians worse off."	21 June
"All week, we've had the former Deputy PM warning about a rodent plague, and now he has been rolled by a root rat!"	22 June
"…treasonous…"	23 June
"'Lord make me pure, but not until we go into opposition' is the prayer of the 'Ballarorter'."	5 August
"What a fraud!"	10 August
"The biggest fraud in Australian politics is the Prime Minister…"	24 August
"But this money should be distributed on the basis of merit and need, not this mysterious alchemy, which ordinary Australians know is nothing more than corruption and rorting…"	24 August
"He is the bloke who starts the bushfire and then starts telling people who are trying to put the bushfire out to put down the hose."	1 September
"Instead, the right-wing nut jobs in the National Party are holding the country's economy to ransom—"	21 October
"He's quite keen on the wig, is the shadow Attorney-General, and he's quite keen on trousering five or six or seven grand a day as well…"	21 October
"Talk about schizophrenia; talk about not knowing who you are!"	28 October
"…the policies we have pursued through the pandemic were not to pay people cash bribes, as the Labor leader wished to do…"	23 November

"…each-way Albo…"	23 November
"…the member for 'Rankin hypocrisy'…"	25 November
"…more of their members are in the Silverwater branch of the Labor Party than they care to admit."	30 November
"We're choosing to go and rape some other forest in Malaysia, Indonesia or Brazil—"	30 November
"You're a fraud!"	1 December
"Of course, we know the real reason that this weak Prime Minister doesn't want an anticorruption commission: because in the witness box you have got to tell the truth."	2 December
"…corruption…"	2 December
"We've seen a minister forge a document in order to attack a local mayor."	2 December

Australian Capital Territory Legislative Assembly

Hoodwinked	21 April
Smear	13 May
XXX the backflipper	2 June
Dirty deal	2 June
Scotty from Marketing	16 September
Spineless	6 October
Smart arse	24 November

New South Wales Legislative Assembly

"Two-faced"	23 November
"Hypocrite"	24 November

New South Wales Legislative Council

"baffle with bullshit"	6 May
"a loser and a failure"	6 May
"a useful idiot"	6 May
"a repeat offender"	12 May
"a liar"	12 May, 8 June, 10 November

Queensland Parliament

"… I take personal offence at the misleading rot from this member …"	25 February
"Read the papers, listen to the people and get off your backsides …"	25 February
"How would the member for Nudgee feel if somebody from here walked into her office and called her 'an [expletive] maggot?"	10 March
"… when it comes to the Public Service in the Queensland community, in your gut you know they will cut …"	25 March

"I will say 'the lazy members on that side'."	25 March
" … not by those lazy sods on the other side but by this government …"	25 March
" … the state's Treasurer, is a gormless show pony."	20 April
"He is so arrogant and out of touch and thinks himself so great that he is the only member in this House who could polish the chandeliers with his nose, because he is constantly looking over and out above everybody."	20 April)
"We know that the member for Burleigh opposes light rail. He wants it to go past his brewery on the Gold Coast. We will do public transport for public benefit in this state, not for personal interest."	21 April
"We can see the way in which the knuckle draggers on the other side …"	22 April
"What a fool is the member for Morayfield, Minister Ryan."	22 April
" … and the lies he told the people of Townsville in 2019 in relation to what would be funded."	11 May
"The $195 million that was set aside was a lie to the people of Townsville."	11 May
" … and that is a Leader of the Opposition who has no backbone …"	12 May
"The scab nurses' union and the scab ambulance union did not stand up for their supposed members …"	12 May
"Broken promises and big fat porkies …"	13 May
"It is time for both sides of this House to have some bloody ambition …"	26 May
" … as opposed to the member for Maryborough, who not only looks like a clown but sounds like one and behaves like one."	26 May
" … a group of young offenders who are ripping the guts out of that city."	26 May
"This Leader of the Opposition is a complete phoney." (When directed at an individual)	15 June
"This business, to their credit, has said, 'No, get stuffed!'	17 June
"Back to this grubby deal with best practice industry conditions …"	17 June
"It is typical of the spinelessness of the LNP."	31 August
"That is because these LNP governments are chock full of crazies … When these crazies complain about businesses or borders, they are using code." (When directed at individuals, in context of COVID-19 pandemic)	31 August
"Bugger. I was on a roll. Sorry."	1 September
"Any moron would put in place a system to bring Queenslanders home …"	15 September
"… I quote the Prime Minister's most memorable campaign: Scott Morrison, where the bloody hell are you?"	16 September
"He then ran again under Tony Abbott, the former prime minister who said—and pardon my language— climate change is 'absolute crap'."	12 October
" … and described CBUS's approach as 'cynical corporate hypocrisy at its worst' and 'bastardry' …"	26 October
"We have Queensland's most prominent poll dancer!"	26 October

"The Leader of the Opposition does not say 'mandatory' because he is too weak to believe in that or anything else."	27 October
"As Mark Twain famously said, there are lies, damned lies and statistics."	28 October
"…we have been working hard to boost confidence in the industry after the Newman LNP government gutted building industry regulation."	28 October
"How the hell are we supposed to deal with this as a state …"	16 November
"This police minister is nothing but a pipsqueak."	17 November
"… and what they say about this police minister—absolutely weak."	17 November
"What we have is another gigantic stuff-up by the minister and his department …"	17 November
"… unlike our federal counterparts, who all cried foul, spun lies …"	18 November
"We can see those on the backbench over there wishing they had more of a leader, but instead they are stuck with this weak man, with barely a shadow of a shadow."	30 November
" What the member for Mackay could do right now is stand up and demand a voice because those patients are looking for someone with a bit of ticker. They are not looking for a nodding donkey …"	30 November
"Currumbin constituents have had a gutful!"	30 November
"They are looking forward to the Olympics as well, but they have crappy stadiums."	1 December
"… and said the team's main KPI was to provide media which would 'give the Labor minister a stiffy'."	2 December

South Australia House of Assembly

Grub	12 February
Gutter snake	6 October

Victoria Legislative Assembly

"The I Cook slug could do a better job than the minister"	23 June
"I will not stand with you because you stand with paedophiles"	18 November

Victoria Legislative Council

"Do-nothing Dick" reflection on a Legislative Assembly	18 March
"such turds"	8 June
"are your ears painted on, Minister?"	8 June
Member made chicken noises and a gesture	9 June
"Cruella de Vil of the events sector"	24 June
"useless member for Sunbury"	24 June
"get her ears and her mouth better connected"	7 October
"Adem Somyurek's chief bagman"	13 October
"Fraud"	13 October
"chipmunk on speed"	27 October
"avuncular geriatric with a D-grade intellect"	28 October
"inner-bastard personality"	28 October

"Megalomaniac"	16 November
"Clown"	16 November

CANADA

House of Commons

"How the hell did this happen, and what are the Liberals doing to fix it?"	25 January
"What a deeply concerning and troubling and, frankly, frigging ridiculous response […]"	26 February
"They are all just total hypocrites when it comes to listening and believing women."	8 March
"Ah, fuck, did you send it to Sajjan?" *The member had inadvertently left his microphone on while virtually attending a hybrid sitting of the House.*	3 May

Manitoba Legislative Assembly

"…in a Pallister recession…"	3 March
"…give a crap about…"	10 March
"…the Stefanson-Pallister government…"	25 November

Ontario Legislative Assembly

…or will he continue to mislead Ontarians and tell them that there is no paid sick leave program?	16 February
…circumventing and obfuscating planning processes on pet projects of the Premier's friends…	22 February
That's what happens when you don't foment fear, when you don't mislead Ontarians, but you work collaboratively	22 February
The suggestion that Ontario rejected proposals based on cost is completely inaccurate and misleading, and so…	10 March
Why are you making up stuff in an attempt to distract from your failure to protect…	24 March
The member fully knows that his comments are disingenuous at best.	24 March
Why, at the time of these families' greatest pain, did the Premier decide to lie to them?	6 May
The double standard, the hypocrisy of this government is not just shameful, it carries…	19 October
First, I think it's important to correct some of the misconceptions contained in the statement made by the member.	3 November
Who will take responsibility for this cover-up?	24 November

Québec National Assembly

"Geste illégal": "un ministre qui cautionne un …" ("Illegal act": "a Minister who condones an …")	18 February
"Odieux" ("Odious")	30 September
"Intégrité": "contre-nature de parler d'…" ("Integrity": "contrary to its nature to speak of …") (21 October 2021)	21 October

"Bricolé(s)": "le gouvernement les a …" – en parlant d'avis ("Cobbled them together": "the Government …" – speaking of an opinion)	23 November
"Mépris" ("Contempt")	1 December
"Portefeuille": "dans l'intérêt de son …" ("Wallet": "in his …'s interest"	1 December
"Ministre récidiviste" ("Repeat offender Minister")	3 December
"Négligence": "la… est un choix politique") ("Negligence": "… is a political choice")	7 December

Saskatchewan Legislative Assembly

"Ignorant idiot"	30 April
"Minister for taxes"	11 May
"The hypocrisy coming from that Leader of the Opposition"	11 May
"Camp Merriman" – *Reference to a homeless encampment called Camp Marjorie where the member used the name of the Minister of Health rather than the correct name of the encampment*	3 November
"The policies that this government put in place were cruel and criminal"	18 November
"The government cannot be trusted"	8 December

Yukon Legislative Assembly

"gaslighting"	27 October

STATES OF GUERNSEY

"So I am just extremely, deeply concerned from what I have heard today that actually all those experts and consultants out there, you are all shit!"	June

INDIA

Chhattisgarh Legislative Assembly

कोचयिा (Broker)	23 February
बेचारे (Helpless)	23 February
लाचार (Helpless)	24 February
कुकर्म (misdemeanour)	24 February
घड़यिाली आंसू (crocodile tears)	24 February
पाप को भी धोएंगे (shall wash away sin)	24 February
पाप (sin)	24 February
दीनहीन (very poor)	24 February
दीनता (meekness)	24 February
कूवत (guts)	24 February
हैसयित (status)	24 February
झूठ (lies)	25 February

क्यों बैठूं (why sit)	25 February
आदविासी (tribal)	25 February
मलिीभगत (collusion)	25 February
घड़यिाली आंसू (crocodile tears)	25 February
औकात (status)	25 February
देश के प्रधानमंत्री (country's prime minister)	25 February
लंदी-फंदी (uncertain people)	25 February
मर्चि (chili)	25 February
गरिगिटि (chameleon)	25 February
रंग बदल (change colour)	25 February
कुकर्मों (misdeeds)	25 February
नौटंकी (gimmick)	25 February
औकात (status)	25 February
महापाप (heinous)	25 February
ढढिोरा मत पीटयि (don't make propaganda)	25 February
बंदरबांट (distribution to own people)	26 February
बेचारे (poor)	26 February
ढढिोरा पीट (progaganda)	26 February
पागल (mad)	1 March
गुर्री गुर्री (stare at)	2 March
दो मुंहा सांप (double-headed snake)	2 March
मर्चि लग गई क्या (have you got chili)	2 March
गधे (donkey)	2 March
अंधा बांटे रेवड़ी चीन्ह के देय (blindly distribution)	2 March
घास छील रहे थे (picking grass)	2 March
बेचारे प्रवक्ता (poor spokesperson)	2 March
थर्ड जेंडर (third gender)	2 March
सब चोर-चोर मौसेरे भाई हैं (all thieves are cousins)	3 March
नौटंकी (gimmick)	3 March
उल्टा चोर कोतवाल को डांटे (the pot is calling the kettle black)	3 March

लाचार (helpless)	3 March
पाप (sin)	3 March
पापों को धोने (wash away sins)	3 March
गुण्डे (goons)	3 March
मवाली (jobless fellows)	3 March
चोर (thief)	3 March
उचक्के (uselesss fellow)	3 March
लुच्चे (scallyway)	3 March
लंद-फंद (knot-lock)	3 March
खुजाल (itching)	4 March
रावण भक्त (supporter of bad man)	4 March
अक्षम सरकार (incompetent government)	5 March
लोकतंत्र की हत्या (murder of democracy)	8 March
औकात (status)	9 March
बेलगाम (unbridled)	9 March
गरिगटि (chameleon)	9 March
गद्धि दृष्टि (vulture sight)	9 March
धोखेबाज सरकार (deceitful government)	9 March
गुलछर्रा (act without responsibility)	9 March
शर्मनाक (shameful)	26 July
दुल्हा डउका (gloomily behaviour)	26 July
मवाली (jobless fellow)	26 July
गुण्डा (goon)	26 July
ठग (the con)	26 July
लूटना (looting)	26 July
अवसादग्रस्त (depressed)	26 July
डप्रिेशन (depression)	26 July
दादागरिी (gundaism)	26 July
नाटक (drama)	26 July
खालस्तिानी (people who want seperate place)	26 July

धोखाधड़ी (fraud)	26 July
बहरी सरकार (deaf government)	26 July
बेकार (waste)	27 July
शर्मनाक (shameful)	27 July
पेंशन प्राप्त मंत्री (pensioned minister)	27 July
पेंशनधारी मंत्री (pensioner minister)	28 July
संक्रामक (infectious)	28 July
ठगने (swindler)	28 July
छलने (trickle down)	28 July
गरयिाने (garagene)	28 July
अवसादग्रस्त (depressed)	28 July
अवसाद (depression)	28 July
पोंगरी बनाकर भर लो (threw the policy in dustbin)	28 July
दाढ़ी वाले (bearded)	28 July
बॉबकट हेयर कट (bobcat hair cut)	29 July
पतली कमर 36-18-36 वाली सुंदरी (slim waist lady 36-18-36)	29 July
लंद-फंद (knot-lock)	29 July
पूरे वपिक्ष के दमिाग में गोबर भर गया है (the mind of the entire opposition has been filled with cow dung)	29 July
गोबर (cow dung)	29 July
साक्षसी बहुमत (witness majority)	29 July
मानसकि चकित्सिालय (mental hospital)	29 July
असंसदीय प्रक्रयिा (non-parliamentary process)	29 July
शर्म (shame)	29 July
बेशर्म (shameless)	30 July
एम्बुलेंस में शराब बांटा जाता था (Liquor was distributed in the ambulance)	30 July
अंट-शंट (without motto)	30 July
लंदी-फंदी (ladi-tandy)	30 July
नकिम्मेपन (inefficiency)	14 December
नाटक (drama)	14 December

हाथी के दखिाने के दांत कुछ और हैं और खाने के दांत कुछ और हैं (the elephant's teeth)	15 December
घघि्घी बंध गई (hanged up)	15 December
लूटने खसोटने (to rob)	15 December

Rajasthan Legislative Assembly

On your recommendation…on your recommendation only	11 February
Of Dhariwal Ji…	12 February
Killer of saints	12 February
Lie	13 February
Tadipaar (a person who cannot enter a Territory as per the order of a judicial court)	13 February
Amit Shah	13 February
Adani and Ambani and Prime Minister and Home Minister	13 February
Today his wife Jashoda Devi Ji, he has no idea whether she is getting pension or not? Your wife could not own you. How would you know what is the condition of kids	13 February
was licking the soles. Hon'ble member of.	13 February
Have to lick the soles…whose are you licking	13 February
Incompetent and useless	13 February
Minister (female)...is screaming	13 February
Rahul Ji	15 February
With the Chief Minister	15 February
Shamelessness	25 February
Idiot	25 February
Idiot to an idiot	25 February
Shame on you B.D. Kallaji, Have shame	25 February
Liar	25 February
Agent of Congress	25 February
Transport minister has - minister.	25 February
Rakesh Sharma	25 February

The Public Accounts Committee, the Leader of the Opposition is its chairman, what is the situation? The recommendations of the Public Accounts Committee are presented in this House, but after that what happened on those recommendations, how much was it implemented, is this house ever told? Are any steps ever taken by the government to ensure their compliance? The secretary who is called in it, regarding the implementation of the report, he shows his helplessness that I was not there at that time, it was another. The same is the case with the Estimates Committee, Hon'ble Chairman Sir, is there any utility left of the Estimates Committee today? Take a look at the record. How is the work of the Estimate Committee going on and is there any accountability of our governance and administration towards the Estimate Committee? Honorable Chairman Sir, I would like to remind you, Assurance Committee, what is the condition of the Assurance Committee? If the Assurance Committee is not taken seriously by the administration, the report which is presented inside this House, that report is not acted upon	1 March
Modi	1 March
Division not done. They were not given a chance to discuss and those laws were passed in the midst of the commotion. (Comment about Rajya Sabha)	1 March
of Dharmendra's son Sunny Deol	1 March
Arnab Goswami	1 March
Like you have allotted a house to Vasundhara Raje this time.. We allotted the house by hook or crook	3 March
Your leader Priyanka Gandhi was made by them to vacate the house and you allotted Vasundhara Raje a house even after the Supreme Court's decision…BJP people are evicting Priyanka Gandhi out of the house and you are allotting them bungalows, you are allotting them bungalows…You are obliging those who made your leader vacate the house in Delhi....	3 March
Of the poors…	3 March
Of Asaramjí-Asaramji	3 March
Who used to make chapatis inside the kitchen? Who used to do the work of making chapatis in the kitchen	3 March
Of Asaramji	3 March
Of telling lies	3 March
Naresh Chandra	3 March
Lie	3 March
Of Bholeshankar	4 March
Of Jitendra Mahawar	4 March
Lie	4 March
Shanti Dhariwalji	4 March
If you want to fall in the well then fall	4 March
A bunch of lies... Liar	4 March

Flicking by snakes in this meeting.	4 March
Can't be so smart...	8 March
Flicking of tongues in meeting of snakes	8 March
Buy MLA for Rs 35-35 crore	8 March
Brother of National Secretary, associate of National General Secretary of Congress and former National President of Congress	8 March
There is corruption in India's horoscope itself	8 March
India	8 March
Rahul Gandhi Ji ... of the honorable Rahul Gandhi Ji… do not know how many tours of Hong Kong, Bangkok, Rahul Gandhi Ji cancelled to keep the Congress party alive…	9 March
Hon'ble Rahul Gandhi Ji...	9 March
Rahul Gandhi's.... Of Rahul Gandhi....It has become Rahul Gandhi, it has become a matter of disaster for us.	9 March
What is Rahul Gandhi...Rahul Gandhiji is really a very high thing, which can make gold out of potatoes...	9 March
Rahul Gandhiji, what a thing he is...the person who can wink an eye at the Prime Minister of the country in Lok Sabha	9 March
This is atrocity on the people of S.C.	9 March
Of Modiji...This is Narendra Modiji	9 March
Shouting.	9 March
Lie…Liar	10 March
Uselessness	10 March
He is Hon'ble Speaker's that, that's why I realize that Hon'ble Speaker is angry with you many times...	12 March
That the Speaker is from Nathdwara, gets angry, because of this…	12 March
This Shanti Kumar Dhariwal is man of destruction, the man of destruction, who has ruined Kota...Ramesh Ji Meena had said here and I am confirming it, I am approving it, he had said that this government is against scheduled castes and tribes... Ramesh Ji Meena sahib, you have said this good thing to Rajasthan, so that people belonging to scheduled castes and tribes...	12 March
Named Kamal Meena...	12 March
Terror of Dhariwalji	12 March
Of Gods and Goddesses like Indira Priyadarshini, Rajiv, Sonia, Rahul...	12 March
Talk about those companies which give Hon'ble member of commission...	12 March
Or first prove this point of commission... Prove the commission...	12 March
To take commission	12 March
A lie	12 March
Cannabis	12 March

The Table 2022

Chief Minister	15 March
That is kept with Hon'ble Governor	15 March
To Gajendra Ji...To Gajendra Singh Ji	16 March
inappropriate conduct	16 March
Of Amit Shah	16 March
Gajendra Singh Shekhawat	16 March
Nonsense	16 March
Hey you are a murderer... You rascal... You are mad... Back off...	16 March
Kept pounding their own chest	16 March
Dr. R.P. Singh	16 March
Illiterate type	16 March
Of murder	16 March
These are the killers of Rohit Vemula, these are the killers of Umar Khalid... This is the army of the illiterate, this is the army of the illiterate... There is also a madman sitting in this uneducated army.	16 March
They will be rubbed off because they are killers of farmers	16 March
Killers of farmers	16 March
Down with murderers of democracy	16 March
He is not Modi but Madari, he has a disease of lying	16 March
Ability	16 March
Balaknath	16 March
Rapist	16 March
The killers of democracy should perish... First of all, their central government will perish, the killers of real democracy are sitting there	16 March
By Modiji... Modi....	17 March
what do you want to say, what do you want	17 March
Of lie	17 March
Lies…Liar…	17 March
Told story	17 March
want We are hungry, we are naked, we are beggars	17 March
Feel jealous...Jealous... What if you feel jealous then	17 March
Not like you, you keep on cawing	17 March
Liar…liar	18 March
A lie	18 March
Named Shakeel Mirza... Is of Muslim community	19 March

Elections are to take place and this government needs at least Rs 2000 crore. They have to be sent to other states. So this government will also receive kickbacks to nominate and then the money that those councillors give, they will earn from the municipality. Congress has to collect Rs 2000, that is why the Chief Minister has told Dhariwal Ji that we need Rs 2000 crore at any cost within these two months. Dhariwal Ji is very expert in this, he is very smart, he will easily collect 2000 crores	19 March
Will collect 2000	19 March
Sahib, 2000 crore rupees	19 March
There is a state of disintegration in Congress...There is a state of disintegration in the Congress, so this state of disintegration should also be (Interruptions) To mend the state of disintegration, the Congress may not disintegrate.	19 March
Money is to be distributed among the Congress MLAs because the Congress government may go down, you must have seen Hemaramji Choudhary...Congress MLAs are about to run away, Congress people are about to run away. This government is going to go. Therefore, to lure them, Rs 1000 crores more is needed. 2000 crores is needed there, 1000 crores is needed here, Rs 3000 crores is to be earned by Honorable Shanti Dhariwalji, only then the Congress can save this government.	19 March
Robust fellow	19 March
Only his pass was made	13 September
If ACB (Anti Corruption Bureau) takes B.D. Kalla in its custody and inquire strictly. If more than half of the ministers of this government are strictly thousands and crores of rupees in cash will be recovered from their houses...They should be sent to jail...	13 September
A lie	14 September
What a shame if the Deputy Leader is announcing a walkout in the presence of the Leader of the Opposition. The Leader is sitting and the Deputy Leader is announcing, the leader is following. These days were yet to be seen. Even these days were yet to be seen that the leader remained seated and was following the deputy leader. Whatever the Leader of the Opposition and the Deputy Leader said, expunge this entire proceeding, it will be an insult, it will be a black day in parliamentary history that the Deputy Leader boycotted, walked out in the presence of the Leader and he followed him. Remove this thing, expunge it from the record, at least...	14 September
Honorable Speaker Sir, I had no such intention that I should speak abusive words for anyone. The kind of words that Dotasara Ji used for the regional campaigner of Rashtriya Swayamsevak Sangh. Nimbathram Ji, is condemnable. As much as it is condemned. I only said that it was necessary to mention the context in which I made my submission. That's why what Mr. Dotasara Ji has said was not correct, that's why.	15 September
A lie… Rathore sahib, you should be ashamed... You have no shame	15 September
Are you Turram Khan (an extraordinarily skilled During debate man)?	15 September

NEW ZEALAND HOUSE OF REPRESENTATIVES

"Dickhead"	9 Febrary

TRINIDAD AND TOBAGO

House of Representatives

Senate

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New South Wales Legislative Council Practice: Second Edition, Frappell, Stephen and Blunt, David (Eds), The Federation Press, ISBN: 9781760022372.

This is the second edition of 'New South Wales Legislative Council Practice', first published in 2008. It is available for purchase for $225 in hard copy (or a free PDF can be found on the NSW Parliament website).

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Women, Power, and Political Representation: Canadian and Comparative Perspectives, by Roosmarijn de Geus, Erin Tolley, Elizabeth Goodyear-Grant and Peter John Loewen, University of Toronto Press, ISBN: 9781487525200

UNITED KINGDOM

Travels with Members: A Clerk in Parliament, from Wilson to Blair, by Bill Proctor, New Generation Publishing, ISBN: 9781800310223 (hardback), 9781800310230 (paperback), 9781800310216 (ebook). Crispin Poyser writes:

This book is probably unique in being the personal memoirs of a career at Westminster not of a politician but of a Clerk. It describes nearly 40 years of life within the UK House of Commons from the non-party political 'inside'. Many senior parliamentary officials have written descriptive works on how Parliament works, but this book describes a clerk's direct and personal contribution to events within the House. Some of these (such as the Foreign Affairs Committee's 1984 inquiry into the events surrounding the sinking of the Argentine navy ship General Belgrano during the Falklands conflict) were of real political interest and sensitivity at the time. As the book's title indicates, there is an emphasis on international activities—principally the UK representations at European and other assemblies and the work of the Foreign Affairs Committee. But there is also much to interest followers of Westminster in other areas, including the thinking behind some of the reforms proposed in the landmark 1978 Procedure Committee report to which so much subsequent parliamentary reform owes a direct or partial ancestry. It is written in the traditional self-deprecatory and drily humorous style of a parliamentary official, making it highly readable.

One of the book's main international threads is in relation to Europe. Several chapters describe the contribution of the UK delegations to the relatively ill-known Parliamentary Assemblies attached to the Council of Europe and to NATO. Of close interest to students of the ongoing saga of the UK's relations with the various iterations of what is now the European Union are the chapters on the support given in 1973 to the first UK delegation (initially boycotted for political reasons by one of the two main parties, making clerkly support all the more challenging) to what is now the European Parliament, and the not-insignificant impact of that delegation. Later chapters cover some of the subsequent developments in the UK-EU relationship, up to the UK Parliament's contribution to Giscard d'Estaing's 2002–2003 Convention on the Future of Europe. The precarious nature of support for this work from the leadership of the then Clerk's Department in the earlier years—1960s and 70s—is entertainingly described (including what must be one of the most grudging of 'thank yous' ever recorded for work done in the successful organisation of a major conference).

A second focus covers the author's time as Clerk to the Foreign Affairs Select Committee, in the mid-80s. These chapters cover such areas as the inquiries into the Falklands Islands after the 1982 war, the 1983 US-led invasion of Grenada, UK relations with Russia (so topical today), relations with Vietnam and the other countries of SE Asia, the prospects for change in a South Africa still subject to apartheid, and the stalemate in Cyprus. There is also a chapter on the obscurely-but-neutrally-titled 'Events surrounding the weekend of 1–2 May 1982' inquiry, looking into the sinking of an Argentine warship in the early stages of the Falklands War in circumstances that gave rise to substantial conspiracy theories. This chapter is of particular interest to students of select committees in its description of how the Committee gained access to the so-called 'Crown Jewels' documents of highly classified government briefing papers on the events—an episode which continues to be discussed as a precedent for committees' access to highly classified information more generally.

Other fields are covered beyond the international sphere. Some have a relatively 'clerkly' interest, such as life in the Public Bill and Journal Offices and on other select committees in the later part of the twentieth and early part of the twenty-first centuries. Others have a much wider resonance. Of particular interest to students of both Westminster and other Westminster-style parliaments are probably the chapters on the 1990s reforms of House administration, giving the House's internal administration a more rational and financially independent structure, and on the major work and report of the 1976–1978 Procedure Committees. Initially at least, the most prominent among the major reforms set in train by the latter was the introduction of the departmentally-related select committees in 1979. The titling of two chapters as 'The Conversion of Enoch'

and 'Norman pulls it off', referring to the individual roles of Enoch Powell and Norman St John-Stevas as major players in the process, reveal how what might seem inevitable from today's perspective was anything but at the time.

Senior parliamentary officials in the Westminster tradition do not publish memoirs. In many cases this will be because they do not, by the nature of their work, feel they have sufficient material of interest to share with a wide audience. But much more it will be because it goes against the grain of senior Westminster officials' principles of neutrality and discretion—and sense of 'not being the story'—that is inbuilt in the Westminster tradition. No-one wants to make life difficult for successors still working for the House by what they say in their memoirs about individual MPs or about their own political views. But, as noted in the Foreword, this work is 'a political memoir, but it is not the memoir of a politician'; and the way it is presented benefits from the author's earlier life (rehearsed in an early chapter) as a junior academic at Manchester University's Department of Government. I do not think that any current or former colleagues need feel that Members' perceptions of their attitudes and role will be adversely affected by this book. The events described mostly occurred a long time ago, in political terms, and any views expressed are—albeit with colour—done so carefully. It may be that the book will not in practice come across the desks of many politicians, at least those without something of an existing academic interest in how parliament works: its prime audience is more likely to be fellow official practitioners and politics students seeking some front-line colour on particular events and parliamentary processes. And to those students, and any others with cognate interests, I can warmly recommend it.

CONSOLIDATED INDEX TO VOLUMES 86 (2018)–90 (2022)

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;	NI	Northern Ireland;
Austr.	Australia;	NSW	New South Wales;
BC	British Columbia;	N. Terr.	Northern Territory;
Can	Canada;	NZ	New Zealand;
HA	House of Assembly;	PEI	Prince Edward Island;
HC	House of Commons;	Reps	House of Representatives;
HL	House of Lords;	RS	Rajya Sabha;
LA	Legislative Assembly;	SA	South Africa;
LC	Legislative Council;	S Austr.	South Australia;
LS	Lok Sabha;	Sask.	Saskatchewan;
Man	Manitoba;	Sen.	Senate;
NA	National Assembly;	Vict.	Victoria
NF and LB	Newfoundland and Labrador;	WA	Western Australia.

GEOGRAPHICAL INDEX

SUBJECT INDEX

Sources and authors of articles are given in brackets.

LISTS

Members of the Society

Abbreviations: R retirement, O obituary.

Privilege cases