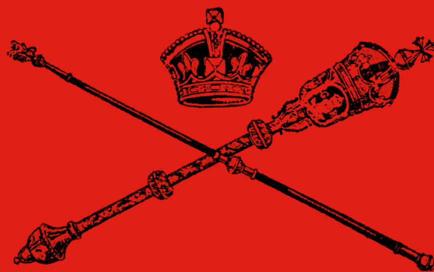


The Table

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

VOLUME 91
2023

The Table

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

EDITED BY
MICHAEL TORRANCE &
JOE BERRY

VOLUME 91

2023

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

The Table 2023

© The Society of Clerks-at-the-Table in Commonwealth Parliaments

ISBN 978-1-7392140-1-2

ISSN 0264-7133

CONTENTS

Editorial 1

Members of the Society 2

Crown and Parliament
DR DAVID TORRANCE 7

Kangaroo court or defence of democracy?—
The Privileges Committee's inquiry into Boris Johnson
DR ROBIN JAMES 30

The Centre Block Rehabilitation Project
ERIC JANSE 51

Practice makes perfect? (or at least a little better)—
Sessional orders as a vehicle for procedural reform in
the New South Wales Legislative Council
VELIA MIGNACCA 62

The adoption of the closure in the New Zealand
House of Representatives
DAVID WILSON 83

Testing the limits: recent questions on the powers of
the Scottish Parliament and devolved autonomy
SARAH McKAY 93

"While the sun shone": Hatsell, Ley and the problems
of patronage, 1802–1812
COLIN LEE 110

Archibald Milman and the crisis of legislation, 1880–1891
COLIN LEE 139

Miscellaneous notes 182

Comparative study: Unexpected change in the head of state 228

Privilege 250

Standing orders 268

Sitting days 285

Unparliamentary expressions 288

Books on parliament in 2022 300

Index 304

EDITORIAL

This edition marks my first as editor, supported by Joe Berry as deputy editor. I am grateful to everyone who has contributed articles for this edition, and I look forward to producing future editions.

It is with great sadness that I report the death of Mike Dana, who published *The Table* for the last 20 years, and enjoyed cordial relations with several of my predecessors. In an unrelated development, the Society of Clerks-at-the-Table (SOCATT) meeting which took place in Ghana in October 2023 took the decision to cease publishing hard copies of *The Table*. However, it will live on digital form, available on the refreshed SOCATT website courtesy of Canadian Parliament colleagues. In the spirit of the new digital arrangements, an in-house project is underway to digitise the first 70 volumes of *The Table*, which are currently only available in hard copy, and make them available online.

This year's edition of *The Table* begins with an article by Dr David Torrance (in relation to which the editor declares a sibling interest) regarding the ceremonial and constitutional events which occurred in the Commonwealth Realms to mark the demise of Her Majesty Queen Elizabeth II and the accession of her son, His Majesty King Charles III.

We then turn to what is arguably one of the most significant privilege matters to have occurred in the UK House of Commons, with a first-hand account by Dr Robin James of the Privilege Committee's investigation into the former prime minister, Boris Johnson, which ultimately led to his resignation as an MP.

The next article is from Eric Janse, who became Acting Clerk of the Canadian House of Commons in February 2023, but still managed to find time to provide an inspiring account of the ongoing work to restore the Canadian Parliament (while the discussions about how to restore the UK Parliament continue without resolution).

Turning back to procedural matters, Velia Mignacca considers the use of sessional orders in the New South Wales Parliament, and David Wilson, the Clerk of the New Zealand House of Representatives, considers the adoption of the closure in that House.

The penultimate article is from Sarah McKay, the senior researcher on parliament and constitution in the Scottish Parliament, who considers three occasions the powers of the devolved Scottish Parliament have been

adjudicated in the courts, including whether it had the power to legislate for a referendum on Scottish independence without Westminster's consent.

Our final articles are provided by Colin Lee, who provides two typically well-researched insights into the procedural history of the UK House of Commons in the nineteenth century – the first focusing on domestic matters including the appointment of clerks, and the second concerning reforms to the House's legislative procedures in response to challenges experienced by the government in delivering its legislative programme.

This edition also includes the usual interesting updates from jurisdictions and the comparative study on how different legislatures respond to an unplanned change in the head of state.

MEMBERS OF THE SOCIETY

Australia

House of Representatives

In 2022, three senior staff rotated to other roles. **Peggy Danaee** (formerly Clerk Assistant (Procedure)) became the Serjeant-at-Arms, **James Catchpole** (formerly the Serjeant-at-Arms) became the Clerk Assistant (Table) and **Glenn Worthington** (formerly the Clerk Assistant (Table)) became the Clerk Assistant (Procedure).

Australian Capital Territory Legislative Assembly

Julia Agostino, Deputy Clerk and Serjeant-at-Arms resigned in October 2022.

New South Wales Legislative Assembly

Simon Johnston was appointed to the new temporary position of Clerk Assistant, Research and Operations. **John Young** and **Ben Foxe** each rotated for a six-month period to the position of Clerk Assistant, House and Procedure.

New South Wales Legislative Council

Jenelle Moore has been appointed to a two-year Acting Clerk Assistant role leading the new Bicentenary and Corporate Office, in addition to her ongoing position as Usher of the Black Rod. **Stephen Frappell** has rotated back to the Clerk Assistant – Procedure role, having spent time as Clerk Assistant – Committees. **Beverly Duffy** has rotated back to the Clerk Assistant – Committees role, having spent time as Clerk Assistant – Procedure.

Queensland Parliament

Stephen Finnimore retired in March 2022 after 23 years of service at the Queensland Parliament and Table. **Karl Holden** left the Parliamentary Service in June 2022. Amanda **Honeyman** resumed her position as First Clerk Assistant (Procedure) in August 2022.

Victoria Legislative Assembly

Bridget Noonan was appointed to Clerk of the Parliaments, November 2022.

Victoria Legislative Council

Andrew Young, former Clerk of the Legislative Council and Clerk of the Parliaments, resigned in October 2022. Andrew was Clerk of the Council since July 2014 and Clerk of the Parliaments from August 2017. **Robert McDonald** was appointed the new Clerk of the Legislative Council.

West Australia Legislative Council

Nigel Pratt, Clerk of the Legislative Council and Clerk of the Parliaments of the Parliament of Western Australia, resigned in early January 2022. His resignation had effect from 31 March 2022. **Sam Hastings**, Clerk Assistant (House), was appointed Clerk of the Legislative Council and Clerk of the Parliaments of the Parliament of Western Australia from 1 April 2022.

Canada

House of Commons

Natalie Foster was promoted to Clerk Assistant, Parliamentary Information and Publications Directorate on 31 January 2022. **Robert Benoit** was promoted to Interim Clerk Assistant, Parliamentary Information and Publications Directorate, during Natalie Foster's maternity leave from 31 January 2022 to 6 September 2022. He then assumed the role of Principal Clerk in that directorate.

Suzie Cadieux was promoted to Principal Clerk, Parliamentary Information and Publications Directorate, on 31 January 2022. She moved to the Legislative Unit, Committees and Legislative Services Directorate, on 6 September 2022.

Pierre Rodrigue, Clerk Assistant, House Proceedings, retired from the House of Commons Administration on 26 February 2022.

Philippe Dufresne retired from the role of Law Clerk and Parliamentary Counsel on 16 June 2022 to accept an appointment as Privacy Commissioner of Canada. **Michel Bédard**, Deputy Law Clerk and Parliamentary Counsel, Legal Services, was promoted to Interim Law

Clerk and Parliamentary Counsel on 16 June 2022.

Jubilee Jackson assumed the role of Deputy Principal Clerk, Parliamentary Information and Publications Directorate, and became a Table Officer on 6 September 2022.

Mr. Charles Robert formerly Clerk of the House of Commons, announced his retirement on 7 December 2022, effective 13 January 2023, after 42 years of service to the Parliament of Canada. Mr. Robert started his career on Parliament Hill in the Library of Parliament and over the years served in both chambers. He was appointed Clerk of the Senate and Parliaments in 2015 and Clerk of the House of Commons in 2017.

British Columbia Legislative Assembly

On 30 August 2022, former Clerk of the Legislative Assembly, **E. George MacMinn, OBC, QC**, died at the age of 92. MacMinn served as Clerk of the Legislative Assembly from 1993 to 2011 and as a Table Officer for 54 years, and wrote the first four editions of its procedural authority, Parliamentary Practice in British Columbia. He was appointed to the Order of British Columbia in 2005 for his service to the province during his legal career and tenure at the Legislative Assembly. At the time of his retirement, MacMinn was the longest-serving Table Officer in the Commonwealth. He was also an honourary member of the Association of Clerks-at-the-Table in Canada.

Jersey

States of Jersey

Mark Egan left his role as Greffier of the States and **Lisa-Marie Hart**, who had been his Deputy, took over the position from May 2022. **William Millow** was appointed as Deputy Greffier in August 2022.

Kenya

National Assembly

Michael Rotich Sialai, CBS retired as the Clerk of the National Assembly on 31 July 2022. **Samuel Josephat Njoroge** was appointed Clerk of the National Assembly with effect from 1 November 2022.

United Kingdom

House of Commons

Mathew Hamelyn, Strategic Director of the Chamber and Business Team and former Secretary of SOCATT, was awarded a CBE in the Queen's Birthday list in 2022.

After nearly forty years working as a clerk, **Sir John Benger** KCB left the House of Commons at the end of September to take up a new role in Cambridge as the Master of St Catharine's college.

He joined the then Clerk's Department in 1986, where he served as second clerk on the then Trade and Industry Committee chaired by Ken Warren MP. He then spent time in the Private Bill Office before in 1990 clerking his first Committee, the Committee of Public Accounts with Robert Sheldon as chair. John worked for four years in the Table Office then from 1998 clerked the Health Committee for six years with David Hinchliffe as chair, one of the Members he most admired of the many he encountered. The Committee undertook a series of wide-ranging public health inquiries including major reports on the UK tobacco industry, the pharmaceutical industry and obesity. John then worked as clerk of supply in the Public Bill Office (2004-08) dealing with all supply and appropriation bills and clerking numerous public bill committees. He was briefly clerk of the Treasury Committee during the financial crisis, but was promoted to Principal Clerk of Delegated Legislation in 2009, overseeing a range of select committees.

He moved for three years to the House of Commons Library in 2012, first as director of service delivery, then as acting Director. He oversaw the 2015 General Election, creating the system still in use whereby newly elected Members are guided in their first weeks by a buddy appointed from the House staff. He was appointed Clerk Assistant and Managing Director of the Chamber and Committees Team in 2015, where he oversaw and co-edited the MPs guide to procedure, before being made the 51st Clerk of the House in March 2019. His tenure of the role covered an especially challenging period. He dealt with the many challenges posed by the Brexit debates, before overseeing the move to hybrid meetings because of the COVID-19 pandemic – the UK was the first parliament in the world to meet regularly in hybrid form.

During tributes to Sir John in the Chamber the Speaker of the House of Commons, Sir Lindsay Hoyle, said of Sir John:

"John has been Clerk through what by anyone's estimation has been a challenging period. He provided leadership during the pandemic with the same diligence and focus that he applies to everything he turns his hand to, tempered as always with his signature good humour. He has also been at the helm during many occasions when this House has been at the centre of national and international attention, as it was following the death of Her Majesty Queen Elizabeth II just a year ago. It is a credit to his leadership, and of course to all those who work here and support the House, that through all these turbulent times the House of Commons has shown itself

in its very best light."[1]

In leaving the House Sir John himself said in a letter read by the Speaker in the Chamber that:

"Here in Parliament we have some of the finest public servants – dedicated, professional and at their best when there is a challenge. But it is their friendship and support, as much as their professionalism that I will remember, and for which I will always be grateful."[2]

Sir John was awarded a KCB in the New Year's Honours list for 2023 and was appointed in the same year to the role of Master of St Catharine's College, a post he started in October 2023, being the 40th master appointed in the 550th anniversary year of the College.

House of Lords

Dr Philippa Tudor, formerly Clerk of Committees, was awarded a CBE in the New Year's Honours list for 2023, after retiring from the Administration in October 2022. Dr Tudor became one of the first two female clerks to join the House in the early 1980s and, during 40 years of service, held several senior roles including Director of Finance and Human Resources Director.

Jake Vaughan moved from being Reading Clerk to being Clerk of Committees in October 2022.

Scottish Parliament

Ken Hughes, Assistant Chief Executive, has now retired.

[1] HC Hansard, Speaker's Statement, 12 September 2023, vol 737, cols 784-785: hansard.parliament.uk/Commons/2023-09-12/debates/BE142AEA-901B-41CE-A1ED-158CBDCB29EE/Speaker'SStatement.

[2] HC Hansard, Speaker's Statement, 12 September 2023, vol 737, cols 784-785: hansard.parliament.uk/Commons/2023-09-12/debates/BE142AEA-901B-41CE-A1ED-158CBDCB29EE/Speaker'SStatement

CROWN AND PARLIAMENT

DR DAVID TORRANCE

Library Clerk, House of Commons, United Kingdom

That *The Table* last published an account of the ceremonial following the death of one monarch and the accession of another 71 years ago speaks to the remarkable reign of Queen Elizabeth II.[1] The year 2022 encompassed both the late Queen's Platinum Jubilee and her demise. In the interim there was talk of a "soft regency",[2] particularly when on 10 May the State Opening departed from precedent in that Parliament was opened – in the absence of the monarch – by the then Prince of Wales and Duke of Cambridge acting in their capacity as Counsellors of State, rather than by a Royal Commission.[3]

Authority for this was provided under section 6 of the Regency Act 1937.[4] Letters Patent authorised by the Queen delegated this Royal function (but no others) to two Counsellors of State "acting jointly."[5] Reduced state ceremonial, as used in 2019 and 2021, was retained.[6] When the Lady Usher of the Black Rod entered the Commons Chamber, she asked MPs "to attend Her [Majesty's] Counsellors of State in the House of Peers." The Prince of Wales delivered the Queen's Speech (which was written in the third person) from the Consort's Throne,[7] next to which the Imperial State Crown had been placed on a table. The Sovereign's Throne was absent.

This was the first use of Counsellors of State since the Queen's 2005 visit to Malta and the first on account of illness rather than absence.

[1] See "Her Majesty's Coronation", in *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments*, Vol 22 (1953), pp16-22.

[2] The Queen's Platinum Jubilee: what does the future hold for the monarchy?, Constitution Unit blog, 16 June 2022, constitution-unit.com/2022/06/16/the-queens-platinum-jubilee-what-does-the-future-hold-for-the-monarchy.

[3] Queen to miss state opening of parliament with 'episodic mobility problems', *The Times* (£), 9 May 2022, thetimes.co.uk/article/queen-to-miss-opening-of-parliament-with-episodic-mobility-problems-szv7zzzxp.

[4] See Commons Library Briefing Paper CBP9374, *Regency and Counsellors of State*, commonslibrary.parliament.uk/research-briefings/cbp-9374.

[5] Warrants Under the Royal Sign Manual | The Gazette, thegazette.co.uk/notice/4082146.

[6] There is a question, therefore, as to whether the retention of ceremonial (even reduced) meant this was a "State Opening" or merely an "Opening", as in 1959 and 1963.

[7] HL Deb 10 May 2022 Vol 822 c1. This meant the Prince of Wales referred to "Her Majesty's Government" rather than "My Government."

Parliament would revisit the Regency Act 1937 before the end of that year (see below), but its main focus during the remainder of May 2022 was the Queen's Platinum Jubilee. As had become customary, on 26 May both Houses debated and presented Addresses. In the Commons, the then Prime Minister, Boris Johnson, moved that:

> "an humble Address be presented to Her Majesty to offer the heartfelt good wishes and loyal devotion of the House on the occasion of the Seventieth Anniversary of Her Accession to the Throne, expressing its deep gratitude for Her Majesty's lifelong unstinting service, leadership and commitment to the United Kingdom, Dependencies and Territories, Her other Realms, and the Commonwealth."[8]

The then Lord Privy Seal (Baroness Evans of Bowes Park) moved an identical motion in the Lords. While the Upper House ordered that its Address be presented to Her Majesty by the Lord Chamberlain, the Commons did not identify its messengers. In 1977, 2002 and 2012 the Queen responded to previous jubilee Addresses via a speech in Westminster Hall. Perhaps owing to the monarch's "periodic mobility issues" there was no such speech in 2022. Indeed, the Queen does not appear to have responded in any form.[9] Members from both Houses also gifted the Queen a pair of illuminated beacons featuring the heraldic beasts of the United Kingdom.[10]

Demise of the Crown

On Tuesday 6 September 2022, the Queen appointed Liz Truss MP Prime Minister and First Lord of the Treasury at Balmoral Castle. It was among the late sovereign's final official acts.[11] On 6 September and 7 September, The Queen approved several Cabinet and junior ministerial appointments.[12] A virtual meeting of the Privy Council was arranged for Wednesday evening, at which certain Cabinet ministers would have collected their seals and

8 See Commons Library Insight, Platinum Jubilee: How will Parliament Address the Queen?, commonslibrary.parliament.uk/platinum-jubilee-how-will-parliament-address-the-queen/

9 The Welsh and Scottish Parliaments paid their own tributes on 24 May 2022 and 1 June 2022, respectively.

10 In the event, the beacons were accepted by King Charles III upon his visit to Parliament on 14 December 2022.

11 Court Circular, 6 September 2022. See also Commons Library Insight, How is a Prime Minister appointed?, commonslibrary.parliament.uk/how-is-a-prime-minister-appointed.

12 10 Downing Street website, Ministerial Appointments: September 2022, 7 September 2022, gov.uk/government/news/ministerial-appointments-september-2022.

sworn their Oaths of Office.[13] This was later cancelled. The Queen's final public statement was a message of condolence for the victims of stabbings in Saskatchewan.[14]

Early on the afternoon of 8 September, Buckingham Palace said in a statement that the Queen's doctors were "concerned for Her Majesty's health."[15] This was followed by a statement from the Speaker, Sir Lindsay Hoyle, in the House of Commons:

> "I know that I speak on behalf of the entire House when I say that we send our best wishes to Her Majesty the Queen, and that she and the royal family are in our thoughts and prayers at this moment. I am not going to take any contributions on this now; if there is anything else, we will update the House accordingly."[16]

The House of Commons adjourned at 16:55. At 18:30, the Palace released another statement:

The Queen died peacefully at Balmoral this afternoon. The King and The Queen Consort will remain at Balmoral this evening and will return to London tomorrow.[17]

The Queen's death certificate later stated that she had died at 15:10 of "Old Age."[18] By law, the Accession of His Majesty King Charles III to the Throne was immediate.[19] The King succeeded while in Scotland, the first monarch to have done so since 1567.[20] Charles also immediately became Supreme Governor of the Church of England and King of 14

[13] See Commons Library Briefing Paper CBP7460, The Privy Council: history, functions and membership, commonslibrary.parliament.uk/research-briefings/cbp-7460.

[14] Royal Family website, A message from The Queen to the Governor General and the people of Canada, 7 September 2022, royal.uk/message-queen-governor-general-and-people-canada.

[15] Royal Family website, A statement from Buckingham Palace, 8 September 2022, royal.uk/statement-buckingham-palace.

[16] HC Deb 8 September 2022 Vol 719 c414.

[17] Royal Family website, Announcement of the death of The Queen, 8 September 2022, royal.uk/announcement-death-queen.

[18] Queen's cause of death revealed as extract of certificate published, Sky News, 29 September 2022, news.sky.com/story/queens-cause-of-death-revealed-as-extract-of-certificate-published-12707655.

[19] See the Bill of Rights 1689 and the Act of Settlement 1701. See also Commons Library Briefing Paper CBP8885, The Crown and the constitution, commonslibrary.parliament.uk/research-briefings/cbp-8885.

[20] King James VI succeeded to the Scottish Throne as an infant after his mother, Mary Queen of Scots, was forced to abdicate. James VI was also in Scotland when he succeeded to the English Throne (as James I) in 1603.

Commonwealth Realms,[21] as well as Head of the Commonwealth.[22] Under the Regency Act 1937, the Queen Consort and the next four members of the Royal Family of age and in the line of succession became eligible to act as Counsellors of State.[23]

The House of Commons had been due to sit at 09:30 on Friday 9 September 2022. The Speaker announced on Thursday evening that the House would instead sit at 12:00 for tributes to Her late Majesty. In a statement outside 10 Downing Street, the Prime Minister gave the first public intimation of the new monarch's regnal name, Charles III.[24]

Upon a Demise of the Crown, Parliament meets immediately pursuant to section 4 of the Succession to the Crown Act 1707. Other than meetings of both Houses for tributes, agreement of Addresses and oath-taking, all other parliamentary business was postponed, including scheduled meetings of Select Committees, until after the State Funeral. The House of Commons met at 12:00. The Speaker invited the House to rise and observe a minute's silence in memory of The Queen. This was led by the Chaplain to the Speaker.[25] For almost eleven hours, MPs paid tribute to the late sovereign, beginning with the Speaker.[26]

The House of Lords also met at 12:00. After a minute's silence was observed, prayers were read by the Lord Bishop of Oxford. The Lord Speaker, party and group leaders and the Archbishop of Canterbury all offered tributes.[27] Both Houses briefly suspended their sittings shortly before 18:00 in order to hear the King's address, which was broadcast in both Chambers as well as televised.[28] In this, his first broadcast as King, His Majesty "solemnly" pledged himself to "uphold the Constitutional principles at the heart of our nation."[29]

[21] These are Australia, Canada, New Zealand, Solomon Islands, Tuvalu, Papua New Guinea, Belize, The Bahamas, Jamaica, St Vincent and the Grenadines, St Lucia, St Kitts and Nevis, and Grenada.

[22] The Commonwealth Headship is not hereditary, but The King's succession had been agreed in advance among the 56 members of the Commonwealth.

[23] See section 6(2) of the Regency Act 1937. These were Prince William, Prince Harry, Prince Andrew and Princess Beatrice.

[24] 10 Downing Street website, Prime Minister's statement on the death of Her Majesty Queen Elizabeth II, 8 September 2022, gov.uk/government/speeches/prime-ministers-statement-on-the-death-of-her-majesty-queen-elizabeth-ii.

[25] HC Deb 9 September 2022 Vol 719 c491

[26] HC Deb 9 September 2022 Vol 719 cc493-652

[27] HL Deb 9 September 2022 Vol 824 c367-75

[28] Both Houses then resumed for tributes. The Lords adjourned at 19:34.

[29] Royal Family website, His Majesty The King's address to the Nation and the

The Accession Council took place at 10:00 on Saturday 10 September in the State Apartments at St James's Palace. It comprised, as is traditional, two parts. In addition to selected Privy Counsellors, the Lord Mayor and Aldermen of the City of London and Commonwealth Realm High Commissioners attended Part I (200 in all). But in a break with tradition, not all Privy Counsellors (700+) were invited to Parts I and II.[30] Instead, 177 were summonsed to attend either ex-officio or having won a place in a ballot. There is no constitutional requirement that all Privy Councillors be invited to – or attend – the Accession Council. Proceedings were broadcast for the first time.[31]

The King was not present at Part I. Penny Mordaunt, the Acting Lord President,[32] began by stating it was her "sad duty" to inform the "Lords of the Council" (Privy Counsellors) of the death of "Her most gracious Majesty Queen Elizabeth II." She then called on the Clerk of the (Privy) Council, Richard Tilbrook, to read aloud the text of the Accession Proclamation. This, of course, proclaimed something (the Accession) which had already occurred. There were several textual differences between the 2022 Proclamation and that for Queen Elizabeth II in February 1952. "Members of the House of Commons" was added after "Lords Spiritual and Temporal", and "representatives of the Realms and Territories" substituted for "representatives of other Members of the Commonwealth."[33]

A deputation consisting of Her Majesty The Queen Consort, His Royal Highness The Prince of Wales (created the day before), the Archbishop of Canterbury, the Lord Chancellor, the Archbishop of York, the Prime Minister, the Clerk of the Council and the Acting Lord President then waited on The King and informed him that the (Privy) Council was assembled.

On joining the proceedings – The King's first Privy Council meeting – His Majesty delivered a non-statutory personal Declaration, in which he said he would "strive to follow" his mother's example in:

Commonwealth, 9 September 2022, royal.uk/his-majesty-king%E2%80%99s-address-nation-and-commonwealth.

[30] Only Privy Counsellors attend Part II.

[31] See David Allen Green, Why the broadcast of the Accession Council was informative and significant, 12 September 2022, davidallengreen.com/2022/09/why-the-broadcast-of-the-accession-council-was-informative-and-significant.

[32] What happens this weekend as Charles proclaimed King after Queen's death, Independent, 10 September 2022, independent.co.uk/news/uk/home-news/queen-death-king-charles-prince-b2163883.html. Mordaunt was yet to be "declared" Lord President at a meeting of the Privy Council.

[33] College of Arms website, The Accession Proclamation, 10 September 2022, college-of-arms.gov.uk/2-coa/78-the-accession-proclamation.

"upholding constitutional government and to seek the peace, harmony and prosperity of the peoples of these Islands and of the Commonwealth Realms and Territories throughout the world. In this purpose, I know that...in the discharge of these duties I will be guided by the counsel of their elected parliaments."[34]

Under the terms of the 1707 Anglo-Scottish Union, the King was then required to take and subscribe the Oath relating to the "Security" of the Church of Scotland.[35] Twelve Prerogative Orders in Council authorised publication of the King's personal Declaration, "transmission" of the Scottish Oath and Accession Proclamation, and for the use of various Seals until replacements had been prepared and authorised by the King. A Statutory Order in Council also extended provision under the Sovereign Grant Act 2011 until six months beyond the end of the present reign.[36] Finally, two Proclamations appointed Monday 19 September a bank holiday in England, Wales and Northern Ireland and, separately, in Scotland.[37] Remaining Privy Counsellors signed the Accession Proclamation as they departed St James's Palace.[38]

The conclusion of the Accession Council was followed by the Principal Proclamation, which was read at 11:00 from the balcony overlooking Friary Court at St James's Palace. The Proclamation was read by Garter King of Arms, David White, who was accompanied by the Earl Marshal, other Officers of Arms and the Serjeants at Arms.[39] There was a further Proclamation at the Royal Exchange in the City of London.

The House of Commons next met at 13:00 on Saturday 10 September. In instructing Members to take the oath or make the affirmation, the Speaker emphasised that there was "no procedural requirement to do so."[40] MPs then resumed their tributes to Queen Elizabeth II,[41] later resolving nemine contradicente (without dissent) that:

[34] Royal Family website, His Majesty The King's Declaration, 10 September 2022, royal.uk/his-majesty-kings-declaration.

[35] This is required, but the text as opposed to the content is not specified by Article XXV(II) of the Union with Scotland Act 1706.

[36] The Sovereign Grant Act 2011 (Duration of Sovereign Grant Provisions) Order 2022

[37] See section 1(3) of the Banking and Financial Dealings Act 1971.

[38] The Privy Council Office later published a list of Attendees at the Accession Council in alphabetical order, privycouncil.independent.gov.uk/wp-content/uploads/2022/09/2022-09-10-List-of-those-present-for-the-Accession-Council.pdf.

[39] College of Arms website, Accession Proclamation, 10 September 2022, college-of-arms.gov.uk/2-coa/75-proclamation.

[40] HC Deb 10 September 2022 Vol 719 c653

[41] HC Deb 10 September 2022 Vol 719 c655-765

"an humble Address be presented to His Majesty to convey to His Majesty the deep sympathy felt by this House for the great sorrow which he has sustained by the death of the late Queen, His Majesty's mother; to extend to all the Royal Family the deep sympathy of this House in their grief, which is shared by all its Members; to assure His Majesty that Her late Majesty's unstinting dedication over a reign of over seventy years to the service of our great country and its people, and to the service of the countries and peoples of the rest of the wider Commonwealth, will always be held in affectionate and grateful remembrance; and to express to His Majesty our loyalty to him and our conviction that he will strive to uphold the liberties and to promote the happiness of the people in all his realms now and in the years to come."[42]

The Leader of the House and Acting Lord President, Penny Mordaunt, moved that this humble Address be presented to His Majesty by the whole House.[43] The House of Commons adjourned at 20:33.

The House of Lords also met at 13:00 for Members to swear or affirm their Parliamentary Oath. Although this was not a legal requirement, under House of Lords Standing Orders it was:

"necessary to take the oath to the new King before taking part in any parliamentary business, including the first sitting of the House after the State Funeral, committee meetings, tabling of questions and amendments."[44]

At 18:30 Lord True, the Lord Privy Seal, moved another Humble Address.[45] This motion was agreed *nemine dissentiente* (without disagreement). That afternoon, Buckingham Palace had announced that the late Queen's State Funeral would take place on Monday 19 September.[46]

The demise had a pronounced territorial dimension. On Sunday 11 September, the Accession Proclamation was read during a special sitting of the States of Guernsey,[47] and also received by the Jersey States Assembly.[48] The Proclamation on the Isle of Man differed in that it included a local

[42] HC Deb 10 September 2022 Vol 719 c766

[43] HC Deb 10 September 2022 Vol 719 c766

[44] This stipulation had not included tributes on Friday 9 September 2022.

[45] HL Deb 10 September 2022 Vol 824 c532

[46] The Liberal Democrats cancelled their autumn conference as the State Funeral would have taken place half-way through their annual gathering.

[47] King Charles III: Bailiwick of Guernsey proclamation takes place, BBC News online, 11 September 2022, bbc.com/news/world-europe-guernsey-62862424.

[48] Charles III formally proclaimed King in Jersey, Jersey *Evening Post*, 11 September 2022, jerseyeveningpost.com/news/2022/09/11/charles-iii-formally-proclaimed-king-in-jersey.

title (Lord of Mann) for the first time.[49] Although in 1952 the devolved Parliament of Northern Ireland had followed Westminster ceremonial upon the demise of King George VI, the death of his daughter Queen Elizabeth II was marked in the Scottish and Welsh Parliaments as well as by members of the Northern Ireland Assembly. The Senedd (Welsh Parliament) met in special session at 15:00 on Sunday 11 September. A minute's silence was held, after which a motion of condolence proposed:

> "That this Senedd expresses its deep sadness at the death of Her Majesty The Queen and offers its sincere condolences to His Majesty The King and other Members of the Royal Family. We recognise Her Majesty's enduring commitment to public service and duty, including her support for many Welsh charities and organisations, and her lifelong association with Wales and its people."

The First Minister of Wales, Mark Drakeford, led the tributes,[50] and the motion was later deemed agreed. The Queen's coffin, meanwhile, had come to rest in the Throne Room of the Palace of Holyroodhouse in Edinburgh, having been transported from Balmoral.

On Monday 12 September the King and Queen Consort attended Westminster Hall to receive Addresses from both Houses of Parliament. The King and Queen were received upon arrival by the Lord Great Chamberlain (Lord Carrington).[51] The Lord Speaker (Lord McFall of Alcluith) read and then presented the Address from the House of Lords to the King.[52] Afterwards the Speaker of the House of Commons read and subsequently presented the Address from the House of Commons to His Majesty.[53] This was the first time a new monarch had received Addresses of condolence and loyalty in person. Having received the Addresses, the King made his reply:

> "Parliament is the living and breathing instrument of our democracy. That your traditions are ancient we see in the construction of this great Hall

[49] Proclamation of the Lord of Mann at St. John's, 16 September 2022, tynwald.org.im/about/tynday/Documents/20220914-Proclamation-Print-Format.pdf.

[50] Senedd Record, 11 September 2022

[51] The office of Lord Great Chamberlain is hereditary and alternates by reign between the heirs of certain families (see parliament.uk/globalassets/documents/foi/house-of-lords-foi-and-data-protection/foi-responses---calendar-year-2019/foi-3165---response.pdf).

[52] UK Parliament website, House of Lords presents Address to His Majesty King Charles III, 12 September 2022, parliament.uk/business/news/2022/september-2022/lords-following-death-of-queen-elizabeth-ii.

[53] UK Parliament website, House of Commons presents Address to His Majesty King Charles III, 12 September 2022, parliament.uk/business/news/2022/september-2022/death-of-her-majesty-queen-elizabeth-ii-commons.

> and the reminders of Mediaeval predecessors of the Office to which I have been called. And the tangible connections to my darling late mother we see all around us; from the Fountain in New Palace Yard which commemorates The late Queen's Silver Jubilee to the Sundial in Old Palace Yard for the Golden Jubilee, the magnificent Stained Glass Window before me for the Diamond Jubilee and, so poignantly and yet to be formally unveiled, your most generous gift to Her late Majesty to mark the unprecedented Platinum Jubilee which we celebrated only three months ago, with such joyful hearts."[54]

The House of Lords (but not the Commons) met at 12:00. The Lord Speaker informed the House that he had:

> "received a great many letters of condolence on the occasion of the death of Her late Majesty the Queen, from our friends and colleagues in other Parliaments and countries across the globe. With the permission of the House, I will respond appropriately on the House's behalf and also arrange for the original letters to be published on the parliamentary website after the period of mourning."[55]

Although the Northern Ireland Assembly was not at that time fully functioning, the Assembly Speaker Alex Maskey wished to ensure Members of the Legislative Assembly (MLAs) had an opportunity to pay their respects. He therefore gathered MLAs in the Assembly Chamber at Stormont on Monday 12 September 2022. Representatives of both the Unionist and Nationalist communities paid tribute to the Queen.[56]

Having replied to Addresses from both Houses of (the UK) Parliament, meanwhile, the King, accompanied by the Queen Consort, were flown to Edinburgh Airport, where they were received by His Majesty's Lord-Lieutenant for the City of Edinburgh, Councillor Robert Aldridge, and Alister Jack MP, the Secretary of State for Scotland. The King, the Duke of York, the Earl of Wessex and Forfar[57] and the Princess Royal, accompanied by Vice Admiral Sir Tim Laurence, later walked in Procession behind the Coffin bearing Her late Majesty to St Giles' Cathedral. There, there was a Service of Thanksgiving for the Life of Her late Majesty The Queen.[58] Prior

[54] Royal Family website, His Majesty The King's reply to addresses of condolence at Westminster Hall, 12 September 2022, royal.uk/his-majesty-kings-reply-addresses-condolence-westminster-hall.

[55] HL Deb 12 September 2022 Vol 824 c535. Until 1952, such messages were read out in full in each House.

[56] BBC News online, Queen Elizabeth II: Assembly hails 'courageous leader', 11 September 2022, bbc.co.uk/news/uk-northern-ireland-62871434.

[57] Who also became, shortly before the King's Coronation, the Duke of Edinburgh.

[58] See St Giles' Cathedral, Order of Service, 12 September 2022, royal.uk/sites/default/

to the Service, the Duke of Hamilton had placed the Crown of Scotland upon The Queen's Coffin.[59]

The King and Queen Consort later drove to the Scottish Parliament where a special session opened with two minutes' silence. The only business was consideration of a Motion of Condolence moved by the then First Minister, Nicola Sturgeon.[60] The Presiding Officer, Alison Johnstone, then invited the King to respond.[61] The meeting of the Scottish Parliament closed at 18:17. The King and Queen Consort afterwards attended a reception in the Garden Lobby at Holyrood. At around 17:30, members of the public had been admitted to the Queen's Lying-at-Rest at St Giles'.[62] Ms Sturgeon later tweeted that Scottish planning for the demise had been known as "Operation Unicorn."[63]

On Tuesday 13 September the King and Queen Consort continued what was known as "Operation Spring Tide" with a visit to Northern Ireland. The Speaker of the Northern Ireland Assembly presented a Message of Condolence from MLAs to the King in the Throne Room at Hillsborough Castle. The King then made his reply.[64] Upon his return to London, the King held a meeting of the Privy Council at Buckingham Palace at 18:30. This allowed the transaction of business which had been due to take place on the evening of Wednesday 7 September. Penny Mordaunt was finally declared and made affirmation as Lord President of the Council.[65] As required by the Promissory Oaths Act 1867, several Cabinet ministers took the (statutory) Oath of Office or made affirmation, kissed hands upon appointment and received their Seals of Office.[66] Meanwhile, the Queen's

files/media/order_of_service_1.pdf.

[59] The Crown of Scotland was made in its present form for King James V of Scotland and forms part of the "Honours of Scotland."

[60] Although the First Minister used the term "Queen of Scots", it has no basis in law and did not form part of the Accession Proclamation in 1952.

[61] Scottish Parliament Official Report, 12 September 2022

[62] Scottish Government press release, Her Majesty The Queen's Lying at Rest in St Giles' Cathedral, 12 September 2022, gov.scot/publications/her-majesty-the-queens-lying-at-rest-in-st-giles-cathedral.

[63] Nicola Sturgeon's Twitter, "Operation Unicorn", twitter.com/NicolaSturgeon/status/1569740542128308238.

[64] Royal Family website, His Majesty The King's reply to the message of condolence at Hillsborough Castle, 13 September 2022, royal.uk/his-majesty-kings-reply-message-condolence-hillsborough-castle.

[65] Hitherto, Mordaunt had been "Acting" Lord President.

[66] Privy Council meeting, 13 September 2022, privycouncil.independent.gov.uk/wp-content/uploads/2022/09/2022-09-13-List-of-Business.pdf. The only other item of business was an Order approving the Government of Alderney (Amendment) Law, 2022.

Coffin had been flown from Edinburgh to RAF Northolt, from whence the State Hearse conveyed it to Buckingham Palace.[67]

According to media reports, planning for the Queen's Lying-in-State at Westminster Hall formed part of what was known as "Operation Marquee."[68] At 14:22 on Wednesday 14 September the Queen's Coffin was borne in State from Buckingham Palace to the Palace of Westminster. The Coffin was followed on foot by the King and other members of the Royal Family.[69] They were received at the North Door of Westminster Hall by the Lord Great Chamberlain, the Lord Speaker and the Speaker of the House of Commons. The Archbishop of Canterbury and the Dean of Westminster conducted a service for the reception of the Coffin.[70] A limited number of nominated MPs and peers also attended, as did members of the legislatures of Northern Ireland, Scotland and Wales, as well as Commonwealth Realm High Commissioners.[71]

The Queen's Lying-in-State (as distinct from the Lying-at-Rest in Edinburgh) began at 17:00. The queue was anticipated to be long. MPs and peers (and a certain number of guests) and staff employed directly by Parliament were able to join the queue from within the Palace of Westminster.[72] Defence Secretary Ben Wallace and Scottish Secretary Alister Jack, both members of the Royal Company of Archers, the late Queen's (and now King's) Bodyguard for Scotland, took part in the Vigil around the Queen's Coffin.[73]

Operation Spring Tide concluded with the King's first visit to Wales as

[67] Royal Family greet Queen Elizabeth II's coffin at Buckingham Palace, BBC News online, 14 September 2022, bbc.co.uk/news/uk-62883712.

[68] What are Operation Spring Tide and Marquee? A guide to the terms being used after the Queen's death, ITV News website, 10 September 2022, itv.com/news/2022-09-10/what-are-operation-spring-tide-and-operation-marquee.

[69] As non-working royals, the Duke of York and the Duke of Sussex did not wear military uniforms for the Procession.

[70] Westminster Hall, Order of Service, 14 September 2022, royal.uk/sites/default/files/media/strictly_embargoed_until_1422hrs_wednesday_14th_september_-_order_of_service_-_a_service_for_the_reception_of_the_queens_coffin_at_westminster_hall.pdf.

[71] UK Parliament website, Service for the commencement of Lying-in-State of Her Majesty Queen Elizabeth II, 14 September 2022, parliament.uk/business/news/2022/september-2022/service-for-the-commencement-of-lying-in-state.

[72] This led to criticism about "queue jumping" (see Controversy as MPs skip the 10-mile queue with guests to see the Queen Lying in State, ITV News website, 16 September 2022, itv.com/news/2022-09-16/who-can-mps-take-with-them-as-they-skip-the-queens-lying-in-state-queue).

[73] Ben Wallace and Alister Jack stand guard over Queen's coffin, BBC News online, 15 September 2022, bbc.co.uk/news/av/uk-62921909.

monarch on Friday 16 September. The King and Queen Consort were received at the Senedd by the Presiding Officer (Elin Jones MS) and the First Minister of Wales. The Senedd presented its motion of condolence to The King, to which His Majesty replied in Welsh and English:

> "Boneddigion a boneddigesau, fel fy Mam annwyl o'm blaen, rwy'n gwybod ein bod ni oll yn caru'r wlad arbennig hon. [Ladies and gentlemen, like my beloved mother before me, I know we all share a love for this special land.] Having visited the Senedd regularly since it was founded, and having heard your heartfelt words today, I know we all share the deepest commitment to the welfare of the people of this land and that we will all continue to work together to that end."[74]

On Saturday 17 September the King hosted the Governors-General of the Commonwealth Realms for a reception and lunch at Buckingham Palace and, later, received Commonwealth Realm Prime Ministers, including Justin Trudeau (Canada), Anthony Albanese (Australia) and Jacinda Ardern (New Zealand).[75]

On the morning of the State Funeral, the Lying-in-State came to an end at 06:30 as the final members of the public were admitted to Westminster Hall on 19 September.[76] At 10:44 The Queen's Coffin was borne in Procession on the State Gun Carriage to Westminster Abbey. The King, members of the Royal Family and Royal Household again followed on foot. The Procession – which was led by the massed pipes and drums of the Scottish and Irish Regiments, the Brigade of Gurkhas, and the Royal Air Force – included detachments from the Armed Forces of the Commonwealth, as well as detachments of the British Armed Forces which had held a special relationship with the Queen.[77]

The State Funeral service was attended by heads of state and overseas government representatives, including foreign Royal families, Commonwealth Realm Governors-General and Prime Ministers. A total of around 2,000 people were in attendance. The service was conducted by the Dean of Westminster. The (UK) Prime Minister and the Commonwealth Secretary-General read lessons.[78] This was the first State Funeral for a

[74] Royal Family website, His Majesty The King's reply to the message of condolence at the Senedd, 16 September 2022, royal.uk/his-majesty-kings-reply-message-condolence-senedd.

[75] Court Circular, 17 September 2022.

[76] The King later attended the unveiling of a plaque commemorating his mother's Lying-in-State on 14 December 2022.

[77] Royal Family website, The Funeral of Queen Elizabeth II, royal.uk/funeral-queen-elizabeth-ii.

[78] Westminster Abbey, Order of Service, 19 September 2022, royal.uk/sites/default/files/

former sovereign at the Abbey since George II's in 1760 and the first to be televised. After the service, the Coffin was borne through the Abbey and returned to the State Gun Carriage for the Procession to Wellington Arch, and in the State Hearse to Windsor.[79]

A Committal Service began at St George's Chapel at 16:00. Prior to the final hymn, the Imperial State Crown, Orb and Sceptre were removed from the Coffin by the Crown Jeweller and placed on the altar by the Dean of Windsor. At the end of the final hymn, the Lord Chamberlain (the most senior officer of the Royal Household) "broke" (or rather unscrewed) his wand of office and placed it on the Coffin. As the Queen's Coffin was lowered into the Royal Vault, the Dean of Windsor said a psalm and the commendation before Garter King of Arms proclaimed Her late Majesty's styles and titles:

> "[T]he late Most High, Most Mighty, and Most Excellent Monarch, Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, and Sovereign of the Most Noble Order of the Garter."[80]

At 19:30 a Private Burial conducted by the Dean of Windsor took place in the King George VI Memorial Chapel.[81]

Demise of the Crown in Commonwealth Realms

As well as immediately becoming King of the United Kingdom upon the death of his mother, Charles III also succeeded as King of 14 other Commonwealth Realms.

Following the Accession Council in London on 10 September, the Canadian Prime Minister and Governor-General (Mary Simon) signed a Proclamation for the new King of Canada. Canada's chief herald proclaimed King Charles III in English and in French. The ceremony at Rideau Hall in Ottawa ended with a 21-gun salute and the armed forces band playing "God Save the King."[82] The Lieutenant Governors of New

media/state_funeral_of_her_majesty_queen_elizabeth.pdf.

[79] Royal Family website, The State Funeral and Committal Service for Her Majesty The Queen, 15 September 2022, royal.uk/state-funeral-and-committal-service-her-majesty-queen.

[80] St George's Chapel, Order of Service, 19 September 2022, royal.uk/sites/default/files/media/committal_of_her_majesty_queen_elizabeth_ii_-_order_of_service.pdf.

[81] Queen's name inscribed on family chapel stone at Windsor, BBC News online, 21 September 2022, bbc.co.uk/news/uk-62974008.

[82] Canada Gazette Vol 156, No 4, 10 September 2022

Brunswick, Newfoundland, Nova Scotia, and Saskatchewan issued their own Proclamations the same day.[83]

Another Proclamation was read by the Governor-General of the Commonwealth of Australia at 12:00 on 11 September at Australia's Parliament House.[84] Similar Proclamations took place the same day in all the States of Australia except Victoria (its Proclamation was issued on Monday 12 September), reflecting each State's distinct relationship with the Crown. The New Zealand Cabinet and Executive Council met at 11:30 on 12 September, after which New Zealand Herald of Arms Phillip O'Shea read the proclamation in English while the Parliamentary kaumātua (a tribal elder) Kura Moeahu read it in Māori. The latter ended with the exhortation: "E te atua tohungia te Kīngi!" (God Save the King!)[85]

The Parliaments of Canada, Australia and New Zealand later observed ceremonial pursuant to the demise of Queen Elizabeth II.[86] Section 2 of the *Parliament of Canada Act* states that Parliament shall not be interrupted but "shall continue, and may meet, convene and sit, proceed and act, in the same manner as if that demise has not happened." Nevertheless, the Speaker recalled the Canadian House of Commons so that Members could make speeches of condolence and pay tribute to the Queen on 15 and 16 September.[87] When the Canadian Senate resumed following its summer adjournment, its first sitting was devoted to honouring the late Queen. Following a minute's silence, all Senators were granted extended speaking time. The Senate Speaker then read a message from the House of Commons requesting that the Senate and House unite to present a humble Address to the King. A motion to this effect was moved and adopted without debate. Neither MPs nor Senators were required to retake their oaths.[88]

The Provincial Legislatures of Saskatchewan and Manitoba followed

[83] The Lieutenant Governors of Ontario and Prince Edward Island issued their Proclamations on 12 September, of Manitoba on 14 September, and of Alberta on 15 September.

[84] Australian Government website, Proclamation, 11 September 2022, pmc.gov.au/sites/default/files/publications/proclamation-King-Charles-III-with-seal.pdf.

[85] King Charles III officially proclaimed as New Zealand's new king, RNZ website, 12 September 2022, rnz.co.nz/news/national/474542/king-charles-iii-officially-proclaimed-as-new-zealand-s-new-king.

[86] It is important to observe that the Succession to the Crown Act 1707 does not extend beyond the UK.

[87] With Queen Elizabeth's death, Canada prepares for an official mourning period, CBC News website, 8 September 2022, cbc.ca/news/canada/canada-plan-queen-elizabeth-death-1.6575741.

[88] Debates of the Senate, 20 September 2022

similar ceremonial. In Quebec,[89] the Queen's death occurred during a dissolution ahead of a general election. After the election, a new proclamation was issued in the name of the King to postpone the convocation of the National Assembly until November 29. This was His Majesty's first act in his capacity as King in right of Quebec. Several members refused to take the oath of allegiance required under the Canadian constitution. On 9 December 2022, the National Assembly passed an Act which effectively abolished the oath of allegiance in Quebec.[90]

Australia's federal Parliament had been due to sit the week after the Queen's death but instead adjourned until 23 September, which followed a national day of mourning (a public holiday). MPs and Senators paid their respects, and in the House of Representatives Prime Minister Anthony Albanese and opposition leader Peter Dutton moved condolence motions. There was no legal requirement for federal MPs to re-swear their oaths.[91] In the State of South Australia, the passing of the Queen required the House to rearrange its sitting calendar. It had been required to meet on 20 September and used this sitting to pass an Address of condolence to the King. Members were not required to be re-sworn.[92]

On Tuesday 13 September 2022, the New Zealand House of Representatives sat following a Message from the Governor-General, Dame Cindy Kiro, officially informing MPs of the Queen's death, which was read by the Speaker. The then Prime Minister, Jacinda Ardern, moved that a "respectful Address" be presented to King Charles III offering the House's condolences on the death of Queen Elizabeth II and congratulations on his Accession to the Throne. This motion was then debated, adopted by the House, signed by the Speaker and conveyed to the Office of the Prime Minister. Members observed a period of silence before the House

[89] In 2021 the National Assembly had passed an Act providing that a Demise would not terminate the activities of the legislature, government, courts or any office or employment under the Crown.

[90] Lieutenant-Governor of Quebec Assents Bill 4, Government of Quebec website, 9 December 2022, quebec.ca/en/news/actualites/detail/the-lieutenant-governor-of-quebec-assents-bill-4-an-act-to-recognize-the-oath-provided-in-the-act-respecting-the-national-assembly-as-the-sole-oath-required-in-order-to-sit-in-the-assembly-44665.

[91] Anne Twomey, Charles is now King of Australia – but that doesn't mean any legal or constitutional change, Guardian, 9 September 2022, theguardian.com/commentisfree/2022/sep/09/charles-is-now-king-of-australia-but-that-doesnt-mean-any-legal-or-constitutional-change.

[92] Section 42(2), *Constitution Act 1934* (South Australia). The Constitution (Demise of the Crown) Amendment Act 2016 had put beyond doubt the effect of a Demise in the State of South Australia. The Parliament of Western Australia had also passed the Constitution Amendment (Demise of the Crown) Act 2017 to similar effect.

adjourned for a week as a mark of respect for the Queen.[93]

Other Commonwealth Realm legislatures do not appear to have marked the Demise in any significant way, though all made proclamations and published sympathetic statements from their respective premiers and Governors-General.

Counsellors of State Act 2022

On Monday 14 November, the Lord Chamberlain, Lord Parker of Minsmere, read a Gracious Message from the King to the House of Lords:

> "To ensure continued efficiency of public business when I am unavailable, such as while I am undertaking official duties overseas, I confirm that I would be most content should Parliament see fit for the number of people who may be called upon to act as Counsellors of State under the terms of the Regency Acts 1937 to 1953 to be increased to include my sister and brother, the Princess Royal and the Earl of Wessex and Forfar, both of whom have previously undertaken this role."[94]

Jo Churchill MP, the Vice-Chamberlain of the Household, later delivered the King's Message to the House of Commons, where it was read by the Speaker.[95]

Legislation in response to a Message from the Monarch is rare. The last occasion preceded consideration of what became the Sovereign Grant Act 2011.[96] The Regency Acts of 1937, 1943 and 1953 also began with Messages from George VI and Elizabeth II.[97] On 15 November, the Leader of the Lords, Lord True, moved:

> "That an Humble Address be presented to His Majesty to return thanks to His Majesty for His most gracious message regarding the inclusion of Her Royal Highness the Princess Royal and His Royal Highness the Earl of Wessex and Forfar among those who may be called upon to act as Counsellors of State under the terms of the Regency Acts 1937 to 1953, and to assure His Majesty that this House will, without delay, proceed

93 The House of Representatives' response to the death of the Queen, New Zealand Parliament website, parliament.nz/en/visit-and-learn/history-and-buildings/special-topics/the-demise-of-the-crown/the-house-of-representatives-response-to-the-death-of-the-queen. The Address was presented in person to the King by the Governor-General and Prime Minister before the Queen's State Funeral.

94 HL Deb 14 Nov 2022 Vol 825 c691 [Counsellors of State]

95 HC Deb 14 Nov 2022 Vol 722 c408 [Message from His Majesty the King]

96 HC Deb 29 June 2011 Vol 530 c976 [Message from the Queen]

97 See HC Deb 22 Sep 1943 Vol 392 cc263-64 and HL Deb 4 Nov 1953 Vol 184 c27. The Regency Act 1943 was introduced in the House of Lords and the Regency Acts of 1937 and 1953 in the Commons.

to discuss this important matter and will provide such measures as may appear necessary or expedient for securing the purpose set out by His Majesty."[98]

The motion was agreed without dissent and it was ordered that the Address be presented to the King by the Lord Chamberlain. In the House of Commons, the Chancellor of the Duchy of Lancaster, Oliver Dowden MP, moved a motion for a similar Address which assured the King "that this House will provide such measures as may appear necessary or expedient for securing the purpose set out by His Majesty."[99] The question was put and agreed to.

The Counsellors of State Bill 2022-23 was introduced in the Lords on 15 November 2022. The Bill extended to the whole of the United Kingdom and to the Crown Dependencies and British Overseas Territories by necessary implication.[100] Although the Bill's provisions did not affect the Commonwealth Realms, these were all notified in advance. The Bill was read for a second time on 21 November. At the Bill's committee stage, the Lords considered amendments to exclude the Dukes of Sussex and York as Counsellors of State and to enable the King to provide a replacement for a deceased Counsellor. Neither amendment was formally moved. The Commons considered all its stages of the Bill on 1 December and the *Counsellors of State Act 2022* received Royal Assent on 6 December 2022.[101]

The Coronation of King Charles III and Queen Camilla

On 11 October 2022, Buckingham Palace announced that the Coronation of King Charles III and the Queen Consort would take place on Saturday 6 May 2023.[102] On 24 November, the Leader of the House, Penny Mordaunt, said the House of Commons would "rise for the coronation recess at the close of business on Wednesday 3 May, and return on Tuesday 9 May."[103]

[98] HL Deb 15 Nov 2022 Vol 825 c769 [Counsellors of State]

[99] HC Deb 15 Nov 2022 Vol 722 c524 [Humble Address]

[100] See Commons Library Briefing Paper CBP8611, The Crown Dependencies, p19, commonslibrary.parliament.uk/research-briefings/cbp-8611/ and CBP9583, The UK Overseas Territories and their Governors, commonslibrary.parliament.uk/research-briefings/cbp-9583.

[101] Counsellors of State were first activated during the King and Queen's planned state visit to France and Germany in March 2023, although in the event the French portion was cancelled.

[102] The Coronation of His Majesty The King, Royal Family website, 11 October 2022, royal.uk/coronation-his-majesty-king.

[103] HC Deb 24 November 2022 Vol 723 c449 [Business of the House]. The House of Lords confirmed the same recess dates.

Andrew Selous MP, the Second Church Estates Commissioner, informed MPs that the "Archbishop of Canterbury, the Earl Marshal and the coronation committee are planning the service."[104]

Oliver Dowden also announced that "for ease and speed of administration" the traditional Court of Claims would not be constituted, with the Cabinet Office instead handling claims.[105] In evidence to the Commons Public Administration and Constitutional Affairs Committee, Mr Dowden said the King, "through Buckingham Palace", was "responsible for the content of the coronation, the guest list and all the other things associated with the coronation." The role of the Government, he added, was twofold:

> "Through DCMS, the Government support ceremonials, as they did with the platinum jubilee and various other moments of national celebration. Through the Cabinet Office, I chair a cross-Government co-ordination Committee to make sure that the whole of the Government works properly to support the coronation, whether that is in relation to policing, security, the footprint of the coronation in terms of the roads, the involvement of the military or all the other things that come together to make this a wonderful day in our nation's history."[106]

In a written answer, the Secretary of State for Scotland said the Cabinet Office and Department for Culture, Media and Sport were working with the Scottish Government and Historic Environment Scotland "on the movement of the Stone [of Destiny] for the Coronation of King Charles III."[107] In April 2023, a House of Commons spokesperson confirmed that the Speaker's State Coach was "a heritage item and will not be used in the Coronation procession",[108] although it was put on temporary display in Westminster Hall shortly before the Coronation.

Media reports suggested that the allocation of tickets for MPs and peers to attend the Coronation had provoked considerable unhappiness. Responding to a written question on 21 March 2023, Lord Parkinson said a number of tickets had been "split between the different parties and groups in the House of Lords, with this split agreed by all parties and groups who

[104] HC Deb 17 Nov 2022 Vol 722 c820 [Coronation of King Charles III]

[105] Public Administration and Constitutional Affairs Committee, Oral evidence: The work of the Cabinet Office, HC 950, 26 January 2023, committees.parliament.uk/oralevidence/12604/html.

[106] Ibid.

[107] UIN 156118, 1 March 2023 [Coronation of King Charles III and Queen Camilla: Stone of Destiny], questions-statements.parliament.uk/written-questions/detail/2023-03-01/156118.

[108] Coronation carriage canned for Speaker Hoyle, Spectator Coffee House blog, 10 April 2023, spectator.co.uk/article/speaker-hoyle-cans-the-coronation-coach.

will distribute the tickets to peers."[109]

On 30 March 2023 Anthony Albanese, the Prime Minister of Australia, informed the House of Representatives that on 6 May he would:

> "... attend, along with the Governor-General, the coronation of His Majesty King Charles III in London. Our nation will be represented at the historic event by us along with all state governors and a number of other notable Australians, most of whom are based in the United Kingdom."[110]

In a written statement on 19 April 2023, Oliver Dowden, said some "updating to the wording of the [Coronation] oath is required to reflect the current position as regards the Realms and Territories." As their "number" had "evolved" since 1953, the King would refer to these "collectively" rather than individually, as had been the case in 1937 and 1953. He added "that no express legislative authority is required to make the changes on the basis that they are to ensure consistency with the position regarding the Realms and Territories, as reflected in legislation."[111] The King was also required take the statutory Accession Declaration Oath at his Coronation, as the next State Opening of Parliament had been delayed until the autumn of 2023.[112]

On 26 April 2023, a Commons motion provided:

> "That Mr Speaker, in accordance with the gracious invitation of His Majesty, represent the House at His Majesty's Coronation on Saturday 6 May."[113]

There was no equivalent motion in the House of Lords, yet on Saturday 6 May both the Lord Speaker and Speaker processed, the latter sans State Coach, to Westminster Abbey for the first Coronation in nearly 70 years.

The Procession into the Abbey included Commonwealth Realm Governors-General, premiers and flag bearers and a number of life and hereditary peers (not all of them members of the House of Lords) bearing regalia, but the most prominent individual was Penny Mordaunt, the first female Lord President of the Council to carry the Sword of State at a coronation ceremony.[114] In addition

[109] UIN HL5639, 20 February 2023 [Coronation of King Charles III and Queen Camilla], questions-statements.parliament.uk/written-questions/detail/2023-02-20/HL5639.

[110] House of Representatives Hansard 30 March 2023, p62.

[111] Statement UIN HCWS727, 19 April 2023 [The Coronation Oath], questions-statements.parliament.uk/written-statements/detail/2023-04-19/hcws727.

[112] See the Bill of Rights 1688 and Accession Declaration Oath Act 1910.

[113] HC Deb 26 April 2023 Vol 731 c891 [Business without Debate]

[114] In the House of Commons the following week, MPs were full of praise for Mordaunt's performance (HC Deb 11 May 2023 Vol 732 cc452-71 [Business of the House]).

to changes already announced in Parliament, the statutory Coronation Oath was preceded by a new preamble spoken by the Archbishop of Canterbury, the Rt Rev Justin Welby:

> "Your Majesty, the Church established by law, whose settlement you will swear to maintain, is committed to the true profession of the Gospel, and, in so doing, will seek to foster an environment in which people of all faiths and beliefs may live freely. The Coronation Oath has stood for centuries and is enshrined in law. Are you willing to take the Oath?"[115]

Those presenting the regalia to the King and Queen, meanwhile, were chosen on the advice of Government and comprised life peers, senior bishops in the Anglican churches and those with an historic claim: Lord Carrington, the Lord Great Chamberlain (Spurs), Lord Kamall[116] (Armills), Baroness Merron[117] (Robe Royal – or Imperial Mantle – and Stole Royal), Lord Patel KT[118] (Ring) and Lord Singh of Wimbledon[119] (Coronation Glove). According to *The Times*, this was "the first involvement of non-Christian figures in the crowning of a British monarch."[120]

Beyond the Investiture, peers played a more limited role than in 1953. Instead of a mass proclamation of "God Save the King!" following the Crowning (accompanied by the putting on of coronets), the Archbishop of Canterbury said those words. And as most hereditary peers were excluded from Parliament under the House of Lords Act 1999, the Homage was also significantly curtailed. [121] Once the Archbishop had led fealty on behalf of the bishops present, only the Prince of Wales knelt before the King and said:

> "I, William, Prince of Wales,
> pledge my loyalty to you
> and faith and truth I will bear unto you,
> as your liege man of life and limb.
> So help me God."

[115] The Coronation Order of Service, Royal Family website, 6 May 2023, royal.uk/sites/default/files/documents/2023-05/The%20Coronation%20Order%20of%20Service.pdf. The preamble echoed a speech made by Queen Elizabeth II at Lambeth Palace in 2012 (royal.uk/queens-speech-lambeth-palace-15-february-2012) and remarks made by the King to faith leaders shortly after his Accession (royal.uk/kings-remarks-faith-leaders).

[116] A London-born Muslim peer who sits as a Conservative.

[117] A Jewish peer and former Labour MP.

[118] A Hindu crossbench peer who was born in what is now Tanzania.

[119] A Sikh crossbench peer born in Rawalpindi in what was then British India.

[120] Peers will represent faiths at coronation, *The Times* (£), 22 April 2023, thetimes.co.uk/article/e8912250-e07f-11ed-be6e-fc82fede3d1d.

[121] But not the Earl Marshal, who organises the coronation, or the Lord Great Chamberlain. House of Lords Reform Act: legislation.gov.uk/ukpga/1999/34/contents

A planned "Homage of the People" had been rebranded by the time the ceremony took place, following criticism of plans for a mass swearing of the oath of allegiance (by those inside the Abbey and "elsewhere") normally taken only by public officials.[122] As the King left the Abbey he was greeted by faith leaders and the Realm Governors-General. The Gold State Coach then transported the King and Queen, as was traditional, in the Coronation Procession to Buckingham Palace for a balcony appearance and a flypast curtailed on account of the wet weather – an echo of Queen Elizabeth II's coronation in June 1953.

Controversy surrounding the policing of republican protests at the Coronation occupied Parliament in the days following the ceremony, with an Urgent Question from Joanna Cherry KC and a short Home Affairs Committee inquiry into the Met's implementation of the Public Order Act 2023.[123] Otherwise attention turned to post-coronational events. In submitting a motion of congratulations to Their Majesties in the Scottish Parliament,[124] First Minister Humza Yousaf said the King would be:

> "presented with the Honours of Scotland [the Scottish regalia] at a ceremony at St Giles' Cathedral. And in July, during Royal Week, the Scottish Government will take the opportunity to present Their Majesties with coronation gifts on behalf of the people of Scotland."[125]

These coronation gifts – the first from a government in the UK – were presented to the King and Queen at the Palace of Holyroodhouse on 4 July 2023.[126] The following day, a "National Service of Thanksgiving and Dedication" in celebration of Their Majesties' Coronation took place at St Giles' Cathedral in Edinburgh. This followed the precedent established by Queen Elizabeth II shortly after her Coronation in June 1953, which in turn built on the post-Coronation visits to Scotland by King Edward VII, King

[122] The broadcaster Jonathan Dimbleby suggested the King would have found the idea "abhorrent" and suggested it had been the Archbishop of Canterbury's idea (Coronation: Idea of paying homage abhorrent to King – Dimbleby, BBC News online, 5 May 2023, bbc.co.uk/news/uk-65493188).

[123] See HC Deb 9 May 2023 Vol 732 cc203-17 [Coronation: Policing of Protests] and Home Affairs Committee to take evidence on policing of public protests, Home Affairs Committee, 10 May 2023, committees.parliament.uk/committee/83/home-affairs-committee/news/195165/home-affairs-committee-to-take-evidence-on-policing-of-public-protests.

[124] Meeting of the Parliament: 09/05/2023, Scottish Parliament website.

[125] Coronation: First Minister's speech – 9 May 2023, Scottish Government, 9 May 2023, gov.scot/publications/coronation-debate-first-ministers-speech-9-2023.

[126] Court Circular, 4 July 2023. The gifts were an oak table, a paperweight and an elm sapling.

George V and King George VI.[127]

Although media reports referred to the Service as a "second", "mini" or "Scottish coronation", it was none of those things.[128] Rather the 1953 Service had been an "invented tradition" which included "coronational" elements.[129] The Honours of Scotland, however, were presented to the King on 5 July.[130] These – the Crown, Sceptre and Sword of State – were last used at the Scottish coronation of Charles II at Scone in 1651. The King, Queen and the Duke of Rothesay wore their mantles and collars of the Order of the Thistle.[131] The Crown of Scotland was presented by the Duke of Hamilton and Brandon, who said:

> By the symbol of this Crown, we pledge our loyalty, entrusting you to reign as our King in the service of all your people.

In response, the King said: "In receiving this Crown, I so promise by God's help." Before responding to each presentation, the King briefly touched each item of regalia. He did not hold the Sword and Sceptre or wear the Crown.[132] The Stone of Destiny was present at St Giles' during the Service. This was not the case in 1953, when the Stone was kept at Westminster Abbey. Following presentation of the Honours, Lord Lyon, King of Arms, said:

> "The presence of the Stone of Destiny or Scone in this High Kirk of Edinburgh on this occasion is a historic moment in the life of Scotland. Carved from the earth, this is a simple piece of stone. Yet, in its simplicity, it has precious and significant symbolism for the people of this land. The Stone of Destiny – An Lia Fáil – is an ancient symbol of Scottish

[127] SPICe Spotlight blog King Charles III's visit to Scotland, 26 June 2023, spice-spotlight.scot/2023/06/26/king-charles-iiis-visit-to-scotland.

[128] A Scottish Government press release issued on 29 June was originally headed "Coronation of The King and Queen in Scotland." It was subsequently changed to "The King and Queen in Scotland" (gov.scot/news/the-king-and-queen-in-scotland/).

[129] David Torrance: "Nothing in the Nature of a Second Coronation", UK Constitutional Law Association blog, 16 May 2023, ukconstitutionallaw.org/2023/05/16/david-torrance-nothing-in-the-nature-of-a-second-coronation.

[130] Historic Environment Scotland commissioned new 3D images of the Honours in advance of the Edinburgh Service (sketchfab.com/HistoricEnvironmentScotland/collections/honours-of-scotland-ce53c75ca86849dbbcd5be7d87ea0bd7).

[131] The King had appointed the Queen to the Order of the Thistle on 16 June 2023 (royal.uk/news-and-activity/2023-06-16/the-queen-is-appointed-to-the-most-ancient-and-most-noble-order-of-the).

[132] Scottish Government, 5 July 2023, pp16-17. The Crown of Scotland had been placed on the coffin of the late Queen Elizabeth II as she lay-at-rest in St Giles' during September 2022. A new Scottish Sword of State – the Elizabeth Sword – had been commissioned for the Service.

Sovereignty."[133]

The First Minister of Scotland also read from the Old Testament,[134] while Penny Mordaunt, the Lord President, and Alister Jack, the Secretary of State for Scotland, were both in attendance. Unlike in 1953, the peerage of Scotland was not formally represented at the Service, although the Scottish judiciary was.

Having visited Northern Ireland in May, a visit to Wales by the King and Queen in late July 2023 completed the traditional post-coronation tour of the UK. According to media reports, the King spent Accession Day (8 September) – the first anniversary of his late mother's death – "quietly and privately" at Balmoral.[135] The King also opened the Westminster Parliament for the first time as Monarch on Tuesday 7 November 2023,[136] an occasion which rounded off a significant 18 months for the Queen – and King – in Parliament.

[133] National Service of Thanksgiving and Dedication order of service, p21 (churchofscotland.org.uk/__data/assets/pdf_file/0003/110595/order-of-service-service-of-thanksgiving-and-dedication.pdf).

[134] The Order of Service erroneously described Mr Yousaf as "Keeper of the Great Seal of Scotland." He is in fact Keeper of the Scottish Seal.

[135] Queen Elizabeth: No public event for anniversary of late monarch's death, BBC News online, 4 August 2023, bbc.co.uk/news/uk-66405877.

[136] parliament.uk/about/how/occasions/stateopening.

KANGAROO COURT OR DEFENCE OF DEMOCRACY?—THE PRIVILEGES COMMITTEE'S INQUIRY INTO BORIS JOHNSON

DR ROBIN JAMES

Clerk of the Committee of Privileges, House of Commons, United Kingdom

Introduction

In June 2023 the House of Commons Committee of Privileges completed its inquiry into the conduct of former UK Prime Minister Rt Hon Boris Johnson.[1] As a direct consequence of the inquiry, Mr Johnson resigned as a Member of Parliament and one of the most colourful and controversial careers in recent British politics was, at least temporarily, over. The inquiry had been mandated by the House in April 2022 to investigate whether Mr Johnson had committed a contempt by misleading the House as to whether rules and guidance relating to social gatherings had been followed in No. 10 Downing Street, his official residence and office, during the period of COVID-19 restrictions.

Perhaps surprisingly, given that the House has been setting up select committees to inquire into matters relating to its own privileges since at least the seventeenth century, the inquiry broke new ground in several directions. It was unprecedented for so senior a political figure (Mr Johnson was in office as Prime Minister when the inquiry began) to be subject to such an investigation, to have been interrogated by the Committee in a globally televised evidence session, and to have been found to have committed multiple contempts (not only by deliberately misleading the House, but further ones arising from his conduct during the inquiry, including deliberately misleading the Committee and "mounting an attack on our democratic institutions").[2] The sanction the Committee would have recommended had Mr Johnson not resigned as an MP – a 90-day suspension – was unprecedented in relation to the conduct of a Minister; as was the House's decision to uphold these findings by a massive majority (albeit with many government supporters abstaining).

Also without precedent was the scale and intensity of political and media

[1] Committee of Privileges, Fifth Report of Session 2022-23, Matter referred on 21 April 2022 (conduct of Rt Hon Boris Johnson): Final Report, HC 564

[2] Fifth Report, para 222

focus and pressure on the Committee during the inquiry. This included repeated challenges to the Committee and its processes. The fairness of the Committee's proceedings was questioned by one of the UK's leading barristers, retained by Mr Johnson at public expense. As a result, legal and procedural issues loomed large during the inquiry, with the Committee setting out and defending its position in four separate reports.[3] In addition to reasoned legal and procedural argument, the personal integrity of the Committee's members, and by implication of its staff and advisers, was called into question by Mr Johnson's supporters, with the Committee being denounced as a "kangaroo court" and its inquiry as a "witch hunt." The Committee followed up its final report on Mr Johnson with a special report dealing with what it called a "co-ordinated campaign of interference" in its work, in which it concluded that Mr Johnson had been complicit. This led to a further debate in the House and the passing of a resolution tightening the protection extended to the Privileges Committee from its work being impugned by Members during the course of an inquiry.

This article sets out background on the role of the Committee; supplies a chronological narrative of events during the inquiry; summarises the Committee's evidence-gathering and its conclusions on whether Mr Johnson committed a contempt; describes the dramatic developments in the final weeks of the inquiry including Mr Johnson's resignation and subsequent events; rehearses the principal legal and procedural issues raised; and considers the implications for future privileges cases.

Background on the Committee

The Committee of Privileges is set up by standing order "to consider specific matters relating to privileges referred to it by the House."[4] The Committee has no power to initiate its own inquiries. Referrals by the House usually instruct the Committee to investigate alleged breaches of privileges or contempts, though occasionally the Committee may be called upon to

[3] These were: (1) Second Report of Session 2022-23, *Matter referred on 21 April 2022: proposed conduct of inquiry*, HC 632, published 21 July 2022, (2) Third Report of Session 2022-23, Matter referred on 21 April 2022: comments on joint opinion of Lord Pannick QC and Jason Pobjoy, HC 713, published 26 September 2022, (3) Fourth Report of Session 2022-23, Matter referred on 21 April 2022: summary of issues to be raised with Mr Johnson, HC 1203, published 3 March 2023, and (4) Fifth Report of Session 2022-23, Matter referred on 21 April 2022 (conduct of Rt Hon Boris Johnson): Final Report, HC 564, published 15 June 2023. The reports are hereafter cited as "Second Report", "Third Report", "Fourth Report" and "Fifth Report."

[4] Standing Order No. 148A

consider broader areas of procedure.[5] Referrals are rare – there have only been five in the past decade, so although the Committee is nominated at the start of each Parliament, it may exist for periods in a state of suspended animation awaiting a referral.

Any Member of the House may request that the Speaker give precedence to a motion referring an alleged contempt to the Committee. The Speaker has discretion to decide whether an arguable case has been made out for doing so. This filtration mechanism serves to eliminate trivial or vexatious complaints. Motions relating to privilege are amendable and by custom a debate is held as soon as possible after the Speaker's decision.

The Committee's standing order confers on it the usual range of select committee powers, including those to "send for persons, papers and records" and to travel. In addition, the Committee is granted an unusual power, shared only with the Standards Committee: the right to order a Member of the House to attend or to produce papers, without seeking an order by the House. This power was exercised during the Boris Johnson inquiry when a Minister was ordered to produce papers.[6] Another unusual provision is that the Attorney General and two other specified Law Officers, if they are Members, are entitled to receive the Committee's papers and attend meetings; this right, which is a historical relic of a time before the House developed its own in-house legal service and therefore was reliant on the Government's legal advisers, has not been exercised in recent years.

The Committee has seven members. As with other select committees, its composition reflects as closely as possible the balance of political parties in the House. In the present Parliament the party balance is Conservative 4, Labour 2 and Scottish National Party 1. The Chair by convention belongs to the largest Opposition party (and, in accord with House practice, has only a casting vote).

There is overlap between the work and composition of the Committee and that of its sister body, the Committee on Standards. This reflects the fact that issues of conduct by MPs, with which the Standards Committee deals, were historically treated as contempts. When the House evolved its present mechanisms for dealing with Members' conduct in the 1990s (introducing a Code of Conduct and appointing a Parliamentary Commissioner for Standards), responsibility for oversight was given to the Privileges Committee, expanded to become the Committee on Standards

5 In recent decades overall reviews of privileges procedure have, however, been conducted bicamerally by Joint Committees of the Commons and the Lords set up specifically to carry out this task.

6 See 40 below.

and Privileges. When the House first recruited members of the public to augment the work of MPs in this task, in 2012, it was deemed inappropriate for those lay members to arbitrate on matters of privilege, and separate committees on Standards and of Privileges were therefore created. However, the two committees remained intertwined: by convention the same MPs were appointed to both committees, both had the same chair (elected by the House to Standards, appointed by the committee in the case of Privileges), and they shared the same secretariat. It proved necessary to modify these arrangements in respect of the Boris Johnson inquiry.

Chronological narrative of the inquiry

Early stages

In November 2021 reports appeared in the media that during the height of the COVID-19 pandemic in 2020-21, social gatherings had been held at No. 10 Downing Street in which the rules and guidance restricting such events had been disregarded. These allegations (dubbed by the media 'Partygate') mattered a great deal politically to Mr Johnson because he had not only headed the government which had introduced the Covid restrictions, but had been their chief public promoter, appearing on live television almost daily during the public health emergency, flanked by the Government's chief medical and scientific advisers, to urge the population at large to abide by the most draconian restrictions on movement and assembly to have been introduced in peacetime in living memory.

In response to the media stories, Mr Johnson made a series of comments in the House defending the Government's position against the charge that (as the Committee later put it), lawmakers had been lawbreakers, but also announcing an inquiry into what had happened, to be conducted by a senior civil servant, Sue Gray, the then Second Permanent Secretary at the Cabinet Office.[7] Meanwhile the Metropolitan Police announced they were investigating whether the law had been broken at any of the No. 10 gatherings.

On 12 April 2022 the police issued Mr Johnson with a fixed-penalty notice (FPN) for having attended an illegal gathering, and he paid the relatively small fine associated with that (understood to have been £50). On 19 April, when the House had returned from its Easter recess, the Prime

[7] The inquiry was initially to have been headed by the Cabinet Secretary, Simon Case, but Mr Case recused himself after reports that a gathering allegedly in breach of the rules had been held in his own office. Sue Gray later left the civil service to become – controversially, particularly among some of Mr Johnson's supporters – the chief of staff to the Leader of the Opposition.

Minister made a statement in the House apologising for his actions that had led to the FPN being issued, but insisting he had at the time been unaware that he had breached the rules. The same day the Speaker announced he had acceded to a request from the Leader of the Opposition, Rt Hon Keir Starmer MP, to give precedence to a motion referring alleged contempts by Mr Johnson to the Privileges Committee. On 21 April that motion was debated for nearly five hours and agreed to without a vote.

The House's decision was as follows:

Resolved, That this House

1. "notes that, given the issue of fixed penalty notices by the police in relation to events in 10 Downing Street and the Cabinet Office, assertions the Rt Hon Member for Uxbridge and South Ruislip has made on the floor of the House about the legality of activities in 10 Downing Street and the Cabinet Office under Covid regulations, including but not limited to the following answers given at Prime Minister's Questions: 1 December 2021, that "all guidance was followed in No. 10", Official Report vol. 704, col. 909; 8 December 2021 that "I have been repeatedly assured since these allegations emerged that there was no party and that no Covid rules were broken", Official Report vol. 705, col. 372; 8 December 2021 that "I am sickened myself and furious about that, but I repeat what I have said to him: I have been repeatedly assured that the rules were not broken", Official Report vol. 705, col. 372 and 8 December 2021 "the guidance was followed and the rules were followed at all times", Official Report vol. 705, col. 379, appear to amount to misleading the House; and
2. orders that this matter be referred to the Committee of Privileges to consider whether the Rt Hon Member's conduct amounted to a contempt of the House, but that the Committee shall not begin substantive consideration of the matter until the inquiries currently being conducted by the Metropolitan Police have been concluded."

The start of the Committee's inquiry was delayed for several reasons. The House's resolution required the Committee to wait for the conclusion of the police investigations; this was announced on 19 May 2022, with Sue Gray's report being published shortly afterwards, on 25 May. The Committee itself had other business to dispose of, in the form of a report concluding its inquiry into "select committee and contempts"; this was published on 16 June.[8]

[8] First Report of Session 2022-23, *Select committees and contempts: review of consultation on Committee proposals* (HC 401)

The Committee's then chair, Chris Bryant MP, recused himself from the inquiry because of tweets he had previously issued commenting on Mr Johnson's veracity. The House on 14 June appointed Rt Hon Harriet Harman QC MP, the 'Mother of the House' (the longest continuously serving female MP) to the Committee in his place.[9] Meanwhile, the Committee's staff team was reconstituted with three additional researchers being added to assist with the inquiry, and the Clerk temporarily stepping aside as Clerk of the Standards Committee in order to work full-time on the Boris Johnson inquiry.

On 29 June the Committee met for the first time to consider the inquiry. It chose Ms Harman as its chair, and appointed as its legal adviser Rt Hon Sir Ernest Ryder, a distinguished former Senior President of Tribunals for the UK and former Lord Justice of Appeal, who had previously carried out a review of fairness and natural justice in the House's standards system at the request of the Standards Committee. On 30 June the Committee issued a call for written evidence from those with knowledge of events related to the inquiry.

On 7 July Mr Johnson announced his intention to resign as Prime Minister, pending an internal leadership election within the Conservative party to choose his successor. His resignation followed a controversy over whether Mr Johnson had told the truth about the state of his knowledge of allegations of sexual misconduct by the Government's Deputy Chief Whip, which in turn had led to multiple resignations of Ministers.

Mr Johnson's resignation did not remove the Committee's responsibility to carry out the investigation into his conduct mandated by the House.[10] On 14 July, the Committee sent a detailed request for specified written evidence jointly to Mr Johnson and the Cabinet Secretary. The items requested included official briefings, diary entries, emails and photographs relating to the events under scrutiny. In addition, Mr Johnson was invited to make an initial written submission to the inquiry. In reply, Mr Johnson indicated that all the papers requested from him were official documents and would be supplied by the Government; he did not respond to the invitation to make an initial submission (and indeed did not set out his own case to the Committee till the eve of the oral evidence session in March 2023).

[9] Throughout the Privileges Committee investigation, Mr Bryant continued to chair the Standards Committee. However, on 6 September 2023 he resigned as chair because of his appointment to the shadow cabinet. On 18 October, the House of Commons elected Harriet Harman as the new chair of the Standards Committee, meaning both the Privileges and Standards Committees had the same chair again.

[10] That could only have been achieved through a formal rescission of the House's resolution of 21 April 2022.

On 21 July the Committee published a report setting out its proposed conduct of the inquiry. In the interests of openness and fairness, the Committee agreed a “resolution on procedure” (following precedent in other high-profile Privileges referrals) giving a guide to the anticipated stages of the inquiry and indicating the steps the Committee was taking to ensure fairness to Mr Johnson. The report also discussed the concept of intention in relation to contempt, and the extent to which the Committee might hypothetically use whistleblowers’ evidence. The Committee announced that oral evidence from Mr Johnson would be taken in public, that all oral evidence in the inquiry would be given under oath, and that it would only accept written evidence if accompanied by “statements of truth” (equivalent to an oral statement under oath).[11]

In its report the Committee announced it had sought a ruling from the Speaker on the applicability of the Recall of MPs Act 2015. This statute provides that if an MP is suspended from the House for 10 days or more following a report from the Committee on Standards, a ‘recall petition’ is opened in their constituency; if more than 10% of the electors on the local electoral roll sign the petition, the seat is vacated and a by-election held (in which the former Member would be entitled to stand). The Act defines the Committee on Standards as “any committee of the House of Commons concerned with the standards of conduct of individual members of that House” and provides that any question relating to this definition is to be determined by the Speaker. The Committee accordingly wrote to the Speaker asking whether the recall provisions in the Act would be engaged if a sanction of the requisite length were to be imposed by the House following a recommendation of the Committee of Privileges. Mr Speaker, after having taken legal advice (published by the Committee with his ruling), ruled that they would be engaged. The Committee made clear that seeking this ruling did not indicate that they had prejudged the case; it was precautionary, so that if subsequently they needed to take a decision on recommending sanctions, they would be aware of the full effect such sanctions would have.[12]

From the start of the inquiry, supporters of Mr Johnson in Parliament and the media assailed the Committee as being unfair. As an example, on 7 August 2022 the Mail on Sunday reported that:

> Johnson allies dismiss the investigation as a ‘witch hunt’ and a “‘constitutional travesty’, pointing out the history of anti-Boris remarks

[11] Second Report of Session 2022-23, *Matter referred on 21 April 2022: proposed conduct of inquiry*, HC 632

[12] See Second Report, paras 12-14 and Appendix.

by the seven members of the committee and arguing that it 'moved the goalposts'."[13]

At the same time two government ministers made comments describing the inquiry as a "witch hunt", "rigged", and "an obscene abuse of power."[14] Although the Committee's general policy during the inquiry was to maintain a dignified silence in response to such attacks, in this case it felt it appropriate to authorise the Chair and the senior Conservative member of the Committee (Sir Bernard Jenkin MP) to write a defence of the Committee which appeared in *The Times* on 12 August,[15] and to publish on its website 'Frequently Asked Questions (FAQs)' about the inquiry rebutting some of the more outlandish criticisms.

On 23 August the Government sent the Committee a bundle of material in response to their request. Certain categories of requested material were withheld and the remainder was so heavily redacted as to be, as the Committee later put it, "devoid of evidential value" (with some material being redacted even though it was already in the public domain).[16]

On 2 September, while Mr Johnson was still in post as Prime Minister (he resigned on 6 September, after Liz Truss's election as leader of the Conservative Party), the Government published a legal opinion commissioned from Lord Pannick QC and Jason Pobjoy,[17] containing criticisms of the Committee's procedures as proposed in its July report. The Government had not given the Committee notice of this publication, nor submitted it as evidence to the inquiry according to proper select committee procedure. The opinion was published by the Prime Minister's Office, not, as might have been expected, the Cabinet Office.[18] The legal advice received by Mr Johnson during the inquiry was publicly funded, a matter which itself became a matter of political controversy, though one on

[13] dailymail.co.uk/news/article-11088247/Boris-Johnson-allies-fury-rigged-Partygate-probe-say-trying-kick-PM-parliament.html

[14] In tweets issued on 7 August 2022 by Rt Hon Nadine Dorries, then Secretary of State for Digital, Culture, Media and Sport (twitter.com/NadineDorries/status/1556182172016467969), and Rt Hon Lord Goldsmith, then Minister of State for the Pacific and the International Environment (twitter.com/ZacGoldsmith/status/1556166447537311745).

[15] *The Times* Red Box, 12 August 2022: The privileges committee was instructed by the House — and no rules have changed, thetimes.co.uk/article/the-privileges-committee-was-instructed-by-the-house-and-no-rules-have-changed-c6bkn558x.

[16] Fourth Report, para 12

[17] Hereafter for convenience referred to as "Lord Pannick's opinion."

[18] gov.uk/government/publications/legal-opinion-by-lord-pannick-qc-relating-to-the-privileges-committee

which the Committee itself did not comment.[19]

On 8 September the Committee agreed a report commenting on, and rebutting, Lord Pannick's arguments. Later that day the death was announced of HM Queen Elizabeth II, and publication of the report was delayed until 26 September, after the conclusion of the period of State mourning.[20] Mr Johnson commissioned two further opinions from Lord Pannick during the inquiry; these were submitted to the Committee in confidence in the proper form. The Committee published the second opinion in March 2023, adding that it had nothing to add to its comments on the first opinion; and the third opinion in June 2023, with comments by its legal adviser.[21]

During August 2022 one of the Conservative members indicated her wish to leave the Committee, and in due course the House replaced her with another Conservative.[22] This was the only change in the Committee's membership during the inquiry.

Collection and analysis of evidence

The period of political turmoil in autumn 2022 had an impact on the inquiry. During the months of September and October the UK had three Prime Ministers and no fewer than four Ministers for the Cabinet Office (the Committee's chief contact within government). When things settled down after Rt Hon Rishi Sunak MP became Prime Minister on 25 October, the Committee renewed its dialogue with the Government over written evidence and this time received a more sympathetic hearing. On 18 November the Government finally supplied all the material that had been requested in July, this time without any redactions.

Some of the material was sensitive because it contained references to individuals who were not the subject of the inquiry and in some cases were junior employees at No. 10. The Committee made clear that it was not concerned with the personal conduct of anyone other than Mr Johnson. For this reason, although all the material it received was disclosed in confidence to Mr Johnson himself, the Committee was selective in what it published in order to protect junior staff in particular from the full glare of unwelcome

[19] On 20 July 2023 the Cabinet Office announced that the cost to the public purse of legal advice to Mr Johnson in relation to the Privileges Committee inquiry was £265,522.

[20] Third Report of Session 2022-23, Matter referred on 21 April 2022: comments on joint opinion of Lord Pannick QC and Jason Pobjoy, HC 713

[21] See Fourth Report, para 15, footnote 14; Fifth Report, Annex 1, p 78.

[22] Votes and Proceedings, 11 October 2022 (Laura Farris discharged, Sir Charles Walker added).

media attention. The Committee adopted a strict security regime in relation to its unpublished evidence: the Chair and other Members had access to it only in hard copy under invigilation; conditions which were imposed in due course on Mr Johnson and his legal advisers when the material was disclosed to them. In the Committee's final report, by agreement with Mr Johnson, the identity of some junior officials was redacted.

Between November 2022 and January 2023, the Committee analysed the written material it had received. Although this included unpublished records of Sue Gray's Government-commissioned report on 'Partygate', the Committee decided that it would not rely on that report in its inquiry. If witnesses to the Sue Gray investigation had made comments relevant to the inquiry, the Committee decided it would approach those witnesses directly to ask them to confirm, with a statement of truth attached, that what they had told the Sue Gray investigation was true. On 24 January the Committee wrote to 23 individuals with detailed requests for information. All of them complied with this request.

In light of these responses, the Committee took a decision that the only witness it would call upon to give oral evidence was Mr Johnson. An evidence session was provisionally arranged for late March. In advance of this, on 3 March, the Committee published a report setting out the issues it intended to raise in the session. For this reason, the report set out an analysis of the written evidence and, in response to requests from Mr Johnson's lawyers, an indication of the case that he had to answer. At the same time the Committee disclosed in confidence to Mr Johnson all the written material it had received, without redaction.

Mr Johnson submitted a memorandum defending his conduct on 20 March; the Committee took this into account in framing its questions for the public evidence session which was held on 22 March. Mr Johnson's overall argument was that while he was at gatherings they rarely if ever contravened the Covid rules or guidance, and that he genuinely believed what he told the House, which was based on "repeated assurances" from others.

The evidence session was shown live on national television and attracted worldwide media attention. The proceedings began with an opening statement by Ms Harman. Then Mr Johnson took the oath, on the King James Bible, and made his own opening statement. There followed three hours of questioning. Each member of the Committee took it in turn to interrogate Mr Johnson on a different aspect of the case. Mr Johnson was accompanied by his legal advisers; he had the right to consult them, but they were not themselves witnesses and did not address the Committee. Mr Johnson and the Committee members both made use of a 'core bundle' of

documents on which he and the Committee had indicated they intended to rely. The core bundle was published online to coincide with the hearing.

'Endgame of the inquiry': the Committee's final report and Mr Johnson's resignation as an MP

Following the oral evidence session the Committee obtained, at Mr Johnson's request, further written evidence accompanied by statements of truth, and disclosed it to him. The Committee then assessed all the evidence collected and instructed the Chair, aided by the team of Clerks and legal advisers, to prepare a draft report which was completed in May.

A diversion occurred during the drafting process when, quite unexpectedly, the Cabinet Office contacted the Committee to say that government lawyers working for Mr Johnson to prepare his response to the separate public inquiry into the handling of the COVID-19 pandemic had identified entries in the then Prime Minister's diary which they regarded as "potentially problematic", in that they referred to 16 "events/activities which could reasonably be considered to constitute breaches of Covid Regulations."[23] The Committee assessed that this material was potentially relevant to its inquiry and accepted it as formal evidence. It disclosed the material to Mr Johnson and asked for his comments, which were sent. It also asked the Cabinet Office for further contextual material about the 16 events. When the Cabinet Office expressed reluctance to supply this, the Committee formally ordered the Minister for the Cabinet Office to supply the material by a specific date, and he complied with the Order.[24]

Having considered this material, the Committee noted that Mr Johnson had supplied explanations of the 16 events, and that it had no evidence conflicting with his account. To avoid further delay to the inquiry, the Committee decided to treat Mr Johnson's explanations as *prima facie* true. The Committee commented in its final report, "[i]f for any reason it subsequently emerges that Mr Johnson's explanations are not true, then he may have committed a further contempt."[25]

When the Chair's draft report was complete, the Committee discussed it and came to the provisional conclusion that Mr Johnson had deliberately misled both the House and the Committee, and had thereby committed serious contempts.[26] The Committee's procedure resolution had provided that if it intended to criticise Mr Johnson it would send him a warning letter,

[23] Fifth Report, para 95

[24] Fifth Report, para 95

[25] Fifth Report, para 98

[26] For details of the Committee's conclusions, see 43 4below.

setting out the criticisms, and indicating the evidence on which they were based and any proposed sanction. Mr Johnson would then have 14 days to make a response, which the Committee would take into account before finalising and publishing its report.

The warning letter, with accompanying material, was duly sent by Ms Harman to Mr Johnson on Thursday 8 June. The Committee informed Mr Johnson that it proposed to recommend a sanction of suspension for a period long enough to engage the provisions of the Recall of MPs Act.[27]

It was made clear to Mr Johnson that this was sent in strict confidence. Thereafter events moved quickly and dramatically. On Friday 9 June, without notice to the Committee, Mr Johnson made a public statement breaching the confidentiality of the inquiry process, criticising the Committee in what it later described as "[an attack] in very strong, indeed vitriolic terms [on] the integrity, honesty and honour of its members", and announcing his resignation as an MP.[28] Amongst other comments, Mr Johnson stated:

> "They have still not produced a shred of evidence that I knowingly or recklessly misled the Commons. They know perfectly well that when I spoke in the Commons, I was saying what I believed to be true. [...] Their purpose from the beginning has been to find me guilty, regardless of the facts. This is the very definition of a kangaroo court. [...] The Committee's report is riddled with inaccuracies and reeks of prejudice, but under their absurd and unjust process, I have no formal ability to challenge anything they say. [...] I am bewildered and appalled that I can be forced out, anti-democratically, by a committee chaired and managed, by Harriet Harman, with such egregious bias."[29]

It should be noted that by resigning as an MP and thereby short-circuiting the privileges process, Mr Johnson chose not to avail himself of the following opportunities to defend himself: (1) before the House of Commons, with which, if the Committee had confirmed its provisional conclusions, final decisions rested on whether a contempt had been committed and if so what sanction should be imposed; (2) with the electors of Mr Johnson's constituency if the Recall Act's provisions had been triggered and a recall petition opened; and (3) with the electors of his constituency if a by-election had been called and he had stood as a candidate.[30] Mr Johnson could therefore have made his case that he had been unfairly treated, and

[27] Fifth Report, para 213; for the Recall of MPs Act, see para 20 above.

[28] Fifth Report, para 222

[29] See Fifth Report, para 216; the full text of Mr Johnson's statement is set out at Fifth Report, Appendix 3.

[30] For the Recall of MPs Act, see 36 above.

in effect appealed against the Committee's verdict, to his parliamentary colleagues at large, and if need be to the wider electorate, but chose not to do so.

In the evening of Sunday 11 June Mr Johnson's solicitors contacted the committee Clerk to announce that, notwithstanding his resignation as an MP and his public denunciation of the Committee and its process, Mr Johnson still intended to make a formal response to the warning letter. That response was received by the Clerk at 11.57pm on Monday 12 June.

The Committee met on Tuesday 13 June. They decided that Mr Johnson's breach of confidentiality and abuse of the Committee amounted to significant further contempts. They further decided that Mr Johnson's public statement on 9 June should be taken to be his response to the warning letter and that the written submission received on 12 June should be accorded no formal status within the inquiry (though they did agree to publish it, describing it as "Purported response of Mr Johnson to the Committee's warning letter", accompanied by their own comments).[31]

The Committee then agreed their report. This contained an analysis of six "gatherings"[32] held at No. 10 Downing Street between May 2020 and January 2021. In respect of each gathering, it listed the detailed Covid rules and guidance in force at the time. It set out evidence as to whether each gathering was in breach of the rules or guidance. It considered the extent of Mr Johnson's personal knowledge of each gathering. It concluded that "Mr Johnson had personal knowledge that should have led him, at least after due reflection and as gathering succeeded gathering, to question whether the Covid rules and guidance were being complied with."[33] It further concluded that "when he told the House and this Committee that the rules and guidance were being complied with, his own knowledge was such that he deliberately misled the House and this Committee."[34]

In a further section of the report, the Committee considered what Mr Johnson was told by others, and examined in detail what he told the House. It discussed Mr Johnson's claim to have received "repeated assurances" from officials that the events in questions had complied with the Covid restrictions. The Committee found that the only assurances that could be said with certainty to have been given to Mr Johnson were those from his Director of Communications and his previous Director of Communications.

[31] Fifth Report, Annex 3

[32] The Committee avoided using the term "party" as being judgemental and difficult to define.

[33] Fifth Report, para 109

[34] Fifth Report, para 117

It noted that both men were concerned chiefly with media handling and had been, at different times, political appointees of Mr Johnson himself.[35] In oral evidence Mr Johnson said he would supply the Committee with the name of a further person who had given assurances, but his lawyers subsequently wrote to the Committee to say "[o]n reflection, Mr Johnson is still not sure of these matters and does not wish to speculate."[36]

The Committee stated that in his evidence to the inquiry Mr Johnson had sought to downplay the significance and narrow the scope of the assertions he made to the House. The Committee argued that this interpretation was directly at odds with the overall impressions Members of the House, the media and the public received at the time from Mr Johnson's assertions. It found that the interpretation amounted to ex post facto rationalisation and was false.[37]

The Committee's overall conclusion was that Mr Johnson had deliberately misled the House and the Committee in multiple ways, and had thereby committed "repeated contempts" of the House. The Committee put on record that if Mr Johnson had not resigned his seat, it would have recommended that he be suspended from the service of the House for 90 days for the contempts and "for seeking to undermine the parliamentary process, by:

- Deliberately misleading the House
- Deliberately misleading the Committee
- Breaching confidence
- Impugning the Committee and thereby undermining the democratic process of the House
- Being complicit in the campaign of abuse and attempted intimidation of the Committee."[38]

The Committee also recommended that Mr Johnson should not be granted a former Member's pass (in effect the only sanction that could be imposed, given Mr Johnson's resignation as an MP).[39]

There was one division on the report within the Committee: two members proposed an amendment to substitute expulsion for 90 days' suspension as the sanction the Committee would have supported; the amendment was defeated. With this exception, the decisions on the report (as on all previous matters arising during the inquiry) were unanimous.

[35] Fifth Report, para 176

[36] Fifth Report, paras 167-68

[37] Fifth Report, paras 180-83

[38] Fifth Report, para 229

[39] Fifth Report, para 229

The report was published on 15 June.[40] The Government moved swiftly to provide time for a debate in the House which took place on 19 June. The motion put forward by the Leader of the House read simply: "That this House approves the Fifth Report from the Committee of Privileges (HC 564)." After a five-hour debate, the House agreed to the motion by an overwhelming majority: 354 votes to seven. It was however widely observed that many Conservative members, including most Ministers and the Prime Minister Mr Sunak, did not vote.

Special report: "Co-ordinated campaign of interference in the work of the Privileges Committee"

There was one item of unfinished business for the Committee. In its Fifth Report it had commented as follows:

> "We [...] note that each of the Committee's members were appointed to the Committee by the House without division. Each member has done their duty on behalf of the House. Despite this, from the outset of this inquiry there has been a sustained attempt, seemingly co-ordinated, to undermine the Committee's credibility and, more worryingly, that of those Members serving on it. The Committee is concerned that if these behaviours go unchallenged, it will be impossible for the House to establish such a Committee to conduct sensitive and important inquiries in the future. The House must have a Committee to defend its rights and privileges, and it must protect Members of the House doing that duty from formal or informal attack or undermining designed to deter and prevent them from doing that duty. We will be making a Special Report separately to the House dealing with these matters."[41]

The Fifth Report noted that Mr Johnson at no point denounced this campaign while it was under way. In oral evidence he expressed respect for the Committee and said he deprecated terms such as "witch hunt" and "kangaroo court." However, he intimated that he would only accept the Committee's findings if they were favourable to him, and in his public statement on 9 June he himself used the terms "witch hunt" and "kangaroo court" to describe the inquiry. The Fifth Report commented that "[t]his leaves us in no doubt that he was insincere in his attempts to distance himself from the campaign of abuse and intimidation of committee members."[42]

[40] Fifth Report of Session 2022-23, Matter referred on 21 April 2022 (conduct of Rt Hon Boris Johnson): Final Report, HC 564

[41] Fifth Report, para 14

[42] Fifth Report, paras 15, 224

On 29 June the Committee published its Special Report.[43] This put on record its concern at "the improper pressure brought to bear on the Committee and its members throughout this inquiry", especially when that pressure was exerted by Members of the two Houses. It stated that their aim had been to "(1) influence the outcome of the inquiry, (2) impede the work of the Committee by inducing members to resign from it, (3) discredit the Committee's conclusions if those conclusions were not what they wanted, and (4) discredit the Committee as a whole."

The Special Report listed in an annex tweets and comments made by seven Members of the House of Commons and three Members of the House of Lords during the inquiry, two of those concerned having been serving Ministers at the time. The Committee did not state that it considered those Members had committed a contempt or recommend sanctions against them, but it drew attention to Erskine May's comments that "to molest Members on account of their conduct in Parliament is [...] a contempt" and that abusing or intimidating Members on account of "their conduct in a capacity of a Member" or imputations that select committee members would not be able to act impartially have in the past been considered contempts.[44]

The Special Report attempted to draw a careful line between the right of Members to free speech in Parliament, including using legitimate means to influence a committee, and bringing improper pressure to bear in an attempt to undermine the due process of Parliament. It drew attention to the fact that the House's Code of Conduct for MPs prohibits the lobbying of the Committee on Standards, and recommended that the House agree a resolution stating that:

> "where the House has agreed to refer a matter relating to individual conduct to the Committee of Privileges, Members of this House should not impugn the integrity of that Committee or its members or to encourage others to do so, since such behaviour undermines the proceedings of the House and it itself capable of being a contempt."[45]

The Special Report also urged the House to draw the attention of the House of Lords to the Special Report and to its resolution, "so that that House can take such action as it deems appropriate."[46]

[43] First Special Report of Session 2022-23, Matter referred on 21 April 2022: Co-ordinated campaign of interference in the work of the Privileges Committee, HC 1652

[44] First Special Report, para 5

[45] First Special Report, para 20

[46] First Special Report, para 20. In response to this part of the resolution which, the day after it was agreed by the House of Commons on 10 July, was communicated

The Government provided time for a debate on the Special Report shortly after its publication, on 10 July 2023. The House agreed to the proposed resolution without a division.

Procedural/legal criticisms of the Committee, and the Committee's response

As we have seen, criticism of the Committee during the inquiry from supporters of Mr Johnson fell into two categories: the measured legal and procedural arguments adduced by Mr Johnson's counsel, Lord Pannick KC; and the public attacks through the media using abusive language aimed at discrediting the Committee and forcing some of its members to resign. These might be dubbed the "learned" and "vulgar" critiques of the Committee. The two channels of criticism flowed together towards the end of the inquiry in Mr Johnson's resignation statement on 9 June 2023, when he repeated some of Lord Pannick's criticisms of the Committee's fairness but added an attack in what the Committee called "very strong, indeed vitriolic, terms"[47] on the integrity of its members and, by implication, its staff and advisers.

The Committee's Special Report dealt with the "abusive" attacks on its conduct of the inquiry. The Committee responded to the arguments from Lord Pannick and others in a variety of ways: through its September 2022 report responding to Lord Pannick's first opinion; through the 'FAQs' section of its website; and through comments in its final report, and in two annexes to that report.

Lord Pannick argued in his first opinion that in several respects "the Committee is proposing to adopt a fundamentally flawed approach." In particular, he argued that the Committee's processes fell short of the standard of fairness to be found in the courts. The Committee vigorously disputed those claims. It stated that:

The view of our impartial legal advisers and Clerks, which we accept, is that [Lord Pannick's] opinion is founded on a systemic misunderstanding of the parliamentary process and misplaced analogies with the criminal

to the House of Lords in the form of a 'Message', the House of Lords Procedure and Privileges Committee considered this matter on 16 October 2023. After noting the actions that had already been taken by the Leader of the House of Lords, who had exchanged correspondence with the Leader of the House of Commons and had placed the Privileges Committee's Final Report and Special Report in the House of Lords Library, the Committee agreed that no further action was necessary.

[47] Fifth Report, para 222

law.[48]

Lord Pannick claimed that "[t]he Committee has failed to understand that to prove contempt against Mr Johnson, it is necessary to establish that he intended to mislead the House." The Committee's response was that this claim was based on a misreading of advice given to it by the Clerk of the Journals on the definition of contempt, which had included a comment that in some circumstances a contempt might have been committed even if there had been no intent to mislead. It pointed out that nothing in that advice precluded the Committee from considering intent, that context was important in privileges cases, and that nothing written by the Clerk of the Journals or endorsed by the Committee changed the procedural situation concerning intent. In the event, the Committee found that Mr Johnson had indeed intended to mislead the House, and therefore the question of inadvertent misleading did not arise.[49]

Lord Pannick further claimed that "[t]he Committee has failed to recognise that for an allegation of contempt to be established, it would need to be persuaded that the allegation is made to a high degree of probability." The Committee responded that Lord Pannick appeared to be arguing for a standard of proof somewhere in-between "beyond reasonable doubt" (the criminal standard) and "on the balance of probabilities" (the civil standard). It noted that in recent years the courts had moved away from using a modified civil standard of proof (a so-called 'sliding scale'), even in very serious cases, but put on record its view, supported by its legal advisers, that "[i]n the present inquiry, because the allegations are very serious, we are mindful that evidence to be relied upon should be of especially high quality and cogency."[50]

Lord Pannick questioned the Committee's stated position that in some circumstances it might contemplate taking evidence from witnesses who preferred to remain anonymous and that their identity might be withheld from Mr Johnson. In response the Committee acknowledged that "the prospect of anonymous evidence may raise issues in relation to fairness which will need to be tackled, but this would necessarily be on a case-by-case basis, and even then the Committee would have to be satisfied that the evidence was relevant and credible." In the event this question did not arise; the identity of all witnesses was revealed to Mr Johnson, even though in some cases, by agreement with him, those witnesses' identity was redacted in material published by the Committee.

[48] Third Report, para 6

[49] Third Report, paras 7-13

[50] Third Report, paras 14-16

Lord Pannick stated that "[t]he Committee has failed to recognise that a fair procedure requires that before Mr Johnson gives evidence, he should be told the details of the case against him." The Committee did not dispute that: all evidence on which it proposed to rely was disclosed in confidence to Mr Johnson before the oral evidence session, and at the same time the Committee published its Fourth Report which summarised the case Mr Johnson would be called upon to answer.[51]

Lord Pannick further argued that fair procedure required that Mr Johnson should be represented at the oral evidence hearing by his counsel and should be able through his counsel to cross-examine any other witnesses. The Committee rejected this argument, pointing out that select committees had no power to hear counsel unless specifically authorised to do so by decision of the House. The Committee had made clear that Mr Johnson was entitled to be accompanied by legal advisers and might receive legal advice throughout the inquiry process. In this as in a number of other respects the Committee felt that Lord Pannick was making an unfounded assumption that the adversarial process used in the courts was intrinsically fairer than the inquisitorial process traditionally used in Parliament, an assumption that the Committee, on the basis of its own legal advice, disputed.[52]

Most of the legal arguments subsequently adduced by Lord Pannick in his further opinions were variations upon these ones, and the Committee responded to them in similar fashion. In its final report the Committee set out at length the ways in which it felt it had been scrupulously fair to Mr Johnson and indeed had gone further than it was legally or procedurally required to do in order to demonstrate its fairness.[53]

One final criticism which was not made by Lord Pannick but by some of Mr Johnson's supporters should be noted. This was the argument that, just as Mr Bryant had recused himself from the inquiry because of tweets he had issued criticising Mr Johnson's veracity, so Ms Harman should not have taken the chair of the inquiry because she had, before the start of the inquiry, 'retweeted' messages expressing scepticism about whether Mr Johnson had told the truth. The Committee itself did not comment on this matter, but in the debate on 19 June Ms Harman told the House that when this criticism had first been raised, she had privately approached the Government (at a time when Mr Johnson was still the Prime Minister) and

[51] Fifth Report, paras 218-20 and Annex 1

[52] Third Report, paras 22-27. The Committee stated in its Fourth Report that "the Committee is not a court of law, it is a select committee of Parliament, and its processes are parliamentary rather than forensic" (Fourth Report, para 6, footnote 4).

[53] Fifth Report, paras 217-28 and Annexes 1 and 3

offered to stand down as Chair, because she was "concerned about the perception of fairness on the Committee", but "I was assured that I should continue the work that the House had mandated, and with the appointment that the House had put me into, and so I did just that."[54]

It should be noted that this exchange highlights an intrinsic difficulty arising from the House's system of self-regulation in privileges matters, especially when the subject of an investigation is a senior politician still active in politics: it would have been genuinely difficult to find any Member of the House of Commons who had not at some stage in recent years expressed an opinion on Mr Johnson, either for or against.

Conclusions

Thus ended an extraordinary episode in Parliamentary history: an inquiry which lasted 15 months, saw the Committee issue five reports, attracted worldwide attention, and resulted in the resignation from Parliament of the Member under investigation, who at the start of the process had held the highest political office in the land. The Committee saw its legitimacy questioned but ultimately decisively affirmed by the House. It was at pains to stress that it saw itself as setting down a marker for the future conduct of Government, stating that:

> "this case will set a precedent for the standards of accountability and honesty that the House expects of Ministers. We have no doubt that Parliament and the public expect the bar to be set high and for there to be serious consequences if a Minister, as in this case, impedes or instructs the functioning of the House by deliberately misleading it."[55]

It is open to question whether this particular exercise is likely to be repeated. It arose from a situation in which a government with a notionally large majority in the House chose not to call upon its supporters to vote down the Opposition motion referring Mr Johnson to the Committee. That decision was widely attributed by commentators to an erosion of political confidence in the then Prime Minister within his own party. The events of 2022-23 demonstrated the continuing relevance of the long-standing axiom that the survival in office of a British Prime Minister is dependent on their being supported by a majority in the House. The political situation on 21 April 2022 when the referral motion was carried reflected a specific and unusual set of circumstances which may well not recur. That said, the issue of honesty in politics remains a live one and no doubt debate will continue as to whether Parliament needs to institute new mechanisms to ensure that

[54] HC Deb, 19 June 2023, cols 597-98

[55] Fifth Report, para 212

Ministers who deliberately deceive the House are held properly to account for doing so.

THE CENTRE BLOCK REHABILITATION PROJECT

ERIC JANSE[1]

Acting Clerk, House of Commons, Canada

The Centre Block is the historic home of Canada's Parliament, housing the chambers of both the Senate and the House of Commons. It is also one of the country's most iconic symbols: its silhouette evokes an immediate connection to parliamentary democracy and the physical setting for lawmaking. Since 2019, the Centre Block has been closed to the public, and is staffed only by the construction and design personnel who are planning and delivering the largest, most complex heritage rehabilitation project ever seen in Canada.

The Impetus to Commence the Centre Block Rehabilitation Project

Since it opened in 1920, the Centre Block's original edifice has undergone only minor repairs, and had crumbling mortar, damaged sculptures and stained glass, as well as ageing water pipes. The building required improved seismic resiliency and updated electrical and security systems. Short-term fixes were no longer a cost-effective option for preserving the building, which needed major repairs to bring it up to modern safety, environmental and universal accessibility standards and to make the building functional for parliamentarians. Furthermore, Canada's *Representation Act* prescribes that the number of parliamentarians be commensurate with population growth, and the edifice needed refitting to provide sufficient room for the projected number of Members of Parliament over the coming decades.

In 2001, Public Services and Procurement Canada, the federal department responsible for the care and control of the buildings occupied by the Parliament of Canada, conceived the Long-Term Vision and Plan (LTVP) in consultation with the parliamentary partners (the Senate, the House of Commons and the Library of Parliament). The LTVP is the guiding framework to upgrade the buildings and landscapes of the Parliamentary Precinct and accommodate the requirements of parliamentarians. The LTVP is a rolling five-year planning cycle to fund, implement and govern the Centre Block rehabilitation project as part of a broader plan to restore

[1] The author would like to acknowledge the assistance of Darrel de Grandmont, Director, Centre Block Program and Leif-Erik Aune, Procedural Clerk in the Table Research Branch, in the preparation of this article.

and rehabilitate several buildings and to construct a new Parliament Welcome Centre. This includes the now-completed Phase 1 (the Visitor Welcome Centre, a modern, 4-level underground complex designed to blend perfectly with the historical structures and natural surroundings of Parliament Hill, and to allow a physical connection to the West Block), and a Phase 2 that will connect the Parliament Welcome Centre to the Centre Block, and offer Canadians an engaging visitor experience to supplement guided tours. It will also support parliamentarians, while ensuring the safe and secure movement of people, services and goods across the complex.

A 2010 report by the Auditor General of Canada examined the rehabilitation of the Parliament buildings and underscored the federal government's assessment that the Centre Block could experience "total failure" sometime between 2019 and 2025. The report stated that system failures could force the building's closure for an extended period while urgent repairs were carried out and, in the meantime, Parliament might not be able to operate or might have to limit its operations. Business continuity being top of mind in the House of Commons' strategic mission of responding to the needs of the House and its members in support of parliamentary democracy, studies by the Senate and the House of Commons concluded that the Centre Block did not meet their present and future needs. By commencing long-term rehabilitation of the Centre Block, Parliament could plan for the building's closure within a framework of continued service delivery, rather than proceed with increasing risks of building failure and emergency closure.

Centre Block

At a projected cost of $4.5 to 5.1 billion, the Centre Block rehabilitation project is designed to preserve the historic character of the building and ensure it continues to support the needs of parliamentarians, employees, and visitors well into the future. The project includes significant repairs to its masonry, a new roof and windows, seismic upgrades, and enhanced information technology and security features, among other improvements.

It has required the temporary displacement of parliamentary services to other buildings, and the temporary closure of the Peace Tower for important structural work as well as conservation of the carillon's bells. The Carillon has only been silent twice since its installation: from 1980 to 1982 for rehabilitation work on the interior of the Tower, and from 1995 to 1997 for work on its exterior.

Project Governance

An Integrated Project Office was established to bring together representatives of Public Services and Procurement Canada, the Senate, House of Commons, Library of Parliament, and the design and construction consortiums (architects, engineers, and the construction manager). The Integrated Project Office provides permanent liaison between all parties with delivery, design, and oversight responsibilities, which facilitates project communication and operations.

Within the House of Commons Digital Services and Real Property service area, a team composed of architects, interior designers and project managers, act as the knowledge client, and are expert advisors to both parliamentarians and administration service sectors (end users) and to the federal government's design consortium. They work with all parties to communicate the House's requirements, resolve design issues, conduct consultations, and provide expert advice. This ensures the design will meet the requirements of Parliament, that everyone has the required information, and that the governance is leveraged for timely decisions.

To ensure members are meaningfully involved in decisions about the project, the Board of Internal Economy (BOIE), the governing body of the House of Commons, established a working group composed of members from each recognised party to be involved at a more granular level of the project and provide valuable design feedback. The working group provides updates on the rehabilitation project and makes recommendations to the BOIE as required. It has been mandated to consult with their parliamentarian colleagues, and at times the Senate's counterpart committee, and provide recommendations to the BOIE which in turn gives authoritative direction to the project. This process for engaging members and obtaining direction by the BOIE facilitates collaboration and attention to important design questions. Some significant directions given by the BOIE include:

1. Prioritising the architectural heritage of significant spaces;
2. Respecting the original location and dimensions of the Chamber;
3. Designing two-storey members' lobbies;
4. Infilling construction over the Hall of Honour, and engaging parliamentarians on use of space;

5. Constructing an underground tunnel network.

Robust cross-institutional governance is key to successful collaboration through the stages of the rehabilitation project. Through the Integrated Project Office, all parties have a permanent forum for thoughtful decision-making and conflict resolution.

Engagement with the Public

Information for members at large is summarised in a Bulletin issued by the Chair of the working group featuring updates on decisions made at the BOIE, construction updates, information about heritage asset preservation and conservation work, as well as updates from other projects in the precinct falling under the umbrella of the LTVP.

While the Centre Block has been a workplace for members and their staff, it is also a building of great symbolic importance to all Canadians, which is why public engagement is so crucial to the success of this historic undertaking. The House of Commons and Public Services and Procurement Canada use digital platforms to share information, photos, and videos documenting the ongoing rehabilitation work to keep Canadians engaged in the process, but also excited for the future of the building.[2]

The Impact on the Administrations and Proceedings of Both Houses

On 13 December 2018, the Senate and the House of Commons held their last sittings in the Centre Block and then adjourned until early 2019, when they would each resume their sittings in new buildings.

The House of Commons moved to the West Block as its temporary home. Situated a mere stone's throw to the west of the Centre Block, the West Block previously housed a ceremonial ballroom, committee rooms and members' offices until the building's closure for reconstruction in 2008, and had undergone a 10-year refit to enclose an inner courtyard to serve as the House of Commons new Chamber.

The West Block is one of Canada's most significant heritage buildings. Designed in the High Victorian Gothic Revival style, the building was opened in 1865 and initially housed the various government departments of the Province of Canada. The rehabilitation project restored the existing heritage building and incorporated modern functionality required to support Parliament. The architectural vision includes a new multi-level infill that provides additional space within the West Block courtyard. The

[2] Detailed information on the project, including plans, timelines and costs is available at the following site: tpsgc-pwgsc.gc.ca/citeparlementaire-parliamentaryprecinct/rehabilitation/edificeducentre-centreblock/apropos-about-eng.html

interim Chamber sits in that courtyard space, surrounded by the stone walls of the heritage building.

Centre Block under construction

The move from Centre Block to West Block was the result of several years of planning and preparation to successfully transition key functions into a new interim space. The Speaker, party House leaders and whips, the BOIE, and the Clerk and Deputy Clerks of the House all moved their offices into the West Block. The House of Commons Administration also moved the Chamber operations teams, including the Journals Branch, the Page Program, and satellite Hansard offices. Important ancillary teams also moved their operations to the West Block, including printing, mail and delivery, catering, transportation, and precinct and security services. The West Block edifice has a smaller footprint than the Centre Block but provides all essential services to support the continuing business of the Chamber and its members.

The House of Commons will sit in West Block for the duration of the Centre Block rehabilitation project, which is planned for completion by 2031.

The Senate sits in a repurposed Government Conference Centre, a heritage building located 500 meters from Parliament Hill, and renamed the Senate of Canada Building. The building has been renovated to house the Senate Chamber using energy-efficient technologies and with accessible design to ensure that all senators, staff, and visitors can easily function in the space.

Although separated by less than one kilometre, both Houses needed a

revised logistics solution to provide for their formal and informal working relationships. Messages and bills could no longer be transferred from one Chamber to the other by simply walking them down a corridor, as was done when both Chambers were housed in the Centre Block. Routine business between the Senate and the House was reviewed to determine the necessary resources for continuing to deliver work to a high standard from the West Block.

Administratively, the Journals teams of the Senate and the House collaborate on message transfers and do most of their work electronically. Important documents are finalised as digital drafts before being printed to hard copy. Leadership teams from the respective administrations meet weekly to ensure a smooth flow of routine work.

Centre Block and West Block (left), West Block (right)

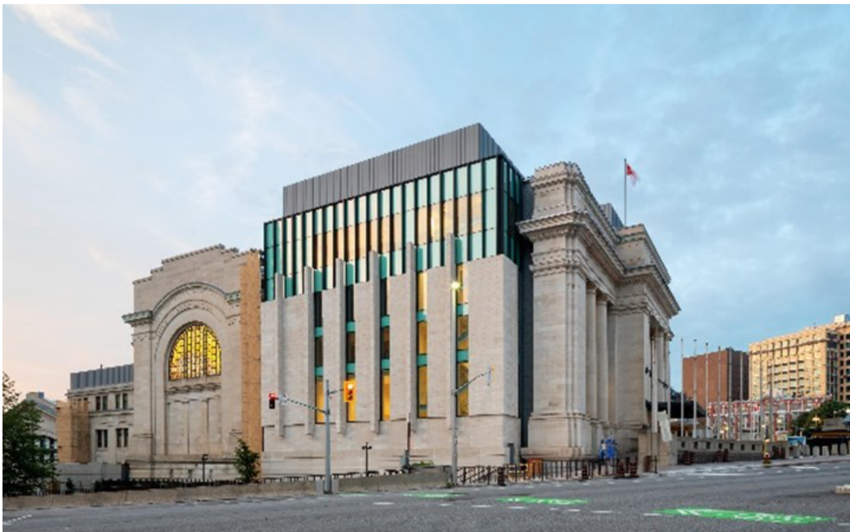
The most routine formal business between Houses of Parliament is the despatch of messages. The Senate and House of Commons send one another formal messages, as with any bicameral legislative assembly, to announce events in one Chamber which implicate the work of the other place. Royal assent, third reading and passage of bills, amendments by one House to bills emanating from the other place, and special ceremonies such as the opening of a new parliament or the Speech from the Throne, all require a formal message which serves as an official announcement. Further, a formal message seizes a Chamber of events that precipitate action.

Messages that were once transferred between offices in one or two minutes are now reliably transmitted between buildings in less than a quarter of an hour. For activities that entail the movement of parliamentarians between buildings, such as the Throne Speech or royal assent ceremonies, Parliament uses both its protective and transportation services to ferry parliamentarians in convoy between buildings. When both Chambers were housed in the Centre Block, this parade could be done in less than five

minutes and now takes 10 minutes longer to complete. With dedicated resources, Parliament continues to deliver its work reliably and consistently, which has facilitated adaptation to a new normal.

Impact to Ceremonial Proceedings and Other Functions

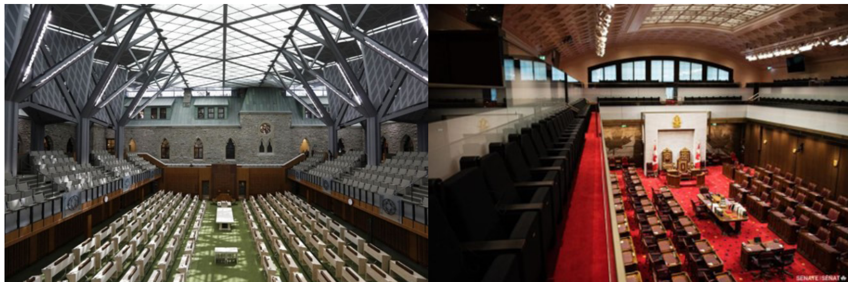
Several historic features of the Centre Block were reproduced in the West Block prior to the move in 2019. The House of Commons foyer is located immediately outside the Chamber and is the traditional space where Members of Parliament meet with representatives of the Press Gallery. The West Block foyer is a smaller and more intimate space, compared to the Centre Block foyer. Rich, wood-framed decorative elements stretch from floor to ceiling and lend a natural warmth to the space. Marble floors with a crosshatch pattern reflect light from pointed, square pendent light fixtures that hang from the coffered, plaster ceiling.



Senate of Canada Building

The antechamber space created between the courtyard walls and the Chamber now houses important historic artefacts from the Centre Block, most notably portraits of Canada's former Prime Ministers, each suspended as if floating inside muted, black metal frames.

During the rehabilitation of the Centre Block, Canada's eight Books of Remembrance, which record the names of every Canadian who died in service to our country, have been moved to the purpose-built Room of



House of Commons interim Chamber, West Block (left), and Senate interim Chamber, Senate of Canada Building (right)

Remembrance within the West Block. The public can continue to admire those various artefacts, while reflecting on the importance of democracy, through guided tours.

Each sitting of the House begins with a ceremonial procession known as the Speaker's Parade. In the Centre Block, the Speaker's Parade made its way from the Speaker's chambers down the Hall of Honour to the House of Commons Chamber. The public has historically been able to witness the daily parade by lining the walls of the Hall of Honour as the Sergeant-at-Arms, bearing the Mace, lead the parade followed by the Speaker, a page carrying the daily prayer, the Clerk of the House and other Table Officers. In the West Block, the corridors flanking the entrance of the House of Commons are significantly narrower, providing no space for public viewing. The Speaker's parade therefore had to be closed to the public for the duration of the Centre Block rehabilitation project.

House of Commons Foyer, West Block

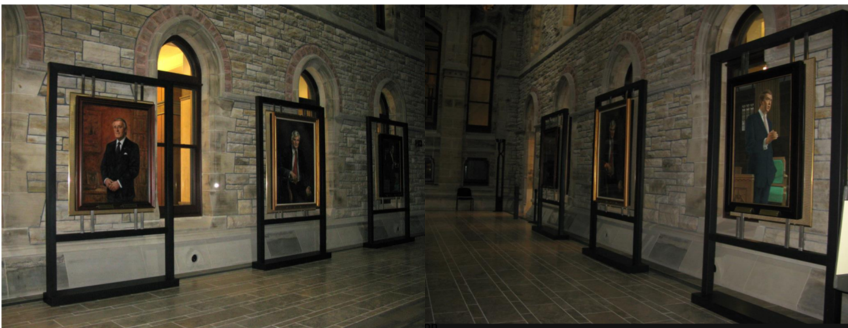
House of Commons Antechamber, West Block

Impact to Tenant Services

When the Senate and the House of Commons both occupied the Centre Block, they were co-tenants of the same edifice. Each House of Parliament had its own staff and rooms, and parliamentarians could readily access their own resources to support their participation in joint activities. Once the Senate and House of Commons moved into separate buildings, any visit by members of one House to the other place entailed a visit by guests, which tasked the tenant services teams of both organisations to avail rooms and resources for parliamentarians who no longer have dedicated spaces in one another's buildings. Removing co-tenancy hence added complexity to the Senate and House of Commons' working relationship.

Impact to Research and Library Services

The Library of Parliament building is an historic rotunda shaped as a 16-sided polygon whose construction was completed in 1876, making it



Portraits of Canada's Prime Ministers, Antechamber, West Block

Room of Remembrance, West Block (left) and one of eight Books of Remembrance (right)

the oldest edifice on Parliament Hill. In 1916, the Library of Parliament survived a great fire which destroyed the original Centre Block building. Members of Parliament and the administrations of the Senate and the House of Commons rely on the Library to provide expert knowledge on all substantive matters, as well as research expertise. The Library is also Parliament's gateway to the greater world of library archives and, if Parliament requires outside knowledge or research capacity, then the Library is the first point of contact for searching farther afield, to other libraries or academic centres, to obtain what is needed.

The Library building stands as the heart of Parliament's document archive and research service but is inaccessible while the Centre Block undergoes rehabilitation. By 2018, the Library had transferred in-person services and its archives to multiple sites on and off Parliament Hill, including a satellite office in the West Block, to provide continuity of service and safe storage of all displaced materials until the Centre Block rehabilitation project is completed. The Parliamentary Information and Research Service provides online research services and maintains its support to parliamentarians and committees of the Senate and the House.

Speaker's Parade in the Centre Block's Hall of Honour (left) and in the West Block (right)

Conclusion

The Centre Block is an indelible representation of Canada's historical ties and its democratic future. After having been opened for nearly 100 years, while undergoing only minor repairs, it needed long-term upgrading to support parliamentary proceedings into the next century. The project to rehabilitate the building could not be further delayed without incurring a significantly longer construction period at a higher cost. The decisions and planning that went into this project occurred years, even decades, before the Centre Block closed for rehabilitation. This could only have been achieved with forethought and a framework for leadership and oversight, so that important decisions were in the hands of a representative group of parliamentarians and public servants who operated with authority and accountability in equal measures. Once completed, the Centre Block will retain its iconic silhouette but have new and necessary capabilities for supporting parliament's growth well into the future.

Library of Parliament Building interior

PRACTICE MAKES PERFECT? (OR AT LEAST A LITTLE BETTER)—SESSIONAL ORDERS AS A VEHICLE FOR PROCEDURAL REFORM IN THE NEW SOUTH WALES LEGISLATIVE COUNCIL

VELIA MIGNACCA

Principal Council Officer, Department of the Legislative Council, Parliament of New South Wales[1]

Introduction

Sessional orders are temporary rules which supplement, vary or override the standing orders. They are often used for routine purposes such as to appoint the days and time for the meeting of the House of Commons. However, they can also be used to trial new procedures to assist the House in deciding whether the new procedures should be adopted as permanent rules. Such procedures may include variations to procedures set out in the standing orders or new measures that have not previously been addressed in the standing orders. Sessional orders lapse at the end of a session, or at an earlier time if the House so decides, and may or may not be re-adopted in the following session.

In New South Wales the making of new or amended standing orders is governed by section 15 of the *Constitution Act 1902* (NSW). That section empowers each House of Parliament to adopt standing orders for the orderly conduct of its business and provides that such standing orders become 'binding and of force' on being approved by the Governor. However, there are no constitutional or statutory provisions which regulate the making of sessional orders that establish temporary variations or additions to the standing orders. While amendments to the standing orders require approval by the Governor temporary modifications introduced by sessional orders take effect immediately they are adopted by the House.

There are precedents for the Legislative Council using sessional orders to trial modifications to its procedures dating back to the 19th century. The practice became more common after 1978 following the Council's

[1] An earlier version of this paper was presented by David Blunt, Clerk of the Parliaments and Clerk of the Legislative Council at the 2022 Meeting of the Society of Clerks at the Table in Halifax, Nova Scotia. This version incorporates valuable feedback subsequently received from colleagues supporting the UK House of Commons and Canadian Senate.

reconstitution as a popularly elected House which led to a revival in the performance of its review and scrutiny role. The trend was renewed after the 2019 state election which saw a strengthening of the positions of non-government parties in the Council and led to the adoption of sessional orders which introduced significant reforms to the House's operations in May 2019.

This paper examines the Council's use of sessional orders by providing:

- an overview of the sessional orders adopted by the House in May 2019
- a brief account of the history of the Council's use of sessional orders to modify its procedures
- an analysis of the House's authority to adopt sessional orders that set aside or amend procedures in the standing orders.

While focusing on the use of sessional orders the paper also includes references to other types of orders by which the House can vary its procedures – temporary orders, which lapse at a time as determined by that order such as the end of a calendar year; resolutions of continuing effect, which have no predetermined time limit but continue until amended or until the House resolves they no longer have effect; and ad hoc orders which establish procedures for particular purposes.

The sessional orders adopted in May 2019

The New South Wales state election held in March 2019 resulted in the return of the previous government to power with a reduced majority in the lower House. In the Legislative Council, where the government has not held a majority since 1988, the election resulted in a decrease in the number of government members, an increase in the number of opposition members and an expanded cross bench, which was one of the largest cross benches in the Council's modern history. One consequence of the new Council make-up was that it became more difficult for the government to obtain a majority where the major parties did not agree: while in the previous Parliament the government needed two extra votes which could be obtained from one crossbench party, in the new Council the government needed five extra votes from a crossbench which consisted of five parties and an independent. [2]

The impact of the new composition of the Council on the dynamics of the

[2] Following the 2019 election the numbers in the Council were: Government 17 (down from 20); Opposition 14 (up from 12); and Crossbench 11 (up from 10) comprising 2 Shooters, Fishers and Farmers, 2 One Nation, 2 Animal Justice, 3 Greens, 1 Independent (ex-Green) and 1 Christian Democrat, down from two.

House became evident even before the sittings of the House commenced. In the lead up to the first sitting week an unusual process took place in which members from the opposition and various cross bench parties, including some with very different political views, collaborated in the development of a set of draft sessional and temporary orders which contained significant reforms to the operations of the House. This contrasted with previous Parliaments in which almost all sessional orders had been initiated by the Government. The draft provisions included a suite of variations to pre-existing sessional orders as well as a number of brand new procedures. On the second sitting day of the new Parliament the House agreed to 19 sessional orders which were either moved or amended by opposition or cross bench members, and 22 sessional orders which were moved by the government and agreed to without amendment.[3]

The new procedures established by the sessional and temporary orders included the following:

Questions and answers

- In Question Time answers to questions were to be 'directly' relevant[4] and there was greater opportunity to ask supplementary questions.[5] For the first-time parliamentary secretaries were also required to answer questions relating to their portfolio responsibilities but were prohibited from asking questions.[6]
- Each party and any independent member could ask one supplementary question at the end of Question Time and written answers were to be lodged by 10am on the next working day.[7]
- Members could submit questions on notice on any business day, not just on sitting days,[8] and ministers were to provide their answer within 21 rather than 35 days.[9]
- The House could 'take note' of answers to questions for a total of 30 minutes after Question Time.[10]

[3] For a detailed analysis of the nature and impact of the sessional orders adopted in 2019 see Allison Stowe, 'The shake-up: new rules in play for the NSW Legislative Council (as at December 2021)' paper presented at the Australasian Study of Parliament Group conference (Victoria), April 2022.

[4] Minutes, NSW Legislative Council, 8 May 2019, pp 77-78.

[5] Minutes, NSW Legislative Council, 8 May 2019, pp 75-76.

[6] Minutes, NSW Legislative Council, 8 May 2019, pp 77, 78.

[7] Minutes, NSW Legislative Council, 8 May 2019, pp 75-76.

[8] Minutes, NSW Legislative Council, 8 May 2019, p 84.

[9] Minutes, NSW Legislative Council, 8 May 2019, p 84.

[10] Minutes, NSW Legislative Council, 8 May 2019, p 85.

Private members' business

- Private members' business was to take precedence over all other business on private members' days except for Question Time and frequently continued until the motion for the adjournment of the House was moved at midnight.[11] This effectively doubled the time for private members' business as previously the House usually adjourned by 4.30pm on Private Members' Day after reverting to Government business at 3.30pm at the conclusion of Question Time.
- Private members had the right to give three-minute speeches on matters they chose to address for a total of 30 minutes on private members' days.[12]
- To enable the House to move through more private members' business a private member could move that their motion be debated in a 'short-form' format with overall debate being limited to 30 minutes.[13]

Committees

- Government responses to committee reports were set down for debate each week.
- There were new provisions for a minister to explain the reasons for a government's non-compliance with the requirement to address each committee report recommendation.[14]
- The budget estimates process was to be held three times per year rather than annually, with extended hours,[15] and parliamentary secretaries could be invited to give evidence.[16]
- The House affirmed the power of Council committees to order the production of documents and set out a process for the production of documents ordered by committees consistent with the procedures for orders for papers by the House.[17]

During debate on the adoption of the new sessional orders opposition and cross bench members cited a range of factors in support of the reforms. These included lifting the standard of parliamentary scrutiny of government in the state,[18] increasing the time available for private members' business

[11] Minutes, NSW Legislative Council, 8 May 2019, pp 68, 69-71.

[12] Minutes, NSW Legislative Council, 8 May 2019, p 74.

[13] Minutes, NSW Legislative Council, 8 May 2019, p 74.

[14] Minutes, NSW Legislative Council, 8 May 2019, pp 86-87.

[15] Minutes, NSW Legislative Council, 8 May 2019, pp 67, 119 (temporary order).

[16] Minutes, NSW Legislative Council, 8 May 2019, pp 77, 119.

[17] Minutes, NSW Legislative Council, 8 May 2019, pp 81-83.

[18] Hansard, NSW Legislative Council, 8 May 2019, pp 77-78, p 82, the Hon Adam

in view of the diversity of opinions of the expanded cross bench,[19] lifting the reach of the House in the ways in which it holds the government to account,[20] enhancing government transparency[21] and helping the House to operate more efficiently.[22]

Brief history of the Council's use of sessional orders to vary its procedures

The Legislative Council has operated under four different sets of standing orders since 1856 when the system of responsible government was established in New South Wales. The first set, adopted in 1856, was replaced by a revised version in 1895; that version in turn was replaced by a new version in 2004 which itself was superseded by the current version in 2023. A brief account of the Council's use of sessional orders during the currency of the 1856, 1895 and 2004 standing orders in turn is provided below.

Under the 1856 standing orders

Most procedural changes in this period took the form of amendments to the standing orders themselves, usually following a report from the Standing Orders Committee, without an initial trial period established by sessional or temporary order. This was the case, for example, with amendments concerning protests against the passing of a bill, the seconding of motions and challenges to a member's vote on the grounds of personal interest.[23] However, some changes were trialled as sessional orders before being incorporated into the standing orders in some form. These included changes concerning the method of delivering messages to the Legislative Assembly,[24] the procedure for divisions[25] and the recording of members'

Searle MLC.

[19] Hansard, NSW Legislative Council, 8 May 2019 p 78, Mr Shoebridge MLC.

[20] Hansard, NSW Legislative Council, 8 May 2019, p 106, the Hon Adam Searle MLC.

[21] Hansard, NSW Legislative Council, 8 May 2019, p 113, the Hon Robert Borsak MLC.

[22] Hansard, NSW Legislative Council, 8 May 2019, p 113, Revd the Hon Fred Nile MLC.

[23] See S Want and J Moore, edited by D Blunt, *Annotated Standing Orders of the New South Wales Legislative Council*, Federation Press, 2018, pp 780-781.

[24] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 398-400.

[25] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 368-371.

names where the House was counted out for lack of a quorum.[26]

Under the 1895 standing orders

The early years of the 20th century were marked by tensions between the appointed Council and the elected Assembly and the vigorous prosecution by the Council of its role as a House of review. However, the reconstitution of the Council as a chamber elected by the members of both Houses in 1934 initiated a period of relative political stability and contributed to a falling-off in review activity across a range of measures.[27] In 1978 the Council was reconstituted as a popularly elected House and with the replacement of the last indirectly elected members in 1984 the Council commenced as a full time House of review which could legitimately claim the authority of the electors. The trend towards a more dynamic House was strengthened by later developments such as a period of non-government majorities from 1988 and reforms to the quota for election in 1991 which improved the prospects of minor parties.

The Council's pursuit of a more active scrutiny role after 1978 was mirrored by an increase in procedural experimentation and reform. Following the introduction of the 1895 standing orders until the 1980s procedural changes were effected by amendments to the standing orders approved by the Governor and sessional orders were confined to routine matters such as appointing sitting days and times. From the 1980s on however the position was reversed: no amendments to the standing orders were made after 1985 until the 2004 standing orders were adopted, but sessional orders were used to trial variations to procedures with increasing frequency. The change in the pace of reform following the reconstitution was noted during debate in the House in 2004:

> "[S]ince 1978 the practices and procedures of the Legislative Council have changed significantly. To cover the increasing gaps in the 1895 standing orders each new Parliament has seen the adoption of a growing body of sessional orders."[28]

The sessional orders adopted after 1978 included new requirements which had the effect of strengthening scrutiny procedures, enhancing government accountability and expanding opportunities for private

[26] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 87-88.

[27] For example, the period following the establishment of the indirectly elected Council was noted for a decline in orders for papers, questions on notice, bills amended and rates of member attendance: D Clune and G Griffith, Decision and deliberation: The Parliament of New South Wales 1856-2003 (Federation Press, 2006), pp 339-343.

[28] *Hansard*, NSW Legislative Council, 5 May 2004, p 8264, the Hon Michael Egan MLC.

members. These included sessional orders to the effect that:

- Motions to disallow statutory instruments were to take precedence of government and general business for the day on which they were set down for consideration. This contrasted with the procedure under the standing orders whereby disallowance motions were dealt with under the normal rules relating to private members' motions with no special precedence.[29]
- Debate on bills introduced in the Council was to be adjourned after the mover's second reading speech until 'five clear days ahead' to ensure that members had sufficient time to examine the bill.[30]
- A list of legislation that had not been proclaimed 90 calendar days after assent was to be tabled in the House every second sitting day of each month.[31]
- Ministers were required to lodge answers to questions within 35 calendar days and the President was to report a failure to answer within the timeframe to the House.[32]
- A new system for the consideration of private members' business was adopted in which business was considered in accordance with an 'order of precedence' of items selected in a draw periodically conducted by the Clerk. This replaced the complex and inflexible system in the standing orders which had proved to be ineffective for dealing with increasing volumes of private members' business following the Council's reconstitution as a directly elected House.[33]
- New rules for questions and answers were adopted including time limits for questions and answers, provision for supplementary questions and a requirement for answers to be relevant.[34]

Many of the procedures introduced as sessional orders during the period of the 1895 standing orders were included in a modified form in the new standing orders adopted in 2004.[35] The 2004 standing orders also

[29] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 273-274.

[30] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 441, 804, 809.

[31] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), p 809.

[32] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 219-220, 225.

[33] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 599-602.

[34] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 213-214, 217.

[35] For a description of the origins of each of the standing orders adopted in 2004,

incorporated procedures which had their origins in other types of orders of the House. For example, the procedure for the recall of the House at the request of an absolute majority of members which was incorporated into SO 36 in 2004 began as amendments to the special adjournment motion between 1990 and 2003, while the citizen's right of reply procedure which was incorporated into SOs 202-203 in 2004 began as a resolution of continuing effect in 1997.

Under the 2004 orders

Following the adoption of the new standing orders in 2004 the Council continued its practice of using sessional orders to modify its procedures where the need arose. Use of the practice reached a peak in the 57th Parliament following the 2019 state election which, as stated previously, resulted in an expansion of the non-government membership of the House. To illustrate the extent of the practice, by October 2021 there were sessional orders in place which varied the operation of 41 standing orders,[36] sessional orders which set out procedures concerning matters not addressed in the standing orders,[37] and temporary and continuing orders.[38]

In response to the development of such an extensive body of temporary procedures, in 2021 the Council referred an inquiry to its Procedure Committee to review the sessional and standing orders and to propose a draft revised set of standing orders for consideration by the House.[39] The committee reported the following year recommending a new set of standing orders which incorporated, with minor amendments, most of the existing sessional orders including those adopted in May 2019 discussed at the start of this paper. The House later resolved that these standing orders, with a small number of amendments, take effect as sessional orders from

including procedures initially introduced as sessional orders, see *Annotated Standing Orders of the New South Wales Legislative Council* (n 23).

[36] The 41 standing orders varied by sessional order were: SOs 12, 25, 29, 30, 32, 34, 35, 36, 37, 44, 46, 52, 55, 57, 64, 65, 66, 67, 68, 70, 106, 113, 141, 154, 172, 180, 183, 184, 185, 186, 188, 196, 198, 208, 210, 211, 218, 222, 227, 232, 233: Legislative Council, Sessional and Temporary order variations to the standing orders, First Session of the Fifty-Seventh Parliament, 21 October 2021.

[37] For example, time limits on government bills and cut-off dates for government bills in the Budget and Spring sitting periods were the subject of sessional orders but were not addressed in the standing orders.

[38] NSW Legislative Council, Sessional orders, temporary orders and resolutions of continuing effect and office holders, First Session of the Fifty-Seventh Parliament, 21 October 2021, pp 39-62.

[39] Minutes, NSW Legislative Council, 9 June 2021, p 2273.

a specified date for the remainder of the session or until rescinded, and that the existing standing orders and most of the existing sessional orders be suspended for that period. Subsequently, following a further report by the Procedure Committee, the House adopted the recommended standing orders, which were approved by the Governor and came into operation in February 2023.

One innovation of the 2023 standing orders is a provision which expressly states that the House may from time to time adopt sessional or temporary orders relating to the operations of the House or its committees (SO 3).[40] The inclusion of this provision in the standing orders can be seen as an acknowledgement by the House that sessional and temporary orders have a significant role to play in the management of the House's proceedings.

Another notable aspect of the process was the extent to which members of the House showed awareness of the broader context in which the reforms had developed. For example, during debate in the House, the Leader of the Government in the Council acknowledged that the goals of the review which had led to the development of the new standing orders had included to 'enhance the role of the Legislative Council as a house of review, and enhance the role of private members ...'. He also acknowledged that, while standing orders when originally introduced often contemplated a government and an opposition:

> "as the House has developed, and the culture and character of the House has developed, proper consideration needs to be made with respect to the rights and entitlements of private members and crossbench members..."[41]

The authority of the House to adopt sessional orders to vary its procedures

House of Commons

The ancient practice of the House of Commons developed at a time when the Commons were concerned with grievances and their redress rather than with the despatch of Crown business. The forms of the proceedings of the House operated as a check and control on the actions of ministers, and were in many instances a shelter and protection to the minority 'against the

[40] Similar standing orders providing for the making of sessional or temporary orders have been adopted by a number of other Australian Houses, e.g. NSW Legislative Assembly SO 364, Victorian Legislative Council SO 24.02, Queensland Legislative Assembly SO 3 (sessional orders); Western Australian Legislative Council SO 2, Western Australian Legislative Assembly SO 2 (temporary orders).

[41] *Hansard*, NSW Legislative Council, 19 May 2022, p 7149, the Hon Damien Tudehope MLC

attempts of power'.[42] With the development of the modern Cabinet system however, and the growing complexity of the machinery of government, the government demanded a stricter control over parliamentary business and in the 19th century this demand was met by the passing of standing orders. These standing orders were designed to safeguard the government programme from being interrupted or forestalled by a diversionary use of the opportunities open to members under the ancient rules of procedure.[43]

Following the development of the standing orders the House retained the ability to adapt its procedures. In 1908 Josef Redlich noted that any change to a procedural rule in the Commons took effect by force of a simple resolution although a second resolution was required to raise a new regulation to the status of a standing order with permanent validity.[44] He further noted that the House could free itself from its 'self-imposed ... fetters' by suspending standing orders by motion on notice or by prescribing a course of procedure inconsistent with the standing orders and by implication cancelling their operation on a particular occasion.[45] Redlich also observed that in addition to the standing orders there were other types of orders which described rules as to the House's business namely sessional orders and orders not expressly endowed with either a short or long term duration which by virtue of continuous practice had acquired the force of customary law. While standing orders were 'intended to bind all future parliaments' sessional orders were 'renew[ed] at the beginning of each session, making the principles contained in them binding for the duration of its currency.'[46]

Similar observations appear in editions of Erskine May which include descriptions of the roles of different types of procedural rules. For example, in the 17th edition it is noted that while a standing order differs from every other order by having an express duration beyond the end of the session, no special procedure is involved in its passage except that after it has been agreed to on motion a further order is made declaring it to be a standing order of the House.[47] It is further noted that a sessional order 'can set aside

[42] Erskine May's Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, 19th ed, 1976, London, Butterworth, p 213.

[43] Erskine May, 19th ed (n 42), p 213.

[44] J Redlich, The procedure of the House of Commons; a study of its history and present form, Vol II, London, Archibald Constable & Co Ltd, Ltd, 1908, p 8.

[45] J Redlich, The procedure of the House of Commons; a study of its history and present form, Vol II, pp 7-8.

[46] J Redlich, The procedure of the House of Commons; a study of its history and present form, Vol II, pp 6-7.

[47] Erskine May's Treatise on the Law, Privileges, Proceedings, and Usage of Parliament,

... a standing order'[48] and that sessional orders can be used 'to experiment with new rules which are intended to be permanent if they prove satisfactory in working'.[49] The current edition of May also notes the House's flexibility to introduce, amend and repeal standing orders by motion and decision in the normal way.[50]

The autonomy of the House of Commons in matters of procedure is supported by principles developed by the courts in the United Kingdom concerning the relationship between the competence of the courts and the jurisdiction of Parliament. Under these principles it is the duty of the common law to define the limits of parliamentary privilege where it is relevant in a particular case, but each House has exclusive jurisdiction over its own proceedings (which includes jurisdiction over whether or not a particular privilege has been breached).[51] The distinction between the limits and the exercise of a privilege may sometimes be difficult to draw[52] and grey areas exist along the boundaries between where parliament enjoys exclusive jurisdiction and where the courts may intervene.[53] Further, there is room for debate as to whether the exclusive jurisdiction of the House is a right, power or privilege[54] and as to the nature of its relationship to the immunity in article 9 of the Bill of Rights.[55] However, it is accepted that there is a sphere in which the jurisdiction of each House is absolute.

New South Wales and Australasian Houses

In New South Wales the Houses of Parliament operate on a different footing to the legislatures in other Australasian jurisdictions whose powers,

17th ed, 1964, London, Butterworth, p 226.

[48] Erskine May's Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, 17th ed (n 47), p 228.

[49] Erskine May's Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, 17th ed (n 47), p 226.

[50] Erskine May's Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, 25th ed, LexisNexis 2019), paragraph 20.96.

[51] Erskine May's Treatise on the Law, Privileges, proceedings and usage of Parliament, 25th ed, (LexisNexis 2019), paragraphs 16.1, 16.3. This power has been used in radical ways, such as adding lay members to a committee and setting up a panel of non-members to deal with certain types of complaints against members.

[52] Canada (House of Commons) v Vaid [2005] 1 SCR 667, at 700.

[53] G Griffith, Parliamentary privilege: first principles and recent applications, NSW Parliamentary Library Research Service, Briefing Paper No 1/09, February 2009, p 12.

[54] See R Laing, 'Exclusive cognisance: is it a relevant concept in the 21st century?', Australasian Parliamentary Review, Vol 30, No 2, 2015, p 59.

[55] G Griffith, Parliamentary privilege: the continuing debate, NSW Parliamentary Library Research Service, Background Paper No 2/2014, pp 15-18.

privileges and immunities are defined by reference to those of the UK House of Commons at specified dates.[56] In the absence of House of Commons equivalency the Houses possess certain powers and privileges which have been defined by statute[57] and such other powers and privileges as are reasonably necessary for the performance of their functions. The powers which are necessary for the performance of the House's functions are protective and self-defensive in nature rather than punitive.[58]

While there can be difficulties establishing a boundary between the 'necessary' and 'self defensive' application of the powers of a House and their 'punitive' application,[59] the principle of necessity has been found to support the existence of some significant powers. These include the power to suspend a disorderly member for the duration of the sitting,[60] to expel a member guilty of conduct unworthy of a member as a means of protecting the House[61] and to suspend a minister for failing to table state papers[62] including papers subject to claims of legal professional privilege or public interest immunity.[63] Conversely, it has been held that the boundaries of necessity stop short of a right to suspend a disorderly member for an indefinite time,[64] to arrest a member who was disorderly but has since left the chamber[65] or to expel a member for reasonable cause as a cloak for punishment.[66]

One limitation which flows from the common law foundation of the powers in New South Wales is that unlike the UK House of Commons which adopts standing orders of its own volition the Houses have no inherent power to adopt standing orders but rely on a statutory power to do

56 R Laing, 'Exclusive cognisance: is it a relevant concept in the 21st century?', Australasian Parliamentary Review, Vol 30, No 2, 2015, p 59, n 4.

57 For example, the Parliamentary Evidence Act 1901 (NSW) confers certain powers on the Houses and their committees to summon witnesses.

58 See S Frappell and D Blunt (eds), New South Wales Legislative Council Practice, 2nd ed (Federation Press, 2021), pp 67-75.

59 New South Wales Legislative Council Practice, 2nd ed (n 58), p 71.

60 Barton v Taylor (1886) 11 AC 197 at 204 per Lord Selborne.

61 Armstrong v Budd (1969) 71 SR (NSW) 386 at 403 per Wallace P.

62 *Egan v Willis* (1998) 195 CLR 424.

63 Egan v Chadwick (1999) 46 NSWLR 563. However, the majority (Spigelman CJ and Meagher JA) found that the power to compel the government to produce documents was limited in the case of Cabinet documents.

64 Barton v Taylor (1886) 11 AC 197 at 205 per Lord Selborne.

65 Willis and Christie v Perry (1912) 13 CLR 592 at 598 per Griffith CJ, at 599 per Barton J, and at 600-601 per Isaacs J.

66 Armstrong v Budd (1969) 71 SR (NSW) 386 at 396 per Herron CJ.

so.[67] Section 15 of the *Constitution Act 1902* authorises each House to adopt standing orders regulating its 'orderly conduct' (section 15(1)(a)) and provides that such orders 'become binding and of force' on approval by the Governor (section 15(2)). However, the requirement for standing orders to be approved by the Governor before they come into effect has not been applied in such a way as to prevent the making of temporary procedural rules. Nor has it precluded the adoption of practices not provided for in the standing orders or which are inconsistent with the standing orders in some respects.

In a paper prepared in 1969, the then Clerk of the Legislative Council, J.R Stevenson, observed that the proceedings of the Council are not guided by standing orders alone:

> "... the Legislative Council relies to a considerable degree on practice rather than on Standing Rules and Orders and retains a flexibility in its approach to matters that come before it, so that it is 'master of its own business'."[68]

Stevenson suggested that this 'flexibility' encompasses suspension of standing orders,[69] interpretations of the standing orders by the presiding officer,[70] orders by the House without the support of a standing order on the subject[71] and the adoption on occasion of procedures which appear to conflict with standing orders. Regarding these procedures, Stevenson observed:

> "In practice, certain procedures are followed on occasions which appear to be in conflict with a particular Standing Rule and Order and the Standing Rule and order is not suspended – the action is sometimes taken on an Order by the House or merely follows practice."[72]

As to actions taken on an order by the House, Stevenson noted that the

[67] In *Egan v Willis and Cahill* (1996) 40 NSWLR 650 at 669 Gleeson CJ noted: 'In ...*Crick v Harnett* (1907) 7 SR (NSW) 126 at 132 ... it was observed that a House of the New South Wales Parliament has no inherent power to make Standing Orders; its power to do so derives from s 15'.

[68] NSW Legislative Council, J.R. Stevenson, Clerk of the Parliaments, 'Application of standing rules and orders in proceedings of the Legislative Council', 21 March 1969, p 10.

[69] J.R. Stevenson, 'Application of standing rules and orders in proceedings of the Legislative Council' (n 68), p 4.

[70] J.R. Stevenson, 'Application of standing rules and orders in proceedings of the Legislative Council' (n 68), pp 6-7.

[71] J.R. Stevenson, 'Application of standing rules and orders in proceedings of the Legislative Council' (n 68), p 9.

[72] J J.R. Stevenson, 'Application of standing rules and orders in proceedings of the Legislative Council' (n 68), p 4.

Council sometimes agrees to a motion that the bill be now read a third time with concurrence immediately after the report of the committee of the whole is adopted whereas the standing orders state that a future day for the third reading may be fixed.[73] He also referred to the process whereby an order of the House may become a sessional order and then a standing order, citing 19th century precedents of orders which required members' names to be recorded when the House was counted out for want of a quorum which led to a change in the standing orders.[74] As to actions which merely follow practice the Clerk gave a number of examples, including the practice that a bill be read three times which is not required by the standing orders and the practice of grouping clauses of a voluminous bill in parts in committee of the whole contrary to the requirement in the standing orders that each clause be read separately.[75]

The flexible approach to the application of standing orders described in Stevenson's paper is consistent with judicial authorities which have considered the nature of standing orders. It has been held that, while the power to make standing orders derives from section 15 of the *Constitution Act 1902*, '[t]he Act does not make them part of the general law'.[76] Further, the courts will not question the validity of a standing order providing it relates to 'orderly conduct'.[77] Moreover, standing orders are not a source of the powers of the House but may regulate the exercise of existing powers.[78] In that regard, in *Egan v Willis and Cahill*, when discussing the relationship between the Council's power to order the tabling of state papers, which derives from the common law principle of necessity, and standing orders which provided for the making of such orders, Gleeson CJ observed:

Section 15 of the *Constitution Act 1902*, which authorises the making of Standing Orders, is not a source of power of the kind presently in question. Standing Order 18 and Standing Order 19 assume the existence of a power, but do not operate as a source of power; rather they regulate in certain respects the exercise of a power which, if it exists, must have some other

[73] J.R. Stevenson, 'Application of standing rules and orders in proceedings of the Legislative Council' (n 68), p 5 (paragraph (e)).

[74] J.R. Stevenson, 'Application of standing rules and orders in proceedings of the Legislative Council' (n 68), p 6 (paragraph (h)).

[75] J.R. Stevenson, 'Application of standing rules and orders in proceedings of the Legislative Council' (n 68), p 5 (paragraphs (a) and (c)).

[76] Clayton v Heffron (1960) 105 CLR 214 at 240 per Dixon CJ, McTiernan, Taylor and Windeyer JJ.

[77] Harnett v Crick [1908] AC 470 at 475-476.

[78] New South Wales Legislative Council Practice, 2nd ed (n 58), p. 131.

source.[79]

Court decisions concerning the validity of orders by the Council for the suspension or expulsion of members have set out the principles which determine the extent of the House's inherent powers. It has been held that the functions of the Council, on which the existence of its inherent powers depends, include the making of laws pursuant to section 5 of the *Constitution Act 1902* and the superintendence of the conduct of the executive within the framework of responsible and representative government.[80] It has been recognised that the question of what is necessary for the performance of these functions requires reference to the conventional practices of the House:

> "What is 'reasonably necessary' at any time for the 'proper exercise' of the 'functions' of the Legislative Council is to be understood by reference to what, at the time in question, have come to be conventional practices established and maintained by the Legislative Council."[81]

These decisions also provide support for the view that, while parliamentary privilege rests on different foundations in New South Wales compared to the United Kingdom and is bound by the principle of necessity, there is a sphere concerning the internal proceedings of each House which is subject to the House's exclusive control. For example, in *Egan v Willis* (1998) 195 CLR 424, the joint majority noted that for the courts to examine the content of particular exercises of valid privilege 'would trump the exclusive jurisdiction of the legislative body' and that intervention by the courts is only 'at the initial jurisdictional level'.[82] In a separate judgment McHugh J stated that the obtaining of information concerning government administration is part of 'the business of the Council' and that 'it is a matter for the Council as to the way in which it conducts business and the order of its business'. He went on to state that:

> "The right of any legislative chamber under the Westminster system to control its business has existed for so long that it must be regarded as an essential part of its procedure which inheres in the very notion of a legislative chamber under that system."[83]

The importance of the right of a legislative chamber to control its business can be demonstrated by reference to the practice of many Australasian

[79] *Egan v Willis and Cahill* (1996) 40 NSWLR 650 at 664.

[80] *Egan v Willis* (1998) 195 CLR 424 at 448-454; Egan v Chadwick (1999) 46 NSWLR 563 at 565.

[81] *Egan v Willis* (1998) 195 CLR 424 at 454 per Gaudron, Gummow and Hayne JJ.

[82] *Egan v Willis* (1998) 195 CLR 424 at 446 per Gaudron, Gummow and Hayne JJ.

[83] *Egan v Willis* (1998) 195 CLR 424 at 478 per McHugh J.

Houses which have used sessional, temporary and/or continuing orders to trial changes to their procedures. For example:

- In 1978 the President of the Senate advised that the Senate 'has made wide use of both sessional orders and resolutions to give new procedures a trial before adopting them as standing orders, if found satisfactory.'[84] The Senate has also trialled a range of accountability mechanisms as 'continuing' orders. These include a procedure for senators to seek and take note of an explanation from a minister where a question on notice is not answered within 30 days, which was later incorporated into the standing orders.[85] In addition, procedures for following up tardiness of ministers in responding to issues raised by the Scrutiny of Bills Committee were initially trialled as a temporary order[86] before being incorporated into the Standing Orders.[87]
- The House of Representatives 'has often adopted sessional orders, which are temporary standing orders or temporary changes to the standing orders, in order, for example, to enable experimentation with a new procedure or arrangement before a permanent change is made to the standing orders'.[88]
- In New Zealand, '[w]hile the Standing Orders are permanent orders of the House, the House sometimes makes other orders regarding its procedures on a temporary or limited basis. ... the House can experiment and trial new procedures before deciding whether to adopt them for the long term'.[89]
- In 2003 the Victorian Legislative Council adopted 35 sessional orders which 'constituted the most far-reaching modifications of the Council's procedures in its history'.[90]
- The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments periodically reports on the adoption by Houses of

[84] Senator the Hon Condor L. Laucke, President of the Senate, 'The use of sessional orders and resolutions as preliminary to standing orders', paper presented to the Presiding Officers and Clerks conference, 1978, p 1.

[85] R Laing (ed), Annotated Standing Orders of the Australian Senate, Department of the Senate, Canberra, 2009, pp 268-271.

[86] Senate Journals, 29 November 2016, pp 656-657.

[87] Senate Standing Order 24(1)(d) to (h).

[88] D Elder (ed), House of Representatives Practice, 7th ed, Department of the House of Representatives, Canberra, 2018, p 191.

[89] M Harris and D Wilson (eds), McGee Parliamentary practice in New Zealand, 4th ed, Oratia Books, Auckland, 2017, p 16.

[90] S Redenbach, 'Radically Revising the Rules?: Victoria's Legislative Council 2003–06', Australasian Parliamentary Review, Spring 2007, Vol. 22(2), p 90.

sessional orders to trial new procedures.[91]

- In Tasmania, the only other Australian jurisdiction apart from New South Wales in which the powers and privileges of the Houses of Commons have not been adopted, certain powers of the Houses are codified in the *Parliamentary Privilege Act 1858* (Tas), such as the power to punish defined contempts, but the Houses also rely on the common law principle of necessity. Nevertheless, despite the lack of House of Commons-style powers sessional orders are often used to trial new procedures in the House of Assembly at least.[92]

In addition to Australasian Houses, it is also relevant to note recent practice in the Canadian Senate where, following the introduction of a new appointments process for senators in 2016 there has been an expansion in the number of senators not affiliated with a political party which in turn has led to the growth of a trend towards the adoption of sessional and temporary orders rather than changes to the formal rules.[93] Matters addressed in recent sessional or temporary orders include the representation of non-affiliated senators on committees,[94] the ability of committees to meet when the Senate is sitting or adjourned,[95] the power of committees to appoint additional deputy chairs,[96] the right of a particular committee to nominate external members[97] and the conduct of hybrid committee meetings and hybrid sittings of the Senate.[98]

[91] For example, the 2019 edition reported that the South Australian House of Assembly had adopted a sessional order requiring that questions on notice be answered within 30 days, and that the New Zealand Parliament had adopted sessional orders trialling procedures for e-petitions and Estimates: *The Table*, Vol 87, 2019, pp 200, 208.

[92] Australia and New Zealand Association of Clerks-at-the-Table (ANZACATT) e-cattinfoshare post from the Tasmanian House of Assembly, 12 August 2021.

[93] Email from Shaila Anwar, Clerk Assistant, Senate Committees, Canadian Senate, to David Blunt, Clerk of the Parliaments, New South Wales Legislative Council, 9 October 2022.

[94] Canadian Senate, Committees Directorate, Sessional Orders of the 1st Session, 44th Parliament, updated 4 July 2022, pp 14-15.

[95] Canadian Senate, Committees Directorate, Sessional Orders of the 1st Session, 44th Parliament, updated 4 July 2022, pp 11-12, pp 13-14.

[96] Canadian Senate, Committees Directorate, Sessional Orders of the 1st Session, 44th Parliament, updated 4 July 2022, pp 3-4.

[97] Canadian Senate, Committees Directorate, Sessional Orders of the 1st Session, 44th Parliament, updated 4 July 2022, pp 13-14.

[98] Canadian Senate, Committees Directorate, Sessional Orders of the 1st Session, 44th Parliament, updated 4 July 2022, pp 4-11, pp 30-34.

The Governor's role in approving standing orders

As in New South Wales all State Houses in Australia have an express power to adopt 'standing rules and orders' regulating their 'orderly conduct' or the conduct of their business and proceedings. In the Commonwealth Parliament the power extends to 'rules and orders'[99] which appears to encompass temporary and continuing orders as well as standing orders. However, it appears that only two of the jurisdictions apart from New South Wales have a requirement for standing orders to be approved by the Governor.[100] In the other jurisdictions the constitution or equivalent statute provides for standing orders to be adopted by the Houses and does not refer to any requirement for approval by an external body.[101]

Reflecting on these provisions in 2009 the then Clerk of the Senate observed:

> "Some state constitutions retain colonial vestiges in having Governors approve the standing orders of the Houses ... Provision for external approval is ... an anachronism and an unnecessary fetter on the freedom of the Houses to determine their own standing rules of procedure."[102]

As noted by the Senate Clerk the requirement for standing orders to be approved by the Governor in New South Wales has its origins in colonial times. Following its establishment in 1824, the Legislative Council operated in accordance with rules of conduct set out in an imperial Act[103] and (from 1827) rules and orders that were readopted at the commencement of each session.[104] These rules and orders in turn were replaced by standing orders adopted by the House in 1829 which were amended on various occasions.[105] However, in 1842 a new imperial Act provided that the Council was to adopt standing rules and orders for its orderly conduct which were to be laid before

[99] Section 50 of the Commonwealth Constitution empowers each House to adopt 'rules and orders with respect to ... the order and conduct of its business and proceedings ...'

[100] Tasmania (*Constitution Act 1934*, s 17) and South Australia (*Constitution Act 1934*, s 55).

[101] Commonwealth (Constitution Act 1901, s 50), Victoria (Constitution Act 1975, s 43), Western Australia (*Constitution Act 1889*, s 34), Queensland (Parliament of Queensland Act 2001, s 11), Norther Territory (Northern Territory (Self Government) Act 1978 (Cth), s 30), Australian Capital Territory (Australian Capital Territory (Self Government) Act 1988 (Cth), s 21).

[102] R Laing, 'Exclusive Cognisance: Is it a Relevant Concept in the 21st Century?', Australasian Parliamentary Review, (Vol 30, No 2, Spring/Summer 2015), p 63.

[103] New South Wales Act 1823, 4 Geo IV, c 96 (Imp).

[104] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 763-764.

[105] *Annotated Standing Orders of the New South Wales Legislative Council* (n 23), pp 764-765.

the Governor for approval at which time they would become binding and in force subject to the confirmation or disallowance of Her Majesty.[106] This procedure, without the reference to confirmation or disallowance of Her Majesty, was later included in section 35 of the Constitution Act of 1855 which established responsible government in New South Wales. When that Act was superseded by the *Constitution Act 1902* the same procedure was carried forward in section 15.

The first set of standing orders referred to the Governor for approval under the 1842 Act included Standing Order 140 which provided for the repeal of a standing order by a simple vote of the Council and not on the approval of the Governor. The Council subsequently received a message from the Governor requesting that the House reconsider this provision. The House ultimately agreed to this request though not without some dissent: a 'this day six months' amendment, and a motion that the Governor's message be considered early in the next session, both of which were negatived on division.

It could be argued, however, that in the context of a modern upper House within a system of representative and responsible government, a requirement to submit procedural rules to the Governor for approval is inconsistent with the independence and autonomy of the House. On the one hand the New South Wales Crown Solicitor has advised that: 's 15 gives rise to an implication that the Governor is not to act with the advice of the Executive Council in relation to whether approval should be given to standing orders'.[107] However, in *Crick v Harnett* (1907) 7 SR (NSW) 126 at 133, Darley CJ stated that the assent of the Governor to standing orders 'of course is given or withheld according to the recommendation of his responsible advisers.'

One issue which would need to be considered in the context of any proposals to reform section 15(2) is the potential application of section 7A of the *Constitution Act 1902*. This section provides that a bill to alter the powers of the Legislative Council must be approved at a referendum. However, the requirement does not apply to a bill to repeal or amend from time to time any of the provisions of section 15.

Conclusion

There is a solid body of precedent, dating back to the 19th century, of

[106] Australian Constitutions Act 1842, 5 & 6 Vic, c 76 (1842) (Imp), s 27.

[107] NSW Crown Solicitor, 'Whether the Governor must act with the advice of the Executive Council when approving standing orders', 1 May 2007, cited in NSW Legislative Assembly Practice, procedure and privilege (online), chapter 28, p 1.

compliance with sessional orders adopted by the Legislative Council. This includes executive government compliance with scrutiny and accountability mechanisms introduced by sessional orders since the 1980s. Sessional orders establishing new procedures have often been adopted on motions by the opposition or cross bench but there have also been cases of such orders being proposed by the government itself. Other Australasian Houses have also made use of sessional or temporary orders to trial new procedures. It appears that the use of these orders in other jurisdictions has not been as extensive as in the New South Wales Legislative Council in recent years although the Victorian Legislative Council's adoption of comprehensive sessional orders to reform its procedures in 2003 is a notable exception. However, the practices of these Houses reinforce the view that temporary procedural rules and not just standing orders are an important and legitimate tool for the management of the business and proceedings of a legislative chamber.

In New South Wales where the powers of the Houses have not been defined by reference to those of the House of Commons each House possesses such inherent powers as are necessary for the performance of its functions, and specific statutory powers. The inherent powers do not extend to the adoption of standing orders, for which each House relies on the express power conferred by section 15 of the *Constitution Act 1902*, but the basis for the power to adopt sessional and temporary orders has never arisen for determination. Should the question arise it is likely that the source of the power would be identified in the principle of necessity and the inherent right of the chamber to control the conduct of its business and that the boundaries of the power would be found to lie in the limits of necessity rather than in any of the provisions of section 15. While section 15 requires standing orders to be approved by the Governor the Legislative Council has a longstanding practice of adopting sessional orders that modify or override the operation of standing orders by simple resolution of the House.

To the extent that there may have been unresolved issues concerning the status of the Council's sessional and temporary orders in the past, the new standing orders that came into effect in 2023 explicitly state that the House may adopt sessional or temporary orders relating to the operations of the House or its committees. This provision, which is similar to standing orders already adopted by a number of other Australian Houses, effectively codifies an existing practice that has had an important role in the development of the Council's procedures over many years.

One further issue that would benefit from review is whether there is any justification for maintaining the constitutional requirement that standing orders must be approved by the Governor before they become binding.

It appears that the requirement for standing orders to be referred to the Governor for approval is shared by only two other Australian jurisdictions. With the bicentenary of the Legislative Council approaching in 2024 it is timely to ask whether this 'unnecessary fetter' on the House's freedom to determine its procedural rules, which was introduced in 1842, continues to serve the interests of good government in New South Wales.

THE ADOPTION OF THE CLOSURE IN THE NEW ZEALAND HOUSE OF REPRESENTATIVES

DAVID WILSON

Clerk of the House of Representatives, New Zealand

Colin Lee's fascinating articles on the adoption of the closure in the House of Commons, published in *The Table*, has led me to consider the history of the procedure in New Zealand.[1] The closure was copied from the House of Commons and with reference to other Westminster-derived parliaments in 1931. As in the UK, the closure was introduced by the government to combat perceived obstruction in debate. It did not go through a process of testing and refinement, however, and was introduced and adopted in a form that endured for two decades. Despite its contentious beginnings, the closure has remained in the Standing Orders, somewhat refined, ever since its adoption. In the nine decades since its introduction, the use of the closure has been limited by the introduction of time limits on speeches and the power of the Business Committee to set time limits for debates.

Origin of New Zealand parliamentary procedure

The New Zealand Constitution Act 1852 (Imperial) authorised the establishment of representative parliamentary government in New Zealand and enjoined the Legislative Council and the House of Representatives to prepare standing orders for approval by the governor. In accordance with that instruction, the first select committee appointed by the House of Representatives was a Standing Orders Committee that was tasked to "prepare such Standing Orders as they may from time to time deem advisable to be adopted by the House."[2] The first Standing Orders were adopted and came into force on 16 June 1854. They mirrored the Standing Orders of the House of Commons to a large degree.

Although the Westminster system of government had not been developed for export to other nations,[3] colonial administrations initially operated versions of it. Later administrations selectively adopted components of Westminster that suited them and added other elements as they saw fit. All political systems in the colonies (later dominions), were hybrids that

[1] See Vols 88, 89 and 90.

[2] New Zealand Parliamentary Debates (NZPD) Vol. A, 1854, p.6.

[3] H.F. Madden, 1980. 'Not for export': The Westminster model of government and British colonial practice. The Journal of Imperial and Commonwealth History, 8(1).

continued to evolve.[4] Very early on, New Zealand began to modify aspects of its colonial inheritance by introducing universal suffrage, creating triennial elections and Māori seats in the House.[5] Nevertheless, New Zealand's parliament has undeniable Westminster roots. The early colonists adhered to the familiar, aiming to imitate the institutions of the United Kingdom, while recognising that they would not be identical. Rather, the colonists aimed to put in place bodies that would fulfil the same functions, seeing the British constitution as a model for colonial emulation.[6] Indeed, until 1995 the New Zealand House of Representatives enjoined the Speaker to be "guided by the rules, forms and usages of the House of Commons."[7]

Time limits on debate

The introduction of the closure had its genesis in the growing work of the government and parliament in the 20th century and time limits on speeches that were generous by today's standards. Originally, debates had no time limit and could continue until every member had spoken, though it was rare that they would all do so. As the House experience growing demands on its time, limits on speeches and on debates were gradually and incrementally introduced. In 1929, time limits on speeches were reduced after a review of Standing Orders. There would be a default time of 30 minutes per speech, unless otherwise specified. The time limit was introduced "with a view to avoiding, if possible, the application of the principle of the closure", which had been rejected by a majority of members on the Standing Orders Committee.[8]

The matter was debated in the House's consideration of the committee's report, where it was revealed that the Reform party members of the Standing Orders Committee had proposed the introduction of a closure procedure, but the Labour and United parties that formed the government had opposed it.[9] The Leader of the Opposition, Gordon Coates (Reform) "failed to see how the proposed Standing Orders would be workable"

[4] R. Rhodes, J. Wanna, P. and Weller, 2009. Comparing Westminster. Oxford University Press.

[5] E. McLeay, 2006. 'Climbing on. Rules, values and women's representation in the New Zealand parliament.' In Sawer, M., Tremblay, M. and Trimble, L. (Eds.), Representing Women in Parliament: A Comparative Study. Routledge.

[6] Madden, 1980.

[7] Standing Orders of the House of Representatives, 1992, SO 2.

[8] Appendices to the Journals of the House of Representatives (AJHR) 1929, I.18, p.1.

[9] NZPD 221, 1929, p.878.

without the application of the closure.[10] The debate primarily focussed on managing House time in other ways, ultimately agreeing that reduced times for speeches were preferable to closure.[11]

These events occurred in a time of considerable political turmoil in New Zealand. The 1928 election had not delivered a majority for any party. The Labour Party initially supported the United government but their alliance came apart as United proposed austerity measures to address the deteriorating economic situation. The Reform party then supported United in government from early 1931. The 1935 election marked the beginning of the predominantly two-party parliament that endured until the introduction of elections under the Mixed Member proportional system in 1996. Reform and United would merge into the National Party, following their defeat by Labour in the 1935 election.[12]

The introduction the closure

The United government had not supported the introduction of the closure but that changed in 1931 when Prime Minister George Forbes (United) attempted to introduce it to end a filibuster on a Finance Bill.[13] The bill was a response to the Great Depression and proposed reductions in public expenditure; notably, on the salaries of public servants. The Labour Party opposed the bill and delayed its passage by two weeks of long sittings under urgency "by using almost every device allowed under the Standing Orders."[14]

On 27 March, Forbes gave one day's notice that he intended to move a motion to amend the Standing Orders by providing for closures. The motion had been drafted by the government, based partly on the House of Commons' procedure and partly on a South African model. Curiously, Speaker Charles Statham and Clerk Thomas Hall had opted not to involve themselves in the preparation of the motion because it was so controversial.[15] While the Labour opposition argued that insufficient notice had been given and that the motion ought to be considered by the Standing Orders Committee, Statham ruled that no such requirements existed in British or New Zealand parliamentary practice.[16]

10 *Ibid.*, p.876
11 NZPD 221, 1929, p.897.
12 National or Labour have led every government since 1935.
13 Journals of the House of Representatives (JHR) 1932, p.11.
14 T.D.H. Hall, (1950). Manuscript on Parliamentary Procedure, Chapter 14, p.5.
15 *Ibid.*
16 NZPD 227, 1931, pp. 544-545

The motion was debated with Prime Minister Forbes making it clear that the new standing order was a response to the current stonewall:

> "I exceedingly regret that honourable members were not able to enter into the discussions in the House in a reasonable spirit, which the members of the Standing Orders Committee expected would be the case. It was then thought that there would be an end to what would be called a prolonged obstruction. However, that was not so, and it shows that under the test the business cannot be put through without the motion I am proposing. I would like to say that the contemplated alteration in the Standing Orders is nothing new. All the dominion Parliaments, with the exception of New Zealand, have the power to close debates, I have always been proud of the fact that our Parliament has been able to get along with that spirit of sweet reasonableness which has always been characteristic of the members of this House but... when we come down to a session of this sort, which is the most urgent in the history of this country, we cannot afford to have all this fiddling while Rome is burning. We have to get down to business."[17]

Labour party leader Harry Holland reminded the House that:

> "... this matter of the closure was discussed from every angle by the Standing Orders Committee. We had before us extracts from the Standing Orders of the different Parliaments of the Empire, and among the members of the Committee there was a consensus of opinion against adopting the closure. The Prime Minister knows that the Standing Orders Committee was wholly against the closure as part of the procedure of this Parliament."[18]

Amendments proposed by the opposition to dilute the effect of the closure were defeated. Late in the debate, the Labour members were particularly aggrieved by a government amendment to apply the closure only in the current parliament, by characterising it as an emergency procedure. Holland responded "the amendment simply means that the closure is not to be applied against any party other than the Labour Party."[19]

Despite the opposition of Labour members, after some 16 hours of debate the new standing order was adopted by 48 votes to 21. The *Evening Post* acknowledged that the rule was necessary "to safeguard against obstructive tactics by a minority"[20] while the *Evening Star* opined that "responsibility

[17] NZPD 227, 1931, pp.546-547.

[18] *Ibid.*, 1931, p.550.

[19] *Ibid.*, 1931, p.658.

[20] 28/3/1931, p.8

must rest with the obstructors who make it necessary."[21]

The parliamentary jurisprudence governing the use of closures was established by Speaker Statham shortly after its introduction. His rulings in relation to closure on the Meat-export Control Amendment Bill[22] in 1931 endure today and have been the basis of more recent rulings. He established that the Speaker and the chairperson in committee of the whole House had discretion about whether to accept a closure motion and that they should not do so if it was oppressive of the minority in the House[23] or if it infringed the rules of the House.[24]

The provision for closure ended with the dissolution of the 23rd parliament but Forbes renewed it with a fresh motion following the 1932 election, this time without a sunset provision.[25] The Labour party came to power at the 1935 election but did not move to repeal the provision for closure and was noted to have used it extensively.[26] It marked the permanent addition of a powerful weapon to the arsenal of the executive, enabling it to dominate the legislature to a significant degree throughout the following decades. The majority could limit debate through the closure and the minority had to rely on the judgement of the presiding officer alone to protect their rights.

Developments in the closure procedure

The closure was not changed until 1951 when the Standing Orders Committee next met and reported that it had only "slightly modified" the procedure. It did, in fact, recommend some important and enduring changes by removing the ability to interrupt a member's speech to move a closure and by requiring the Speaker to permit the motion only if they judged that it was not an abuse of the rules of the House or an infringement of the rights of the minority.[27] Reflecting the challenging and sensitive nature of the judgement required on this latter point, the closure could only be moved if the Speaker or Chairman of Committees was presiding.[28] The procedure had only appeared as an addendum to Standing Orders because

21 30/3/1931, p.8.

22 A private members bill to alter the way the Meat Export Control Board was appointed, introduced by Douglas Lysnar MP.

23 NZPD 228, 1931, pp.725 & 941

24 *Ibid.*, pp.24 & 34.

25 JHR 1932, p.10.

26 Hall 1950, chapter 14, p.5

27 AJHR 1951, I.17, p.2

28 Standing Orders of the House of Representatives, 1951, SO 197.

they were not reprinted between 1929 and 1950. In 1951 in appeared it the Standing Orders for the first time, as standing order 197.

Use of the closure peaked in 1961, when the National government moved it successfully on 31 occasions, often under urgency, to pass contentious legislation such as the International Finance Agreements Bill,[29] the Industrial Conciliation and Arbitration Amendment Bill[30] and the National Military Service Bill.[31] The use of the closure waned over the middle years of the second National government but built up again to be used 30 times in 1970 and 25 times in 1971. In 1974, Clerk of the House Eric Roussell tried, unsuccessfully, to persuade the Standing Orders Committee to adopt a 'guillotine' procedure to enable the House to set the maximum length of individual debates, as an alternative to closure.[32]

The rule about who could accept a closure was considered again in 1972[33] and changed in 1974 to enable the newly created positions of Deputy Speaker and Deputy Chairman of Committees to accept the closure.[34] This change caused some contention because, by custom, the Deputy Chairmen were government whips with a vested interest in progressing government business as quickly as possible.[35] Since 1985 whips have been ineligible for the positions.

The closure procedure received little attention from the House after that time. In 1985, the Standing Orders Committee reported "the view is expressed that closure motions should not be accepted too readily" but it did not recommend any formal changes.[36] Geoffrey Palmer, the architect of major parliamentary reforms in the mid-1980s, emphasised that there had been no substantive change to the rule and expressed some pride in the fact that New Zealand did not have a mechanism for a guillotine motion, explaining:

> "We are unusual in that, because Canada, Australia and the United Kingdom all have guillotine motions available to the Government to force

29 The International Finance Agreements Bill made provision for New Zealand to become a member of the International Monetary Fund (IMF).

30 The Industrial Conciliation and Arbitration Amendment Bill removed the presumption of compulsory unionism, though industries could still opt into compulsory unionism.

31 The National Military Service Bill required men to register for a ballot for compulsory military training at age 20, at a time when conscription was falling out of favour.

32 J. Martin, 2004. The House. Dunmore Press. p.279.

33 AJHR 1972, I.19, p.8

34 AJHR 1974, I.14, p.5.

35 NZPD 395, 1974, p.5751.

36 AJHR 1985, I.14, p.14

measures through the House at great speed. We have a closure motion. Of course, we have no upper House as those other countries do, and it is particularly important that we do not hurry matters too much."[37]

The 1990 report of the Standing Orders Committee remarked that presiding officers "should not be required to rehearse, at length, the reasons for the decision" to accept or decline a closure motion. This remark was not accompanied by any changes to Standing Orders and was, primarily, intended to save time by avoiding lengthy points of order, rather than to reinforce the authority of the presiding officers.[38] Since 1996, the Business Committee has been able to set time limits for debates so it is unlikely that a guillotine procedure will be adopted for the House.

Time limit for debate

Time limits for debates continued to be reduced in the decades following the introduction of the closure, because of the "continuous growth of the business of the House."[39] The Standing Orders Committee in 1951 recommended a default time limit of 30 minutes for any speech, unless otherwise specified.[40] It also agreed "it should be a matter of arrangement between leaders of parties to set aside a definite time for certain debates to run."[41] The 1967 review of Standing Orders further reduced default speaking times in debates from 30 minutes to 20 minutes. The Standing Orders Committee considered trends in overseas parliaments towards shorter speeches and advised that "some reductions in time limits of speech are desirable and that the provision of additional opportunities for members to address the House as suggested elsewhere in this report such reductions can be made without unduly restricting their rights of speech."[42] The ongoing truncation of speaking time reflected the mounting pressure on governments to progress legislation as a consequence of "the gradual extension of State activities."[43] A proposal by Labour members to extend some speaking times was rejected in 1968.[44] Government members were also opposed to reducing some speaking times.[45] While some members

[37] NZPD 464, 1985, p.5906.
[38] AJHR 1990, I.18B, p.19.
[39] Hall, 1950, Chapter 13, p.4.
[40] NZPD 294, 1951, p.22.
[41] AJHR 1951, I.17, p.3.
[42] AJHR, 1967, I.17, pp.11-13.
[43] *Ibid.*, p.18.
[44] AJHR 1968, I.14, p.15; NZPD 355, 1968, pp.120-122
[45] Memo from the Clerk to the Standing Orders Committee 24/4/1968.

felt that the shorter speaking time "restricted the rights of the ordinary member" others thought that "most members who have a case of real importance to make find that 20 minutes is enough."[46] Now speaking times are usually limited to no more than 10 minutes in most debates.

Closure remains in the Standing Orders, though it is usually only resorted to in committee of the whole House consideration of bills because most other debates now have a time limit, which precludes the moving of a closure. Chairpersons in the committee of the whole House have made rulings regarding the acceptance of a closure motion that make it more likely to be accepted if ministers engage constructively in debate[47] and less likely where bills have been drafted in ways that restrict debate.[48] Since 2011 the chair has possessed the power to select a handful of similar amendments to test the will of the committee, rather than holding a vote on each one. They may also group a member's amendments and hold a single vote on them. The aim is to spend time debating the substance of the amendment, rather than on voting. Nevertheless, the use of closure remains popular, with it being successfully deployed an average of 44 times each year of the 53rd parliament (2020-2023).[49]

Regular reviews of standing orders

Today, it would be unthinkable for a government to introduce major procedural change on its own motion, without consideration by the Standing Orders Committee. However, in 1931 regular, frequent review of parliament's rules were many years away. The review of 1929 had been the first for 35 years. No reviews were held again until 1951 when the abolition of the upper house necessitated some consequential amendments.

Thomas Hall was Clerk of the House between 1930 and 1945 and attributed the lack of reviews of Standing Orders to a variety of reasons, including short parliamentary sessions, a lack of professional, permanent parliamentary officials and a shortage of members with procedural knowledge. In addition, Hall felt that a strong institutionalisation of existing practices and a nostalgic attachment to rules copied from the House of Commons combined to stifle reform:

> "In general, the loyalty and affection felt for the homeland of the parents or grandparents of most of the adult population made for a conservative

[46] NZPD 355, 1968, p.115.

[47] NZPD 709, 2015, p.7664.

[48] NZPD 607, 20032, p.4421.

[49] Closure is used multiple times during contentious debates and each instance of its use has been counted in reaching this figure.

attitude towards changes made in the interest of an independence which did not need to be asserted which might suggest a lessening of that feeling."[50]

Political scientist Leslie Lipson, Hall's contemporary, shared his views and lamented that "the average calibre of legislative personnel is not good enough even though a few members on both sides are outstanding."[51]

The Great Depression and Second World War are likely to have focussed the minds of members on important external issues rather than the systematic review of their own rules. The House did not reduce its sitting hours during the Depression, possibly reflecting the fact that executive and legislative measures could be taken to address it. The House sat for significantly fewer hours during the Second World War than before or after it, reflecting the degree of cooperation between government and opposition particularly during the early years of the war.[52] Standing Orders reviews became more frequent in the decades following, with three reviews in the 1960s and three in the 1970s. After a complete rewrite of Standing Orders in 1985, a review was held in each parliament, bar one.[53]

Conclusions

The introduction of closure was driven by expediency. It was based on overseas practice and ultimately, enthusiastically employed by all governing parties. Today, such an important change to parliamentary procedure would likely not be made in the face of objection from the parliamentary opposition and without endorsement by the Standing Orders Committee. Coalition governments have been the norm in New Zealand since the introduction of the MMP electoral system in 1996, so government parties accept that certain policies may not garner sufficient support to pass.[54] They have no recent history of changing parliament's rules to get their way. The utility of the closure has been somewhat limited by the prevalence of time-limited debates in the Standing Orders and the power of the Business Committee to set debate times. It remains a feature of protracted debates in

[50] Hall, 1950, Chapter 17, pp.1-3.

[51] L. Lipson, 1948. The Politics of Equality. University of Chicago Press. p.335.

[52] The House sat for an average of 446 hours a year in the five before the Second World War. It sat for an average of 368 hours each year during the war and for an average of 797 hours a year in the five years following.

[53] In the 46th parliament (1999-2002) an early election did not leave time for the Standing Orders Committee to complete its work.

[54] The exception was the 53rd parliament (2020-2023), when the Labour Party held an outright majority in the House.

the committee of the whole House. The only recent change to the procedure has been to alter the language of the motion required to move a closure; a change made as part of a move to modernise parliamentary jargon in the 2023 review of Standing Orders.[55]

The adoption of the closure was the most significant procedural reform of the first half of the twentieth century. The ability of the majority to curtail debate altered the character of the House, orienting it towards the rapid despatch of business. It was a valuable weapon for the executive which, in the predominantly two-party parliament between 1935 and 1996, guaranteed it legislative success. While other procedural tools now exist to deal with delaying tactics, closure remains the most often used. Its use is seen as largely unremarkable and a normal part of parliamentary business, a far cry from the tumult that followed its introduction.

[55] The new wording "That debate on this question now close" replaced "That the question be now put", which was adopted in 1931.

TESTING THE LIMITS: RECENT QUESTIONS ON THE POWERS OF THE SCOTTISH PARLIAMENT AND DEVOLVED AUTONOMY

SARAH MCKAY

Senior researcher parliament and constitution, SPICe

Introduction

Recent questions over the limits of devolved competence and the autonomy of the Scottish Parliament have brought the Scotland Act 1998 into sharp focus and have involved the courts in the constitutional space in Scotland.

The UK Government has questioned the Scottish Parliament's legislative competence in relation to three Bills since 1999.[1] Meanwhile, the Scottish Government has sought legal clarity on competence in relation to legislating for a referendum on independence through the Lord Advocate's reference to the Supreme Court in June 2022.[2]

On 16 January 2023, the Secretary of State for Scotland, Alister Jack MP, announced that he intended to make an Order under section 35 of the Scotland Act 1998.[3] The Section 35 Order prevented the Gender Recognition Reform (Scotland) Bill, which the Scottish Parliament passed on 22 December 2022, from being submitted to the King for Royal Assent.

This was the first use of the section 35 power since the establishment of the Scottish Parliament. It attracted significant attention, even being described as the "nuclear option."[4] Whilst the Section 35 Order effectively blocked legislation passed by the Scottish Parliament from entering the statute book, the issue is not one of legislative competence. Rather,

[1] The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill; the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill

[2] The Supreme Court, Reference by the Lord Advocate to the Supreme Court, 28 June 2022, supremecourt.uk/news/reference-by-the-lord-advocate-to-the-supreme-court-28-june.html

[3] UK Government, Gender Recognition Reform (Scotland) Bill: statement from Alister Jack, 16 January 2023, gov.uk/government/news/gender-recognition-reform-scotland-bill-statement-from-alister-jack

[4] Stonewall, Statement on the UK Government's decision to block Scotland's Gender Recognition Reform Bill, 16 January 2023, stonewall.org.uk/about-us/news/statement-uk-government%E2%80%99s-decision-block-scotland%E2%80%99s-gender-recognition-reform-bill

the question is over the effect the Scottish legislation would have on the operation of reserved law. The use of section 35 is novel, in part at least, for the very reason that it did not question the competence of the Scottish Parliament to pass the Bill but has still resulted in testing the limits of the Parliament's autonomy in the devolved space.

This article explores three case studies where the limits of the Scottish Parliament's powers or autonomy have been questioned, and answers sought from the courts. It begins with a brief overview of the relevant sections of the Scotland Act 1998 before considering the examples. The article concludes by offering some thoughts on how the political community in Scotland has reacted and what this may tell us about the operation of devolution in Scotland.

The Scotland Act 1998

Legislative competence

The limits to the legislative competence of the Scottish Parliament are provided in sections 29 and 30 of the Scotland Act 1998.

Section 29 provides that an Act or provision of an Act of the Scottish Parliament is outside its legislative competence in certain circumstances:

- it relates to reserved matters,
- it is in breach of the restrictions in Schedule 4, (Schedule 4 sets out 'enactments protected from modification' by the Scottish Parliament for example the UK Internal Market Act 2020),
- it is incompatible with any of the Convention rights,
- it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.[5]

Section 30 of the Scotland Act gives effect to Schedule 5 which provides a list of general and specific reservations. These are matters where the Scottish Parliament cannot legislate. Specific reservations are listed under 11 Heads.

Scrutiny of Bills by the Supreme Court

Section 32A provides for consideration of Bills by the Supreme Court on questions of "protected subject-matter." Section 31(4) of the Scotland Act 1998 provides that Bills which relate to some matters are subject to a two-thirds majority. They are:

- the persons entitled to vote as electors at an election for membership of the Parliament,

[5] Legislation.gov.uk, The Scotland Act 1998, section 29

- the system by which members of the Parliament are returned,
- the number of constituencies, regions or any equivalent electoral area, and
- the number of members to be returned for each constituency, region or equivalent electoral area.

The Law Officers may refer to the Supreme Court the question of whether a Bill, or any provision of a Bill, relates to a protected subject-matter at any time during the period of four weeks following the rejection of the Bill where the Presiding Officer made a statement that provisions of the Bill relate to a protected subject-matter; or following the Parliament's passing of a Bill where the Presiding Officer made a statement[6] that in their view no provisions of the Bill relate to a protected subject-matter and the number of members voting in favour of the Bill at its passing was less than two-thirds of the total number of seats for members of the Parliament.

Section 33 provides that the Supreme Court may consider Bills on questions of legislative competence. It provides that the Law Officers can refer the question of whether a Bill, or any provision of a Bill, would be within the legislative competence of the Parliament. The Law Officers can do this at any time during the period of four weeks following passing of the Bill (or following the approval of a Bill at Reconsideration Stage).[7] This is the established route for challenging a Bill, or a provision of a Bill, already passed by the Parliament.[8]

Devolution issues – direct reference to the Supreme Court

Paragraph 34 of Schedule 6 allows the Law Officers to make direct reference to the Supreme Court on devolution issues which are not the subject of proceedings.[9]

The reference to the Supreme Court on devolution issues by the Lord Advocate in 2022 tested the purpose of this provision and the circumstances in which it could be used.

The UK Government argued that the provision was not intended to circumvent section 33.

[6] Such statements are made under section 31 of the Scotland Act 1998

[7] Law Officers are unable to make a reference under section 33 if they have already notified the Presiding Officer that they do not intend to make a reference. This does not apply where a Bill is passed following Reconsideration Stage and notification was given at passing prior to reconsideration.

[8] Aitken C, The Scottish Parliament Information Centre, Reconsideration Stage SB 23-05, 27 January 2023, sp-bpr-en-prod-cdnep.azureedge.net/published/2023/1/27/7469413b-0be9-4559-ad3a-f3dad3571d7d-1/SB%2023-05.pdf.

[9] Generally taken to mean not the subject of another case before the courts

Power to intervene in certain cases

Section 35 of the Scotland Act 1998 gives the Secretary of State a power to intervene in certain circumstances where the Scottish Parliament has passed a Bill, but before it is submitted for Royal Assent.

Section 35 allows the Secretary of State to exercise this power:

1. "If a Bill contains provisions—
   (a) which the Secretary of State has reasonable grounds to believe would be incompatible with any international obligations or the interests of defence or national security, or
   (b) which make modifications of the law as it applies to reserved matters and which the Secretary of State has reasonable grounds to believe would have an adverse effect on the operation of the law as it applies to reserved matters"[10]

A Section 35 Order can be made where there is no question over the Scottish Parliament's legislative competence to pass the Bill. The effect of such an Order is to prohibit the Presiding Officer from submitting the Bill for Royal Assent.

The case studies

Section 33 and the three Bills

The Supreme Court has considered three references made under section 33 of the Scotland Act 1998 related to Scottish Parliament Bills.[11]

Firstly, in July 2017 the UK Government introduced the European Union (Withdrawal) Bill in the UK Parliament. The UK and Scottish Governments disagreed over provisions in the Bill relating to where powers returning from the European Union, but within devolved competence, would sit. The Bill received Royal Assent in June 2018.

On 27 February 2018 the Scottish Government introduced the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill in the Scottish Parliament. The Bill was passed on 31 March 2018 and was referred to the Supreme Court under section 33 by the Attorney General and the Advocate General for Scotland. By the time the Supreme Court heard the case in July 2018, the European Union (Withdrawal) Act 2018 (and therefore the inclusion of the European Union (Withdrawal) Act 2018 in Schedule 4 to the Scotland Act 1998) was on the statute book.

The Court considered that three principal restrictions on the devolved

[10] Legislation.gov.uk, The Scotland Act 1998

[11] The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill; the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill; and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.

competence of the Scottish Parliament were relevant to the case – section 29(2)(d), since repealed in part, which related to incompatibility with EU law; section 29(2)(b) and 29(3) which relate to reserved matters and section 29(2)(c) and Schedule 4 which relate to protected enactments.[12]

The Court deemed that the reference raised "four principal questions", namely if:

- the Bill as a whole was outside the legislative competence of the Scottish Parliament because it relates to the reserved matter of relations with the EU
- section 17 was outwith the legislative competence of the Scottish Parliament
- section 33 and Schedule 4 were outwith the legislative competence of the Scottish Parliament
- various provisions of the Bill were outside competence because (i) they are incompatible with EU law, (ii) modify section 2(1) of the European Communities Act 1972, and/or (iii) are contrary to the rule of law or constitutional principle.

The reference raised two further questions:

- whether the Court could consider the effect of the UK Withdrawal Act 2018 in the context of the reference
- the effect of the UK Withdrawal Act 2018 on the legislative competence of the Scottish Parliament in relation to the Bill.[13]

The UK Government argued that the Bill would, in its entirety, modify the European Union (Withdrawal) Act 2018, stating that:

> "The whole and evident purpose of inserting an enactment into paragraph 1(2) of the Schedule 4 [to the Scotland Act] list is so that the Scottish Parliament is not permitted to create its own version of the same regime."[14]

The Court's judgement was that it was "not able to accept these contentions" stating:

> "We agree with the submission of the Lord Advocate that they conflate the mechanism of paragraph 1 of Schedule 4 with that under Schedule 5 to the Scotland Act...when the UK Parliament decides to reserve an area of

[12] McIver I & Evans A, the Scottish Parliament Information Centre, UK Supreme Court ruling on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill SB 18 88, 18 December 2018, sp-bpr-en-prod-cdnep.azureedge.net/published/2018/12/18/UK-Supreme-Court-ruling-on-theUK-Withdrawal-from-the-European-Union--Legal-Continuity---Scotland--Bill/SB%2018-88.pdf

[13] *Ibid*

[14] Supreme Court, UKSC 64, Judgment, the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill,13 December 2018 (paragraph 98)

law to itself, it lists the relevant subject-matter in Schedule 5 as a reserved matter. Parliament has not done so in relation to the subject matter of the UK Withdrawal Act. Instead, by adding the UK Withdrawal Act to the list of provisions, in paragraph 1(2) of Schedule 4 to the Scotland Act, which are protected against modification, the UK Parliament has chosen to protect the UK Withdrawal Act against subsequent enactments under devolved powers which would alter a rule in the UK Withdrawal Act or conflict with its unqualified continuation in force."[15]

The Court stated that it needed to "examine the individual provisions of the Scottish Bill to see whether they have that effect on provisions of the UK Withdrawal Act"[16]. Ultimately, its judgment was that a number of provisions within the Continuity Bill would modify the European Union (Withdrawal) Act 2018 contrary to section 29(2)(c) of the Scotland Act 1998 and therefore these matters were outside the Scottish Parliament's legislative competence. It found that section 17 of the Bill modified section 28(7) of the Scotland Act 1998, also contrary to section 29(2)(c), as it would have imposed a condition on the legal effect of laws made by the UK Parliament thereby limiting the Parliament's ability to make laws for Scotland.

The Scottish Government chose not to return the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill to the Scottish Parliament for a reconsideration stage.[17] Instead, it introduced the UK Withdrawal from the European Union (Continuity) (Scotland) Bill in June 2020.[18]

Secondly, in March 2021 the Scottish Parliament passed two Bills, the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill.[19] The Bills incorporate into Scots law two international treaties[20] to which the UK is a signatory. On 24 March 2021, the Secretary of State for Scotland, Alister Jack MP, wrote to the

[15] *Ibid* (paragraph 99)

[16] *Ibid* (paragraph 100)

[17] Scottish Government, Continuity Bill Update, 5 April 2019, gov.scot/news/continuity-bill-update/

[18] Scottish Parliament, UK Withdrawal from the European Union (Continuity) (Scotland) Bill, 18 June 2020

[19] Scottish Parliament, United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and European Charter of Local Self-Government (Incorporation) (Scotland) Bill

[20] The United Nations Convention on the Rights of the Child and the European Charter of Local Self-Government

then Deputy First Minister, John Swinney MSP, raising concerns about the Bills:[21]

> "Given the competence concerns with both of these Bills the UK Government will now use the four week period following Stage 3 consideration to make a decision on whether to use the powers under sections 33 and 35 of the Scotland Act 1998."

The Attorney General and the Advocate General for Scotland referred the bills to the Supreme Court under section 33(1) of the Scotland Act 1998[22]:

> "The first issue is that both Bills would bestow upon the Scottish courts extensive powers to interpret and scrutinise primary legislation passed by the sovereign UK Parliament. The UK Law Officers consider that these provisions modify s 28(7) of the Scotland Act 1998 and are therefore outside the legislative competence of the Scottish Parliament." [23]

The second issue raised in the references was that provisions in both Bills required "reading down[24] in order to come within the legislative competence of the Scottish Parliament."

The Court gave its Judgment on 6 October 2021, deciding that:[25]

> "sections 6, 19(2)(a)(ii), 20(10)(a)(ii) and 21(5)(b)(ii) of the UNCRC Bill and sections 4(1A) and 5(1) of the ECLSG Bill would be outside the legislative competence of the Scottish Parliament."

The Court noted that three provisions of the UNCRC Bill would modify section 28(7) of the Scotland Act 1998 and therefore be outside the

[21] Gov.uk, Letter from Secretary of State for Scotland to Deputy First Minister, 24 March 2021, assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973000/Letter.pdf

[22] Supreme Court, Reference by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill – The Supreme Court; Reference by the Attorney General and the Advocate General for Scotland – European Charter of Local Self-Government (Incorporation) (Scotland) Bill – The Supreme Court

[23] *Ibid*

[24] "Reading down" means to choose, where possible, an interpretation giving effect to legislation rather than invalidating it. S101(2) of the Scotland Act 1998 provides that any provision of an Act of the Scottish Parliament is to be read as narrowly as required for it to be within legislative competence.

[25] Supreme Court, Press Summary, Reference by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

Reference by the Attorney General and the Advocate General for Scotland – European Charter of Local Self-Government (Incorporation) (Scotland) Bill [2021] UKSC 42, 6 October 2021 , supremecourt.uk/press-summary/uksc-2021-0079.html

Parliament's legislative competence.

On the European Charter of Local Self-Government (Incorporation) (Scotland) Bill, the Court held that:

> "section 4, which creates an obligation to interpret legislation compatibly with the requirements of the Charter, so far as it is possible to do so; and section 5, which gives courts the power to declare legislation to be incompatible with the Charter, were outside the competence of the Scottish Parliament for the same reasons applied to the UNCRC Bill."[26]

In May 2022, John Swinney, the then Deputy First Minister told the Scottish Parliament that the Scottish Government intended to return the UNCRC Bill to the Parliament for a Reconsideration Stage.[27] It was similarly announced that the ECLSG Bill would be reconsidered at a Reconsideration Stage.[28] Addressing the Parliament, Mr Swinney said he had worked:

> ."..since receiving the judgment, to engage with the Secretary of State for Scotland to explore potential routes to increasing the effectiveness of incorporation of the UNCRC. Regrettably, the Secretary of State has made it clear that he is unwilling to address the issues with the devolution settlement that have impacted on our ability to do that."

The Scottish Parliament has not yet reconsidered either Bill.

The Lord Advocate's devolution issue reference and the independence referendum question

In a statement on a second independence referendum on 28 June 2022, Nicola Sturgeon, the then First Minister, indicated a wish for "legal clarity" on whether a second independence referendum was within the legislative competence of the Parliament.[29]

During the statement the then First Minister announced that the Lord Advocate had exercised her power under paragraph 34 of schedule 6 of the Scotland Act 1998 to refer the question of whether a Bill providing for a

[26] Scottish Government, European Charter of Local Self-Government Bill and the UNCRC Bill – next steps: statement by Deputy First Minister, 24 May 2022, gov.scot/publications/next-steps-european-charter-local-self-government-bill-uncrc-bill-statement-deputy-first-minister-john-swinney-tuesday-24-2022/

[27] Scottish Parliament, Official Report, Col 11, 24 May 2022

[28] The Bill was a Member's Bill introduced by Andy Wightman MSP. Andy Wightman was not returned to the Parliament at the 2021 election. Mark Ruskell MSP was designated as the additional member in charge of the Bill. The Scottish Government has stated it will support Mark Ruskell MSP as the member in charge.

[29] Scottish Parliament, Official Report Col 16, statement on independence referendum by the First Minister, 28 June 2022

referendum on Scottish independence would relate to a reserved matter to the Supreme Court.

The reference to the Supreme Court was filed on the afternoon of 28 June 2022,[30] with the Lord Advocate seeking:

> "from this Court a determination of the following question: Does the provision of the proposed Scottish Independence Referendum Bill that provides that the question to be asked in a referendum would be "Should Scotland be an independent country?" relate to reserved matters? In particular, does it relate to: (i) the Union of the Kingdoms of Scotland and England (para.1(b) of Schedule 5); and/or (ii) the Parliament of the United Kingdom (para.1(c) of Schedule 5)?"[31]

Professor Aileen McHarg of Durham Law School explained the issue thus:[32]

> "Essentially, the issue turns on whether an advisory referendum – one which seeks to ascertain the views of the Scottish people on independence, but does not do anything, legally, to bring it about– "relates to" the Union and/or the UK Parliament, both being matters reserved to Westminster. While a referendum Bill undeniably has something to do with those reserved matters, previous decisions have held that "relates to" requires more than "a loose or consequential connection", and depends on how the purpose and effect of the Bill are understood."

The reference was the first via paragraph 34 of Schedule 6 to the Scotland Act 1998. The Lord Advocate argued that the provision allows a law officer to "refer to the Supreme Court any devolution issue which is not the subject of proceedings" and that, given the question is not *the subject of other proceedings and that it* "raises a devolution issue (within the meaning of para.1(f) of Schedule 6) and accordingly that this Court is able to provide authoritative legal guidance on the issue."[33]

[30] The Supreme Court, Reference by the Lord Advocate to the Supreme Court, 28 June 2022, supremecourt.uk/news/reference-by-the-lord-advocate-to-the-supreme-court-28-june.html

[31] Scottish Government, Lord Advocate's written case in the matter of a reference by the Lord Advocate under Paragraph 36 of Schedule 6 to the Scotland Act 1998 in relation to whether the question for a referendum on Scottish independence contained in the proposed Bill relates to reserved matters, 12 July 2022

[32] McHarg A, The Scotsman, Indyref2 Supreme Court: Scottish independence Supreme Court case explained, what might happen next, 10 October 2022, scotsman.com/news/politics/indyref2-supreme-court-scottish-independence-supreme-court-case-explained-what-might-happen-next-3873813

[33] Scottish Government, Lord Advocate's written case in the matter of a reference by the Lord Advocate under Paragraph 36 of Schedule 6 to the Scotland Act 1998 in relation to whether the question for a referendum on Scottish independence contained in the proposed

The UK Government's argument to the Court was that the reference, and the question posed by it, did not fall within the jurisdiction of the Supreme Court afforded by paragraph 34 of Schedule 6 of the Scotland Act 1998. Further, the provision was not intended to circumvent the section 33 procedure for testing bill provisions and, as a result, the Lord Advocate's submission was premature because no Bill had been passed by the Scottish Parliament (a draft Bill had been published by the Scottish Government but not formally introduced in Parliament).[34]

The Court chose to hear arguments on jurisdiction[35] and the substantive issue together. The Court heard the case over two days – 11 and 12 October 2022. The case summary highlights the three key questions of the case:[36]

(1) Is the question referred by the Lord Advocate a "devolution issue"? If not, it cannot be the subject of a reference under paragraph 34 of Schedule 6, which would mean that the Court does not have jurisdiction to decide it.

(2) Even if the question referred by the Lord Advocate is a devolution issue, should the Court decline to determine the reference as a matter of its inherent discretion?

(3) Does the provision of the proposed Scottish Independence Referendum Bill that provides that the question to be asked in a referendum would be "Should Scotland be an independent country?" relate to reserved matters? In particular, does it relate to: (i) the Union of the Kingdoms of Scotland and England; and/or (ii) the Parliament of the United Kingdom?

On Wednesday 23 November 2022 the UK Supreme Court delivered its judgment[37]. The Court decided that that the question referred by the Lord Advocate is a devolution issue and therefore it did have jurisdiction to make a decision on the substance of the case (i.e., the route of the reference via paragraph 34 of Schedule 6 to the Scotland Act was acceptable). It further concluded that it should accept the reference:

"The reference has been made in order to obtain an authoritative ruling on a question of law which has already arisen as a matter of public

Bill relates to reserved matters, 12 July 2022

[34] UK Government, Written Case on behalf of HM Advocate General for Scotland UKSC 2022/0098, 11 October 2022

[35] That is whether paragraph 34 of Schedule 6 to the Scotland Act 1998 could be used to refer a question to the Court in this way and hence whether the Court had the authority to make a decision on the case

[36] The Supreme Court, Case ID2022/0098, 11-12 October 2022

[37] The Supreme Court, Judgment UKSC 31, 23 November 2022

importance. The Court's answer will determine whether the proposed Bill is introduced into the Scottish Parliament. The reference is not therefore hypothetical, academic or premature."

The Court's Judgment on the substance of the case – whether section 2 of the draft Scottish Independence Referendum Bill related to reserved matters – was unanimous. The Court ruled that the section did relate to reserved matters and that it is not within the Scottish Parliament's legislative competence to legislate for a referendum on independence:

"the question referred by the Advocate General is a devolution issue, which means that the Court has jurisdiction to decide it...the Court should accept the reference...the provision of the proposed Bill which makes provision for a referendum on the question, "Should Scotland be an independent country?" does relate to matters which have been reserved to the Parliament of the United Kingdom under the Scotland Act...Accordingly, in the absence of any modification of the definition of reserved matters (by an Order in Council or otherwise), the Scottish Parliament does not have the power to legislate for a referendum on Scottish independence."

The Court held, in line with established case law,[38] that a provision "will relate to a reserved matter if it has something more than a loose or consequential connection with it."

In deciding the question, the Court considered both the purpose of the provision and its "effect in all the circumstances."

The Court determined the purpose of the Bill "is to hold a lawful referendum on the question whether Scotland should become an independent country." The Court decided that:

"That question evidently encompasses the question whether the Union between Scotland and England should be terminated, and the question whether Scotland should cease to be subject to the sovereignty of the Parliament of the United Kingdom."

On effect, the Court determined that section 2 of the draft Bill (the holding of a referendum on Scottish independence) "*is not restricted to its legal consequences*." The Lord Advocate had argued that because section 2 of the draft Bill provided for a consultative referendum rather than a legally binding one, there was no legal effect. The Court's view differed:

"The effect of the Bill, however, will not be confined to the holding of a referendum. Even if it is not self-executing, and can in that sense be described as advisory, a lawfully held referendum is not merely an exercise in public consultation or a survey of public opinion."

[38] The Supreme Court, Judgment UKSC 51, 28 July 2016

Taking into account the purpose and effect, the Court's judgment was that it was "clear that the proposed Bill has more than a loose or consequential connection with the reserved matters of the Union of Scotland and England and the sovereignty of the United Kingdom Parliament. Accordingly, the proposed Bill relates to reserved matters and is outside the legislative competence of the Scottish Parliament."

Section 35 and the Gender Recognition Reform (Scotland) Bill

The Scottish Parliament passed the Gender Recognition Reform (Scotland) Bill on 22 December 2022 with the support of MSPs from across political parties.[39]

On 16 January 2023, it was announced that Secretary of State for Scotland, Alister Jack MP, was to make an Order under section 35 of the Scotland Act 1998[40] – a move that would prevent the Bill from being submitted for Royal Assent.[41]

Section 35 (2) of the Scotland Act 1998 provides that an Order made under section 35 must:

> "identify the Bill and the provisions in question and state the reasons for making the order."

As such, a Section 35 Order must state the Bill to which it relates and the provision or provisions which the Secretary of State believes are problematic in addition to providing the reason or making the Order.[42]

The Secretary of State for Scotland also made a statement to the House of Commons[43] and the UK Government published a policy paper setting out its 'policy rationale' – a 'Statement of reasons relating to the use of section 35 of the Scotland Act 1998'.[44]

Speaking in the House of Commons, the Secretary of State said his decision had not "been taken lightly" and that the "decision is centred on

[39] 86 for, 39 against, 0 abstentions, 4 MSPs did not vote, parliament.scot/bills-and-laws/bills/gender-recognition-reform-scotland-bill/stage-3

[40] Gov.uk, Gender Recognition Reform (Scotland) Bill: statement from Alister Jack, 16 January 2023, gov.uk/government/news/gender-recognition-reform-scotland-bill-statement-from-alister-jack

[41] Legislation.gov.uk, The Gender Recognition Reform (Scotland) Bill (Prohibition on Submission for Royal Assent) Order, 17 January 2023

[42] These matters are covered by Schedule 1 and Schedule 2 to the Order 'Relevant Provisions' and 'Statement of Reasons' respectively.

[43] Gov.uk, Oral statement to Parliament, 17 January 2023, gov.uk/government/speeches/statement-gender-recognition-reform-scotland-bill

[44] Gov.uk, Statement of reasons related to the use of section 35 of the Scotland Act 1998, 17 January 2023

the consequences of the legislation for the operation of reserved matters, including equality legislation across Scotland, England and Wales."

The House was also told that the Minister for Women and Equalities, Kemi Badenoch MP, met the then Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP, to discuss the UK Government's concerns before the Bill reached Stage 3.

The statement continued:

> "It is our assessment that the Bill would have a serious adverse impact on, among other things, the operation of the Equality Act 2010...The Bill also risks creating significant complications through the existence of two different gender recognition regimes in the UK, and allowing more fraudulent or bad- faith applications."

On the use of the section 35 power itself, the Secretary of State noted that it "is a significant decision" but argued that "the powers in section 35 are not new, and the Government have not created them; they have existed for as long as devolution itself." The power, in the words of the Secretary of State "provides a sensible measure to ensure that devolved legislation does not have adverse impacts on reserved matters." Continuing that "This is not about preventing the Scottish Parliament from legislating in devolved matters, but about ensuring that we do not have legal frameworks in one part of the United Kingdom which have adverse effects on reserved matters."

In the Scottish Parliament, the then Cabinet Secretary for Social Justice, Shona Robison MSP, set out the Scottish Government's position in response to an urgent question on 17 January 2023, stating:

> "I question why the UK Government has chosen for the very first time to use a section 35 order, against the clear will of this Parliament, on an issue that is within this Parliament's competence rather than, for example, a section 33 order, if there were issues with reference to reserved matters. I also question what the implications are for the future legislation of this Parliament... It does not agree with the bill, so it has blocked it. The decision that it has taken is political. This is a sad day for democracy and for devolution."[45]

The Scottish Government's position was further articulated in a letter from the Cabinet Secretary to the Secretary of State for Scotland dated 21 January 2023 in which the move was described as an "unprecedented intervention" which "represents an attack on the democratically elected Scottish Parliament and its ability to make decisions on devolved matters."

Legal action seemed a likely response from the Scottish Government. On 23 January the then First Minister, Nicola Sturgeon MSP, stated in an

[45] Scottish Parliament, Official Report Col 70, 17 January 2023

interview that:

> "There is...a real public interest in getting some judicial interpretation of Section 35 and what are the circumstances that it can be used, can't be used, what tests need to be passed, what evidence does the UK Government need to put forward"[46]

A prayer motion against the Order was tabled in the House of Commons on 24 January 2023.[47] The objection period for the Order ended on 7 March 2023.

On Tuesday 11 April 2023 a question initiated by the Scottish Government seeking an update on the Scottish Government's response to the Order was lodged in the Scottish Parliament. The Cabinet Secretary responded on 12 April 2023, indicating that the Scottish Government was to lodge a petition for judicial review:

> "To uphold the democratic decision of the Parliament, and ensure proper protection of devolution, Scottish Ministers will now lodge a petition for judicial review of the Secretary of State's decision."[48]

The response indicated the Scottish Government's view that the reasons for the Order were "insufficient justification" and that "the UK Government has not used the power in line with the Memorandum of Understanding between the UK and Devolved Governments (agreed in 1999 and updated in 2013), or as envisaged when the Scotland Act 1998 was passed."[49]

On 19 April 2023, after the Scottish Parliament's return from recess, the new Cabinet Secretary for Social Justice, Shirley-Anne Somerville, made a statement to the Chamber, setting out the reasons for recourse to the Court:

> "allowing the UK Government's veto on the democratic decisions of this Parliament to go unchallenged would undermine our democracy... the veto was used with no prior discussion or warning, and without ever hearing from the UK Government about what amendments it would have wanted in the bill. That cannot go unchallenged, because of the implications for future legislation and for devolution"[50]

The Scottish Government made public its petition for judicial review

[46] The Independent, Sturgeon: Testing limits of Section 35 veto in Court is in the public interest, 23 January 2023, independent.co.uk/news/uk/alister-jack-nicola-sturgeon-first-minister-government-scottish-government-b2267430.html

[47] UK Parliament, EDM 794, 24 January 2023. The prayer was signed by 52 members including SNP MPs, Green MP Caroline Lucas, Liz Saville Roberts MP of Plaid Cymru Scottish Liberal Democrat MP Alistair Carmichael and the Social Democratic and Labour Party's Colum Eastwood MP.

[48] Scottish Parliament, S6W-17198

[49] *Ibid*

[50] Scottish Parliament, Official Report, Col 25-26, 19 April 2023

on the same day.[51] The basis of the Scottish Government's challenge is articulated in the petition as follows:

"b. Material Error of Law: the Secretary of State's assertion that the Bill would have an adverse effect upon the operation of the law as it applies to reserved matters is founded upon a material error of law in respect of the consequences of the Bill.

c. Irrationality: having regard to the absence of any supporting evidence produced by the Secretary of State, and in the context of research, consultation and comparative information available to, and considered by, the Scottish Parliament during the Bill's passage, the Secretary of State's concerns about the operation of the Bill are irrational.

d. Irrelevant Considerations: that in having regard to what the Secretary of State asserts are insufficient safeguards in the Bill, he has had regard to a policy issue which is irrelevant to the making of an Order under s.35 SA.

e. Inadequate Reasons: that the reasons provided by the Secretary of State are insufficient to discharge the duty imposed on him by s.35 SA to provide reasons when making the Order with the consequence that the Order is unlawful."

Political response

It is perhaps notable that the above examples of questions put to the Court over the Parliament's competence and autonomy have been raised in the period since the referendum on the UK's membership of the European Union (EU).

The question may then be whether the root of the tension is political differences between the UK and the Scottish Governments or more fundamental challenges around how devolution is operating now, over two decades on from its design, and now outside of EU membership.

The Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee has noted the view of its adviser, Dr Chris McCorkindale, that leaving the EU:

> "has posed a number of significant challenges to the effective functioning of the UK constitution...territorial tension has been exposed and exacerbated by the relatively weak constitutional safeguards for devolved autonomy and the relatively weak mechanisms that have existed for

[51] Scottish Government, Petition for judicial review of the UK Government's Order under section 35 of the Scotland Act 1998 on the Gender Recognition Reform (Scotland) Bill, 19 April 2023

shared governance as between the UK and the devolved institutions."[52]

The Committee itself has been vocal on the challenges devolution faces, highlighting concerns over the UK Internal Market Act 2020 on regulatory autonomy;[53] the "balance of power between executive and legislature, both at the UK and devolved level"; and stating "that the Sewel Convention is under strain" and that there is "an urgent need to address the ad hoc and inconsistent approach to consent mechanisms for the exercise of delegated powers by UK Ministers in devolved areas."[54]

Professor Nicola McEwen told the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee:

> "Devolution may be at a turning point, although, as is always the case with turning points, we will not really know that until much later and further down the line. Changes were already afoot before Brexit came along, with the new devolution settlement making things a lot more complex and interdependent given the split between devolved and reserved powers. That was already in train, but Brexit clearly exacerbated it, creating a completely new constitutional landscape within which devolution is framed.
>
> We have seen a variety of legislative and intergovernmental processes to try to adapt to the UK being moved away from the EU regulatory umbrella. In some of those processes, Governments have worked together; in others, they have been in competition. We are also seeing competitive nationalisms, with the UK Government perhaps flexing its muscle for a variety of reasons, pushing back at the boundaries of devolution from the outside as the Scottish Government has sometimes pushed to extend them from the inside. The cumulative effect of all of that suggests to me that we are at some sort of turning point."[55]

Whilst the Court can give clarity on the devolution settlement articulated in the Scotland Act 1998, litigation may strain intergovernmental

[52] Scottish Parliament, Constitution, Europe, External Affairs and Culture Committee, The Impact of Brexit on Devolution, 22 September 2022, digitalpublications.parliament.scot/Committees/Report/CEEAC/2022/9/22/1b7a03d8-e93c-45a4-834a-180d669f7f42#Introduction

[53] Constitution, Europe, External Affairs and Culture Committee Report, The UK Internal Market, 22 February 2022, sp-bpr-en-prod-cdnep.azureedge.net/published/CEEAC/2022/2/22/73682bfb-fb43-47e5-b206-b79ec5e28262-2/CEEACS052022R1.pdf

[54] Constitution, Europe, External Affairs and Culture Committee Report, Legislative Consent Memorandum for the Retained EU Law (Revocation and Reform) Bill, 15 February 2023

[55] McEwen N, Official Report Col 2, 16 March 2023

relationships necessary to make devolution work.[56] It is perhaps of note that one of the Scottish Government's arguments for judicial review of the Section 35 Order relates to the UK Government not using the section 35 power in line with Memorandum of Understanding on devolution.[57]

Writing on the Section 35 Order, Professor McHarg and Dr McCorkindale, have stated:

> "in the context of what the devolved authorities see as a generalised attack on devolution...the Cabinet Secretary made clear that the Scottish Government felt it necessary to draw a line in the sand, to prevent further erosion of devolved autonomy. She pointed to the recent fate of the Sewel Convention, arguing that "once a precedent has been set, the UK Government will find it easier to justify using a power again and again, gradually eroding the hard-won devolved powers of Scotland." Echoing the breakdown of practices of notification and consultation over UK Bills affecting devolved matters which hitherto supported the Sewel Convention, Ms Somerville also emphasised the UK Government's failure to adhere to agreed procedures and practices for alerting the Scottish Government to concerns about devolved Bills, so as to avoid resort to formal intervention."[58]

Perhaps then, this is a pinch point in Scottish devolution where question of politics, practice and principle come together.

[56] Constitution, Europe, External Affairs and Culture Committee, Devolution Post EU, Official Report, 16 March 2023

[57] Gov.uk, Devolution: Memorandum of Understanding and Supplementary Agreement, September 2012

[58] McHarg & McCorkindale, UK Constitutional Law Association, Rescuing the Gender Recognition Reform (Scotland) Bill? The Scottish Government's Challenge to the Section 35 Order, 25 April 2023, ukconstitutionallaw.org/2023/04/25/chris-mccorkindale-and-aileen-mcharg-rescuing-the-gender-recognition-reform-scotland-bill-the-scottish-governments-challenge-to-the-section-35-order/

"WHILE THE SUN SHONE": HATSELL, LEY AND THE PROBLEMS OF PATRONAGE, 1802–1812

COLIN LEE

Managing Director, Select Committee Team, House of Commons, United Kingdom[1]

Introduction

On Monday 1 July 1811, the Speaker of the House of Commons, Charles Abbot, spoke with John Hatsell, the Clerk of the House of Commons, as they rode together. Hatsell recounted a difficult conversation he had had that morning with John Ley, the Deputy Clerk. Ley had claimed the right of nomination for any vacancy that should arise for the post of Second Clerk Assistant. Hatsell had disputed this, and was now seeking Abbot's support for his view that such appointments were for him as Clerk. In seeking to justify his own position, Hatsell also reflected on previous disagreements with Ley about the profits and patronage that the two men shared. He was remarkably critical of his colleague and friend of over forty years' standing. Abbot recorded in his diary that Hatsell said that Ley seemed to think "that he was to make Hay while the Sun shone, & mind nothing else."[2]

The relationship between Hatsell and Ley was central to their careers and to the development of the Clerk's Department between 1768 and 1814. The two of them had a sustained and vigorous recess correspondence, the surviving parts of which provide much insight on politics and procedure.[3] Their friendship provided the basis for the unique arrangement implemented in July 1797 whereby Ley became Deputy Clerk and performed the day-to-day duties of the Clerk of the House, while sharing equally with Hatsell in the huge profits of that office.[4] This article explores the development of

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

[2] The National Archives (hereafter TNA), PRO 30/9/35, Charles Abbot, Journal with interpolated correspondence, etc, 1811–1816, fo 67. All italics in citations reflect emphasis in the original.

[3] P J Aschenbrenner and C Lee, The Papers of John Hatsell, Camden Fifth Series, Volume 59 (Royal Historical Society, Cambridge, 2020) (hereafter Hatsell Papers), pp 10–11; C Lee, eds, and P J Aschenbrenner, "'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 (hereafter *The Table*), Vol 89 (2021), pp 66–119 (hereafter "Greater Stage"), p 67.

[4] C Lee, "'Much more than sufficient': Clerkly profits and patronage, 1796–1802", in

their relationship, and the matters of patronage and fees which unsettled it, between 1802 and 1811, alongside their very different relationships with Abbot as Speaker. The study also considers the origins and passage of the Bill for the House of Commons (Offices) Act 1812. The provisions of that Act were influenced not only by concerns about clerkly patronage, but also by perceived defects in a previous Act passed in 1800 with regard to the fees received by the Serjeant at Arms.

Some matters considered in this article have been explored previously in the work of Orlo Williams,[5] and Clare Wilkinson.[6] The present study is based in part on the most significant sources used by those two authors, most notably the diaries of Charles Abbot,[7] Hatsell's letters to Ley up to 1804,[8] and a select committee report which considered Hatsell's income in 1810.[9] But this article also draws upon a broader range of sources, including some papers of Abbot not used by Williams,[10] correspondence between members of the Ley family,[11] Hatsell's legal and financial papers,[12] and contemporary newspaper reports.[13]

"My cordial & fast friend": the new relationship between Abbot and Hatsell

On 10 February 1802, Charles Abbot was elected Speaker of the House of Commons. For Hatsell, this might not have appeared an auspicious development. The reformist Abbot and the increasingly reactionary

The Table, Vol 90 (2022), pp 78–120 (hereafter "Sufficient"), pp 79–83, 92–96, 106–107, 119–120.

5 O C Williams, The Clerical Organization of the House of Commons 1661–1850 (Oxford, 1954), pp 102–103, 107–117.

6 C Wilkinson, "The Practice and Procedure of the House of Commons c. 1784–1832" (University of Wales, Aberystwyth, PhD thesis, 1998), pp 24, 29–30, 38–42.

7 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 Devon Heritage Centre (hereafter DHC), 63/2/11/1, Ley of Trehill papers, 1583–1922, Ley-Hatsell correspondence.

9 Ninth Report from the Committee on the Public Expenditure, &c. of the United Kingdom, Printing, and Stationery, HC (1810) 373.

10 TNA, PRO 30/9/14, Miscellaneous Parliamentary Papers of Charles Abbot.

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

12 The Parliamentary Archives (hereafter TPA), HAT, Papers of John Hatsell.

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

Hatsell had clashed repeatedly since 1796—about relatively small procedural reforms, about the power of select committees to call officials of the other House as witnesses and about the appointment of a clerk in the Commons, Samuel Gunnell, as a parliamentary agent for the Irish Office when Abbot was chief secretary.[14] However, against this unpromising background, Hatsell soon established a working relationship with Abbot that matured into a firm friendship.

The development of this relationship owed a great deal to their shared closeness to Henry Addington, who was Speaker from 1790 to 1801 and prime minister from 1801 to 1804. Addington had been Abbot's patron, appointing him to ministerial office and subsequently securing him the speakership. Addington also remained close to Hatsell while in Downing Street, and encouraged Abbot to trust Hatsell's judgment.[15] Abbot recorded the premier's role as intermediary when he noted:

> "*Hatsell* by Mr Addington's means also became tho' slowly my cordial & fast friend & we maintained an unreserved & confidential intercourse."[16]

Even though Hatsell had relinquished his role at the Table, he made himself available to the Speaker to proffer procedural opinions, advising Abbot on the appropriate procedure in Committee of Supply for a grant to the Prince of Wales in March 1802.[17] Hatsell also exercised his continuing patronage as Clerk to ensure that Samuel Gunnell, who had worked closely with Abbot over several years, was promoted to a much more lucrative position in the Clerk's Department.[18]

Hatsell proved valuable to Abbot in other regards. Abbot had started his legal career by being called to the bar from the Middle Temple in 1783, but he surrendered his fellowship in 1792 to practise in the equity courts. Hatsell had been elected Treasurer of Middle Temple in November 1802,[19] and was thus able to smooth the path for Abbot's return to the Middle Temple as a bencher. On 12 May 1802, Hatsell wrote to Abbot to confirm that he had passed on Abbot's wish to be admitted as a bencher, and the gentlemen of the bench had unanimously agreed to it, on the understanding that Abbot would come "as a Private Gentleman, & not with Your Attendants

14 "Sufficient", pp 89–92, 96–97, 109–119.

15 "Sufficient", pp 89–90, 105–106; Williams, Clerical Organization, p 85.

16 TNA, PRO 30/9/31, Charles Abbot, Journal with interpolated correspondence, etc, 1757–1796, fos 97–97v.

17 Hatsell Papers, p 128.

18 "Sufficient", pp 99, 118.

19 DHC, 63/2/11/1/103, Hatsell to Ley, 14 Nov. 1802; Sun (London), 29 Nov. 1802, p 3.

as Speaker."[20]

However, individual instances such as this, while important, were of secondary importance compared with the broader commonality of interests and mindset that developed over time. They sustained a frequent correspondence, and went riding together regularly, as evidenced in Abbot's diary. They also dined together, most often at Westminster, although Hatsell also entertained Abbot at his country house.[21] Above all, in dealing with matters relating to his continuing responsibilities and powers as Clerk of the House, Hatsell was always mindful of Abbot's interests and concerns. In adopting that approach, Hatsell was to find himself increasingly at odds with his friend and colleague Ley, for whom his own family came first.

"Hatsell had refused to consent": an early skirmish

The seeds of contention between Hatsell and Ley were sown by the uncertain terms of their agreement when Hatsell partially retired and Ley became Deputy Clerk in July 1797. At that time, Ley had also secured a reversion on Hatsell's patent, so that if Hatsell predeceased Ley, the Deputy Clerk would become Clerk and assume all the rights belonging to Hatsell. Although they had reached an agreement on this, and also to share equally the profits of the office of Clerk,[22] there seems to have been less discussion on the exercise of patronage within the Clerk's Department during the period when Hatsell remained Clerk in semi-retirement.

The Clerk of the House was responsible for "the nomination of the Clerk Assistant, and all the other Clerks without doors."[23] Hatsell viewed this as integral to his patent rights as Clerk, and certainly did not consider that he had surrendered this power. As he put it to Abbot during the dispute over Samuel Gunnell's Irish agency work:

> "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."[24]

In 1800, legislation had been passed in the form of the House of Commons (Offices) Act which redirected the personal income of the Clerk

[20] TNA, PRO 30/9/14, Hatsell to Abbot, 12 May 1802.

[21] Hatsell Papers, pp 12, 141.

[22] "Sufficient", p 95.

[23] Members/Speaker (1781 edn), pp 169, 177. 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 precedentsofproceedings.com.

[24] Hatsell Papers, p 128. For the context of this letter, see "Sufficient", pp 109–117.

of the House to a fee fund, and established fixed salaries, to be paid from that fee fund, for the Clerk of the House and the Clerk Assistant.[25] However, the Act respected the property rights involved in Hatsell's existing patent and Ley's reversionary right to a patent on the same terms, only applying to the Clerk's income when Hatsell and Ley were both dead or had surrendered their patents. Moreover, the 1800 Act did not affect the patent rights in relation to making appointments.

Hatsell's correspondence with Ley in the years after 1797 demonstrates that he was largely content to treat his right of appointment as a reserve power, and delegate day-to-day management of the Department, including more junior appointments, to Ley. When it became evident that the Journal Office and some other offices would face increased demand following the Act of Union with Ireland, Hatsell told Ley:

> "You will settle the establishment in The C[our]t of Wards, in the manner, that You think best. As We have got more Members, & more Space, to put them in, We shall want more ... Clerks to attend their business."[26]

Hatsell wrote subsequently:

> "I am glad to hear, that You have got two young Men into the Office, who are likely to prove efficient Clerks. There will be probably business, of some kind or other, to employ them."[27]

Hatsell adopted the same attitude when an issue arose about staff for the Public Bill Office in 1803, writing to Ley:

> "Dorrington seems uneasy, at not hearing how the arrangement is made in the office—I told Him, I had heard from you on the subject, in the beginning of the Recess, but had not heard Your final determination; but that I left it entirely to You."[28]

However, Hatsell seemingly considered that there were limits to the informal delegation of patronage to his Deputy. In 1811, Hatsell recollected to Abbot, as the Speaker recorded:

> "it never entered into his [Hatsell's] head, That Ley should do more than arrange preferences amongst the Clerks in their gradation & succession,

[25] "Sufficient", pp 101–104. The Act also made comparable provision in relation to the Serjeant at Arms, which is considered further later in this article.

[26] DHC, 63/2/11/1/78, Hatsell to Ley, 26 Dec. 1800. The Journal Office was sometimes referred to as the Court of Wards on the basis of its previous location: Williams, Clerical Organization, pp 195–196.

[27] DHC, 63/2/11/1/83, Hatsell to Ley, 25 Jan. 1801.

[28] DHC, 63/2/11/1/110, Hatsell to Ley, 24 Oct. 1803. John Dorington, whose name was spelt by Hatsell as Dorrington, was Clerk of the Fees, and thus head of the Public Bill Office: W R McKay, Clerks in the House of Commons 1363–1989 (House of Lords Record Office Occasional Publications, 1989) (hereafter McKay, Clerks), pp 38–39.

& putting in boys at the bottom of the Office as beginners."[29]

The question of more senior appointments arose in 1801 in the context of the addition of a third clerk at the Table, and the appointment of Ley's eldest nephew, John Henry Ley, to that role. On that occasion, however, Hatsell was content both with the idea of the appointment and with Ley's exercise of nepotism, as was Addington as prime minister, so that the question of who was making the formal appointment did not seem to matter.[30]

The same was not the case in relation to the post of Clerk of Ingrossments in 1804. This post was held jointly, and one of the holders was the long-standing sinecurist Hardinge Stracey.[31] The second position was usually a "retiring" position, held by a clerk with long service, with the actual work done by juniors in the office. In 1804, this post became vacant by the death of Thomas Parker, who had been a clerk since about 1754.[32] Although there is no contemporary record of what happened in 1804, Hatsell told Abbot in 1811 of "a former attempt", which probably dated to the 1804 vacancy, "of Ley to appoint his own brother to be Clerk of Ingrossments." Ley's brother was Henry Ley, father of J H Ley. Henry was very close to his brother, and very keen on the family's advancement, and the proposal makes sense in this context. However, Hatsell, according to his later account to Abbot, had

> "refused to consent to & had threatened to appeal to the House upon it, if Ley persisted;—which thereupon Ley declined, & gave it up."[33]

It is possible that this incident caused a rupture in the relationship between Ley and Hatsell, at least in the short term. Until 1803, they had corresponded regularly, particularly during recesses when both were away from Westminster. The regularity and tone of their recess correspondence is illustrated by an occasion in 1803 when Hatsell sent several letters to Ley without reply. Hatsell joked that he did not know whether Ley was alive or dead, and that he might be writing to Ley's executor, only to then report that three letters from Ley arrived together after a postal delay.[34] However, from 1804 onwards, there is no surviving correspondence between them. This might not mean that such correspondence ceased. Ley made a request shortly before his death in 1814 for all his letters and papers to

[29] TNA, PRO 30/9/35, fo 63.

[30] "Sufficient", pp 106–108.

[31] Members/Speaker (1781 edn), p 184; "Sufficient", p 98; Williams, Clerical Organization, pp 141–142, 229–231; McKay, Clerks, p 90.

[32] McKay, Clerks, pp 79, 122.

[33] TNA, PRO 30/9/35, fo 63.

[34] DHC, 63/2/11/1/108, Hatsell to Ley, 13 Oct. 1803; DHC, 63/2/11/1/109, Hatsell to Ley, 16 Oct. 1803; DHC, 63/2/11/1/110, Hatsell to Ley, 24 Oct. 1803.

be destroyed.[35] This was not carried out in full, but Henry Ley might have been keen to give effect to the instruction so far as it related to disputes which concerned the Ley family interest. Social contact between Ley and Hatsell was certainly restored by 1806, when the latter stayed with the Ley family at Trehill.[36]

"My poor wife": Hatsell's family

Hatsell's decision in 1797 not to surrender his patent rights and to retain half of the income associated with his office may have been connected in part to the costs associated with his country house living, which sometimes exceeded £1,000 annually in the 1790s.[37] In 1799, he moved from the country house which he had previously rented at Bradbourne to a grander and more expensive house at Marden Park, near Godstone in north east Surrey. This house had been created in the 1670s as the "magnificent seat" of the City of London magnate Sir Robert Clayton.[38] In 1799, the property belonged to another Sir Robert Clayton, the third baronet. He died in that year without issue, and the baronetcy and the property at Marden Park passed to his cousin, William Clayton. Sir William was settled in Buckinghamshire, and decided to rent the property at Marden Park, which Hatsell first occupied on 29 September 1799. In 1801, the total expenditure associated with the upkeep of the house was £2,096 11s 7d, although it fell back in the following years.[39] In 1807, Sir William Clayton increased the annual rent by £100, which Hatsell agreed to pay "rather than to be turn'd out, & to look for another Place."[40] The total annual expenditure rose to £2,114 1s 2d in 1808 when Hatsell stayed at Marden Park for 24 weeks.[41]

When Hatsell first established his expensive habits as a country gentleman, he did so along with his wife, Elizabeth Barton, whom he had married in 1778.[42] On occasions, their movements attracted the interest of the newspapers, with one noting in June 1804 that "On Wednesday last, Mr and Mrs Hatsell removed from their house in Cotton-garden to

35 DHC, 2741M/FZ15, Testamentary instructions of John Ley, 8 June 1814.

36 Hatsell Papers, p 136.

37 "Sufficient", pp 88–89.

38 Oxford Dictionary of National Biography online (hereafter ODNB), Sir Robert Clayton.

39 TPA, HAT/1/1, Account book for Bradbourne and Marden Park, 1792–1816.

40 TPA, HAT/3/6, Note by Hatsell on rent for Marden Park, 30 July 1807.

41 TPA, HAT/1/1.

42 "Sufficient", p 86.

Marden-park, Surrey."[43] However, this was to be the last such notice. On 1 December 1804, Mrs Hatsell died at Cotton Garden "after a very long illness."[44] During her final illness, she was cared for by one of Hatsell's servants, Diana Brill, to whom Hatsell paid £4 11s for her "attentions to my poor Wife, whilst she lay so long ill."[45] Hatsell had no children of his own. In December 1781, when he contemplated what he saw as an especially bleak political outlook, he wrote that

> "I ... amuse myself in my own way, & having, thank God! no posterity for whom I am anxious, hope that I shall be able to bear my share of the Calamities that are impending over us with submission & patience."[46]

Elizabeth did have two sons from a previous marriage. The elder, John Barton, was appointed chaplain to the House of Commons through his stepfather's influence in 1802, and subsequently became a canon at Canterbury Cathedral, but he died soon thereafter in 1803.[47] The younger, Charles William Barton, who went by the first name Newton, was appointed as Addington's secretary when he became prime minister in 1801, but he seems to have led an unsettled life and was "unfortunately drowned ... while bathing at Worthing" in June 1808.[48] After Elizabeth's death, Mary Barton, the childless widow of John Barton, joined Hatsell's household, becoming chatelaine both at Cotton Garden and Marden Park.[49]

"With You, & towards You, I always think aloud": the end of Addington's premiership

Hatsell's influence and access to patronage had, over the years, relied in part on his close relationship with Henry Addington, first as Speaker and then, from February 1801, as prime minister.[50] For much of 1802 Addington remained politically in the ascendant, but his fortunes declined in 1803, with his predecessor William Pitt moving more conspicuously into opposition. In June 1803, Hatsell wrote to Addington urging him to reconcile with Pitt, who, he felt "would not be averse to the opening of a new Negotiation, to renew again that Private & Political Friendship, which formerly subsisted

43 Sun (London), 29 June 1804, p 3.

44 Bury and Norwich Post, 12 Dec. 1804, p 2.

45 TPA, HAT 3/6, Note by Hatsell of money belonging to Diana Brill in his keeping and associated interest.

46 Hatsell Papers, p 48.

47 "Sufficient", p 87; Hatsell Papers, p 3.

48 "Sufficient", p 106; Oxford University and City Herald, 11 June 1808, p 3.

49 Hatsell Papers, p 3.

50 "Sufficient", pp 95, 105–107.

between You." In view of the renewal of hostilities with France and "the great Struggle we are about to make", Hatsell considered it foolhardy not to invite Pitt to join the administration as War Minister or at the Admiralty. In advising "reconciliation" with Pitt, and acknowledging Pitt's pre-eminence in wartime, Hatsell knew he was testing the strength of his friendship with Addington, ending his letter as follows:

> "I make no apology for having written it; as I may flatter myself, I have a right to say to You, what came with more importance from a Greater Personage, That, with You, & towards You, I always think aloud!"[51]

Addington and Pitt were not so easily reconciled, and Hatsell's suggestion that Pitt might serve in a subordinate position in Addington's ministry did not altogether ring true.

Hatsell's frank advice did not threaten his friendship with Addington. In the spring of 1804, Addington commissioned James Northcote, the prominent artist, to paint a portrait of Hatsell. When the commission was first reported, it was noted that Hatsell was someone "whom all parties hold in high esteem", and it was predicted that "an engraving from it would soon be in the hands of every Member of the House of Commons who values private worth, combined with official zeal, knowledge, and fidelity, manifested in a long course of public service."[52] The finished portrait was exhibited at the Royal Academy's exhibition at Somerset House in 1805. The main criticism levelled at the painting was that "the paper upon the table has rather the appearance of paper actually *stuck upon it*, in place of being painted, and is not folded with any degree of taste." The perceptive critic wondered whether Northcote had yielded to Hatsell's vanity, "who was probably ambitious of having the portrait of his paper, as well as himself, recorded upon the canvass."[53] Both this review and others noted that the painting involved "a striking resemblance" to the sitter. William Ley, Ley's nephew, commented: "old Hatsall's [sic] portrait the most conspicuous, & *uncommonly* like."[54]

Addington resigned the premiership in early May 1804, to be replaced by his former friend Pitt. Hatsell continued to encourage warmer relations between Addington and Pitt. A meeting between the two of them at the end of December 1804 to complete their reconciliation took place at Hatsell's office at the House of Commons, which was more neutral territory than

51 Hatsell Papers, pp 129–130.

52 True Briton, 31 Mar. 1804.

53 Bell's Weekly Messenger, 19 May 1805, p 8.

54 St James's Chronicle, 16 May 1805, p 5; DHC, 2741M/FC3/5, William Ley to Henry Ley, May 1805.

Downing Street.[55] Addington then joined Pitt's administration as lord president, and agreed to become Viscount Sidmouth so as not to threaten Pitt's supremacy in the Commons. Hatsell remained close to Sidmouth, such that he was counted by some as among Sidmouth's political grouping.[56]

"Not in any way connected with printing": limiting copy money

Although the pathways to patronage may have become more limited for Hatsell and Ley after Addington's resignation from the premiership in 1804, their financial position was continuing to improve. A significant element in the growing income which Hatsell received up to 1797, and which he shared equally with Ley thereafter, took the form of "copy money." This was the term used for a payment made to the Clerk of the House to compensate for the loss of income formerly available for copying manuscript documents as more House papers were printed. The rate was fixed at £1 for every £2 the House spent on printing.[57]

After 1800, the scale of parliamentary printing expanded very considerably. Some of this was directly attributable to Irish papers, which accounted for around a tenth of the total by 1806.[58] However, the main driver, partly influenced by the practice of the Irish House of Commons, was the decision to print a far higher proportion of papers laid upon the table.[59] This change led to a very rapid increase in expenditure on printing,[60] and consequently in the copy money paid to Hatsell and Ley. In 1803, the annual cost of House printing had risen to £8,382. The gross amount payable to Hatsell and Ley together was therefore over £4,000. After deducting taxes and a payment to the Clerk of the Journals, Hatsell estimated that he and Ley would receive £1,700 each, significantly above the amounts paid in the 1790s.[61]

At two points, one no later than 1804 and another in 1806 or early 1807, Hatsell held discussions with successive Prime Ministers about

55 Morning Herald, 31 Dec. 1804, p 2.

56 M Roberts, The Whig Party, 1807–1812 (London, 1939), p 339.

57 "Sufficient", pp 81–82, 95.

58 TNA, PRO 30/9/14, Return to a Note dated 17 May 1806, for an Estimate to shew what the Proportion of printing for Ireland particularly, bears to the whole Quantity ordered to be printed.

59 HC (1810) 373, p 201.

60 J C Trewin and E M King, Printer to the House: The Story of Hansard (London, 1952), pp 73–75; R Myers, ed, The Auto-biography of Luke Hansard, written in 1817 (Wakefield, 1991), pp 83–84.

61 DHC, 63/2/11/1/109, Hatsell to Ley, 16 Oct. 1803; Williams, Clerical Organization, pp 323–324.

ways to reduce this payment, but, as he later recollected, "The difficulty was to ascertain a distinct and permanent rule by which the public charge should be reduced, when it amounted beyond a certain sum."[62] In 1807, a mechanism was finally settled with Spencer Perceval, the new Chancellor of the Exchequer, whereby Hatsell and Ley "agreed to take a sum certain, instead of a continually increasing sum", which was based on an average for the period between 1801 and 1807 and amounted to a gross payment to Hatsell and Ley together of £4,300. The net amount received by Hatsell and Ley each was slightly less than £1,400 a year.[63]

According to Hatsell's later account to Abbot, provided when relations with Ley had deteriorated further, this agreement was reached despite opposition from Ley. Hatsell claimed in 1811 that Ley

"had resisted Hatsell's relinquishing the excess of Copy-Money,—until Hatsell said, he would himself at all events waive it, & lay before the Treasury a written note of his own waiver & Ley's refusal."

Ley had apparently given way at this point, but Hatsell was later to conclude from this and other episodes "That nothing but the peremptory mode would do with Ley."[64]

Hatsell's judgment in pressing for this limit was probably superior to Ley's in questioning it. The extent of parliamentary printing continued to expand. Within a year, the effect of the cap was to reduce by half the amount paid compared with the total that would have been payable without the cap.[65] The House's printer, Luke Hansard, continued to state the amounts that would have been paid had the cap not been set: in 1818, the total that would have gone to the Clerk to be shared with his Deputy was £9,805; in 1819, the figure was £12,398.[66]

Hatsell secured a limit on a payment that could hardly be justified just as parliamentary interest in the examination of public expenditure was reviving. The idea of a committee to analyse the control of expenditure—modelled on the Finance Committee which Abbot had chaired in the 1790s—was revived in 1807, when confidence in the effective administration of the

[62] HC (1810) 373, p 201.

[63] HC (1810) 373, pp 200–201; Report from the Select Committee on Establishment of the House of Commons, HC (1833) 648, p 226; P and G Ford, eds, Luke Graves Hansard His Diary, 1814–1841 (Oxford, 1962), pp xxi–xxii.

[64] TNA, PRO 30/9/35, fo 67.

[65] TNA, PRO 30/9/35, fo 67.

[66] Printing Expenses: Return to an Address dated 14 February 1821, HC (1821–22) 203, pp 1, 2.

war effort was at a low ebb.[67] The initial focus of the new Committee on the Public Expenditure was on sinecures, and it "struck a general alarm into sinecure placemen and peculators, as it is known to be composed of very active, ardently zealous reformers."[68] The Committee began a study of public offices, sinecures and pensions, and, in 1808, the Committee noted the continuation of offices "executed wholly or chiefly by a Deputy", pointing out that previous efforts of the Finance Committee and the House more generally to constrain them had not met with success. The new Committee also identified the risk to the efficiency of offices from granting reversions, which actively encouraged the creation of more roles filled by deputies.[69]

In 1810, the Committee began an extensive consideration of expenditure on printing and stationery, to which Hatsell presented a detailed account of his entire income, and not solely that element which was derived from copy money. The Committee argued unequivocally that copy money represented an abuse: it was an encumbrance to the public purse "for purposes not in any way necessarily connected with printing." They went on:

> "Although printing is a substitution for copying, it by no means follows that copying would have increased in any thing like the proportion that printing has done or that the latter affords any reasonable basis for calculating the compensation to be made upon the abolition of the former."[70]

It seems quite possible that, had Hatsell not shown his willingness to compromise by reaching agreement on the cap, the Committee would have recommended remedial action. That they did not do so was probably in part because of the limit that had been placed on income from copy money. It was also, as the Committee noted, because they knew that the system could not outlive Hatsell and Ley due to the passage of the 1800 Act, which provided for the current methods of determining income to cease when their patent rights expired.[71]

[67] Parl Deb, 10 Feb. 1807, cols 704–717.

[68] Parl Deb, 24 Mar. 1807, cols 178–187; Lady Holland, cited in HoPT, 1790–1820, Robert Biddulph.

[69] Third Report from the Committee on the Public Expenditure, &c.of the United Kingdom, Offices, Places, Sinecures & Pensions, HC (1807) 109; Parl Deb, 30 June 1807, cols 692–715; HoPT, 1790–1820, Henry Bankes; Third Report from the Committee on the Public Expenditure, &c. of the United Kingdom, Pensions, Sinecures & Pensions, HC (1808) 331, pp 125–128.

[70] HC (1810) 373, p 182.

[71] HC (1810) 373, p 181.

"More than double The Speaker's Income": the incomes of the Clerk and Speaker

The restraint shown by Hatsell and Ley—the latter possibly under duress—in relation to copy money was made much easier by the remarkable growth in other elements of their fee income. The main source of income for the Clerk of the House derived from bill fees, both those connected to the passage of private bills and those arising from the fees for engrossment of public as well as private bills.[72]

Hatsell's income up to 1797, and that he shared thereafter with Ley, had expanded greatly in the 1790s due to the growth of legislative business, especially enclosure bills.[73] This expansion continued apace after 1800. On 24 February 1804, Abbot noted in his diary:

> "Last day of receiving private petitions; 172 this session. Average about 200; last year 300. The profits of the Clerk of the House of Commons last year amounted to above 12,000*l*."[74]

In 1807, there were 268 private bills,[75] and Abbot noted in April that year how there was "an immense quantity" of private business such that the Table was "covered deep with Bills."[76] In 1811, 360 private bills were presented, an increase of 50 on the previous Session. Nor was the growth confined to private bills: in the 1811 Session, 128 public acts received Royal Assent, alongside 295 local and private acts, all generating fees in relation to engrossment.[77] This increase was due in part to the addition of Irish legislative business, in which the government took a leading role, and also to the increasing pace of economic activity which Hatsell himself noted.[78]

In his evidence to the 1810 inquiry into printing by the Committee on Public Expenditure, Hatsell declared that his fee income from private bills and the engrossment of both public and private bills amounted to £11,824 in 1809, to be shared equally between him and Ley.[79] The evidence that his

[72] "Sufficient", pp 80–81.

[73] "Sufficient", p 81.

[74] CDC, I.482.

[75] TNA, PRO 30/9/35, fo 32v.

[76] TNA, PRO 30/9/34, Charles Abbot, Journal with interpolated correspondence, etc, 1806–1810, fo 160.

[77] S Lambert, Bills & Acts: Legislative Procedure in Eighteenth-century England (Cambridge, 1971), p 52.

[78] J Innes, "Legislating for three kingdoms: how the Westminster Parliament legislated for England, Scotland and Ireland, 1707–1830", in J Hoppit, ed, Parliaments, nations and identities in Britain and Ireland, 1660–1850 (Manchester, 2003), pp 18–25, 32–33; Hatsell Papers, pp 133, 155.

[79] HC (1810) 373, p 200.

personal income for the prior year, once Ley had received his half, amounted to £6,913 16s 9d was available for all to see.[80] The Committee's report noted that the staggering growth in bill fee income made the continuation of copy money all the harder to stomach:

> "From the prodigious increase of business in the House, all Fees depending upon the transaction of that business have grown to an extent, which must have been entirely out of the contemplation of any of those who received their Offices many years ago; by which (if it had been adverted to at the proper time) a natural source of emolument was opened, affording an ample compensation for any diminution in this solitary branch of transcribing."[81]

The findings of the 1810 Committee on Hatsell's income were especially galling for one reader—the Speaker, Charles Abbot. The Speaker's annual salary had been set at £6,000 in 1790,[82] and had not increased since then, even though the net value had been reduced by taxation and inflation. Abbot estimated that the costs associated with the office of Speaker had increased, and noted that both Addington and his immediate successor as Speaker Sir John Mitford had told him that the salary was "inadequate."[83] Abbot resented the fact that his salary was fixed when, by his estimation, the business of the House had doubled in the years since the Act of Union.[84] He recorded that "The Clerk of The House of Commons had for many years more than double The Speaker's Income—without any burthen of Official Expenses & with infinitely less Labor."[85] The contrast seemed greater still as Abbot knew that Hatsell received an income greater than his for little or no work, alongside the matching income paid to Ley as Deputy Clerk.

"My express disapprobation": the 1811 dispute over table clerks

Hatsell must have been keenly aware that his income in semi-retirement exceeding Abbot's for a vastly tougher job was a potential source of resentment. He therefore formed a plan to use his continuing power of patronage to help sustain good relations with the Speaker. At a relatively early stage in Abbot's Speakership, Hatsell had told Abbot that he would

80 HC (1810) 373, p 200. The information was republished: see, for example, The Sun (London), 30 Aug. 1810, p 4. See also, Williams, Clerical Organization, pp 111–112 for some observations on Hatsell's calculation.

81 HC (1810) 373, p 182.

82 "Sufficient", p 93.

83 TNA, PRO 30/9/31, fos 57–57v

84 CDC, I.320.

85 TNA, PRO 30/9/31, fo 57v

allow the Speaker to recommend an individual for the post of Second Clerk Assistant—a post created in 1801 and held by J H Ley—should a vacancy arise, "thinking The Speaker most interested, & best qualified for judging of, the person proper for such a situation."[86] Hatsell also made this offer to Abbot as a way to fend off other proposals. Thus, when Hatsell received an approach from Addington asking him to appoint "a young man (a Mr Bowdler)" to any such vacancy, Hatsell told Addington of his prior engagement to Abbot, and Addington accepted this.[87]

In April 1807, Abbot sought to pin down Hatsell's offer, both by reminding him of the undertaking and by nominating a potential candidate. According to the record in the Speaker's diary, he began by recollecting the previous undertaking—"I told *Hatsell* that as He had obligingly said he would not appoint any person but such as I should approve of or recommend—*upon any Vacancy of a Clerk at the Table*"—and then went on to say that he had considered the matter further. He wished to "take the Liberty" of naming a potential candidate if Hatsell was willing to hear it. The individual Abbot then named was William Elias Taunton. Like Abbot, Taunton had been educated at Westminster and Christ Church, Oxford. He was of 8 or 9 years' standing at the Bar and Abbot's successor as Recorder of Oxford. He was also someone, Abbot told Hatsell, "for whose character, learning, discretion & diligence I could be Answerable."[88] Abbot then noted Hatsell's response:

> "He acceded entirely to my suggestion—It was agreed that neither of us should name him but that Hatsell shod take an opportunity of acquainting L[or]d Sidmouth and Mr Ley reporting that I had a person in my view, in order that they might no longer persist in urging their respective Candidates."[89]

There is no record in Abbot's diary of the outcome of any conversation between Hatsell and Ley, or indeed who Ley's candidate was at this point, and the matter seemed to remain in abeyance for several years.

On the morning of Monday 1 July 1811, Ley came to Hatsell with a

86 TNA, PRO 30/9/35, fo 63. The timing is deduced from the subsequent exchange with Addington, prior to him becoming Viscount Sidmouth.

87 TNA, PRO 30/9/35, fo 63. Possibly John Bowdler (1783–1815), who was a solicitor and had political ambitions: ODNB. He was the nephew of Henrietta Bowdler, who produced The Family Shakespeare in 1807.

88 TNA, PRO 30/9/34, fo 176v. Of Taunton, ODNB records that, as an advocate, he was a somewhat dull and slow speaker who, however, "made the monotony of his voice impressive and used his sluggishness as a power." Despite these qualities, he never became a clerk.

89 TNA, PRO 30/9/34, fo 176v.

proposal for a new arrangement for clerks at the table. Ley's proposal was to prove extremely testing for Hatsell and Abbot, and for relations between the three of them. The principal account of the exchanges between them lies in Abbot's diary, which is the source used in previous examination of the issue by Williams and Wilkinson.[90] However, the current analysis also draws upon a letter which J H Ley wrote to his father in mid-February 1812, which sheds new light on the arrangements proposed in the summer of 1811 by comparing them with what was under discussion in different circumstances the following year.[91] From these sources, it is evident that there were three contentious elements to Ley's proposals. The first concerned the question of who had the right to nominate to any vacancy that should arise at the table. The second concerned the nature of the vacancy, and possible ways in which it might be brought about. The third concerned the individual candidate that Ley was proposing.

According to Hatsell's oral account to Abbot on the afternoon of 1 July of the meeting that morning, "*Mr Ley had maintained an altercation with Him respecting the right to appoint to the place of Second Clerk Assistant*."[92] Ley claimed that, when Hatsell had stepped down from his duties at the table in July 1797, he had given Ley an assurance "that all the patronage should belong to Ley." This, Hatsell "as positively denied." He gave the reply already cited, that Ley's patronage was intended to extend only to junior appointments, not to bringing "*new* people into the head situations."[93] Hatsell also told or reminded Ley of the undertaking he had given to Abbot that, when a vacancy arose for the post of Second Clerk Assistant, "he should appoint any body whom I [Abbot] would recommend." It was implicit in this offer that Hatsell took it for granted that the appointment formally lay with himself, although Ley "seemed to think otherwise."[94]

In support of his position, Hatsell also told Abbot of his refusal to consent in 1804 to Ley's wish to appoint his brother as joint Clerk of Ingrossments, referred to earlier in this article. When Abbot and Hatsell conferred on 1 July, they agreed that the right to make an appointment "clearly belonged to the Clerk."[95] Hatsell also reaffirmed his commitment to the Speaker, telling

[90] Williams, Clerical Organization, pp 102–103; Wilkinson, "Practice and Procedure", pp 38–42.

[91] DHC, 63/2/11/18, 16/17 Feb. 1812. This letter is undated; the dating offered is based on contextual evidence.

[92] TNA, PRO 30/9/35, fo 63.

[93] TNA, PRO 30/9/35, fo 63.

[94] TNA, PRO 30/9/35, fos 63, 67.

[95] TNA, PRO 30/9/35, fo 64.

Abbot that

> "He should appoint nobody—but such as The Speaker of the time should recommend for the purpose—and he thought that to be *his* own Duty."[96]

Hatsell spent that afternoon searching his papers for any correspondence between him and Ley about the power of appointment, but could find none "& therefore it must rest (unless Mr Ley finds any thing to the contrary) on Our respective memories." He comforted himself that a vacancy seemed unlikely to arise and that "My death—or His death—puts an end to the question."[97]

Although Hatsell and Abbot were confident of their position with regard to a permanent vacancy, the situation was made more complicated because of the way Ley planned to bring about a vacancy, which is not fully apparent from the account in Abbot's diary, but can be deduced from the later account by J H Ley. In that letter, Ley's nephew compared the proposal advanced in the summer of 1811 with a different set of options in different circumstances considered in 1812, which will be explored in a subsequent article. Ley's preferred option in 1811 seems to have been to mimic the actions of Hatsell himself in 1797—to step back from the day-to-day execution of his functions and determine who would act in his stead. According to J H Ley, his uncle's position was that:

> "he had the immediate appointment in the case of any Vacancy, and that if he intended to resign himself being obliged to provide the payment of a person to do his Business, he considered he might to have the appointment of such person."[98]

Ley's intention was to retain the formal office of Deputy Clerk. On the assumption that Jeremiah Dyson, the Clerk Assistant, became the most senior clerk at the table, Ley would fund from his continuing generous income the difference between the salary which Dyson received as Clerk Assistant—£2,000—and the statutory salary of the Clerk of the House—£3,000. The same would apply to J H Ley in assuming the responsibilities of Clerk Assistant, with Ley funding the gap between his salary as Second Clerk Assistant of £1,500 and the Clerk Assistant's salary. As J H Ley put it in February 1812: "What was suggested in the summer was £1000 to Mr Dyson if he became Deputy—£500 to myself."[99] The third clerk at the table was also to receive a salary from Ley's continuing

96 TNA, PRO 30/9/35, fo 64, 67.

97 Hatsell Papers, p 155.

98 DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812.

99 DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812.

fee income, a salary which was expected to be "at least £1000."[100] In short, Ley was to follow the path taken by Hatsell in 1797, of retaining his income for doing little or no work, and deploy some of his windfall profits for the exercise of informal personal patronage. Under Ley's proposal, no new formal appointments to the posts of Deputy Clerk, Clerk Assistant or Second Clerk Assistant would be made, thus bypassing the formal powers of appointment vested in the Clerk.

The full details of the scheme envisaged by the Leys was possibly not shared with Hatsell during the initial discussions on 1 July. However, they were almost certainly included in a document which Ley submitted to Abbot on 18 July, which Abbot dubbed Ley's "plans for arranging the business of the Office." This included a proposal "for Mr L. to appoint *a young person to supply his absence at the Table*."[101] The likely nature of Ley's absence had already been trailed in Ley's conversation with Hatsell on 1 July, when Ley had "talked himself of being very possibly prevented by ill health of coming up to London in another Session of Parliament", at which point the arrangements would fall into place.[102]

The third aspect of the proposal, and potentially the most contentious, was the identity of the young person whom Ley planned to appoint as third clerk at the table—his nephew, William Ley, the youngest brother of J H Ley.[103] William, like his eldest brother, had been educated at Westminster School, spending time at his uncle's house in St Margaret Street.[104] However, unlike John Henry and their other brother Henry, William had not gone on to university. In March 1804, William, who was then 19, had made what was clearly not the first attempt to involve his uncle in efforts to find him useful employment through patronage for he began a letter by begging his uncle's "pardon for again mentioning a Subject, which has lately been much talked of, and I fear occasioned considerable uneasiness to you." William had heard that an old school friend had been put into a role at the Foreign Office despite knowing nothing of any foreign language; that friend was now on £200 a year. William asked his uncle to use his political connections to secure William a similar nomination.[105] In October the same year, William wrote again and thanked his uncle "for your continuing to bear in mind my affairs" and was satisfied that "as soon as you can bring

[100] DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812.

[101] TNA, PRO 30/9/35, fo 72.

[102] TNA, PRO 30/9/35, fo 64.

[103] TNA, PRO 30/9/35, fos 63–64.

[104] DHC, 63/2/11/15, Ley to Henry Ley, 21 July 1800.

[105] DHC, 2741M/F/C/7/12, William Ley to Ley, 30 Mar. 1804.

the matter to a finish you will."[106] These efforts obviously came to nothing, because in 1807 Ley approached Spencer Perceval, the chancellor of the exchequer, asking him to intervene with the prime minister, the Duke of Portland, about a role for William, but Portland was unable or unwilling to accede to the request.[107]

By 1811, William Ley had lodgings in New Palace Yard, close to the House of Commons and the house in St Margaret's Street where his uncle and eldest brother lived. William followed the political and social scene in London, and seemingly received an allowance from his father to maintain the lifestyle of a gentleman. He was still not in gainful employment, although he was to tell Hatsell in March 1812 that

> "I had been under the eye of my Uncle & brother, & heard & thought a great deal about the business, & actually possessed a document which I c[oul]d shew him [Hatsell] of my having attended to business."[108]

Given William's underemployment and Ley's track record of viewing members of his family as the most worthy beneficiaries of patronage, it can hardly have come as a surprise to Hatsell when Ley proposed William—or, as Abbot put it, "another of his nephews."[109] Abbot also learned subsequently that J H Ley was deeply involved in the scheme, referring in his notes at the end of the Session to "J H Ley's attempt to introduce his younger Brother as a *temporary* Assistant."[110] J H Ley referred himself in February 1812 to "the Plan I had proposed to the Speaker last year."[111]

Hatsell and Abbot carefully coordinated their response to the proposals made by the Leys. The starting point was the assertion of Hatsell's patent rights. At their meeting on 1 July, the Speaker and Clerk agreed that, if Ley approached Abbot, the latter would say

> "That the *question of appointment* could not arise during the Joint Lives of H. & L. or of the Survivor for in either case the right clearly belonged to the Clerk,—and no other person."[112]

When Ley did indeed come to Abbot to broach the matter on 18 July, Abbot replied as agreed:

> "That in the case of a permanent vacancy, the Patentee would of course

[106] DHC, 2741M/F/C/7/17, William Ley to Ley, 24 Nov. 1804.

[107] DHC, 63/2/11/1, Appendix, Handlist of certain other letters on parliamentary affairs preserved in the Ley MSS, summary of Spencer Perceval to Ley, 4 May 1807.

[108] DHC, 63/2/11/18, William Ley to Henry Ley, 11 Mar. 1812.

[109] TNA, PRO 30/9/35, fo 64.

[110] TNA, PRO 30/9/35, fo 79v.

[111] DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812.

[112] TNA, PRO 30/9/35, fo 64.

> fill up, & we must then submit to the inconvenience of a new person as in other case of necessity & He [the patentee] would afterwards go on to fill the same situation."[113]

In other words, if Ley died or relinquished his position as Deputy, all appointments at the table would be for Hatsell. If Hatsell died, all such appointments would be for Ley. In parallel with Abbot's response, Hatsell emphasised to Ley the undertaking which Hatsell had given to Abbot to appoint the Speaker's nominee to any vacancy as Second Clerk Assistant. As Clare Wilkinson has put it, "Abbot referred Ley to Hatsell and in turn Hatsell deferred to Abbot."[114]

However, Abbot and Hatsell also had to handle the proposal for Ley to relinquish his duties and propose new arrangements which would not involve formal appointments. Their approach here was to treat them as comparable to the long-established arrangements for deputising for short-term absences.[115] On 1 July, Hatsell and Abbot agreed that

> "as to the *occasional employment* of any person during Mr Ley's temporary absence, *I should not approve of any body but one of the Out-door Clerks for that purpose*."[116]

Hatsell confirmed the appropriateness of this position when he wrote to Abbot after their meeting: "(as You observ'd) His ill state of Health will only justify a *temporary* substitute."[117] When the matter was broached by Ley on 18 July, Abbot replied in the form agreed with Hatsell. He drew a sharp distinction between the process to be followed in the event of a permanent vacancy and Ley's proposition, and stated:

> "any *temporary* absence of either [sic] of the Three Clerks must be supplied as formerly by one of the Out-door Clerks such as *Mr Henry Gunnell, &* no inexperienced person."[118]

Abbot then wrote to Hatsell to inform him of what he had said to Ley.[119] In framing their response in relation to temporary substitutions at the table, Abbot and Hatsell were seemingly side-stepping the actual proposal envisaged by Ley, which was almost certainly to retire from table duties

113 TNA, PRO 30/9/35, fos 72–73.

114 Wilkinson, "Practice and Procedure", p 42.

115 "Sufficient", pp 93–94.

116 TNA, PRO 30/9/35, fo 64.

117 Hatsell Papers, p 155.

118 TNA, PRO 30/9/35, fo 72. Henry Gunnell was probably chosen as an example because he was the most experienced of the Outdoor Clerks, having been in service since 1770; he was to act as a substitute table clerk in 1814: McKay, Clerks, p 53.

119 TNA, PRO 30/9/35, fo 73.

altogether, while seeking to remain Deputy Clerk.

In the initial conversation between Abbot and Hatsell, the Speaker also made clear the extent to which the proposal to appoint J H Ley's brother caused him particular problems:

> "I told him, in general, my apprehensions of the inconvenience of having two of the same Family making a majority of Clerks at the Table;—which would render the control of the Speaker less effectual for all purposes of business."[120]

Abbot clearly feared that the younger brother would be in awe of his eldest brother, and the opportunity to draw on an additional table clerk as an occasional source of contrasting advice would thus be lost. It seems that neither Hatsell nor Abbot broached this specific aspect of Abbot's objections with Ley, although Abbot left Ley in no doubt that the proposal as a whole was one to which "*I could not consent*."[121]

Abbot followed up the next day by holding a meeting "together" with Jeremiah Dyson and J H Ley, who would be beneficiaries of the proposal as envisaged by Ley. At that meeting, Abbot

> "*declared my express disapprobation of the proposal to introduce a young man upon the Establishment of Clerks* for the particular purpose of doing the Duty of the deputy Clerk of the Ho. & becoming a Supplementary Assistant at the Table. That I told them, when necessary, must be according to former Custom, namely, by calling in some one of the most experienced Out-door Clerks for any such occasional purpose."[122]

Abbot attempted to frame the discussion as one about either temporary substitutions or the formal position under the patent:

> "Upon any *permanent* Vacancy, a new person must of course be appointed to the permanent Situation; but that must wait for the Event."[123]

A couple of days later Abbot received a reply from Hatsell which was summarised by Abbot as "*denying Ley's right* to appoint Clerks at the Table."[124]

Ley then let the matter lapse, as J H Ley reflected in a later letter:

> "You know Mr Ley's Energy in such Contests as well as I do, and that you might as well desire him to join in over the Church as to enter into such a Contest in which he certainly would not be able to succeed unless he could produce some written Document, which he does not know that

[120] TNA, PRO 30/9/35, fo 64.

[121] TNA, PRO 30/9/35, fo 72.

[122] TNA, PRO 30/9/35, fo 73.

[123] TNA, PRO 30/9/35, fo 73.

[124] TNA, PRO 30/9/35, fo 74v.

he possesses."[125]

Further damage had been done to the relationship between Ley and Hatsell. It was during the discussions with Abbot about Ley's scheme that Hatsell provided his accounts of the incidents referred to earlier in this article—the attempt by Ley to place his brother in the sinecure role of joint Clerk of Ingrossments and the resistance which Ley mounted to the cap on copy money. It was at this juncture that Hatsell referred to Ley's determination "that he was to make Hay while the Sun shone, & mind nothing else." It was also at this time that he advised Abbot that "That nothing but the peremptory mode would do with Ley."[126]

The professional disputes seem to have both reinforced and been reinforced by a decline in social interaction between the two friends. On 25 March 1812, William noted that it was "very odd" how rarely his uncle and Hatsell met. Ley reported that "this year he [Hatsell] had been worse than before as he did use to call once, but now he had not been at all, except one Morning when he sent to desire he [Ley] would come about some Money matters."[127] It seems that Ley did then call on Hatsell, at William's prompting, because on 1 April 1812, Mary Harris, Ley's niece and the sister of J H and William Ley, told her mother of an exchange that she had had with Hatsell earlier that week when the Clerk

> "told me with a degree of satisfaction that Mr Ley, *my Uncle* had ... called on him that morning in a friendly way, which he said was the first time he had seen him in his House for a twelvemonth except on business."[128]

The dispute in the summer of 1811 also had profound implications for relations between Abbot and Ley. As Williams has observed, "From this time onwards it is obvious from Abbot's [diary] entries that no love was lost between him and John Ley."[129] Some effects of this deterioration were evident in new legislation introduced at the start of the next parliamentary session.

"In several respects defective": the new Act

In 1800, principally at the behest of the then Speaker Henry Addington, Parliament had enacted legislation—the House of Commons (Offices) Act—which provided for an end to the fee income for the Clerk of the House and Serjeant at Arms, set out salaries for the Clerk, Clerk Assistant

[125] DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812.

[126] TNA, PRO 30/9/35, fo 67.

[127] DHC, 2741M/FC9/7a–7b, William Ley to Henry Ley, 25 Mar. 1812.

[128] DHC, 2741M/FC9/11a–b, Mary Harris to Mary Ley, 1 Apr. 1812.

[129] Williams, Clerical Organization, p 103.

and Serjeant, and empowered Commissioners to secure a fairer distribution of fee income among officials of the House. The Act respected the existing patent rights of the Clerk and Serjeant, and Ley's reversionary rights, so that the Act did not come into effect until those rights expired.[130] However, even before the new Act took full effect, a new Bill was introduced in February 1812, which became the House of Commons (Offices) Act 1812. The new legislation repealed the 1800 Act and declared in its preamble that the provisions of the 1800 Act "are in several respects defective, and in others require to be varied and amended."[131]

Section 7 of the 1800 Act provided that it would come into force when either the patents rights of Hatsell and Ley in respect of the clerkship or the patent rights of Edward Colman as Serjeant at Arms came to an end. In April 1805, Colman retired as Serjeant, and the Act therefore came into effect.[132] The office of Serjeant passed to his son Francis John Colman, who retired from the army as a lieutenant colonel in the same year, and who was entitled to the annual salary of £2,300 set in the 1800 Act, from which he was expected to pay his Deputy £300. An agreement seems to have been reached between father and son that some of this income would also go to his father in return for his retirement, although Edward also secured a pension from the Civil List.[133]

The salary for the Serjeant set by the 1800 Act was calculated on the basis of the average of fees for the postholder in the period 1790 to 1799.[134] Based on the increase of parliamentary business since 1800, it seemed reasonable to expect that the fee income from the Serjeant which passed to the new Commissioners would be somewhat higher. However, when the newly-constituted Commissioners examined the income of the Serjeant at Arms during the three years previous to Colman's retirement, they found that it was in fact below the salary to be paid to Francis, so they could not expect "any Surplus whatever" to be available to the fee fund. Indeed, the total receipts for the period from April to October 1805 were in fact only £1,111 5s 10d, which would go towards meeting Colman's statutory salary for the half-year period of £1,150.[135] The situation in the year to October 1806 was similar, with annual fee income of £2,109 17s 2d, again short of

130 "Sufficient", pp 102–104.

131 House of Commons (Offices) Act 1812, 52 Geo 3 c. 11, Preamble.

132 CJ (1808) 663.

133 "Sufficient", po 103–104; CJ (1805–06) 479, 484; "Edward Colman and the 'Job for Life'", available at mortiquarian.com/2013/07/06/edward-colman-and-the-job-for-life.

134 CJ (1799–1800) 690; "Sufficient", p 103.

135 CJ (1806) 639.

the statutory salary.[136] The same was true for the half-year ending in April 1807, when the deficiency was over £689, making a total gap between fee income and Francis Colman's statutory salary of £973 9s 1d since the Act had come into force.[137]

This discrepancy was explained by a defect in the 1800 Act. Section 4 required the Serjeant to pass to the fee fund "all Fees, Perquisites and Emoluments to which he might or could have been entitled, or which he may have been accustomed to receive, by virtue or in respect of his said Office, previous to the passing of this Act."[138] However, not all fees payable to the Serjeant were in respect of that office, as he also held the distinct post of Housekeeper to the House of Commons. The fees reported in the 1790s almost certainly included those as Housekeeper, but those fees were charged separately, on a different basis and for different work.[139] The Colmans, and the Deputy Housekeeper John Bellamy who calculated the fees, must have concluded these were not covered by the Act.[140]

Even without the income received by Colman as Housekeeper, the wider growth of parliamentary business and the additional fees associated with the 1807 general election ensured that a fee surplus was finally provided in the six months to October 1807, amounting to £1,688 7s 6d even after the deficiency was paid out.[141] The further surplus for the year to October 1808 after Colman's salary was paid was £683 9s 6d, which was retained by the Commissioners in case the surplus proved not to be recurring.[142] In fact, further surpluses were reported in the three following years.[143]

Alongside the questionable treatment of his income as Housekeeper, Francis Colman's relations with Abbot were facing other difficulties. In 1810, Colman had been sharply criticised by Abbot and the prime minister, Spencer Perceval—albeit perhaps unfairly—for what they portrayed as his ineffectiveness in executing a warrant issued by the House for the committal to the Tower of London of the radical MP Sir Francis Burdett

[136] CJ (1806–07) 408.

[137] CJ (1808) 663.

[138] House of Commons (Offices) Act 1800, 39 & 40 Geo 3, c 92, section 4.

[139] CJ (1727–32) 807–09; HC (1833) 648, p 11 and QQ 325, 1119.

[140] John Bellamy managed the accounts and ensured the discharge of the Housekeeper's functions: see P Seaward, "Bellamy's", available at historyofparliamentblog.wordpress.com/2020/11/24/bellamys.

[141] CJ (1808) 663.

[142] CJ (1809) 657.

[143] CJ (1810) 717; CJ (1810–11) 656; CJ (1812) 781.

for contempt.[144] After the failed first attempt, Colman had to return later to detain Burdett with the support of military force, creating a conflict between the radical City of London and the forces of the Crown and the House of Commons of the kind that Perceval and Abbot wished to avoid, and which Burdett relished. It led to a legal dispute which was not resolved until the following year.[145]

From 1809, alongside his role as Serjeant, Colman had established a new recreation for the recesses—"to relieve the tedium of the vacation serving in the Portuguese army with the rank of Brigadier-General." In 1811, this proved too much and he died in Lisbon in August "from fever and debility brought on by exertions in his profession too great for his constitution."[146]

Abbot was not going to let this opportunity go to waste. He approached Perceval to suggest that a temporary appointment should be made to the office of Serjeant, and that new legislation should be introduced before a permanent Serjeant was appointed. John Clementson, who like his father and namesake before him had been Deputy Serjeant, was appointed Serjeant on 7 January 1812 and then, as Abbot recorded:

> "The interval between Mr Colman's death—& whilst Mr Clementson held the Office of Serj ad interim—& the vacancy was not finally & permanently disposed of—was thought by Mr Perceval to be a convenient opportunity for amending & completing the arrangement in parts where the former Act was very defective."[147]

Leave for the Bill's introduction was given on 11 February, and Abbot was consulted on a draft of the Bill the same day and "corrected" it.[148] The Bill was introduced the following day and read a second time on 13 February, when Abbot sent the government his proposals for the salaries—"with the Blanks filled up"—which were inserted on 17 February.[149] The Bill passed the Commons on 19 February, was returned from the House of Lords without amendment on 25 February and received Royal Assent on 28 February.[150] A week later Clementson's short tenure as Serjeant ended, and Henry Seymour was appointed to the role.

144 Sir Francis Burdett, ODNB; CJ (1810) 260–270.

145 CJ (1810) 346, 351, 480; Sir Francis Burdett, ODNB; *The Times*, 20 Jun. 1811, p 2; T E May, A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament (London, 1844), pp 52–55.

146 "Edward Colman and the 'Job for Life'."

147 TNA, PRO 30/9/35, fo 89; 52 Geo 3 c. 11, section 2.

148 CJ (1812) 108; TNA, PRO 30/9/35, fo 118.

149 CJ (1812) 111, 113, 120; TNA, PRO 30/9/35, fos 118v, 121v–122.

150 TNA, PRO 30/9/35, fo 122; CJ (1812) 129, 149, 158.

Much of the new statute effectively re-enacted the provisions of the 1800 Act, including the establishment of the same Commissioners as under the earlier legislation, but there were several differences. First, section 5 of the new Act noted that the posts of Serjeant and Housekeeper had "for a long time past" been held by the same individual, provided that this should continue to be the case and, most importantly, provided that "the Salary, Fees and Emoluments heretofore usually paid to the Housekeeper" should be paid to the Commissioners "and be accounted for to the said Commissioners, and applied by them together with and in like manner as all the Salaries, Fees, Perquisites and Emoluments are by this Act directed to be paid and applied."[151] Second, under section 6, those appointed by the Commissioners to ascertain the fee income to be passed to the Commissioners were required to certify the accuracy of their accounts under oath.[152]

There were also some changes to the provisions on salaries. That payable to the Clerk of the House was the same as under the 1800 Act,[153] but the salary of the Clerk Assistant was increased by £500.[154] A salary was also set for the post of Second Clerk Assistant, established since the passage of the last Act, initially of £1,500, rising to £2,000 after five years of service.[155] The Serjeant's basic salary was reduced to £2,000, but he was also to receive an additional payment of £300 until such time as he was provided with an official residence.[156] The salary of the Deputy Serjeant at Arms—the post previously held by Clementson to which he could expect to revert when a new Serjeant was appointed—was increased to £800, together with a payment of £200 pending the allocation of a residence.[157] A further provision empowered the Commissioners to pay additional allowances to office-holders in place of amounts awarded by Address to the Crown.[158]

The 1800 Act had been motivated in part by concerns about ill-paid junior clerks and enabled the Commissioners to make payments to those who needed it from "casual circumstances" or as a result of age or

[151] 52 Geo 3 c. 11, section 5.

[152] 52 Geo 3 c. 11, section 6.

[153] 52 Geo 3 c. 11, section 7; "Sufficient", p 103. The salary was £3,000, rising to £3,500 after 5 years in post.

[154] 52 Geo 3 c. 11, section 7; "Sufficient", p 103. The new salary was £2,000, rising to £2,500 after 5 years in post.

[155] "Sufficient", pp 106–108; 52 Geo 3 c. 11, section 7.

[156] 52 Geo 3 c. 11, section 9.

[157] 52 Geo 3 c. 11, section 10.

[158] 52 Geo 3 c. 11, section 11.

infirmity.[159] When the Commissioners deliberated on the use of the first surplus for the half year ending in October 1807, they concluded that "no part is wanting" for distribution for casual circumstances or on grounds of age or infirmity.[160] They came to the same view in each year from 1809 to 1812.[161] The surpluses were instead largely spent on salaries. On 2 July 1808, the House passed resolutions awarding the surplus as follows: £1,200 to the Chairman of Ways and Means, £208 as additional income for Clementson as Deputy Serjeant and £100 as a payment to John Rickman, the Speaker's Secretary, for his work as Secretary to the Commissioners.[162] This pattern was broadly replicated in 1810 and 1811, although there was also a payment in 1811 to the person responsible for the chamber ventilation.[163] The 1812 Act continued to allow for distribution of fee income to needy officials and also restated the statutory basis for the salary of the Chairman of Ways and Means.[164]

The remaining provisions of the Act related most directly to the difficulties that Abbot had encountered in his dealings with Ley in 1811. First, the powers of the Clerk of the House in respect of appointing, suspending and removing clerks were set out in statute, in terms which placed the current situation beyond doubt and also allowed for them to continue after the patent rights of Hatsell and Ley expired:

> "That after the Expiration of the present Interest of the said John Hatsell and John Ley, the Power of Nomination or Appointment, by the said Clerk of the House of Commons, of all the Clerks in his Department, together with the Power of Suspension and Removal of all the Clerks so by him nominated or appointed, shall be holden, exercised and enjoyed by the said Clerk of the House, in such manner as the same are holden, exercised and enjoyed at the time of the passing of this Act."[165]

The right of any subsequent Clerk to delegate their functions to a deputy was terminated:

> "Provided nevertheless, that after the Expiration of the said Letters Patent, granted to the said John Hatsell and John Ley, no Clerk of the

159 "Sufficient", pp 97–104.

160 CJ (1808) 663.

161 CJ (1809) 657; CJ (1810) 717; CJ (1810–11) 656; CJ (1812) 781.

162 CJ (1808) 480; CJ (1809) 657.

163 CJ (1810) 496–497; CJ (1810–11) 656; CJ (1810–11) 448–449.

164 52 Geo 3 c. 11, sections 12 and 13; "Sufficient", p 104.

165 52 Geo 3 c. 11, section 14. Section 15 made comparable provision for the powers of the Serjeant, and also allowed him to continue to sell offices, provided the proceeds went to the fee fund.

House of Commons shall exercise the said Office by Deputy."[166]

As J H Ley, the first Clerk of the House without this power later recollected, the practice

> "was considered objectionable, and a clause was introduced in the Act of 1812, by which it is enacted, that this office shall not be executed by Deputy, the House being of opinion, that the Clerk should retire upon such an allowance as they might consider his services entitled him to, instead of executing his office by Deputy, and retaining a large part of his salary, which they had fixed as the proper salary for the Acting Clerk."[167]

The final provision was also novel. In the course of 1811, Abbot was told of the

> "general dissatisfaction amongst Members attending Committees upon Private Bills;—for the want of a sufficient *number* of *competent* Clerks; complaining of the inadequacy of the Estab[lishmen]t, and their *inadequate pay* towards encouraging a succession of qualified Persons."[168]

Abbot accepted the need for some increase in the number of clerks, as well as for clerks to be taken from other offices when the need for private bill committees demanded it.[169] He also sought further information about the striking differentials in pay and progression amongst clerks.[170] Abbot developed his own proposals in 1812 to enable private bill committees to be properly staffed, not least by seeking to ensure that Committee Clerks would "be *all* efficient Clerks."[171] The new Act gave the Speaker a power in respect of staff appointed subsequent to the Act that, "if any Complaint or Representation shall at any time be made to the Speaker" of the "Misconduct or Unfitness" of staff other than the Clerk Assistants and Deputy Serjeant at Arms, "it shall be lawful for the said Speaker to cause Enquiry to be made into the Conduct or Fitness of such Person." If the result of that inquiry was that "it shall appear to the Speaker, that such Person has been guilty of Misconduct, or is unfit to hold his Situation", it would be

> "lawful for the Speaker to require that such Person should be suspended or removed, as the case may be, and such Person shall be so suspended or removed accordingly."[172]

[166] 52 Geo 3 c. 11, section 14.
[167] HC (1833) 648, Q 298.
[168] TNA, PRO 30/9/35, fo 33.
[169] TNA, PRO 30/9/35, fo 33.
[170] TNA, PRO 30/9/35, fo 33v–34.
[171] TNA, PRO 30/9/35, fo 89v.
[172] 52 Geo 3 c. 11, section 16.

Conclusions

When Charles Abbot became Speaker of the House of Commons in February 1802, John Hatsell had good reason to worry about their relationship, after the various clashes between them in the preceding five years. However, they formed a close relationship, which served Hatsell well in continuing to secure the benefits of his office as Clerk. Perhaps mindful of the growing gap between his income in return for no labour and the Speaker's income in return for growing labour, Hatsell negotiated a cap on his income from copy money. That source of income was hardly justified, and might not otherwise have survived the scrutiny of the Select Committee on Public Expenditure in 1810. Hatsell also placed one of the most prized pieces of patronage associated with his office—the appointment to a vacancy for a clerkship at the table—at Abbot's disposal.

John Ley as Deputy Clerk was much less successful in developing and maintaining a good relationship with Abbot. Alongside the very considerable income which Ley personally received as Deputy Clerk, he pursued various means to fill the family coffers. His attempt to appoint his brother to a lucrative sinecure as joint Clerk of Ingrossments was rebuffed by Hatsell. Ley required a threat to go public from Hatsell to accept the cap on copy money. In 1811, Ley advanced a brazen scheme to retain the perquisites of office as Deputy Clerk while paying others to undertake the work, and at the same time secure advancement for his youngest nephew William. This attempt foundered, but not before it worsened Ley's relationship with Abbot.

The introduction of the Bill which became the House of Commons (Offices) Act 1812 can be seen in part as Abbot's response to the conflict with the Leys in 1811. The Bill embodied a negative judgment on the propriety of deputising arrangements, while continuing to respect the property rights of the patents held by Hatsell and Ley. The legislation as enacted also gave the Speaker an unprecedented power to intervene on personnel matters in the Clerk's Department. However, the main driver for the Bill was the vacancy for Serjeant following the death of Francis John Colman, and the associated opportunity to remedy the defect in the treatment of the income of the Serjeant as Housekeeper.

In the years after 1802 Hatsell was able to manage key political relationships without the pressures of daily work, while continuing to benefit from the enormous profits of his office. The sun had shone on Ley to the same degree only since 1797, and his approach was motivated by a desire to secure a family fortune and wider family benefits that would outlast him. Hatsell's approach would be seen in a different light subsequently when his conduct, like that of Ley, became increasingly influenced by ties of kinship.

ARCHIBALD MILMAN AND THE CRISIS OF LEGISLATION, 1880–1891

COLIN LEE

Managing Director, Select Committee Team, House of Commons, United Kingdom[1]

Introduction

Writing in 1878, Archibald Milman, then Second Clerk Assistant of the United Kingdom House of Commons, noted that "Every autumn the Opposition newspapers point in triumph to the number of Bills introduced by the Government which they have failed not only to pass into law, but even to submit to discussion in the House of Commons." He observed that it was "many years since the full tale of measures submitted by the Government" in the Queen's Speech at the start of a session had been completed. He went on: "That the losses of the Ins should be scored up as points made by the Outs is fair party fighting, but the nation suffers not a little in the long run from the constant delay of needful legislation."[2]

The problem which Milman recorded in the late 1870s became even more acute in the 1880s. In November 1881, Sir Thomas Erskine May, the Clerk of the House, argued that "so grave a crisis" had arisen that the House had to undertake far-reaching reforms of legislative procedure,[3] but the crisis of the legislative process continued throughout the decade. In 1883, the year after the House had passed a set of far-reaching procedural reforms, of 11 bills mentioned in the Queen's Speech, only five were passed by the Commons, and more than 20 government bills were withdrawn.[4] In July 1884, Gladstone argued that it was "the great practical principle of modern Conservatism to keep down the efficiency of the procedure of the House of Commons" for fear that "legislation should march too fast." He regretted the fact that legislative progress was determined not "by the deliberate choice of the representatives of the people", but by "a system

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

2 A Milman, "The House of Commons and the Obstructive Party", Quarterly Review, Vol 145 (1878) (hereafter "The Obstructive Party"), pp 231–257, at p 231.

3 British Library (hereafter BL), Add Ms 44154, fos. 79–85, Memorandum on the Rules of Procedure of the House of Commons by Erskine May, 2 Nov. 1881. A printed copy is available digitally at The National Archives (hereafter TNA), CAB 37/3/60, pp 1–7.

4 HC Deb, 21 Aug. 1883, cols 1514–1528.

built upon the abuse of ancient and generous rules."[5]

The experience of the Conservative-led government from 1886 was in many ways similar. In September 1890, the Lord Hartington, the leader of the government's Liberal Unionist allies, admitted the Session just ended had "produced no legislative achievement which will be remembered in history" and that "the important measures considered by the Government have hardly been entered into." He attributed this to the "more or less continuous success" of the policy of obstruction over "15 years of more or less ineffectual attempts to suppress it", obstruction originating with Irish Home Rulers, but now connived in by Gladstone and the Opposition frontbench.[6] In the same year, a Report from a Select Committee chaired by a cabinet minister noted how "four times since 1880 the House of Commons has been obliged to revise its rules, for the purpose of expediting public business" and "four times in the same period" the House had been obliged to adopt "exceptional methods of restricting discussion." The Report went on:

> "The causes, legitimate and illegitimate, which stimulate discussion, have, however, counterbalanced, and more than counterbalanced, the effect of the rules designed to restrain it; the difficulty of legislation, has not diminished; the exhausting labours imposed upon Members of Parliament, excessive at the beginning of this decade, have, if anything, increased."

The closure rule had proved "adequate, to deal with single resolutions and short Bills", but was "not adequate to enable the House to consider" bills which were long, complicated and controversial.[7]

This study considers three responses to this crisis. The article first considers the pre-history and early development of Standing Committees to undertake the Committee stage of some bills. The second part examines the "exceptional measures" adopted in the 1880s to address delays to particular bills, in the form of stand-alone orders to limit the duration of particular stages. The third part examines the "carry-over" proposal with which the Select Committee of 1890 was particularly concerned—to enable the proceedings on stages of a bill in the Commons completed in one session to be abridged if that bill was reintroduced in the next Session

[5] P Fraser, "The Growth of Ministerial Control in the Nineteenth-Century House of Commons", English Historical Review, Vol 75 (1960), pp 444–63, at p 459.

[6] Morning Post, 4 Sept. 1890, p 2. References to *The Times* are via *The Times* Digital Archive. All other newspapers have been accessed via the British Newspaper Archive.

[7] Report from the Select Committee on Business of the House (Abridged Procedure on Partly Considered Bills), HC (1890) 298, p 3.

of the same Parliament.

"A great economy of time would be effected": proposals for delegation up to 1878

The idea for what became Standing Committees originated in Erskine May's writings and evidence to select committees.[8] As Milman was to note in 1886:

> "Grand Committees to deal with Department, Legal and other Bills, not of an exciting or party character, have been advocated by Sir Erskine May for 30 years. His object was to relieve the mass of Members from attendance, and to facilitate the passage of Bills."[9]

In a pamphlet published in 1848, May proposed that bills committed to select committees need not always be recommitted to the Committee of the whole House, and also suggested that the Committee of the whole House should be able to meet independently of the House, sometimes before the House sat and sometimes in parallel with it.[10] In an anonymous article early in 1854, May went further, proposing the establishment of six Grand Committees of 110 Members, which would be "little Parliaments, as it were, in themselves", each on various topics, with the majority of bills committed to the relevant Grand Committee.[11]

However, when May was called to give evidence to a select committee later in 1854, perhaps sensing the conservative mindset of that committee, he reverted to something akin to his proposal of 1848. Instead of proposing Grand Committees, he suggested that it would be a "great improvement" if, when a Bill was committed to the Committee of the whole House, the

[8] In addition to the primary sources cited, this account draws principally upon four accounts: (1) Sir Courtenay Ilbert's evidence to a 1906 Procedure Committee: Second Report from the Select Committee on House of Commons (Procedure), HC (1906) 181, QQ 243–276; (2) C J Hughes, "The Early History of Standing Committees", Parliamentary Affairs, Vol 2 (1949), pp 378–390; (3) G M Higgins, "The Origins and Development of the Standing Committees of the House of Commons, with Special Reference to their Procedure, 1882–1951" (Oxford D Phil thesis, 1954); (4) W R McKay, "The Principle of Progress: May and Procedural Reform", in P Evans, ed, Essays on the History of Parliamentary Procedure in Honour of Thomas Erskine May (Oxford, 2017), pp 158–70.

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

[10] T E May, Remarks and Suggestions with a view to facilitate the dispatch of Public Business in Parliament (London, 1848); McKay "Principle of Progress", p 159; Hughes, "Early History", pp 379–380.

[11] T E May, "The Machinery of Parliamentary Legislation", Edinburgh Review, Vol 99 (1854), pp 244–82; HC (1906) 181, QQ 243–247; Hughes, "Early History", pp 380–381; McKay, "Principle of Progress", p 162; Higgins, "Standing Committees", pp 8–9.

Committee stage could take place on Tuesday and Thursday mornings prior to the sitting of the House with a reduced quorum.[12] Before a joint committee in 1869, May presented a modified proposal for a committee open to all Members of the House, with a quorum of 20, in which "Bills of secondary importance might be discussed."[13] Two years later, before a Commons committee, May suggested that the House should establish six Grand Committees on Public Bills, of 110 Members each, in which the committee stage of bills could be taken, and which could sit simultaneously; he was open to the idea that other Members attending might also be able to participate. The Grand Committees would differ from select committees in that Members would stand to speak and proceedings would take place in public. They would be reserved for "certain classes of Bills", with bills about trade referred to one such Committee and legal measures to another "mainly composed of lawyers and other gentlemen who took an interest in cognate subjects." Bills of "the first importance" would continue to be committed to a Committee of the whole House, with Grand Committees generally considering "Bills not involving party considerations." He argued that such a "division of labour" was what was "most needed", not least to enable "a more adequate consideration of Bills."[14]

Although the committee of 1871 offered no support, May's proposals subsequently found an important advocate in Henry Brand, elected Speaker in 1872, who was required to respond, along with the leader of the House, Sir Stafford Northcote, to the onset of systematic obstruction in 1877.[15] At the conclusion of that session, Brand drew Northcote's attention to May's evidence of 1871, suggesting that the best way to meet growing demand on the legislature was "by a division of labours, which is the sound principle upon which Sir Erskine May's proposal is based." Brand's preferred model differed slightly from May's 1871 evidence, with smaller committees of 25

[12] Report from the Select Committee on the Business of the House, HC (1854) 212, QQ 271–288; HC (1906) 181, QQ 248–250; Hughes, "Early History", p 381; J Redlich, The Procedure of the House of Commons (London, 1908, 3 volumes), I.91; McKay, "Principle of Progress", p 162.

[13] Report from the Joint Committee of the House of Lords and the House of Commons on the Despatch of Business in Parliament, HC (1868–69) 386, Q 139; McKay, "Principle of Progress", p 165.

[14] Report from the Select Committee on Business of the House, HC (1871) 137, QQ 36, 41–45, 77–79, 161–163, 182–183, 190, 195, 249–256; McKay, "Principle of Progress", p 166; Redlich, Procedure, I.107; Hughes, "Early History", pp 381–382.

[15] C Lee, "Archibald Milman and the procedural response to obstruction, 1877–1888", *The Table*: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments (hereafter *The Table*), Vol 83 (2015), pp 22–44, at pp 30–32.

Members, who would mainly be "experts", albeit with the possibility of expansion up to 50 Members. Brand envisaged that meetings would be conducted "according to the Rules & Orders of the House."[16] Northcote stated in reply that he was "not yet a convert" to Grand Committees and did not "think they will be very acceptable."[17]

Northcote's scepticism coloured the approach to the matter by a Select Committee on Public Business which he chaired in 1878. Perhaps conscious of the leader's position, and also Brand's preference for smaller committees, May now suggested that there should be only four committees, each with 20 core members throughout the session, and 10 additional members in respect of each bill committed. He argued that, if the practice of committing bills to such committees "became familiar to the House", then "a great economy of time would be effected."[18] The Speaker, in his own evidence, supported May, attaching "very great importance to that proposal." He suggested that "the House of Commons at large is wasting its power in going through, in minute detail, the clauses of a Bill in Committee."[19] Brand also appeared to coin the term Standing Committee in this context. That term had been used before to refer to Grand Committees of a former era of a permanent character, and had been applied to May's proposal in 1871 by a Member referring to their enduring character.[20] Brand, however, used the term Standing Committees for the new proposal, first of all in reference to the sessional membership of 20 MPs for all bills in respect of each committee, and then more generally to highlight the distinctive elements of the proposed committees—more like a select committee in size than the Grand Committees previously proposed by May, but different from select committees in their procedures and approach.[21]

Brand's stress on the novel term Standing Committee may also have been because members of the Select Committee cross-examining him and May consistently muddled May's proposal with the occasional practice of referring bills to select committees. The Committee's Report made no specific reference to May's proposal.[22] Milman, writing that year, did little

16 The Parliamentary Archives (hereafter) TPA, BRA/1/3/26, draft Memorandum from Brand to the Chancellor of the Exchequer, 15 Oct.1877.

17 TPA, BRA 1/3/27, Northcote to Brand, 23 Oct. 1877.

18 Report from the Select Committee on Public Business, HC (1878) 268, QQ 211–243; HC (1906) 181, QQ 261–262; McKay, "Principle of Progress", p 167.

19 HC (1878) 268, QQ 713–766.

20 HC (1871) 137, QQ 43, 97.

21 HC (1878) 268, QQ 728, 752, 758.

22 HC (1878) 268, para 6.

to disguise his disappointment at the missed opportunity:

> "We had hoped that Sir Erskine May's carefully thought-out plan for the regular appointment of grand committees, consisting each of twenty permanent members, besides specialists to be added according to the occasion, to examine the details of administrative bills ... would have received careful consideration from the Committee, and so might have been accepted in due time by the House. But we fear this hope must once more be deferred."[23]

"Devolution ... to Grand Committees": Gladstone's approach

Interest in Grand Committees was revived in the autumn of 1880, at the conclusion of the torrid first session of Gladstone's second administration. Gladstone prepared a memorandum for his cabinet colleagues entitled "Obstruction and Devolution", designed to address not only "the scandalous evil of obstruction", but also "the heavy inconvenience of prolonged and manifold legislative arrear." For Gladstone, the solution to both issues lay in what "I shall call devolution", namely "devolving upon other bodies a portion" of the "overwhelming tasks" facing the Commons. While some of this devolution might be to "subordinate and separate bodies" in the form of local government across the United Kingdom's constituent nations, his focus in his paper was on devolution to "sub-formations out of the body of the House itself." Gladstone specifically referred to the influence of a meeting he had had with the Speaker and May at some point between 1872 and 1874 when Brand "gave a general opinion in favour of the devolution of a portion of the duties of the House to Grand Committees."[24]

However, Gladstone did not adopt the approach advocated by May and Brand. Gladstone's proposition was that Grand Committees for "particular portions of the three Kingdoms", open to all Members for constituencies "within the limits of that part of the country or of the United Kingdom for which the Committee may have been appointed to act" together with ministers and certain former ministers with relevant territorial responsibilities if not included by the preceding provision. This implied that there would be Irish and Scottish Grand Committees, and left open the possibility of English and Welsh Grand Committees. The Committees were

[23] A Milman, "The Block in the House of Commons", Quarterly Review, Volume 146 (1878), pp 181–202, at p 201.

[24] BL, Add Ms 44154, fos 79–85. On the 1880 session and its role in giving new impetus to consideration of procedural reform, see C Lee, "Archibald Milman and the Evolution of the Closure—Part 1: Origins to 1881", in *The Table*, Vol 88 (2020), pp 5–54 (hereafter "Part 1"), at pp 18–21.

to be empowered to undertake inquiries through select committees, appoint sub-committees, offer reports or resolutions to the House and consider bills or parts of bills referred to them by the House subsequent to first reading, so that the Grand Committees could undertake all stages from second reading up to report stage.[25] Wittingly or unwittingly, Gladstone's proposal echoed a proposal made by the Irish Home Rule leader Charles Stewart Parnell in his minority report as a member of the 1878 Committee.[26] The clear focus of May's proposals had been replaced by a sprawling scheme, straddling various stages of the legislative process and motivated as much by Gladstone's concerns about the territorial constitution as by the problems with which the Speaker and Clerk were concerned.

When Gladstone consulted cabinet colleagues, their responses indicated how far they took the proposal as about devolution generally, rather than procedural reform. William Forster, the Chief Secretary for Ireland, thought that the proposals "would ultimately lessen Irish obstruction by satisfying as much of the Home Rule demand as is a real grievance." John Dodson, the President of the Local Government Board, identified weaknesses in Gladstone's scheme:

> "The Conservative Party would have practically no voice in a Scotch Committee. What sort of a Land Bill, or any other Bill, would result from an Irish Committee?"

Dodson pointed out that May's proposal was for subject committees, reflecting the party composition of the House. He also noted that "the advocates of Grand Committees" had never suggested their use for "great measures and measures of a party character." He observed that May himself had "abandoned the Grand Committee scheme" by proposing small "Standing Committee[s]" in his evidence to the 1878 Committee, and that even this proposal "met with no favour" on that Committee.[27]

Gladstone's scheme was overtaken by immediate measures needed to secure passage of coercive legislation for Ireland, including the use of the Speaker's closure and the urgency provisions which followed.[28] However, Gladstone reminded his colleagues of his proposals in the context of the package of procedural reforms considered in the autumn of 1881. At this juncture, Brand made his own position clear, telling Gladstone's private

[25] TNA, CAB 37/3/60, pp 3–7.

[26] HC (1878) 268, p xx; Hughes, "Early History", p 382; Higgins, "Standing Committees", p 10. Parnell's proposal was confined to the Committee stages of Bills relating exclusively to England, Ireland or Scotland.

[27] TNA, CAB 37/3/60, pp 8–12.

[28] "Part 1", pp 21–51.

secretary that

> "I strongly object to the devolution of business on a National or geographical basis, because it ought to be our aim to merge the separate nationalities of the Scotch & Irish, & to legislate for a *United People*."[29]

Brand subsequently contended that "the adoption of strictly Irish Committees would bring us within a measurable distance of Home Rule."[30]

"A tentative and experimental measure": Standing Committees established

In November 1881, May prepared a memorandum which argued that "The most serious obstacle to legislation is found in the system of Committees of the whole House", which entailed "no delegation of duties to another body", because it was in essence the House itself with a different Chair. May contended that "so grave a crisis" had now arisen that the House could no longer delay an experiment with "Committees of a more manageable character." He advanced proposals for eight Standing Committees, each composed of 20 core members, with further members to be added in respect of particular bills. Bills were to be referred after second reading and the Standing Committees were to "exercise the same functions, be subject to similar rules, and be, in every respect, the equivalents of Committees of the whole House." Bills of primary importance would continue to be considered in a Committee of the whole House, although May floated the idea that this might meet outside the House's sitting hours.[31] Brand sent a covering letter to Gladstone, emphasising that he attached "great importance" to the scheme and believed that "in practice it will work well."[32] Gladstone confirmed to May that he thought that "the knot of the business evidently lies in delegation or devolution."[33]

The cabinet considered these proposals at a five-hour meeting on 1 February 1882. At that meeting, the cabinet made several revisions. First, they decided that the committee membership was to be much larger, with between 60 and 80 members each. They also concluded that they would

29 BL, Add Ms 44195, fos 69–70v, Brand to Hamilton, 6 Nov. 1881; emphasis in original.

30 BL, Add Ms 44195, fos 117–118, Memorandum by Brand on Standing Committees, Aug. 1882.

31 C Lee, "Archibald Milman and the Evolution of the Closure—Part 2: 1882–1885", in *The Table*, Vol 89 (2021), pp 5–55 (hereafter "Part 2"), at pp 8–10; TNA, CAB 37/6/29, pp 6–9.

32 BL, Add Ms 44195, fos. 65–67v, Brand to Gladstone, 5 Nov. 1881; TNA, CAB 37/6/29, pp 14–15.

33 TPA, ERM 1/31–33, Gladstone to May, 7 Nov. 1881.

only propose an "experimental scheme" comprising only two Committees, one relating to trade and another to law.[34] On 2 February, May sent Gladstone a draft of the rules seeking to embody the cabinet's decisions.[35] This draft was considered at a further cabinet meeting on 3 February, when two changes were made which were reflected in a new draft prepared the next day. First, the term "Standing Committees" was agreed as the title for the Committees. Second, it was to be provided that all bills relating to trade or law were to stand committed to the relevant Committee unless the House otherwise ordered.[36] Gladstone told Northcote of the key features of the proposal, stating that it was to be proposed "as a tentative and experimental measure."[37]

At this stage, the cabinet's consideration was complicated by a memorandum from Samuel Whitbread, a backbench Member who was also the Speaker's nephew and who came to be regarded by Gladstone as "*the* greatest independent authority on procedure matters." Whitbread argued that the proposed Standing Committees would only be "large" and "unwieldy" select committees, but not large enough to meet the ideal of Grand Committees as replacements for the Committee of the whole House. He also pointed out that, unless otherwise ordered, the Committee of Selection would nominate members equally from the government and opposition sides, which was then the practice in the nomination of select committees. Whitbread favoured instead choosing six Grand Committees, with all non-Ministerial Members nominated to one of the Committees, so that all would have a stake in the system and each would be "a miniature of the House itself." The Committee of Selection would have power to add up to 20 Members, including ministers, to each Committee for particular measures.[38] Brand forwarded his nephew's memorandum to Gladstone,

[34] D W R Bahlman, The Diary of Sir Edward Walter Hamilton 1880–1885 (Oxford, 1972; 2 vols), p 217; H C G Matthew, ed, The Gladstone Diaries with Cabinet Minutes and Prime-Ministerial Correspondence: Volume X: January 1881–June 1883 (Oxford, 1990), p 205.

[35] BL, Add Ms 44154, fos 116–117, May to Gladstone, 2 Feb. 1882.

[36] Gladstone Diaries, p 206; BL, Add Ms 44154, fos 135–136, May to Gladstone, 3 Feb. 1882; BL, Add Ms 44154, fos 137–138, May to Gladstone, 4 Feb. 1882; BL, Add Ms 44154, fos 122–123, Rules on Standing Committees, [4 Feb. 1882].

[37] BL, Add Ms 50014, fos 240–241v, Gladstone to Northcote, 3 Feb. 1882 (printed in Gladstone Diaries, pp 206–207).

[38] Hamilton Diary, p 350; BL Add Ms 44474, fos 124–127, Memorandum on Grand Committees by Samuel Whitbread, 3 Feb. 1882. On practice on the nomination of select committees without a government majority, see also HC Deb, 28 Nov. 1882, cols 306–307 (George Goschen).

stating that "there is much to be said for his plan", and suggesting that a "large scheme, fully considered, would have a better chance of floating than that now proposed by the Cabinet."[39]

At its next meeting, on 7 February, the cabinet was flummoxed by Whitbread's memorandum, and possibly also by Brand's inconsistency on the size of committees. Sir William Harcourt, the Home Secretary, noted that "Whitbread's paper has convinced me that our plan will not do."[40] Joseph Chamberlain, the President of the Board of Trade, disagreed, arguing that, while Whitbread's paper had merits as a final scheme, the less ambitious cabinet proposal was better as an experiment.[41] The cabinet confirmed the scheme as agreed in principle at its previous meeting, with the addition of a requirement on the Committee of Selection to have regard to "the composition of the House", thus providing that Standing Committees would reflect any government majority, and the reversal of the presumption on committal, so that bills would only be committed to Standing Committees by specific decision of the House.[42]

The difficulties in securing passage of the closure rule, and other political developments, meant that the proposal agreed by the cabinet in February could not be considered by the House before the summer. On 29 July, the cabinet agreed to invite Whitbread to be part of a "Committee to frame [a] plan of Devolution." Whitbread declined to be part of a committee, but submitted a memorandum on 1 August which was printed for the cabinet. This restated the arguments of his February paper, and added that a Chairman of a Grand Committee would be

> "more like the Chairman of Ways of Means, presiding over the Committee and keeping order in its debates, and not like the Chairmen of a Select Committee, who takes a prominent part in the discussions, and generally produces the Report."[43]

Brand wrote to Gladstone expressing support for "Mr Whitbread's plan as the basis upon which you should build your Standing Committees."[44] In September, Brand expressed to May his fear that

39 BL, Add Ms 44195, fos 85–86, Brand to Gladstone, 4 Feb. 1882.

40 BL, Add Ms 44474, fo 130, Note by Harcourt, 7 Feb. 1882.

41 BL, Add Ms 44474, fo 128, Note by Chamberlain, 7 Feb. 1882.

42 Gladstone Diaries, p 208.

43 Gladstone Diaries, p 305; BL, Add Ms 44476, fo 83, Whitbread to Gladstone, 1 Aug. 1882; BL, Add Ms 44476, fos 85–91, Memorandum on Grand Committees by Whitbread; BL, Add Ms 44476, fos 93–94v, copy of same printed for cabinet, 3 Aug. 1882.

44 BL, Add Ms 44195, fos 111–115v, Brand to Gladstone, 11 Aug. 1882; BL, Add Ms 44195, fos 117–118, Memorandum by Brand on Standing Committees, Aug. 1882.

> "an imperfect scheme of 'Devolution' may be proposed by the Govt, which will do more harm than good, for, if adopted by the House, its probable failure would prevent the adoption hereafter of a more comprehensive plan."[45]

Brand remained hopeful in October that Gladstone "would enlarge his proposal with regard to Standing Committees",[46] but the cabinet, focused as they were on the closure proposal, showed no inclination to revisit their position, and the motion moved in late November was unchanged from that agreed in February. The government received representations from the Conservatives to postpone the Standing Committee proposal in view of the time taken over the preceding procedural measures, but resisted the pressure.[47]

Gladstone moved the first motion to establish the two Standing Committees on 27 November, stressing that the measure was "a modest experiment", limited in both ambition and duration; there would be only two new Committees for the initial period, although he hoped for wider application thereafter; only non-controversial bills would be committed during the experimental phase. At the same time, the prime minister emphasised that the House could not be rescued from its "deplorable condition" simply by means of the "penal or restrictive" measures agreed on the preceding days. A new method was needed to address the "arrears" of work to be done. The proposal applied "the principle of the division of labour, by multiplying the organs by which the House applies itself to and discharges its proper work." By devolving a key part of the legislative function to separate bodies, the measure would remove the case for what he termed "indirect or subaltern obstruction"—delaying one measure to defeat another.[48]

Replying to Gladstone for the Official Opposition, Sir Richard Cross characterised the measure as a proposal to "break up the House into *bureaux* [which] was foreign to our system, and recommended by no authority except one of the Clerks of the House."[49] W H Smith subsequently reflected the suspicions of the Opposition when he claimed that Sir Charles Dilke, a prominent radical and a junior minister, had said that

[45] TPA, ERM 4/114–117, Brand to May, 19 Sept. 1882.

[46] TPA, ERM 4/118–119, Brand to May, 15 Oct. 1882.

[47] Hamilton Diary, pp 361–362; BL, Add Ms 44195, fos 138–140v, Brand to Gladstone, 18 Nov. 1882. Northcote departed before the matter was debated: BL, Add Ms 44217, fos. 210–211, Northcote to Gladstone, 23 Nov. 1882.

[48] HC Deb, 27 Nov. 1882, cols 142–153.

[49] HC Deb, 27 Nov. 1882, col 156.

> "the great object of bringing forward these Rules was that the House might be turned into a Bill-spinning machine, and that measures might be passed through the House more rapidly, and without the consideration which they deserved."[50]

During the debate, three main issues of contention arose—relating to the size and composition of the committees, the territorial dimension and the procedure to be adopted.

Cross argued that if committees were to be established at all, they should be "smaller Committees" which would "work more efficiently." The proposed Committees "were too large to thoroughly sift out the details, and they were far too small to carry the principle of a Bill in a way that the House would accept." In short, they were "neither fish, flesh nor fowl."[51] Other Conservatives echoed this criticism, suggesting that the work would be better done by select committees of 10 to 20 Members.[52] The Conservatives largely ignored the weakness of past practice of referring bills to select committees after second reading, namely that it was seen as in addition to, rather than a substitute for, a Committee of the whole House stage.[53] Others queried the composition of the committees. One Liberal critic, Charles Norwood, expressed concern that a committee of experts would be "productive of much evil", and suggested that law reform could not be left to a committee of lawyers, a concern echoed by a Conservative.[54] Another critic suggested that the committees would be more subject to control by the whips than smaller committees, because they would necessarily include Members with little interest in the legislation.[55] The government and its supporters argued that the committees would be "reflections of the House" and that their large size militated against the risk of capture by special interests.[56] Towards the conclusion of the debate, a government amendment was agreed to which reflected Whitbread's proposal, first made in February, to allow the Committee of Selection to

[50] HC Deb, 29 Nov. 1882, col 325.

[51] HC Deb, 27 Nov. 1882, col 158.

[52] HC Deb, 27 Nov. 1882, cols 163–164 (Sir Henry Holland); HC Deb, 27 Nov. 1882, col 167 (George Gregory); HC Deb, 27 Nov. 1882, col 177 (Stanley Leighton); HC Deb, 27 Nov. 1882, col 193 (Edward Gibson).

[53] HC Deb, 27 Nov. 1882, col 181 (W E Forster); HC Deb, 29 Nov. 1992, col 349 (Charles Ritchie).

[54] HC Deb, 27 Nov. 1882, col 161; HC Deb, 27 Nov. 1882, col 165 (Sir Henry Holland).

[55] HC Deb, 27 Nov. 1882, cols 175–176 (Stanley Leighton).

[56] HC Deb, 27 Nov. 1882, cols 303–304 (Dodson); HC Deb, 29 Nov. 1882, col 323 (Whitbread).

add up to 15 Members to a Committee in respect of a particular bill.[57]

A recurring theme concerned the position of Irish, Scottish and Welsh MPs. When Gladstone sought, in his opening speech, to highlight "the varied wants of this great Empire", he found himself drawn to territorial examples, referring to "the different system of law" in Scotland, and the special considerations that applied to Wales as meriting a legislative body with relevant specialism.[58] Drawing on what Gladstone had said, Cross contended that, "if these Committees were once set up, Scotch and Irish measures would then be relegated to a Committee specially composed of Scotch and Irish Members; and so even with Wales." As such, "They were entering upon a new and dangerous course."[59] This concern was picked up by critics of the measure on both sides of the House, one suggesting that it would encourage "a species of Home Rule."[60] This concern was accentuated when a Scottish Liberal backbencher, Sir George Campbell, proposed the creation of an additional Committee with "a large infusion of Scotch Members" as a form of "modified Home Rule", suggesting that such a Committee might in due course meet in Edinburgh.[61] Gladstone opposed this amendment as incompatible with the experimental nature of the proposals, but side-stepped the matter of principle.[62] This in turn invited suggestions that Gladstone actually supported the principle of the amendment, which Conservatives argued was destructive of the concept of a United Parliament.[63] Similar suspicions arose from another amendment advocating a Standing Committee consisting of Irish Members for Irish business.[64]

The procedure to be followed in Standing Committees was extensively debated. May's initial proposal had been for Standing Committees to be "the equivalents of Committees of the whole House", and Whitbread had argued in August that the role of the Chairman would be comparable to that of the Chairman of Ways and Means.[65] However, Gladstone envisaged

[57] CJ (1882) 523; HC Deb, 1 Dec. 1882, col 513.

[58] HC Deb, 27 Nov. 1882, cols 148–149.

[59] HC Deb, 27 Nov. 1882, col 157.

[60] HC Deb, 27 Nov. 1882, col 162 (Norwood); HC Deb, 27 Nov. 1882, cols 171–172 (Churchill).

[61] HC Deb, 29 Nov. 1882, cols 315–318.

[62] HC Deb, 29 Nov. 1882, cols 318–319.

[63] HC Deb, 29 Nov. 1882, cols 319–321 (Lord John Manners); HC Deb, 29 Nov. 1882, col 326 (W H Smith); HC Deb, 29 Nov. 1882, col 328 (Charles Newdegate).

[64] HC Deb, 30 Nov. 1882, cols 415–417 (Frank O'Donnell); HC Deb, 30 Nov. 1882, cols 417–422 (Parnell).

[65] TNA, CAB 37/6/29, p 7; BL, Add Ms 44476, fos 93–94v.

the new Committees, despite their increased size, as bodies that would follow select committee procedure, albeit while being "less interlocutory and conversational", with speeches "delivered as they are in this House."[66] Lord Randolph Churchill moved an amendment to provide that the Standing Committees would operate by the procedure of a Committee of the whole House, arguing that select committees were "perfectly informal", and that this approach would not work for Committees intended "to sit as a kind of Parliament in miniature." He also noted that Chairmen of the Standing Committees would need to impose order in a way not required in select committees.[67] Replying to Churchill's amendment, Gladstone argued that it would be best to allow these new Committees to settle their own way of working, choosing from select committee procedure and that of the Committee of the whole House as they thought fit.[68]

Resistance to the measure collapsed, much to Gladstone's delight, on the fifth day of debate, with the Conservatives desperate to see the Session ended.[69] Edward Hamilton, Gladstone's Private Secretary, noted that "The Tories look upon these Committees with great suspicion", but he thought that "Time and experience will probably allay these apprehensions as it has allayed many other apprehensions regarding far more drastic reforms."[70]

"Found unwieldy": the 1883–84 experiment with Standing Committees

In 1883, the Committee on Trade considered two Bills, on Bankruptcy and Patents, both of which subsequently became law.[71] The Committee considered the former Bill over 20 meetings between 9 April and 25 June. It was noted that, from the outset, government and opposition members did not sit on opposite sides of the room, reflecting "the entire absence from their discussions of any manifestations of Party spirit", as well as the relative lightness of whipping that was to be a feature of early Standing Committees.[72] The Patents Bill was agreed after only four meetings, despite

[66] TPA, ERM 1/50, Gladstone to May, 7 Nov. 1882; HC Deb, 7 Nov. 1882, col 953; HC Deb, 27 Nov. 1882, col 151.

[67] HC Deb, 30 Nov. 1882, cols 456–457.

[68] HC Deb, 30 Nov. 1882, cols 457–459.

[69] CJ (1882) 517–524; Hamilton Diary, p 368; Gladstone Diaries, p 371.

[70] Hamilton Diary, pp 368–369.

[71] CJ (1883) 106, 141, 297–298,

[72] Proceedings, HC (1883) 224; HC Deb, 13 Feb. 1884, col 798; HC Deb, 22 Feb. 1887, col 354; Hughes, "Early History", pp 385, 386–387; Higgins, "Standing Committees", pp 12, 120–121.

being comprised of over 100 Clauses and 3 Schedules.[73] The consideration of these Bills was judged a success, and there was little obstruction.[74] At the end of the Session, Hamilton thought that, as a result of the Bankruptcy Bill in particular, "the success of Devolution" was "practically established."[75] Churchill later told Conservative cabinet colleagues that "it ought in fairness to be admitted that the Bankruptcy Bill and Patents Bill would hardly have become law without the machinery of the Standing Committees."[76]

However, the experience of the other Committee on the Law, the Courts of Justice and Criminal Procedure was very different, and widely deemed a failure. From the outset of its consideration of the Court of Criminal Appeal Bill it was noted that there was a tendency to adopt party lines, reflected in seating arrangements. Strong differences emerged about whether the right of appeal was to extend to sentences as well as verdicts, with the majority of the Committee at odds with the government's desire to confine it to the latter. Although the clause-by-clause consideration of the Bill was completed in May, it was not reported from Standing Committee until late June, because the House had instructed the Committee to consider combining it with the next Bill before the Committee. In part as a result of this delay, the Bill was subsequently withdrawn.[77] When the Committee considered the Criminal Code (Indictable Offences Procedure) Bill, it encountered what Gladstone later termed "serious obstruction", including a novel form of obstruction whereby Conservative members remained in the corridor outside the room to delay a quorum being established. Late in June, the Attorney General moved a motion to cease further consideration of the Bill, and the Committee agreed that there was "no prospect" of completing its examination of the Bill.[78] One Conservative frontbencher who served on the Committee reflected that "No greater waste of time could be pointed to

[73] Committee Proceedings, HC (1883) 247.

[74] 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, at p 479; HC Deb, 23 Feb. 1887, col 413; HC Deb, 21 Feb. 1887, col 224; CUL, Add Ms 9248/17/2012, Milman to Churchill, 13 Nov. 1886.

[75] Hamilton Diary, p 474.

[76] TNA, CAB 37/18/19, undated memorandum by Churchill, p 4.

[77] Encyclopædia Britannica, p 479; Higgins, "Standing Committees", p 13; Hughes, "Early History", pp 385–386; HC Deb, 12 Feb. 1884, cols 766–767; HC Deb, 13 Feb. 1884, cols 790–791, 801; HC Deb, 23 Feb. 1887, col 409; CJ (1883) 301, 478; HC Deb, 21 Aug. 1883, cols 1515–1516; Special Report and Proceedings, HC (1883) 225, pp 42, 55.

[78] HC Deb, 21 Feb. 1887, col 224; Higgins, "Standing Committees", p 14; CJ (1883) 301; HC (1883) 225, pp 54–55.

in the history of any Legislature than had occurred in connection with this Grand Committee on Law."[79]

In December 1883, Erskine May was said to be "strongly in favour of enlarging the area of reference to Grand Committees", in part because he believed that "the more combatant part of the Opposition meant to thwart all legislation next session."[80] In February 1884, the government instead obtained the House's agreement to continue with the existing two Committees, and indicated bills that were intended to be committed to them, with Gladstone stressing that it was a "longer trial of the experiment" that was being proposed, "not the composition at once of a matured and extended plan."[81] Although Members were nominated to both Committees, no bill was committed to the Committee on Trade, so that the experiment only continued with the Committee on Law which had conspicuously failed in 1883. That Committee considered three small Bills, with two disposed of at two meetings and a third requiring four meetings. Two of the three Bills received Royal Assent, with a third withdrawn prior to report stage.[82]

Milman was to write in 1885 that "Many regarded the experiment of 1883 as a qualified success",[83] although Harcourt noted that "there was a universal feeling" in the 1886 Procedure Committee "that the Grand Committees had not been a success as previously constituted."[84] Milman was later to argue that the effective failure of the experiment owed much to the size of the Committees, which were "found unwieldy by their numbers."[85] This assessment was shared by Sir Lyon Playfair, the Chairman of Committees, who described them as "too large for business", and noted that they "could be made into imitative repetitions of the Whole House."[86]

"Practically a unanimous consensus": the 1886 proposals

In July 1884, Gladstone told a group of Liberal MPs that they had "to impress on the public mind the absolute and daily growing necessity of

[79] HC Deb, 13 Feb. 1884, col 791.

[80] Hamilton Diary, pp 531–532.

[81] HC Deb, 12 Feb. 1884, cols 763–774; HC Deb, 13 Feb. 1884, cols 788–822; HC Deb, 25 Feb. 1884, cols 1905–1956; CJ (1884) 73.

[82] CJ (1884) 97–98, 219–220, 324; Hughes, "Early History", p 387; Proceedings, HC (1884) 184, 220 and 277.

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

[84] BL, Add Ms 44200, fos 186–94, Harcourt Memorandum for Gladstone, Dec. 1886, at fos 187–188.

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

[86] HC Deb, 22 Feb. 1887, col 311.

great internal reforms in the House of Commons."[87] In his manifesto for the 1885 General Election, he regretted the "most determined opposition" that the Conservatives had offered to "our views in favour of multiplying [the] working powers [of the House of Commons] by a judicious and extensive system of devolution of business to what are known as grand or standing committees." He indicated that further reforms would be needed if a Liberal Government would be able to pass the manifesto he was placing before the enlarged electorate.[88]

Following that General Election, the Conservatives remained in office pending the meeting of the new Parliament, and late in 1885 Churchill presented a memorandum to cabinet colleagues, in which he argued that the system established by Gladstone had "hardly been successful", in part because the Standing Committees "were too large." His own proposal was for all Bills after second reading to stand referred to a Committee of between 30 and 40 Members. These would differ from the Standing Committees not only in their size, but also because they could be constituted for each Bill, although he reserved the possibility of more than one Bill being committed to the same Committee.[89] Although a number of other measures in this paper fell foul of his more cautious cabinet colleagues, this proposal attracted support. Reginald Palgrave, who was Clerk Assistant at the time and was soon to be May's successor as Clerk of the House, and Milman were then involved in preparing draft motions to give effect to the proposal, and revising them following a meeting with Churchill.[90] A draft for consultation was shared with Arthur Peel—who had been elected Speaker in succession to Brand in 1884—and Gladstone in mid-January.[91] The proposals were then published late in January in the name of Sir Michael Hicks Beach, the Leader of the House. The proposal, which was later characterised by Harcourt as the "principal reform" in this paper, was for all bills other than taxation and supply bills to stand referred to "Public

[87] Edinburgh Evening News, 12 July 1884, p 4.

[88] Leeds Mercury, 19 Sept. 1885, p 12.

[89] TNA, CAB 37/18/19, pp 4–5. For the political context and other elements of the package, see "Archibald Milman and the Evolution of the Closure—Part 3: 1885–1894", in *The Table*, Vol 90 (2022), pp 8–55 (hereafter "Part 3"), at pp 11–14; C Lee, "Archibald Milman and the failure of Supply reform, 1882–1888" (hereafter "Failure"), in *The Table*, Vol 87 (2019), pp 7–34, at p 24.

[90] CUL, Add Ms 9248/11/1268, Palgrave to Churchill, 9 Jan. 1886; CUL, Add Ms 9248/11/1282, Palgrave to Churchill, 11 Jan. 1886; CUL, Add Ms 9248/11/1284, Palgrave to Churchill, 12 Jan. 1886.

[91] Gloucestershire Archives (hereafter GA), D2455X/4/1/1/18, Gladstone to Hicks Beach, 20 Jan. 1886; GA, D 2455/X4/1/1/18, Peel to Hicks Beach, 20 Jan. 1886.

Bill Select Committees" of between 30 and 40 Members unless the House otherwise ordered.[92]

The Conservative Government was defeated in the House and resigned before the proposals could be considered, but cross-party agreement was reached to establish a procedure select committee. Harcourt, now Chancellor of the Exchequer, chaired a committee including some Liberal backbenchers, which made its own proposals in March.[93] Harcourt told May that they were a "considerable modification of Beach's plan." The small Public Bill Committees were to be replaced by five Standing Committees nominated at the start of a Session, with all Members nominated to one of them, so that each Committee could be expected to be comprised of at least 130 Members, with up to 10 Members able to be transferred between or added to Committees in respect of a particular bill. As with the Churchill-Beach proposals, all Bills other than financial measures were to stand referred to a Committee unless the House otherwise ordered. The first draft of the proposals made specific provision about non-government bills:

> "One Standing Committee at least shall be appropriated to Bills introduced by Members not being Ministers of the Crown, and such Bills shall be disposed of in the order in which they pass their second reading. In the other Committees the Government shall have power to arrange the order of such Government business as may have been referred to the Committee."

This was omitted from the final version of the proposals, which followed those of their Conservative predecessors in envisaging that the Committee of Selection would allocate bills between Committees. These Standing Committees were also to be empowered to consider Estimates referred to them.[94]

When Harcourt shared his proposals with the Conservative Opposition, Hicks Beach initially indicated to Churchill that he would be opposed to "the idea of dividing the House into 5 great Bureaux, instead of appointing the Public Bill Committees which we had proposed."[95] When the Procedure Committee began to consider the resolutions proposed by Harcourt, there was, according to his later recollection, "practically a unanimous consensus

92 *The Times*, 23 Jan. 1886, p 8; Higgins, "Standing Committees", p 15; BL, Add Ms 44200, fo. 186.

93 "Part 3", pp 14–15.

94 TPA, ERM/8/264, Harcourt to May, 2 Mar. 1886; TPA, ERM/8/261, Confidential print of motions to be moved on the Business of the House, 1 Mar. 1886; TNA, CAB 37/18/48, pp 3–4; "Failure", p 25.

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

of the Committee" in favour of "relieving" the House "from the pressure of detailed work by the process of devolution through Standing Committees to whom all Public Bills were to be referred after their Second Reading."[96] This reflected the common ground between the Churchill-Beach proposals and the Harcourt resolutions. As Harcourt later put it, "We thought the idea of [Hicks Beach] of sending every Bill to a Committee was an excellent one, and we adopted it."[97] What was perhaps more surprising is that the Conservatives did not make a stand against the size of the Committees, and indeed agreed to an amendment to provide that there would only be four such Committees, with a membership of over 160 Members each. A proviso was also added to give private Members' Bills precedence in one of the four Committees.[98] Milman was later to describe this proposal for four large Committee to consider bills as one "which, had it been adopted, would have revolutionized parliamentary procedure."[99]

The apparent consensus behind the proposals of the 1886 Procedure Committee disguised their weakness. They were finally adopted by the Committee in a rushed manner while distracted by the Home Rule debate taking place on the floor of the House.[100] The intention was that the House itself would sit later on two days a week to allow for the Committees to sit for a substantial period of time, but no matching modifications of sitting times of the House were put forward.[101] Hartington, who chaired the Committee, later admitted that

> "the plan which the Committee laid before the House was, in many respects, an incomplete and imperfect plan, which could not possibly be submitted by the Government to the consideration of the House in the form in which it appeared."

The Committee had not decided how the Committees would operate, or resolved whether they would consider private bills or estimates.[102] Leonard Courtney, Chairman of Committees also believed that the 1886 Committee had not resolved the "considerable difficulties" with the scheme.[103]

[96] BL, Add Ms 44200, fos 186–187.

[97] HC Deb, 21 Nov. 1887, col 254.

[98] Report from the Select Committee on Parliamentary Procedure, HC (1886) 186, pp iii–iv, x–xv; HC (1906) 181, QQ 268–269; Higgins, "Standing Committees", p 16.

[99] Encyclopædia Britannica, pp 479–480.

[100] HC Deb, 22 Feb. 1887, col 327 (Hartington).

[101] HC Deb, 21 Feb. 1887, col 269 (Cecil Raikes).

[102] HC Deb, 22 Feb. 1887, cols 326–329.

[103] HC Deb, 22 Feb. 1887, col 366.

"Worked well on the whole": Standing Committees re-established

When Churchill, now leader of the House, turned his mind to a new package of procedural reforms in the autumn of 1886, he adopted the idea of four large Standing Committees as the basis for his proposals for legislative devolution and the partial devolution of Supply.[104] This approach sparked a reaction from both Palgrave, now Clerk of the House, and Milman, now Clerk Assistant, albeit on slightly different grounds in each case.

Palgrave argued that the provisions did not give sufficient control to the Government over the management of the business of the Standing Committees. The proviso on precedence for private Members' Bills in one of the four Committees ceded control on that Committee and the government's control over the other three was only implied and "indirect." Palgrave was concerned at the instruction that each Committee should reflect the composition of the House, so that "Each Committee is to be a picture in little of the House itself" and "accordingly, of each political division into which the House is separated ... one-fourth part is to be placed on each Grand Committee." He went on:

> "the danger would be rife in a Committee composed, not to perform a definite task, or upon a definite principle, but in the hope, that by an infinite amount of selection, the House of Commons may be reproduced four times over."

He argued that no minister could pass any bill through such a committee single-handed, and drew attention to the "strain" that would be placed on ministers in charge of bills.[105] Palgrave accepted that "Delegation of work must be attempted, but surely so difficult an attempt ought to be made tentatively, & without a wholesale delegation of authority."[106]

Milman also accepted the case for devolution:

> "The Committee of the whole House is that part of the Parliamentary system in which the breakdown of recent years has been most complete. It is the very playground of Obstructers."

However, he reminded Churchill that Erskine May had envisaged Grand Committees "to deal with Departmental, Legal, and other Bills, not of a party or exciting character." He claimed—not entirely accurately—that "forty was the largest number" of members that May "ever contemplated for such Committee, and anticipated an average attendance of some thirty." The Committees of 168 Members proposed by Churchill would mean that

[104] "Part 3", pp 22–26; "Failure", pp 27–29.

[105] CUL, Add Ms 9248/17/2019, Palgrave's Memorandum on Rules VI and II of the Draft Rules of Procedure, 12 Nov. 1886.

[106] CUL, Add Ms 9248/17/2018, Palgrave to Churchill, 15 Nov. 1886.

"The Hydra you fear, you are going to multiply by four." He thought that:

> "The ascendancy undoubtedly exercised to some degree by the Government cannot be brought equally to bear in all four Committees at once. Of the intricacies of 'whipping' for these bodies I say nothing. I know it is the French Plan, but what does that produce but ruthless partisan legislation?"

He argued that the rationale for large committees was flawed, because "the House will never delegate the great fighting Bills of the Session to any limited Committee nor do I understand that the Government would propose to do so now." Whereas Palgrave's criticism was essentially negative, and did not seem to propose any alternative, Milman argued that another solution was available. In essence, he argued for a return to the Churchill-Beach proposals of February 1886 with small public bill committees. Milman suggested the need for

> "a relief Committee, a manageable body of men most fitted to deal with a particular branch of legislation, and not a representative microcosm with a specimen of every species in the House. You have to eliminate busybodies and get the constant and uninterrupted attention of good men."[107]

The proposals for the four large Standing Committees were removed from the government's proposals by mid-December.[108] When the draft rules were shared by Churchill with Gladstone, who in turn passed them to Harcourt, the Opposition were astonished to discover the timidity of the remaining proposals. The new scheme, according to Harcourt,

> "substantially discards the principal reform recommended by Sir M Hicks Beach in his resolutions of Jan 86 and adopted by us ... This is now apparently entirely thrown overboard by the Govt. and they simply revert to the Grand Committees of 1882 which were limited to Law and Trade the Govt. now proposing to add a third for Agriculture ... The Govt. are content simply to fall back upon them and to do nothing beyond that to relieve the congestion of Public business."[109]

Following Churchill's resignation at the turn of the year, it fell to his successor as leader of the House, W H Smith, to present the whole package of procedural reforms to the House in February 1887. Smith did not disguise the limited nature of the proposals for Standing Committees, admitting that

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

[108] CUL, Add Ms 9248/17/2064, copy of Churchill to Hartington, 22 Nov. 1886; CUL Add Ms 9248/17/2100a, copy of Churchill to Peel, 30 Nov. 1886; CUL, Add Ms 9248/18/2160, Courtney to Churchill, 16 Dec. 1886; "Failure", p 29.

[109] BL, Add Ms 44200, fos 186–188.

they did not go as far as Gladstone would have wished and did not establish the four or five Grand Committees envisaged in 1886. Instead, "Our proposal is to restore the Standing Committees which were in operation some time ago, to create another Grand Committee, and to refer to these Committees certain classes of Bills."[110] Although Smith was fairly defensive about the reluctance to go as far as the 1886 Committee's proposals, his ministerial colleague Cecil Raikes was much more robust. Raikes described those proposals as being of "limitless absurdity" and suggested that the government deserved the gratitude of the House "in having refused to encumber the Paper ... by reviving that ridiculous proposal."[111]

Responding to Smith, Gladstone acknowledged that the proposals broadly mirrored the 1882 measures, but he then noted that "experience convinced us of the absolute insufficiency of our own proposals", not least because "they embraced a very small portion of the measures to which it was desirable that they should be applied." The government's proposals were "totally inadequate" and would not have a "serious effect" on the management of legislative business.[112] His disappointment that the 1886 scheme had not been revived was echoed by others, including some who had sat on the 1886 Procedure Committee.[113] However, the government's cautious approach received some endorsement, most notably from Sir Lyon Playfair, who expressed disappointment that the government had not proposed smaller committees along the lines of those proposed by Hicks Beach in February 1886,[114] and from Hartington, who felt that a further experimental phase was justified by the Committee that he had chaired.[115]

Although the government's proposals were debated extensively as part of a debate on the procedural package, the time taken to consider and adopt the new closure rule meant that Standing Committee proposal was held over until the following year.[116] Palgrave returned to the question of the size of Standing Committees, claiming May opposed committees "reaching 80 or 160 in number" and had envisaged selected bills being "reviewed by

[110] HC Deb, 21 Feb. 1887, col 188.

[111] HC Deb, 21 Feb. 1887, cols 269–270.

[112] HC Deb, 21 Feb. 1887, cols 194–195.

[113] HC Deb, 21 Feb. 1887, col 217 (Whitbread); HC Deb, 21 Feb. 1887, cols 223–225 (Alexander Craig Sellar); HC Deb, 21 Feb. 1887, col 233 (William Rathbone); HC Deb, 21 Feb. 1887, col 254 (Harcourt).

[114] HC Deb, 22 Feb. 1887, cols 311–312.

[115] HC Deb, 22 Feb. 1887, cols 326–329.

[116] "Part 3", pp 31, 39.

Committees of about 40 Members."[117] Perhaps influenced by Palgrave's memorandum, the government tabled its proposals in February 1888 with two modifications from those of 1887: first, the core membership was to be 40 to 60 Members, rather than 60 to 80; second, the idea of a third Standing Committee on Agriculture was dropped. Smith explained that smaller Committees were proposed "because it was felt that a comparatively small Committee would be a more efficient instrument for the careful examination of measures."[118]

The proposed reduction in the size of the Standing Committees was subject to fierce criticism. Whitbread, long an advocate of much larger committees, "very much regretted" the reduction, which he felt was a departure from the ideal of Committees as "a miniature of the House."[119] When the argument against the reduction was also taken up by government backbenchers as well as Gladstone, Smith relented, and agreed to the restoration of the core membership of 60 to 80 Members.[120] The debate on the proposal, although much shorter than the great procedure debates of 1882 and 1887, was also notable for another attempt by Sir George Campbell to establish a Scottish Standing Committee.[121] This time, Gladstone, freed from the responsibilities of office, was able to follow the initial instincts of his 1880 memorandum on devolution, and warmly supported the proposal.[122] It was opposed in fairly blunt terms by Arthur Balfour, Chief Secretary in Ireland and a former Secretary of State for Scotland, and rejected by the House.[123] A matching proposal for a Welsh Standing Committee was also rejected, and then the main question was agreed to.[124]

The two Committees thus re-established were soon "accepted as an integral part of the proceedings of the House."[125] In 1888, towards the end of their first year of renewed operation, Smith confessed that he had not been "greatly in favour of the system of delegation which is practised

[117] House of Commons, Papers of the Clerk of the Journals (hereafter PCJ), Miscellaneous Precedents and Memoranda on Procedure (hereafter Miscellaneous Precedents), 4 volumes, Vol 1, fos 373–374, Memorandum on Standing Grand Committees, 1 Dec. 1887.

[118] HC Deb, 29 Feb. 1888, col 1788.

[119] HC Deb, 29 Feb. 1888, cols 1790–1791.

[120] HC Deb, 6 Mar. 1888, cols 384–401.

[121] HC Deb, 6 Mar. 1888, cols 401–403.

[122] HC Deb, 6 Mar. 1888, cols 411–415.

[123] HC Deb, 6 Mar. 1888, cols 415–419, 465–468.

[124] HC Deb, 7 Mar. 1888, cols 469–504, 514.

[125] Higgins, "Standing Committees", p 20.

by Standing Committees", but that his scepticism had been confounded by their value.[126] In 1890, Hartington referred to Standing Committees as "perhaps the most promising experiment which has yet been tried in the direction of Parliamentary procedure."[127] Milman wrote in 1901 that "the system of standing committees has worked well on the whole."[128] This success was not to be taken for granted. Not only had the first experiment failed, but an experiment with standing committees in the House of Lords agreed to in March 1889 had almost collapsed by 1891, with only one such committee appointed thereafter before the formal abandonment of the experiment in 1910.[129]

One measure of the success of the re-established committees was legislative productivity. Of the 47 bills considered by the Committee on Trade between 1888 and 1901, 38 became law; of 72 bills considered by the Committee on Law over the same period, 55 reached the statute book.[130] The Committees were used increasingly for private Members' bills alongside government bills, particularly from the mid-1890s onwards, with 42 out of 73 such bills committed to a Standing Committee up to 1905 receiving Royal Assent.[131] In 1894 and 1895, an additional Scottish Standing Committee was created on an experimental basis, although it did not outlast the Liberal administration.[132] Another indicator of the effectiveness was the tendency noted by Milman to use Standing Committees increasingly for controversial bills.[133] This was subject to much complaint, most notably from the Chairmen's Panel, but it was argued by Chamberlain that such use was both consistent with Gladstone's original intention and a logical development of the potential implicit in the system.[134]

Although Standing Committees had been made subject to select committee procedure in 1882, there was from the outset a gap between the formal position and the reality. The Chairmen's Panel decided at an

[126] HC Deb, 10 July 1888, cols 894–895.

[127] Morning Post, 4 Sept. 1890, p 2.

[128] Encyclopædia Britannica, p 480.

[129] A Adonis, Making Aristocracy Work—The Peerage and the Political System in Britain, 1884–1914 (Oxford, 1993), pp 62–65; M Torrance and P Tudor, "Select Committees in the House of Lords", House of Lords Library Briefing (2019), p 2.

[130] Return ... of ... Bills ... committed to the Standing Committees for Law and Trade respectively in each year since 1882, HC (1902) 92.

[131] Higgins, "Standing Committees", pp 70–73; HC (1906) 181, Q 276.

[132] Hughes, "Early History", pp 389–390; Higgins, "Standing Committees", pp 17–19.

[133] Encyclopædia Britannica, p 480.

[134] Chairmen's Panel: Special Report and Minutes of Proceedings, HC (1905) 261; Higgins, "Standing Committees", pp 20–26.

early stage that they would seek greater formality in proceedings than in select committees, and adopt the role of impartial presiding officers.[135] Palgrave's 1894 edition of the *Treatise* embodied the tension, stating first that these committees "are, in procedure and method, assimilated to select committees" and then that "the proceedings of a standing committee are assimilated, as far as possible, to those of a committee of the whole house."[136] It was resolved by additional powers for the Chairmen of Standing Committees, initially informally and then by Standing Order.[137] The size of the committees, which had been the cause of so much contention, received little attention after a while. As the committees functioned increasingly like a Committee of the whole House, the idea that they might develop as repositories of specialist knowledge receded. Their established place was confirmed by procedural changes in the early twentieth century, most notably the 1907 provision that all public bills would stand referred to such committees unless the House otherwise ordered.[138]

"It goes against the grain": the 1881 guillotines

The second step to address the weaknesses of legislative procedure took the form of stand-alone orders to limit the duration of particular stages of bills, which became known as the "guillotine." Milman had first identified the possible relevance of such a measure in 1878. Writing anonymously, he recommended the adoption of a rule applied in the United States House of Representatives and "found effectual." Under this rule, a motion could be tabled which ended Committee stage on a bill at a set day and time. When that point was reached, the Chairman was required to put the questions necessary to conclude proceedings, only allowing for a five-minute speech by the mover of each amendment. A similar motion was available to conclude report stage and, "On neither of these occasions are motions for delay admissible." Milman concluded:

> "This rule does not seem to give more than due power to the House to deal with its own business and restrain factious opposition. If the opposition were substantial, there would be so much difficulty in passing the motion for closing the Committee that it would not be worth while trying to do so."[139]

[135] Higgins, "Standing Committees", pp 24–26, 107–108, 128–130.

[136] R Palgrave, ed, A Treatise on the Law, Privileges, Proceedings and Usage of Parliament (10th edn, 1894), pp 372, 374; Higgins, "Standing Committees", p 129.

[137] Higgins, "Standing Committees", pp 24–26, 128–130, 140–143.

[138] Higgins, "Standing Committees", pp 258–260, 28–33.

[139] "The Obstructive Party", pp 251–252. Milman's account was taken from evidence

During initial consideration of procedural reforms by Gladstone's cabinet, a note was provided on the method in the House of Representatives for stopping debate by a special order.[140] Dodson noted that this included provision for "the mover of an amendment being ... allowed five minutes to explain it, and one other member to speak five minutes in opposition to it."[141] When Gladstone canvassed proposals from his cabinet colleagues in January 1881 for proposals to face down the expected resistance from Irish Home Rule Members to the planned coercion legislation, one colleague proposed a comparable measure.[142] Another draft allowed for the House to declare proceedings on a bill as urgent, with amendments then decided without debate,[143] although Dodson advised Gladstone that went further than the closure and would "not find acceptance."[144]

After the Speaker's closure on the motion for leave to bring in a Bill for the better Protection of Person and Property in Ireland, he was empowered by the House at the instance of a motion moved by Gladstone to set rules for the regulation of proceedings under urgent procedure. Less than a week after the promulgation of 17 rules including a closure motion, restrictions on dilatory motions and governing the conduct of individual Members,[145] Brand realised that further restrictions were becoming necessary, most notably a proposal to bring the Committee stage to a close.[146] On 16 February, he recorded in his diary:

> "I am considering, with the assistance of Whitbread, Playfair and May, new rules for the purposes of closing proceedings both in Committee on a Bill and on its consideration after Report from the Committee."

Brand concluded that "the conduct of Parnell and his Party renders it imperatively necessary" to adopt "this extreme measure" if "the power of the House is to be sustained."[147] The next day, Brand laid his additional rules granting a power, as Brand termed it, "to close proceedings arbitrarily

from Edward Curtis in 1848: Report from the Select Committee on Public Business, HC (1847–48) 644, QQ 134, 197.

140 BL, Add Ms 44625, fos 110–113v, Notes on Clôture in the United States, derived from Cushing's Manual.

141 BL, Add Ms 44625, fos 114–121v, Printed Cabinet paper by Dodson, 24 Nov. 1880. A revised version was circulated in December 1881: BL, Add Ms 44252, fos 128–141; also available at TNA, CAB 37/6/38.

142 BL, Add Ms 44626, fo 62. For the context of this proposal, see "Part 1", pp 25–28.

143 BL, Add Ms 44626, fos 64–64v

144 BL, Add Ms 44252, fos 104–105, Dodson to Gladstone, 8 Jan. 1881.

145 "Part 1", pp 38–49.

146 BL, Add Ms 44195, fos 24–25v, Brand to Gladstone, 15 Feb. 1881.

147 TPA, BRA/3/4, transcript of Henry Brand's diary, 16 Feb. 1881.

on the Committee and Report stages."[148] These rules allowed a minister to move with notice that proceedings at Committee or report be concluded at a certain day and hour, and for that question to be put forthwith without debate, and provided that it would take effect if agreed to by the proportional majority that applied to declarations of urgency, namely a majority of three to one. When that point was reached, the questions on clauses and amendments would be put forthwith, except that one speech was to be permitted by the mover of the amendment and another speech in reply, with the speech in reply by a minister except in the case of government amendments. This was modelled on the provision of the US House of Representatives, albeit without a speech time limit.[149]

Although Gladstone initially gave notice of an intention to move to conclude the Committee stage at midnight the next day[150] it soon became evident that there were a number of problems with the new rules. The support of the Official Opposition was essential to securing the necessary majority, but its leader in the Commons, Sir Stafford Northcote, had not been consulted over the rules or the proposed date for ending the Committee stage.[151] Gladstone was able to placate the Opposition on timing, by offering not to move the motion before Monday.[152] However, the problems with the rules went deeper. Brand explained to Northcote that he had not consulted Gladstone on the rules either,[153] but Northcote remained unhappy. He noted that the limitation of speeches "would operate with peculiar unfairness against" the Conservatives who would not be called at all as they had refrained from tabling amendments.[154]

On 18 February the Speaker prepared a replacement rule, "dropping the provisions for limited debate", which he presented to the House in the early hours of 19 February.[155] The motion to conclude Committee stage

148 TPA, BRA 3/4, 17 Feb. 1881.

149 CJ (1881) 78–79; HC Deb, 17 Feb. 1881, cols 1070–1071, 1093; Additional Rules Framed by Mr. Speaker for the Regulation of the Business of the House, while the state of Public Business is Urgent, HC (1881) 73–I.

150 HC Deb, 17 Feb. 1881, col 1092.

151 BL, Add Ms 50018, fos 258–259, Northcote to Beaconsfield, 17 Feb. 1881.

152 HC Deb, 17 Feb. 1881, col 1191; TPA, BRA 3/4, 17 Feb. 1881.

153 BL, Add Ms 50021, fos 198–198v, Brand to Northcote, 17 Feb. 1881.

154 TPA, BRA/1/4/53, Northcote to Brand, 18 Feb. 1881. See also BL, Add Ms 44217, fos 170–171, Northcote to Gladstone, 18 Feb. 1881 and HC Deb, 18 Feb. 1881, cols 1236–1238.

155 BL, Add Ms 44195, fos 31–33, Brand to Gladstone, 19 Feb 1881; BL, Add Ms 50021, fos 202–203, Brand to Northcote, 18 Feb. 1881; CJ (1881) 83; HC Deb, 18 Feb. 1881, cols 1343–1344; Additional Rule Framed by Mr. Speaker for the Regulation of the

at midnight on 21 February was moved at the start of that day's business and agreed to by 415 votes to 63, "or more than double the required majority."[156] The proceedings were then concluded at the set time with relatively little fuss, with some amendments not being moved.[157] The report stage was curtailed by a motion under the same rule after three days, with nine divisions taking place when the knife fell.[158] Brand recorded in his diary:

> "It goes against the grain to take a division without debate but I know of no other course, unless we adopt the limited debate which I originally suggested, but to which Sir S. Northcote objected."[159]

Brand also noted that "Without the Urgency Rules we should have been engaged for months upon this single Bill."[160] The guillotine was also used for the Committee and report stages of another bill of the same session designed to tackle unrest in Ireland and declared urgent—the Peace Preservation (Ireland) Bill.[161]

There was some discussion, prompted by Dodson, of whether to make an arrangement for peremptorily ending a stage of a bill part of the package of procedural reforms considered in cabinet in January 1882, but no decision was taken.[162] May subsequently reminded Gladstone of the value of the measure, noting on 23 January 1882 that "The putting of the remaining Clauses and amendments, in Committee on a Bill, was provided for last Session in one of the Speaker's Urgency Rules, and found very effective."[163] However, there seemed to have been no political appetite for such an extreme measure, with the closure remaining the most extreme and controversial procedural measure debated in 1882 and in the early months of 1887.

"The gag": the Conservative use of the guillotine in 1887 and 1888

This changed when the full extent of the challenge faced by the Conservative-led administration in securing passage of new coercive

Business of the House, while the state of Public Business is Urgent, in lieu of the Rules laid upon the Table on the 17th February, HC (1881) 73–II.

156 CJ (1881) 85; HC Deb, 21 Feb. 1881, col 1392; TPA, BRA 3/4, 21 Feb. 1881.

157 CJ (1881) 85; HC Deb, 21 Feb. 1881, col 1472.

158 CJ (1881) 85–93; HC Deb, 24 Feb. 1881, cols 1672–1675.

159 TPA, BRA 3/4, 24 Feb. 1881.

160 TPA, BRA 3/4, 23 Feb. 1881.

161 CJ (1881) 113–114, 116–117.

162 BL, Add Ms 44154, fos 103–105v, May to Gladstone, 12 Jan. 1882.

163 BL, Add Ms 44154, fos 94–95v, May to Gladstone, 23 Jan. 1882.

legislation in 1887 became apparent. Although the case for a procedural package with a new closure rule as its cornerstone had been agreed by Salisbury's cabinet before the case for such legislation was firmly established, the new closure rule was portrayed as part of the solution to the obstruction that bill would face.[164] The rule as finally agreed to was integral to the progress that was made on the Criminal Law (Amendment) Bill in the spring.[165]

However, there were several factors making the passage of this Bill harder than that of the comparable measure of 1881. First, it was being piloted through the House by a relatively inexperienced minister, Arthur Balfour, after Hicks Beach had resigned on health grounds. On 15 April, Salisbury wrote that

> "Balfour's health has not yet sprung any leak. But in the H. of Commons the prospect is oppressive to a degree. There seems every likelihood that the Committee on the bill will last till July."[166]

Second, whereas the 1881 measure had the support of the Official Opposition, the 1887 Bill was opposed by the Gladstonian Liberals as well as Parnellites. On 13 May, Smith complained to his wife that "the obstruction of the two Oppositions now united in one is beyond anything that has been seen in this House" and thought that "very drastic measures will have to be taken" if it continued.[167] Four days later, he wrote that "we have now been eight days over one Clause and we have not finished it yet", noting criticism of the government's weakness for "not insisting on faster procedure."[168]

When the House returned after the Whitsun recess, on Monday 6 June, Smith was pressed privately by government backbenchers to bring forward a motion fixing an end date to the Committee stage.[169] During questions the following day, Smith hinted at such a plan.[170] Leading figures

164 "Part 3", pp 20–31.

165 "Part 3", pp 39–42. For a summary of the provisions of the Bill, see L P Curtis Jr, Coercion and Conciliation in Ireland: 1880–1892: A Study in Conservative Unionism (London, 1963), pp 180–181.

166 GA, D2455, X4/1/1/12, Salisbury to Hicks Beach, 15 Apr. 1887; "Part 3", p 40.

167 E Alexander, Viscount Chilston, W H Smith (London, 1965), p 251.

168 Reading University Special Collections (hereafter RUSC), HAM/A/1156, Smith to Mrs Smith, 17 May 1887, also cited in E Alexander, Viscount Chilston, Chief Whip: The Political Life and Times of Aretas Akers-Douglas, 1st Viscount Chilston (London, 1961), pp 128–129.

169 R Temple, Life in Parliament being the experience of a Member in the House of Commons from 1886 to 1892 inclusive (London, 1893), p 154.

170 HC Deb, 7 June 1887, col 1230.

in both oppositions seemed willing to expedite the Committee stage to preclude that eventuality. Harcourt urged other opponents of the bill to confine discussion "to points which raise ... vital principles in the various clauses, and to divide against every clause by way of protest against the Bill generally."[171] This call was echoed by Parnell.[172] However, some of Parnell's supporters were determined to ignore this advice and, "During the next two days the obstruction waxed worse than ever."[173]

On 9 June, Smith gave notice that, the following day, he would move a motion "the effect of which will be to name a period at which the Committee will report the Bill to the House."[174] Later that evening he gave notice of the terms of the motion, and that it would bring proceedings in Committee to a conclusion at 10.00pm on Friday 17 June.[175] Milman had been asked to prepare the motion, and drafted several versions before that which was tabled. In preparing these drafts, he used the comparable rule and motions of 1881 "as my model."[176]

This motion had three crucial differences from those of 1881. First, it required only a simple majority to pass, rather than the super majority provisions of the urgency rules.[177] Second, it made no provision for amendments, new clauses or new schedules to be moved when the knife fell.[178] Third, whereas the question on the motions of 1881 was to be put forthwith within the framework of the urgency rules, this motion was debateable. In moving the motion, Smith argued that such a measure had become absolutely imperative. The House had spent 35 days considering the bill, including 15 days in Committee, with much time spent on "trivial" amendments. Without this motion, the government would essentially be proved unable to legislate as it wished, which was a negation of the purpose of confidence in an administration being established on the basis of parliamentary elections.[179]

[171] HC Deb, 7 June 1887, col 1239.

[172] HC Deb, 7 June 1887, col 1239.

[173] Temple, Life in Parliament, p 155.

[174] HC Deb, 9 June 1887, cols 1441–1442.

[175] HC Deb, 9 June 1887, cols 1551–1552.

[176] BL, Add Ms 49696, fos 128–129, Milman to Smith, 19 May 1890; PCJ, Miscellaneous Precedents, Vol 3, fos 16–17, draft and final motions relating to Criminal Law Amendment (Ireland) Bill.

[177] HC Deb, 9 June 1887, col 1552; HC Deb, 10 June 1887, col 1631.

[178] HC Deb, 10 June 1887, col 1617. An early draft provided for separate decisions on the second reading and addition of a new Schedule: PCJ, Miscellaneous Precedents, Vol 3, fo 16.

[179] HC Deb, 10 June 1887, cols 1594–1601.

In his response, Gladstone first pointed out the crucial differences between the present use of the peremptory motion and the context of the 1881 measures, when there had been a prior declaration of urgency. He used strong language to condemn the bill and the government, which he said had "disregarded all the usages and traditions of Parliament in the conduct of Business." He also said that he "cannot find fault with Gentlemen who think it right to record their protest against this further abridgment of Parliamentary liberty", while emphasising that he was not actually opposing the motion.[180] Harcourt later made explicit the Gladstonian belief that the precedent being set would be of use to a future Liberal government.[181] The closure was successfully claimed on an amendment under debate and then on the main question, and the motion was agreed to by 245 votes to 93.[182] The provisions were put into operation on 17 June, made easier by a Parnellite walkout.[183]

On 28 June, Smith announced his intention to move a further guillotine motion, this time to bring to an end proceedings on report stage at 7.00pm on 4 July. He suggested that the House would be prepared for this motion, and indeed Members were dubbing it "The gag" before he was able to read out its terms.[184] On this occasion, provision was made for putting the question on amendments, although only on those of which notice had been given prior to the announcement of the intention to table the motion. Smith moved the motion on 30 June. The opposition to the motion was less vociferous than to that of 10 June, and the Bill completed its report stage before the scheduled end time due to an opposition boycott.[185] The guillotine was used again for a Bill introduced in haste in July 1888 to establish and empower a Judicial Commission to examine the allegations levelled against Parnell of complicity in the Phoenix Park murders. The measure was regarded with some distaste even among Unionist ranks, and there was sense that the guillotine motion introduced on 2 August to conclude the Committee stage was to shield the government from further embarrassment at its own measure.[186]

[180] HC Deb., 10 June 1887, cols 1601–1608.

[181] HC Deb, 10 June 1887, cols 1630–1632.

[182] CJ (1887) 284–285; HC Deb, cols 1608–1674.

[183] CJ (1887) 302; HC Deb, 17 June 1887, cols 484–488; Temple, Life in Parliament, pp 157–158.

[184] HC Deb, 28 June 1887, col 1222.

[185] CJ (1887) 332, 333; HC Deb, 30 June 1887, cols 1337–1352; Temple, Life in Parliament, p 162.

[186] HC Deb, 2 Aug. 1888, cols 1272–1273; Temple, Life in Parliament, pp 207–211.

The guillotine was not used again during Salisbury's second administration, but the ill-feeling created by its use remained. In March 1890, Gladstone told a crowd in Norwich that "The Coercion Act they had passed was more odious in its nature and its object than had ever been conceived before", that it had been "imposed on Parliament ... in defiance of every Constitutional usage and principle, and in a manner odious to the best convictions and best traditions of the British nation." The government with a "domineering and hectoring majority" had "trodden under foot the ancient liberties of Parliament." This speech emboldened Milman to write to Smith drawing attention to the similarities between the motions drafted by May for Gladstone in 1881 and the motion which Milman had prepared for Smith in 1887, contending that they were "practically identical."[187]

"To allot a definite time in Committee or on Report": Milman's alternatives to the guillotine

Although Milman viewed Gladstone's criticism of the Conservative use of the guillotine sceptically, Milman remained uneasy about the sweeping and indiscriminate effect of the motions he had been asked to draft. In 1887, he prepared a motion designed to reduce the onerous effect of the guillotine on the Criminal Law Amendment (Ireland) Bill by permitting a motion "That certain amendments or new Clauses specified in the Motion be not considered."[188] If taken alongside or prior to the guillotine motion, this would have allowed trivial amendments to be set aside, to enable the remaining time to be concentrated on the "indispensable" amendments that Parnell and Harcourt had suggested should be prioritised.

In 1889, alongside that proposal and others to increase the effectiveness of the closure,[189] Milman prepared a standing order for Smith's consideration to allow a minister, when the Speaker agreed that proceedings at Committee stage or on report had been "unduly prolonged", to provide that the remainder of the stage would operate under "the Rules of Restricted Debate." These rules combined elements of Brand's abortive rules of 17 February 1881 and of the guillotine motion for the report stage of the Criminal Law Amendment (Ireland) Bill which was not used. From the former, it borrowed the provision for a speech by a mover and an opposer

[187] BL, Add Ms 49696, fos 128–129, Milman to Smith, 19 May 1890. The first quotation from Gladstone's speech is from The London Evening Standard, 17 May 1890, p 5; the second is from the cutting from The Observer attached to Milman's letter to Smith.

[188] PCJ, Miscellaneous Precedents, Vol 3, fo 17, manuscript motion relating to Criminal Law Amendment (Ireland) Bill.

[189] "Part 3", p 49.

of each amendment, limited to five minutes as in the US rule. From the latter, it took the prohibition on additional amendments being tabled for consideration. Finally, it allowed a motion to be moved, with the Chair's consent, to exclude certain amendments from consideration.[190] Milman prepared a revised version of this proposal in 1890.[191]

In 1891, as part of a memorandum on the working of the closure rule, Milman reminded his readers that the failings of the 1881 urgency rules had meant that "Mr. Gladstone had four times to obtain a special order from the House to close peremptorily the proceedings" on committee and report stages of two bills at an appointed hour. The weaknesses of the closure rule and the quantity of unimportant amendments considered during the Committee stage of the Criminal Law Amendment (Ireland) Bill in 1887 meant that "the impatience of the House reached a pitch" which led to the first "peremptory order", soon followed by another "to bring the proceedings on the Report stage to an abrupt termination." Thus, "the House was still compelled to deal with the crisis in 1887 just as it had dealt with a similar crisis in 1881." As a result, the majority of the bill went unconsidered, and the government was unable even to insert an amendment they supported "and were reproached with bad faith." In consequence, "the Bill was deprived of that prestige which a thorough sifting of the machinery and its acceptance by considerable majorities can alone confer." Alongside reform of the closure rule, Milman suggested a new measure, which was prospective rather than reactive, and designed to tackle the problem not only of obstruction, but also that of the uneven distribution of time in Committee and on report which flowed from it. Under his new proposed rule, a minister would be able to move a motion

> "to allot a definite time in Committee or on Report for the consideration of any Clause or other defined part of a Bill. At the expiration of the allotted time (if the proceedings be not concluded) the decision of the Committee shall be taken forthwith on every Question necessary to complete the proceedings on such Business, and a day shall be appointed for the next ensuing proceeding thereon."[192]

Milman's 1891 paper contained two fundamentally important ideas. The

[190] PCJ, Miscellaneous Precedents, Vol 3, fo 152, Control of the House over protracted Debate in Committee of the whole House and on Report, 1889.

[191] PCJ, Miscellaneous Precedents, Vol 3, fo 207, Control of the House over protracted Debate in Committee of the whole House and on Report, 1890.

[192] PCJ, Miscellaneous Precedents, Vol 1, fos 251–252v, Memorandum on the Working of the Closure Rule, Apr. 1891. For the elements of this paper relating to the closure, see "Part 3", pp 49–50.

first was that consideration would be improved if the timetable motion for a bill divided the bill into individual compartments with different concluding points for each compartment, in contrast to the motions of 1881, 1887 and 1888, which only dealt with a single end point for a stage of a bill. The second was that such an allocation would be better made at an early point, rather than in response to obstruction so that the allotted time could be used effectively. The first idea was adopted in the order limiting the duration of the Committee stage of the Government of Ireland Bill in 1893, and the cabinet's approach may have been influenced by Milman's suggestions. The second idea for programming was not adopted systematically by the House of Commons until the very end of the twentieth century.[193]

Frustrated both by the reluctance of successive governments to adopt his own proposals and by the operation of the guillotine in relation to the Government of Ireland Bill in 1893, Milman became increasingly forthright. In an article published anonymously in early 1894, he criticised the "peremptory order" which he felt overrode the rules of the House and was, "like the state of siege, above law." He thought that, "while the justification of its use must rest on the circumstances of each case, the abuse of it is a standing peril in Parliament."[194] Writing early in the twentieth century, Milman again expressed unease about "this irrational method of legislation."[195] Milman's concerns were echoed soon afterwards by Josef Redlich, the author of the first systematic history of parliamentary procedure, who characterised the guillotine as "completely out of harmony with the historical character of parliamentary government."[196]

The verdicts of Milman and Redlich on the guillotine were overly harsh. Milman's own schemes would have mitigated some of its effects, but his proposal for speeches for and against amendments at the conclusion of proceedings gave rise to the objections which Northcote had identified in 1881: it benefitted those who tabled amendments, and penalised restraint. Awareness of the power of the guillotine changed the balance of forces within the House, because, as Milman noted in 1894, "It has now its peg in the parliamentary armoury, whence it can be snatched down in a moment."[197] Milman's proposals for the use of motions for advance allocation of time

[193] C Lee, "Archibald Milman and the 1893 Irish Home Rule Bill", *The Table*, Vol 84 (2016), pp 28–63, at pp 33–34, 46, 60.

[194] A Milman, "The Peril of Parliament", Quarterly Review, Vol 178 (1894), pp 263–88, at pp 278–279.

[195] Encyclopædia Britannica, p 479.

[196] Redlich, Procedure, I.181.

[197] Milman, "Peril of Parliament", p 278.

for bills would not be adopted for many years to come, in part because the House viewed evidence of unreasonable delay as a necessary precursor to an order bringing those proceedings to a conclusion.

"Any unfamiliar proposal always flutters the House": carry-over proposals

The third response to the crisis of legislation in the 1880s came in the form of proposals to enable the stages of a bill in the Commons completed in one session to be abridged if that bill was reintroduced in the next session of the same Parliament. These proposals had their origin in suggestions made in the House of Lords. However, first May and then Milman developed alternative proposals, which sought to address constitutional objections to those suggestions and were confined to proceedings in the Commons.

In 1848, the Conservative leader Lord Stanley introduced a Bill in the Lords to enable either House of Parliament by resolution to suspend until a future session the consideration of a Bill passed by the other House, as part of an attempt to tackle the tendency of the Commons to send bills to the Lords late in the session. This Bill passed the Lords, but made little progress in the Commons, with a Select Committee on Public Business unanimously concluding that "it did not think it advisable to recommend it for adoption by the House."[198] A similar bill was introduced in 1852 and the matter continued to be debated in the Lords in the 1850s.[199] In 1861, both Houses established committees on the despatch of public business. The Commons Committee concluded that the objections to the proposal embodied in Lord Stanley's bill were "grave and numerous." It would curtail the opportunity to improve bills between sessions. It would be at variance with the prerogative of the Crown by counter-acting the effects of Prorogation.[200] The Lords Committee, however, proposed a new scheme, whereby if a bill brought to the Lords was in the same form as one brought to it in the previous session, it could, in certain cases, adopt an "abridged form of proceeding."[201] The Commons Committee conceded that this

[198] Parliamentary Proceedings Adjournment Bill, HL Bill 103 and HC Bill 391 of Session 1847–48; HL Deb, 15 May 1848, cols 981–987; HL Deb, 23 May 1848, cols 1255–1259; HL Deb, 2 June 1848, cols 246–249; HC Deb, 5 July 1848, cols 131–137; CJ (1847–48) 596, 685; HC (1847–48) 644, p viii. The text of the Bill was republished in 1890: Parliamentary Proceedings: Return to an Order of the House, HC (1890) 233, pp 1–2.

[199] RUSC, HAM PS 15/44, Memorandum by Smith, June 1890.

[200] Report from the Select Committee on the Business of the House, HC (1861) 173, paras 40–46; HC (1890) 233, pp 3–4.

[201] Report from the Select Committee ... [on] the Despatch of Public Business, HL (1861) 95, pp 3–4.

proposal did not interfere with the prerogative of Prorogation, but saw no case for its application to the Commons, as bills could be passed through stages quickly if the House so desired.[202]

In 1869, Salisbury introduced a Bill in similar terms to that introduced by Lord Stanley in 1848, in response to which the government agreed to establish a joint committee.[203] That joint committee restated previous objections to the proposal, but also received evidence from Erskine May which mirrored the proposal of the Lords Committee of 1861: he suggested that, where a bill had not been passed by the Commons, but not been rejected, it might be allowed to pass through the same stages in a second session through an expedited procedure.[204] In 1875, a Select Committee recommended that

> "Where all the clauses of a Consolidation Bill cannot be got through before a prorogation, the Bill should be suspended to the ensuing Session, and taken up at the point which it had reached in the previous Session."[205]

Before the 1878 Select Committee, Erskine May mentioned the idea he had mooted in 1869 in more tentative terms, simply referring to the possibility of a bill which had not completed its stages in one session having "facilities given to it in the following Session."[206]

In January 1882, when asked to prepare a set of procedural proposals for Gladstone's cabinet, May noted that the idea of a bill which had passed one House being suspended by the second House was a cause of "obvious objections", but "there could be little objection to the suspension of a Bill in the House of Commons itself; & if the principle were entertained, it could readily be carried into effect." He then set out a draft which allowed for a bill which had been reported from Committee in one session, if introduced without alteration in the next session, to have all its stages up to the start of consideration taken "pro formâ."[207] Brand told May that he approved "of your last rule relating to the suspension of Bills", welcoming the fact that pro forma proceedings in the new session dealt with objections about

[202] HC (1861) 173, paras 47–52; HC (1890) 233, pp 4–5.

[203] HC (1890) 233, p 2; HL Deb, 4 Mar. 1869, cols 588–620; RUSC, HAM PS 15/41, Note on Parliamentary Proceedings Bill 1869.

[204] HC (1868–69) 386, paras 1–2 and QQ 143–144.

[205] Report from the Select Committee on Acts of Parliament, HC (1875) 280, p vii.

[206] HC (1878) 268, Q 188.

[207] BL, Add Ms 44154, fos 112–115, Additional Rules for consideration, 18 Jan. 1882, at fos 114–115.

"tampering with the prerogative of the Crown."[208] Despite this, Dodson argued that "The change interferes with the Royal Prerogative of putting an end to all business by a Prorogation."[209] Chamberlain disagreed with Dodson, arguing that the change "would be popular in the House and deserves careful consideration." He noted in particular that "Private members would like this alteration and it would help sweeten our other proposals to them."[210]

The government did not include any proposal along these lines in its package of reforms offered to the House in 1882, although the matter was raised by a backbench Conservative, Edward Clarke, who moved a motion as follows:

> "That it is desirable that the practice of this House should be so amended that the consideration of Bills which have passed a Second Reading but have not become law shall be resumed in the succeeding Session of the same Parliament at the stage of Committee."

In advancing this suggestion, which was similar to the one shared with the cabinet by May, Clarke drew a clear distinction between his proposal and that for suspension by the second House as mooted in 1848 and 1869, which was "something quite different." Dodson replied for the government, evincing the same scepticism in public that he had demonstrated in private with regard to May's suggestion, and the motion received little support from either side.[211] A proposal for second House suspension was debated in the Lords in May 1883, and also attracted little support.[212]

There the matter rested until the Conservative-led administration in which Clarke served as Solicitor General encountered "partial parliamentary paralysis" in the period between 1887 and 1890.[213] This condition was exemplified by the difficulties encountered by the government in securing tithe reform. Legislation to transfer responsibility for the payment of tithes from the occupier to the owner of the land was widely recognised as essential both to ease burdens on agricultural tenants during the agricultural depression and to ease the position of the clergy in relation to their parishioners.[214] In July 1887, when Smith was forced to jettison almost

[208] TPA, ERM 4/112–113, Brand to May, 19 Jan. 1882

[209] BL, Add Ms 44252, fos 153–154v, Dodson memorandum on rules of procedure, 20 Jan. 1882.

[210] BL, Add Ms 44125, fos 116–117, Chamberlain to Gladstone, Jan. 1882.

[211] HC Deb, 21 Feb. 1882, cols 1265–1285.

[212] HL Deb, 7 May 1883, cols 1–12.

[213] Chilston, Chief Whip, pp 169–170.

[214] Chilston, Smith, pp 257–260; Chilston, Chief Whip, pp 181–183; P Marsh, The

all government legislation not relating to Ireland, he still hoped to salvage the Tithe Bill "which we consider to be a measure of very great importance."[215] In August, Smith was forced to abandon even this Bill, despite having been pressed by "many of our friends who are apprehensive of very serious mischief during the coming Winter if an attempt is not made to deal with the evil."[216] The Bill featured in the 1888 Queen's Speech and was started in the Lords, but was withdrawn without achieving a second reading in the Commons, even with the use of an unwelcome autumn continuation for legislative business.[217] The Bill had to be abandoned again in 1889, when it was discovered that the provisions needed to secure Opposition support were outside the scope of the Bill.[218] In 1890, the second reading of the Bill was secured in March with a comfortable majority, but by June there was, in the words of one backbencher, "a gloom in our Party such as I had never before witnessed." It became increasingly evident that the Tithes Bill and an Irish Land Purchase Bill could not possibly be passed by the summer. The options of abandoning the legislation or proposing another autumn continuation seemed equally unpalatable. Accordingly, the government sought to cut its "Gordian knot" by suspending the two Bills until the next Session.[219]

On 2 June 1890, Milman wrote to Smith enclosing "the sketch of a Rule that might perhaps meet the wishes of the Govt." Like May and Clarke before him, Milman emphasised that his draft avoided "the constitutional difficulty of a Bill being considered in one House only in the same session by providing that it should again pass the originating House in the next Session." He went on:

> "The Rule is I think made so pliant that neither the Government nor the House would be bound to follow the abridged Procedure in case of fresh information coming to hand, or an alteration taking place in public feeling, or any other change of circumstance arising. At the same time there would be only one Debate in the originating House in the second Session, and that on the Question whether the Bill should be again considered in Committee, or be sent up straight to the Lords in the

Discipline of Popular Government: Lord Salisbury's Domestic Statecraft (Hassocks, 1978), pp 167–168.

[215] HC Deb, 4 July 1887, col 1614; Kent History and Library Centre, U564/C25/35, Smith to Akers-Douglas, 26 July 1887.

[216] RUSC, HAM PS 12/88, copy of Smith to Hartington, 7 Aug. 1887.

[217] CJ (1888) 9, 473; Temple, Life in Parliament, pp 213–217.

[218] Temple, Life in Parliament, pp 252–253; Marsh, Discipline, p 174.

[219] Temple, Life in Parliament, pp 268–279.

exact form in which it passed in the previous Session."[220]

The motion as drafted dealt with more than the abridged procedure. It began by imposing a cut-off point for most legislation:

> "That, in future Sessions after a day to be appointed at the commencement of each Session, and in the present Session after a day to be hereafter appointed, no Public Bills (except Money Bills, Continuance Bills, and Bills returned from the Lords) shall be further proceeded with."

It then allowed for the Member in charge of a Bill to move a motion in the form "That further Proceedings on such Bill be suspended until the next Session." In cases where this motion was agreed to, in the next Session, "(being a Session of the same Parliament)", the Member in charge could ask for the suspension motion to be read, after which the Bill would be presented and the questions on first and second reading would be put forthwith. If those questions were agreed to, the bill would be printed and it would resume its passage at the relevant point in Committee or on report at which proceedings had been suspended.[221]

Smith then tabled the motion based on Milman's draft, albeit specifying 15 July as the cut-off date. A Conservative backbencher felt that Smith gave notice of it "in a somewhat feeble and harassed manner."[222] Smith received representations about its terms, and on 20 June he conceded that it would be best for the proposal to be considered by a select committee in the first instance.[223] On the Sunday preceding the scheduled debate on the establishment of the committee, Milman wrote to Smith drawing attention to a range of foreign legislatures where bills did not lapse at the end of a session or could be carried over, and stating that he was "confident the Government plan will make way with the House when it comes to be understood but any unfamiliar proposal always flutters the House for a time." He went on:

> "Ideas on the subject were once current but generations (in the Parliamentary life) have passed away since then and Radicals who would upset everything with a light heart and throw the constitution into a melting pot to see how it would look recast, pretend to be scared by your proposal. What they wish is to throw it over till next Session to wreck the

220 PCJ, Miscellaneous Precedents, Vol 3, fo 77, Milman to Smith, 2 June 1890.

221 PCJ, Miscellaneous Precedents, Vol 3, fo 77, Abridged procedure on Bills partly considered in this House in a previous Session of the same Parliament.

222 RUSC, HAM PS 15/50, copy of motion; HC Deb, 17 June 1890, cols 1158–1160; Temple, Life in Parliament, p 279; RUSC, HAM PS 15/40, copy of Smith to Gladstone, 17 June 1890.

223 HC Deb, 20 June 1890, cols 1505–1506.

Government Bills in this."[224]

In his speech the next day, Smith did refer to foreign examples, but did not dwell on the wider case for the change. In response, Gladstone acknowledged the "conciliatory spirit" embodied in the proposal to establish a select committee, although others were more critical of the motion.[225]

During the subsequent debate on the nomination of the select committee, it was noted that the membership followed the recent practice whereby it reflected the government's majority in the House. Harcourt, speaking for the Opposition, did not contest the composition, while putting down a marker on the substantive issue referred to the committee:

> "I am confident that it will not be settled by a Party majority either in the Committee or in the House. It will be utterly impossible to deal with so grave a question as is involved in this proposed Constitutional change unless by general consent, both in the House and the Committee."[226]

The government was represented on the Committee by George Goschen, the Chancellor of the Exchequer, who was Chairman, Balfour and Clarke, a proponent of carry-over in 1882 and now Solicitor General. Hartington and Chamberlain were nominated for the Liberal Unionists. The Opposition members included Gladstone, Harcourt and Whitbread. At the Committee's first meeting on Monday 30 June, it soon became apparent that there was no real prospect of agreement, hardly helped by the precision with which the position to be adopted by Opposition members was shared with the press, but there was still some hope that a report could be adopted in the course of a week.[227]

However, when the Committee held its second meeting on Thursday 3 July, the extent of disagreement became apparent. The government advanced its proposals, in the form of a new draft Standing Order, omitting reference to the cut-off for considering new measures, but otherwise reflecting the motion tabled on 17 June. Gladstone then moved a draft Report, which represented a frontal assault on the government's proposal. He equated the proposal with those advanced since 1848, and contended that "In every

224 RUSC, HAM PS 15/47, Milman to Smith, 22 June 1890. On the foreign examples, see also PCJ, Miscellaneous Precedents, Vol 1, fos 72–74, Memorandum showing the Parliaments in which the consideration of Bills partly considered in one Session is resumed in the next ensuing session, RUSC, HAM PS 15/44, Memorandum by Smith, June 1890, RUSC, HAM PS 15/45, Reginald Dickinson to Smith, 20 June 1890, RUSC, HAM PS 14/48, Dickinson to Smith, 26 June 1890 and RUSC, HAM PS 15/49, Memorandum by Dickinson, 26 June 1890.

225 HC Deb, 23 June 1890, cols 1664–1689.

226 HC Deb, 27 June 1890, cols 222–228.

227 *The Times*, 1 July 1890, p 10; *The Times*, 3 July 1890, p 11.

instance, and in every shape, they have been universally condemned." He suggested that the objections raised by the 1861 Committee on constitutional and practical grounds

> "apply equally to the case of the carrying over to another Session in the House of Commons a Bill partly considered, and they derive greater force from the fact that, since the date of the above Report, the House of Commons has acquired much greater and more effective means of expediting the passage of Bills when it is so minded."

He then advanced a further argument, that, when a bill could not be passed, it would be better for it to be reintroduced in "a new and reformed shape", rather than amended, terming the Tithe Bill of the 1889 Session "an apt illustration" because "it was found impossible to introduce into the Tithe Bill the desired amendments in Committee, and it was necessary to introduce a new Bill to accomplish the objects of its authors." He argued that carry-over "might have a most prejudicial effect in inducing an apathy and laxity on the part of the Government and of the House in the prosecution of important measures."[228]

It was reported that "the Government foresee that a prolonged debate must take place when the subject comes before the House."[229] Gladstone's draft Report was defeated by 11 votes to 9, but by the time the Committee met again on Tuesday 8 July it was widely known that "the Members of this Committee were at loggerheads among themselves." There was even a division among government supporters about whether the initial suspension motion should be debateable.[230] On Thursday 10 July, the Committee met again, but only managed an initial debate on the principle of a draft Report supporting the new Standing Order in Balfour's name. Smith subsequently admitted in the House "that after what has occurred in the Committee we cannot hold out any certain expectation of an immediate termination of its labours." He acknowledged that, if the government pursued its proposal, they would "interpose a prolonged and possibly an acrimonious Debate" to secure the Standing Order. Against a background of government troubles on other fronts, Smith announced that it had decided "not to press this Standing Order in the course of the present Session", and to abandon the Tithe Bill and the Land Purchase Bill. Instead, the Bills would be introduced afresh in a new Session which would begin at a "much earlier period than is customary"—in November rather than February.[231]

[228] HC (1890) 298, pp 7–9.

[229] *The Times*, 4 July 1890.

[230] Temple, Life in Parliament, p 279; HC (1890) 298, pp 13–14.

[231] HC Deb, 10 July 1890, cols 1320–1321; Marsh, Discipline, pp 174–177.

In his statement, Smith had kept open the possibility that the government might return to the proposal on carry-over in the future, and the Committee met again on Monday 14 July, in Gladstone's absence, to consider Balfour's draft report paragraph by paragraph. An amendment tabled by Chamberlain designed to placate the Opposition was rejected by Harcourt, and the Report was agreed to after nine further divisions. Before the report could be officially printed, the alternative texts were published in the press, along with a blow-by-blow account of the proceedings.[232] Balfour's draft Report which provided the basis for the final Report was combative in tone, and was reminiscent in style and argument to some of Milman's writings, such that it seems quite possible that he prepared it. That Report first set out the problems in securing the passage of complicated and controversial bills in the preceding decade. It argued that the House faced two options if it was not to "acquiesce in its increasing impotence", in the form of more systematic use of the guillotine or the use of carry-over; the latter option was portrayed as more acceptable in most cases. The Report argued that the Standing Order that was being proposed "differs fundamentally both in its character and in its object" from the proposals for suspension of bills in the second House considered since 1848. It contended that

> "those who are impressed with the advantages of not passing measures till they have been twice introduced into the House of Commons are hardly in a position to regret that the proposed Standing Order may in certain cases extend legislation over two years instead of one."

The Report also claimed that the proposal for carry-over was "much less violent in character and much less at variance with the spirit of Parliamentary tradition than some alterations which have been made of late years in Parliamentary procedure."[233]

The idea of carry-over had been launched in 1890 towards the end of a session by an exhausted leader as a straw to clutch at after the government had badly mismanaged its legislative programme. These circumstances were never likely to be conducive to successful procedural reform. The idea of carry-over for public bills would be revived intermittently during the twentieth century, but only systematically adopted by the Commons early in the twenty-first.[234]

[232] HC Deb, 10 July 1890, col 1320; *The Times*, 15 July 1890; HC (1890) 298, pp 13–20.

[233] HC (1890) 298, pp 3–5.

[234] D Natzler and M Hutton, eds, Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament (25th edn, 2019), paras 30.31–30.32; HC (1928–29) 105; First Report from the Select Committee on Modernisation of the House of Commons:

Conclusions

The challenges faced by successive governments in the 1880s in passing legislation brought into sharp relief the limits to the effectiveness of the procedural changes introduced in that decade. The limited impact applied to some of the measures intended to deal with proceedings generally, most notably the closure. Even the introduction of Standing Committees, intended specifically to address the legislative logjam, had only a relatively marginal impact prior to the start of the twentieth century, although the value of these committees in enabling legislation that was not at the top of any government's political agenda to be passed into law was recognised well before then. The peremptory order or guillotine provided a solution for the most contested measures, but was used rarely in the 1880s and there was a considerable political cost associated with its use. The proposal for carry-over of bills in the Commons had the potential to provide a solution for more contested measures, but the proposal was advanced in circumstances which made its adoption unlikely. None of the measures implemented dealt satisfactorily with the problems about the control and management of time in the House. Milman's proposals for advance allocation of time for bills was designed to address this issue, and he was to play a leading role in significant changes from the mid-1890s which were also designed to do so.

The Legislative Process, HC (1997–98) 190, paras 68–70; Third Report from the Select Committee on Modernisation of the House of Commons: Carry-Over of Public Bills, HC (1997–98) 543.

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Safety and respect in Commonwealth parliamentary workplaces

On the first sitting of the year, 8 February 2022, the Speaker made a statement acknowledging the history of workplace bullying, sexual harassment, and sexual assault in Commonwealth parliamentary workplaces. The statement was delivered on behalf of the Parliamentary Cross-Party Leadership Taskforce, established following the Independent Review into Commonwealth Parliamentary Workplaces by the Sex Discrimination Commissioner, Ms Kate Jenkins.

A Joint Select Committee on Parliamentary Standards was established by both Houses later in February to develop a code of conduct for Commonwealth parliamentarians, parliamentary staff and parliamentary workplaces to ensure safe and respectful behaviour. The committee's final report was presented on 29 November. It proposed behaviour codes for parliamentarians, parliamentarians' staff and Commonwealth parliamentary workplaces.

Extended sitting for passage of religious discrimination bills

On 9 February 2022, debate resumed on the second reading of the Religious Discrimination Bill 2021, in cognate with the Religious Discrimination (Consequential Amendments) Bill 2021 and the Human Rights Legislation Amendment Bill 2021. Just before the time for the adjournment of the House to be proposed, standing orders were suspended to allow for an extended sitting for consideration of the three bills, as well as three unrelated bills. The second reading cognate debate on the Religious Discrimination Bill 2021 then continued until after 1.00 am.

The bill then proceeded to the consideration in detail stage. A minister moved a further set of government amendments and the shadow Attorney-General moved an amendment to one of these amendments. The question that the opposition amendment to the government amendment be disagreed to was put and a division called. The numbers for the ayes and the noes being equal, the Speaker gave his casting vote with the ayes on the principle that, where further discussion is not possible, decisions should not be taken except by a majority. The government amendments were then carried.

The Religious Discrimination (Consequential Amendments) Bill 2021 was then called on, read a second time, and passed by the House.

Next, the Human Rights Legislation Amendment Bill 2021 was called on and read a second time before proceeding to the consideration in detail stage, where the bill was amended by a crossbench member. The bill was then read a third time.

Two other bills listed in the suspension motion were then passed by the House and consideration of a third bill was postponed. The House adjourned at 5.01 am.

Opening of 47th Parliament

The House was dissolved on 11 April 2022 ahead of a general election on 21 May. Members and senators assembled in Parliament House for the opening of the 47th Parliament on 26 July.

There was a change of government following the election, with the Labor Party winning 77 seats (a narrow majority in a House of 151 seats), the Liberal and National Parties in coalition winning 58 seats and independent and minor party members constituting the largest crossbench since Federation, with 16 seats.

After those 148 members present had been sworn in, the Clerk called for nominations for the office of Speaker. Government member Mr Milton Dick and opposition member and former Speaker Mr Andrew Wallace were both nominated. Mr Dick was elected 92 votes to 56, becoming the 32nd Speaker of the House of Representatives. Later in the day, the House elected Ms Sharon Claydon (Labor) as Deputy Speaker and Mr Ian Goodenough (Liberal) as Second Deputy Speaker.

Private Member's bill passes the House

In August, a government backbencher presented the Restoring Territory Rights Bill 2022, which proposed to remove the restrictions preventing the Northern Territory and the Australian Capital Territory from passing legislation to allow for voluntary assisted dying. Later that sitting, standing orders were suspended to allow the motion for the second reading of the bill to be called on during government business for debate and referral to Federation Chamber. Following debate, the Manager of Opposition Business noted that parties had agreed to allow a free vote (a conscience vote) on the bill and that certain members may have wished for their vote to be placed on the record, through a division. The third reading was then moved and a division called. The question that the bill be read a third time was carried 99 votes to 37.

When the bill passed the Senate and received Royal Assent in December, it became the 24th private member's bill to pass into law since Federation.

Death of Her Majesty Queen Elizabeth II

Following the death of Her Majesty Queen Elizabeth II on 8 September 2022, the Speaker notified members that the House would next meet on Friday, 23 September, instead of on 12 September as intended. A national day of mourning took place on 22 September. The following day, when the House met, standing orders were suspended to set the order of business for the day. The Prime Minister moved that an address to His Majesty King Charles III be agreed to, expressing deep sympathy for the death of Her Majesty and congratulating His Majesty on his accession to the throne.

National Anti-Corruption Commission legislation

On 28 September the National Anti-Corruption Commission Bill 2022 was introduced by the Attorney-General along with a bill providing for associated consequential and transitional provisions.

The legislation creates a new Commonwealth anti-corruption agency, the National Anti-Corruption Commission. This independent agency will investigate and report on serious or systemic corruption in the Commonwealth public sector, refer evidence of criminal corrupt conduct for prosecution, and undertake education and prevention activities regarding corruption. It will have the jurisdiction to investigate Commonwealth ministers, parliamentarians and persons engaged under the Members of Parliament (Staff) Act 1984, amongst others.

Special sitting for passage of energy price relief bill

After the last scheduled sitting of the year, the Prime Minister announced, on 9 December, that the parliament would return to consider legislation to ease pressure on household energy bills. In accordance with standing order 30 the Speaker set Thursday, 15 December, as the date for the next meeting of the House.

The House agreed to suspend standing orders to set the order of business for the day. The resolution provided for the introduction and passage through all stages of the Treasury Laws Amendment (Energy Price Relief Plan) Bill 2022 that day. The bill was introduced and passed all stages.

Senate

Statement of acknowledgement regarding workplace bullying and harassment

Proceedings on the first sitting day of 2022 commenced with a statement of acknowledgement by the President of the Senate (and by the Speaker in the House of Representatives), and statements of acknowledgement and apology from party leaders in both Houses regarding workplace bullying, sexual harassment, and sexual assault in Commonwealth Parliamentary

Workplaces. The acknowledgement was crafted by a cross-party leadership group comprising government, opposition and crossbench senators and members, together with an independent chair, on the recommendation of the Australian Human Rights Commission's Independent Review into Commonwealth Parliamentary Workplaces.

On 10 February 2022 the Senate passed a resolution to appoint a Joint Select Committee on Parliamentary Standards to develop 'codes of conduct for Commonwealth parliamentarians, parliamentary staff, and parliamentary workplaces to ensure safe and respectful behaviour'. The House of Representatives agreed to the resolution on 14 February.

The committee tabled its final report on 29 November, making 16 recommendations, including that the Senate and the House of Representatives should endorse draft behaviour standards for parliamentary workplaces and behaviour codes for parliamentarians and their staff, pending finalisation of enforcement mechanisms.

Senate composition

The general election on 21 May 2022 resulted in a change of government and a very different Senate, incorporating its largest ever crossbench party – the Australian Greens, with 12 senators elected (compared to 9 in the previous parliament) – and overall, its second largest crossbench: 18 senators in 5 party groupings.

Flags in the Senate chamber

On 27 July 2022, the Senate resolved to have the Aboriginal Flag and the Torres Strait Islander Flag displayed in the Senate chamber for the first time, alongside the Australian Flag. A similar proposal was narrowly defeated in October 2020.

Public interest and legal advice on the constitutionality of laws

Inquiries by the Parliamentary Joint Committee on Corporations and Financial Services and the Senate Economics Legislation Committee on the Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021 each received evidence that questioned the constitutionality of the bill. The Attorney-General's Department raised public interest immunity claims against providing legal advice sought by the committees, on the basis of a supposed 'long-standing convention'. The joint committee rejected the claim, while the legislation committee seemed unpersuaded.

Officers from the department also declined to provide information about the constitutional head of power supporting the bill, again making

public interest immunity claims. They argued that providing such details to a parliamentary committee—even as in-camera evidence—might effect a waiver of legal professional privilege. However, evidence given to a committee is protected by parliamentary privilege, restraining its use before the courts and, in any case, the Senate does not consider legal professional privilege an acceptable ground for a public interest immunity claim, as opposed to possible prejudice to actual or pending legal proceedings.[1] The situation was described by the legislation committee as 'an unsatisfactory state of affairs', while the dissenting report from opposition senators said the argument was 'self-evidently ridiculous'.

Orders for documents and public interest immunity claims

The Senate made 46 orders for the production of documents in the first six months of the 47th Parliament, with the government fully complying with 8 orders. Other responses redacted or withheld information for a variety of reasons. Among them were public interest immunity (PII) claims invoking deliberative processes of government, legal professional privilege, and prejudice to relations between the Commonwealth and the states, as well as a claim that fully responding to an order would 'significantly and unreasonably divert resources'. Some of the grounds claimed—for instance, that documents comprise privileged legal advice or would not be released under a Freedom of Information request—have been explicitly rejected by the Senate as unacceptable, including throughout the previous Parliament.

On 3 August the Senate made an order requiring the government to provide 'a statement outlining' statistics on claims for death and injuries arising from COVID-19 vaccines. The government's response challenged the validity of the order because it did not seek 'a document that is in existence, but a statement'. This is somewhat at odds with the view endorsed by the Privileges Committee that 'such orders also cover documents created for the purpose (a 'return to order') from information available to the person to whom the order is directed.[2] The Senate has made many orders over the years requiring information to be compiled in this way. Some of these orders are of a continuing nature and are listed online with the Senate's standing orders.

On 22 November the Senate referred to its Procedure Committee an inquiry into a proposed procedure for senators to review documents subject to orders for production that a minister believes would not be in the

[1] Odgers' Australian Senate Practice, 14th ed., pp 662, 668

[2] 153rd report, Guidance for officers giving evidence and providing information, paragraph 5.25

public interest to table. This adds to a number of inquiries over the years into potential mechanisms for resolving PII disputes between the Senate and executive government.

Australian Capital Territory Legislative Assembly

Presence of Auslan interpreter on the floor of the Chamber

Following an amendment to standing order 210 in October 2019, an Auslan interpreter may be permitted on the floor of the Chamber to allow for some debates to be signed. When a petition signed by 536 residents was presented, requesting an inquiry into the use of Auslan, an interpreter was allowed on the floor to sign debate concerning the petition. Later, on 2 June 2022, when the Chair of the Standing Committee on Education and Community Inclusion was making a statement informing the Assembly that the committee had resolved to conduct an inquiry into and report on the access to services and information in Auslan in the Territory, an interpreter was similarly allowed on the floor of the Chamber.

Speaker introduces legislation

During the reporting period the Speaker introduced two Bills relating to the administration of the Assembly. The first Bill, the Legislation (Legislative Assembly Committees) Amendment Bill 2022 was introduced on 10 February 2022 This bill will amend provisions in a number of ACT statutes to enable the Speaker of the Legislative Assembly to nominate, in writing, which Assembly standing committees are to perform particular statutory responsibilities and functions. The amendments will make statutory references to Assembly committees consistent and will remove any ambiguity as to which committees are required to perform particular statutory functions. The Bill passed the Assembly without amendment on 24 March 2022.

The second Bill introduced by the Speaker on 9 June 2022 was the Integrity Commission Bill 2022. This bill will amend the Integrity Commission Act 2018 to include the category of 'Assembly information' in the Act, which is a broad class of information into which material covered by parliamentary privilege will necessarily fall. The bill also includes particular arrangements for handling of such information in the exercise of powers and functions by the Integrity Commission, including requests for information from heads of public sector entities, preliminary inquiry notices, search warrants and examination summonses.

Financial Management Amendment Bill 2021

The Public Accounts Committee conducted an inquiry into the Financial

Management Amendment Bill 2021 which officials feared would subject the Office of the Legislative Assembly to the direction of the Chief Minister and to determinations made by the Chief Minister about the deployment of financial resources in support of its statutory functions. This would be inconsistent with long standing institutional norms and the separation of powers doctrine as well as being contrary to the letter and spirit of the Legislative Assembly (Office of the Legislative Assembly) Act 2012 (OLA Act).

The Committee recommended that the bill be amended so as to state that the Office of the Legislative Assembly and Officers of the Legislative Assembly may consider the framework and not be subject to any executive directions in making a decision.

Ukraine conflict

On 23 March the Chief Minister moved the following motion concerning the Ukraine conflict –

That this Assembly:

1. voices support for the democratically elected Ukrainian Government, the Ukrainian people and Canberra's Ukrainian community; and
2. requests the Speaker convey to the Ukrainian Government, via the Embassy in Canberra, the support of this Assembly expressed in this motion.

It is rare for the Assembly to pass motions covering international affairs.

Bullying and Harassment training

For a number of years, the Assembly has instituted a Bullying and Harassment policy that is binding on MLAs, their staff and Office staff.

The policy is formally signed off by the Speaker, the Clerk, the Chief Minister, the Leader of the Opposition and the Leader of the ACT Greens.

In order to ensure that everyone understands their obligations under the policy, the Office developed two online training modules with a third-party vendor. The Standing Committee on Administration and Procedure agreed that it would be mandatory for all members and staff and in the reporting period of this report it is pleasing to note that there has been 100% completion.

Number of female Members drops to 52%

On Tuesday 2 August 2022 the Speaker informed the Assembly of the resignation of Mrs Guilia Jones as a member of the Assembly. The Speaker then announced that the Electoral Commissioner had conducted a countback, and that Mr Ed Cocks has been declared as the new member

for Murrumbidgee in the place of the resigned Member. The replacement of a female MLA with a male MLA means that only 13 of the 25 Members were women, down from 56% to 52%.

No confidence motion against Chief Minister – Decision of ACT Greens not to support parts of the Budget
On Monday 15 August 2022, following the required 7 days' notice required under the Australian Capital Territory-Self-Government 1988 (C'Wealth), the Assembly convened to consider a motion of no confidence against the Chief Minister moved by the Leader of the Opposition. The notice was given following the announcement by the Leader of the ACT Greens (who support the Labor Party and form the Government in the ACT) that he didn't fully support the budget introduced by the Chief Minister and Treasurer and that the ACT Greens would move amendments to delete certain items of expenditure contained in the budget, such as expenditure subsidising horse racing in the Territory.

The no confidence motion was defeated. In later sittings, a backbench Greens MLA moved an amendment to the Appropriation Bill to reduce the budget by $1,589,000. Following debate, a division was called, and the Greens (including 3 Ministers) voted against the budget item, but the Opposition and Labor Members of the Government voted in favour of the expenditure.

Subsequently the Appropriation Bill was passed by the Assembly.

New South Wales Legislative Assembly

Suspension of a Member
On 22 March 2022 the Member for Kiama was charged with a number of criminal offences. The following day the then Acting Premier tabled legal advice entitled 'Expulsion or Suspension of a Member of the LA charged with a criminal offence', received from the Crown Solicitor. On 24 March 2022 the House suspended the Member for Kiama in accordance with Standing Order 255, which states:

If the House decides not to proceed on a matter which has been initiated in the House concerning the alleged misconduct of a Member on the grounds that the Member may be prejudiced in a criminal trial then pending on charges founded on the misconduct, the House may suspend the Member from its service until the verdict of the jury has been returned or until it is further ordered.

Standing Order 255 is based on an earlier standing order first introduced and used in 1906 but which had not again been used since.

At the same time, the House referred an inquiry to the Committee on

Parliamentary Privilege and Ethics into the options available to the House regarding the withholding of remuneration and other entitlements of a Member suspended. The Committee sought expert advice on constitutional and legal principles, relevant precedents, case law and the position across comparative jurisdictions throughout the course of its inquiry.

The Committee found that additional measures of withholding remuneration and other entitlements of a Member suspended from the service of the House would require new legislation to be enacted. Given existing constitutional limitations, the Committee recommended against the enactment of such legislation.

Following the general election in March 2023 the Member for Kiama was re-elected to Parliament. In the first sitting period of the new Parliament the House referred an inquiry to the Committee on Parliamentary Privilege and Ethics on matters relating to the position of a Member suspended from the service of the House and subsequently re-elected. The inquiry is ongoing.

Introduction of Live Captions to the Parliament's Broadcast of Proceedings

In June 2022, the New South Wales Parliament became the first State or Territory Parliament in Australia to introduce live captioning of its proceedings. Live captioning assists those in the community who are deaf or hard of hearing to participate more easily.

In order to facilitate the change in the Legislative Assembly, the House agreed to amend the terms of its Broadcast Resolution to encompass the publication of audio captions of the proceedings of the House and its Committees.

25 Year Commemoration of the Apology to the Stolen Generations

On 7 June 2022, the then Premier moved that the Legislative Assembly mark the 25th anniversary of the NSW apology to the Aboriginal people of Australia, for the systemic separation of generations of Aboriginal Children from their parents, families, communities and country, by reaffirming its support for the resolution of the House of 18 June 1997.

Just prior to the Premier moving this motion, three survivors of the Stolen Generations, Uncle James Michael 'Widdy' Walsh Number 36, Aunty Lorraine Peeters and Uncle Richard Dawes addressed the House from the floor of the Chamber. It is unusual for non-Members to address the House in this way, and the survivors did so in accordance with a resolution of the House passed on 19 May 2022.

The Speaker also drew the attention of the House to the Message Stick on the table, which had been presented to the Parliament in 2017 to commemorate the introduction of the Aboriginal Languages Bill 2017.

New South Wales Legislative Council

Bicentenary of the Legislative Council

The NSW Legislative Council sat for the first time in 1824, making it the oldest legislative body in Australia. In October 2022, to mark the lead up to the official Bicentenary, which falls in 2024, the Governor of NSW, Margaret Beazley, formally launched a schedule of events at an opening two-day conference.

So far, the Council has completed a special Bicentenary video series called 'The Immortals' to connect audiences with fascinating figures from our history; hosted a month-long exhibition, 'Unlocking the House', in our Fountain Court space to showcase important stories and curious objects from across our last 200 years; and, held a conference where respected academics and experts delved into the early history of the colony, including the experience of the Aboriginal community and the evolution of the Council. [3]

Inquiry into the incorporation of Australian Sign Language (Auslan) into the proceedings of the Legislative Council

On 23 February 2022, the House on the motion of Abigail Boyd (The Greens) referred the issue of the incorporation of Auslan interpretation of Legislative Council proceedings to the Procedure Committee for inquiry and report. In what was a first for the Procedure Committee, a half-day hearing was held on 14 October 2022, with individuals from the Deaf community, peak bodies, academics as well as officers of various other parliamentary jurisdictions all invited to give evidence. The whole hearing was translated into Auslan and broadcast live.

From the evidence given to the inquiry, the shortage of English to Auslan translators in the Deaf community emerged as an impediment to improving access to parliaments across all jurisdictions. The report of the committee was tabled on 8 November 2022, containing six recommendations. At the core of the recommendations is a pilot program to be trialled in 2023, which includes: the translation of the Governor's speech to open the 58th Parliament; the incorporation of Auslan translation into the broadcasting of Question Time to mark the National Week of Deaf People; the translation of debates of significance to the Deaf community; and the production of a monthly Auslan video bulletin. On 10 November 2022, the House agreed to the motion of the Leader of the Government giving effect to the

[3] A dedicated website has been established to house information about the Bicentenary, including details of upcoming activities and recordings and resources from past commemorative events: parliament.nsw.gov.au/bicentenary.

recommendations establishing the pilot program.

Update to the Broadcasting Resolution
On 20 June 2019, the Hon John Ajaka, then President of the Legislative Council, referred the 2007 broadcast of proceedings resolution of continuing effect to the Procedure Committee for inquiry and report. Tabled on 30 September 2022, the Report contains six recommendations, including a statement of principles to guide interpretation of the resolution; the modification of language to improve clarity and accessibility; allowing photographs to be taken in the Chamber whilst in session, subject to conditions; and, photography during committee hearings. On 19 October 2022, the House formally adopted the amended resolution as recommended by the committee.

Recall of the Parliament to deal with the Energy and Utilities Administration Amendment Bill 2022
The Parliament rose for the year on 17 November 2022 with the expectation that the next sitting day would not be until after the election in March 2023. Critical whole-of-building maintenance works and heritage restoration were planned for this period, including the complete refurbishment of both the Legislative Council and Assembly chambers. All of the planned work was interrupted on 19 December 2022, when the Presiding Officers at the request of the Government recalled Parliament for 21 December to deal with the energy implementation plan, which was the outcome of negotiations held between the state and federal governments in response to the energy crisis.

With both chambers unavailable, a committee room was transformed into a temporary chamber, complete with leather benches, designated places for the Speaker, President and Clerks, and full broadcasting facilities. As the 'Chamber' was to be used consecutively by both Houses on the same day, the Assembly (which sat first at 12 noon) had to stick to a tight schedule while conducting its business, including the passing of the Energy and Utilities Administration Amendment Bill 2022, to enable the Council to sit at 2.30pm. The Assembly returned to the Chamber shortly after 5.00pm to deal with the bill on its return.

This was the first time the Council had met outside its Chamber since 1856, with the President giving an opening statement to that effect. The Assembly, on the other hand, had sat outside its Chamber once before, on 19 November 2021, when it held proceedings in the Jubilee Room.

Queensland Parliament

100th anniversary of the abolition of the Queensland Legislative Council

In March 2022, the Queensland Parliament commemorated the 100-year anniversary of the abolition of the Queensland Legislative Council. The occasion provided an opportunity for the Queensland Parliament to mark the event as a significant and unique milestone in Queensland political history.

In 1859, the newly created colony of Queensland established a bicameral Westminster styled parliament consisting of a Legislative Assembly (with 26 elected members) and a Legislative Council (with 11 nominees appointed by the Governor). The Legislative Councillors were initially appointed for a five-year period however all subsequent appointments were made for life. In the years that followed, general dissatisfaction with the usefulness and obstructive nature of the Upper House ensued and it gained a reputation as a handbrake on legislation pulled by the wealthy gentry.

Numerous calls and attempts to abolish or reform the legislative council followed but it was not until 1915 and the election of the first long-term Labor government – led by T.J. Ryan – that the stage was set for a final confrontation between the two Houses.

Shortly after election, Premier Ryan introduced a Bill to abolish the Legislative Council which was rejected by the Council 26 votes to 3. One year later, the bill was re-introduced, also failing 19 votes to 3 but this opened the way for a referendum of the people.

Unfortunately for Ryan and his supporters, the 1917 referendum also failed with nearly 61 percent voting against the abolition. As such, the Upper House remained, rejecting or drastically amending around 800 bills by 1918 on major reforms around health, crime and industrial relations.

After various attempts to reform the Legislative Council, abolition was eventually achieved following the appointment of William Lennon as President of the Legislative Council in 1920. President Lennon stacked the Upper House with sympathetic appointees – dubbed the 'Suicide Squad'- who vowed to support the abolition.

In October 1921, the Constitution Act Amendment Bill was introduced and passed through both Houses. The Council met for the last time on 27 October 1921, adjourning at 8.37pm. Royal Assent was given on 3 March 1922.

The centenary provided opportunity for a suite of engagement activities. A historical seminar co-hosted with the Royal Historical Society was complemented by library displays, media coverage and other events. Presentations were placed on the parliament's website and historical essays have been published. A locally produced sangiovese provided the

commemorative toast for the occasion.[4]

Disruption in the public gallery
On 30 November 2022, the proceedings of the Assembly were disrupted by climate change activists. Proceedings were paused for several minutes as the activists chanted and draped concealed banners over the public gallery railings. An undeclared phone, concealed in a wheelchair, was used to record and live-stream the protest on Facebook.

The occurrence enlivened several legal and procedural matters of interest. In Queensland, laws provide that any person who disturbs the Assembly or commits disorderly conduct in the presence of the Assembly with the intention of interruption, commits a misdemeanour. The group of activists were subsequently charged under the laws, which had not been used in at least three decades.

The procedural fallout continued as it later became apparent that a Member of Parliament had posted the live stream on their own social media account, alongside a message of apparent support for the cause. The Speaker ruled that the member be referred to the Ethics Committee, citing standing orders which provide the House may treat as a contempt making public statements inciting or encouraging disruption of the Legislative Assembly by bringing the proper proceedings of the Legislative Assembly or its committees into disrepute.

This matter is currently still before the Ethics Committee and a report is pending.

Private Member's bills discharged from Notice Paper
In 2022 an unusual situation occurred whereby a private member had their second, and subsequently third private members' bill ruled out of order.

The bills were discharged as a result of fundamental constitutional considerations around the financial imperative of the Crown as each of the bills sought to increase or impose a charge on the people of the State or make appropriations from the State funds without the necessary message from the Governor.

The private member moved a dissent to the Speaker's first ruling,

[4] For those who wish to learn more, references to several articles are provided below.

L Armstrong and K Saunders, 'The beginning of the end: the failure to reform the Queensland legislative council, 1859-1912', Queensland History Journal, Vol 25(3), November 2022, p 225-41

P Keane, '1922 : after Ryan, the storm', Seldon Society Lecture Series, Lecture 1, 2022

P Williams, 'Queensland's quandary: To reintroduce a Legislative Council?', Queensland Review, Vol 29(1), 2022, pp 36-48. (doi.org/10.1558/qre.23431)

which was debated on the floor. The will of the House was clear with fewer than 5 members supporting the motion. Some months later, the member introduced another bill which was also ruled out of order for the same reasons.

In December, the private member sought to introduce a third bill. The Speaker ruled that the bill was out of order for similar reasons and discharged the bill from the Notice Paper. The Speaker made clear that while Members have a right to introduce bills, they do not have the right to ignore the rules that they know to be out of order. The Speaker referred the matter to the Ethics Committee stating that deliberate, continual attempts to breach the rules, or repeatedly and knowingly ignoring the rules not only disrespects the authority of the Speaker, but also interferes with the Legislative Assembly's authority and functions.

This matter is still before the Ethics Committee and a report on the matter is pending.

Questions on notice expectations

In 2022, an increase in disputation in relation to questions and responses led to an increased pressure on Parliamentary resources, resulting in the Speaker reminding all members of his expectations around questions on notice. The Speaker delegated initial assessment of both questions and responses to the Clerk and Table Office, setting out the rules and principles that would guide determinations of compliance.

The ruling covered issues such as relevance, questions not being answered or only being answered in part and the use of gratuitous political statements.

One year on from the ruling, processes have become lengthier with Clerks at the Table frequently referring responses back to Ministerial offices as non-compliant. However, the trend in compliance is positive. More often than not, a revised response is submitted, improving the detail of the response or making clear why information cannot be provided. Anecdotally, complaints from Members about responses have also reduced.

South Australia House of Assembly

Has the Member resigned? – Bragg by-election

Following the 19 March 2022 general election result and before the first sitting day of the new Parliament on 3 May 2022, the returned Member for Bragg and former Deputy Premier (Hon. V A Chapman) wrote to the Speaker notifying of her intention to resign on 31 May. Upon receipt of the letter, the Speaker sought Crown law advice on whether the letter constituted a resignation with immediate effect. Section 30 of the *Constitution Act 1934*

provides that a Member's seat becomes vacant upon the receipt of a letter of resignation by the Speaker. The advice questioned whether the Member ought to be sworn in and noted that any question about a vacancy may only be determined by the House. On the first sitting day of the 55th Parliament, the Speaker tabled the legal advice and referred the matter to the House for consideration. In a Ministerial Statement, the Government indicated it would not use its majority to pursue the matter.[5] The Member for Bragg was sworn in on 3 May and subsequently resigned by letter to the Speaker to that effect dated 31 May.

The end of regular prorogation

A clause contained in the Constitution (Independent Speaker) Amendment Act (assented to 4/11/2021) which made it unconstitutional to prorogue the House 'after July 1 in the year immediately before a general election' meant that for the first time in its history, the House of Assembly was not prorogued prior to being dissolved before the scheduled March 2022 election.

Tasmanian House of Assembly

Motion for Respect – Report into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services

On 29 August 2022, the Tasmanian Anti-Discrimination Commissioner, Ms Sarah Bolt published her report into the Workplace Culture in the Tasmanian Ministerial and Parliamentary Services. The Report made 14 recommendations, with recommendation 2 seeking the creation of a Joint Committee and the employment of an independent project manager to oversee the progress of the other recommendations.

The same day as the report was released, a joint statement of support for progressing the recommendations was made by the Premier, the Opposition Leader, the Leader of the Greens, the Speaker, the President, the Attorney-General, Meg Webb the Independent Member for Nelson, and Kristie Johnston, the Independent Member for Clark.

The Joint Sessional Committee on Workplace Culture Oversight held its first meeting on 27 September 2022, noting that all Report recommendations had in principle support from the relevant employers. The independent project manager position was advertised towards the end of 2022 and the recruitment process is in its final stages.

[5] hansardpublic.parliament.sa.gov.au/Pages/DateDisplay.aspx#/DateDisplay/HANSARD-11-44626/HANSARD-11-44561

Restoration of the Tasmanian House of Assembly numbers

On the 25 May 2022, the Premier, Honourable Jeremy Rockliff MP, announced that the Government intended to restore the Tasmanian House of Assembly numbers, reversing the reduction of members that occurred in 1998. The Government released a draft Expansion of House of Assembly Bill 2022 for public consultation on the 31 August 2022, with consultation closing on the 28 September 2022.

On the 27 October 2022, the Premier tabled the Expansion of House of Assembly Bill 2022. This bill sought to restore the House of Assembly to five seven member electorates and would come into effect at the next State election in 2025.

The bill was passed by the Tasmanian Parliament in November of 2022. The bill made changes to the *Constitution Act 1934* and the Electoral Act 2004 to restore the numbers of members elected to the House of Assembly to 35 members from the current 25.

Victoria Legislative Assembly

Court case about presiding officers' power to grant media accreditation and access to the precinct

In March 2021, Avi Yemini, an Australian-based correspondent for Rebel News, a Canadian online news company that publishes on YouTube and social media, applied for a media accreditation pass to gain access to the Parliament of Victoria building and grounds. Media accreditation access is the responsibility of the presiding officers and is managed on a day-to-day basis by the Serjeant-at-Arms. In July 2021, the Serjeant advised Mr Yemini, through his solicitors, that the application had not been approved. The solicitor requested reasons for the decision.

After being advised by parliament's solicitors that the decision was not one to which administrative law applied, Mr Yemini commenced legal action against the presiding officers and the Serjeant-at-Arms. He sought a review of the decision on the basis that it misconstrued the provisions of the Parliamentary Precincts Act 2001, involved jurisdictional error, and denied him natural justice. Mr Yemini sought that the decision be quashed and remitted to presiding officers.

In December 2022, His Honour Justice Ginnane published his judgement. His Honour found that the decision was validly made and that no jurisdictional error occurred. In any event, the decision was a matter of exclusive cognisance of the parliament and therefore not justiciable. Accordingly, the proceeding was dismissed.

Victoria Legislative Council

Death of a sitting member of the Legislative Council

On 2 August 2022, the Legislative Council was informed of the passing of the late Honourable Jane Garrett MLC, who was a sitting Member for the Eastern Victoria Region. Ms Garrett was a long-standing member of the Victorian Parliament who served as a member of the Legislative Assembly from 2010 to 2018 and a member of the Council from 2018.

Legislative Council Standing Order 5.12(1)(a) states that in the event of the passing of a member of the current Parliament precedence would be given to a motion of condolence. However, at the request of Ms Garrett's family, the condolence was delayed until the next day to allow them to be present in the Chamber.

The House agreed to a motion to suspend Standing and Sessional Orders to allow general business to be conducted on Tuesday 2 August 2022, facilitating a condolence motion for Ms Garrett on Wednesday 3 August 2022. [6] On Wednesday, the condolences for Ms Garrett took precedence and after nearly two hours of contributions the House adjourned for the remainder of the day as a further mark of respect for Ms Garrett.

The following sitting week, the Parliament held a joint sitting to fill the casual vacancy rendered by the passing of Ms Garrett. Mr Thomas McIntosh MLC was selected to fill the vacancy.

Resignation and return of a member to the Legislative Council

In April 2022, Mr David Limbrick MLC, member of the Liberal Democrats Party, announced in a members' statement that he would soon resign in order to stand as a candidate in a Senate seat at the upcoming federal election. Section 164 of the *Commonwealth Electoral Act 1918* states that a person cannot nominate to be a Senator or member of the House of Representatives if they are a member of a State Parliament.

On 11 April 2022, Mr Limbrick wrote to the Governor of Victoria resigning as a member of the Legislative Council. Section 30 of the *Constitution Act 1975* prescribes that a seat becomes vacant on receipt of resignation letter by the Governor. This allowed Mr Limbrick to nominate as a candidate for the Senate. Mr Limbrick subsequently wrote to the President of the Legislative Council notifying that if he failed to secure a seat in the Senate, he intended to become the candidate for the seat he vacated in the Council. Pursuant to section 62 of the *Electoral Act 2002* (Vic), a joint sitting to fill Mr Limbrick's vacancy could not be held until the results of the federal election were declared.

[6] General business is usually conducted on the Wednesday of a sitting week.

On 21 June 2022, the Australian Electoral Commission returned the writs for Victorian seats in the Senate. Mr Limbrick was unsuccessful and on the same day the President announced that the Liberal Democrats Party had select Mr Limbrick to fill the vacant seat in the Council.

On 22 June 2022, Mr Limbrick was selected to return to the seat he rendered vacant via a joint sitting of the Parliament. Pursuant to the *Constitution Act 1975* (Vic), Mr Limbrick was required to be sworn in again as a member of the Legislative Council.

CANADA

House of Commons

Invocation of the Emergencies Act

In January 2022, hundreds of vehicles formed convoys from several locations across the country and traversed Canadian provinces before converging on Ottawa to protest pandemic restrictions. On 14 February 2022, following the resulting blockade and protests, the Governor in Council declared a public order emergency, invoking the Emergencies Act for the first time since its passage in 1988. On 16 February Minister of Public Safety Marco Mendicino (Eglinton—Lawrence) tabled the motion for confirmation of the declaration of emergency and the declaration of emergency itself, pursuant to section 58 of the Act. An order of the day was designated for the consideration of the motion.

On 16 February John Brassard (Barrie—Innisfil), then House leader of the official opposition, rose on a point of order concerning subsection 58(6) of the Emergencies Act, which states that a motion to confirm any declaration of emergency "shall be debated [by the House] without interruption." He requested that the Speaker rule on the meaning of "without interruption", which he saw as requiring the House to sit and debate the matter continuously until the question was put. On 17 February the Speaker ruled that the statutory debate would take precedence over all other orders of the day, but that the daily routine of business, including the ordinary hour of daily adjournment, would remain in place. He encouraged the parties to come to an agreement if they wished to adapt this proposal to the urgent matter at hand. That same day, the Leader of the Government in the House of Commons, Mark Holland (Ajax), sought and obtained unanimous consent for a motion setting out the terms of the debate.

The motion provided for five extended sitting days devoted to the debate, including the weekend of 19-20 February, although the ordinary daily routine of business was to be maintained on 17, 18 and 21 February, with the exclusion of Private Members' Business and Adjournment Proceedings.

The motion also contained provisions for the vote to be held on the evening of Monday 21 February, even if debate collapsed at the weekend. Standing Orders 26 (motion to extend sittings) and 52 (requests for emergency debates) were also suspended.

Accordingly, the statutory debate began in the House on 17 February. In an unusual turn of events, the planned sitting on Friday 18 February, was cancelled (after consultations with all recognised parties) because of police operations in the area surrounding Parliament. The House adopted the motion to confirm the declaration of emergency on 21 February. That same day, Candice Bergen (Portage—Lisgar), then Leader of the Opposition, gave notice of a motion aiming to revoke the declaration of emergency under subsection 59(1) of the Emergencies Act. Then, on 23 February, the Governor in Council revoked the declaration of emergency. Pursuant to subsection 61(1) of the Act, Mr. Holland tabled the revocation of the declaration of emergency when the House next sat on 28 February. Because the declaration of emergency had already been revoked, the Speaker removed Ms. Bergen's motion from the Order Paper.

Address by the President of Ukraine

After the outbreak of war between Russia and Ukraine on 24 February, Ukrainian President Volodymyr Zelenskyy addressed Parliament by video link on 15 March. Members of Parliament, Senators, and other guests attended the first joint address to Parliament since the House moved from the Centre Block, which is under construction, to the West Block. The address by President Zelenskyy was also the first virtual joint address to Parliament.

Agreement between the Liberal Party of Canada and the New Democratic Party

On 22 March, Prime Minister Justin Trudeau and Leader of the New Democratic Party Jagmeet Singh announced a confidence and supply agreement between the Liberal Party of Canada and the New Democratic Party (NDP). The agreement involves cooperation between the two parties on certain parliamentary objectives, a commitment by the NDP to support the government on votes related to confidence and supply, and a commitment by the Liberal Party not to call an election before the House rises in June 2025.

The same day, John Brassard (Barrie—Innisfil), then opposition House leader, rose in the House on a point of order to argue that the agreement created a coalition government and that the NDP should therefore no longer be considered an opposition party. He asked the Speaker to rule whether the NDP should be allowed to exercise certain privileges afforded to opposition

parties, such as putting forward opposition motions and responding to ministerial statements. On 29 March, Deputy Speaker Chris d'Entremont delivered the Chair's ruling. He noted that the Chair's role does not include interpreting or giving meaning to what is by nature a political agreement. He then explained that his ruling relies on the different rights exercised by government and opposition parties; namely, that the governing party includes members holding ministerial positions and opposition parties do not. Given that no member of the NDP had gained ministerial status, the Deputy Speaker concluded that the NDP continues to form a recognised opposition party.

Extension of sitting hours

On 2 May, the House agreed to a motion providing for extended hours of sitting. The motion stated that, on sitting days until 23 June 2022, a minister could, with the agreement of a House Leader of a recognised party, rise before 6:30 p.m. and request that the House sit until midnight on that day or on a subsequent day and that such a request would be deemed adopted. The motion also stated that on extended sitting days, no quorum calls or dilatory motions would be permissible after 6:30 p.m. Following the adoption of the motion, when its provisions were applied, various members rose on points of order to request a quorum count after 6:30 p.m. or to question which party had provided the agreement to sit until midnight. Deputy Speaker Chris d'Entremont ruled on 2 May that the quorum provisions of the motions were admissible, and, on 17 May, that members would be taken at their word that prior consultations had taken place. This order was used eight times to extend the sittings of the House.

On 15 November 2022, the House adopted a similar motion to govern the sittings and proceedings of the House until 23 June 2023. The motion allows the government to move the ordinary hour of daily adjournment for a subsequent sitting to midnight with the agreement of another party. Additionally, it gives the Speaker the power to combine, for voting purposes, motions to concur in the votes for which a notice of opposition was filed during consideration of the estimates on the last allotted day of each supply period; and it allows for the consideration of a motion for third reading of a government bill during the same sitting in which the said bill had been concurred in at the report stage.

Hybrid sittings of the House of Commons

Special orders adopted on 25 November 2021, and 23 June 2022, allowed the House and its committees to function in a hybrid fashion for the entirety of 2022, permitting members to participate in-person or remotely,

including using remote electronic voting during recorded divisions in the House. The June 2022 order is set to expire on 23 June 2023.

Provisions related to COVID-19 vaccination

On 16 June 2022, the House agreed by unanimous consent to suspend the provisions related to COVID-19 vaccination, which had been adopted by the House on 25 November 2021. The provisions had required members participating in person to demonstrate proof of COVID-19 vaccination or of medical exemption.

A few weeks before this, on 3 June 2022, Cathay Wagantall (Yorkton—Melville) was escorted from the parliamentary precinct by the Sergeant-at-Arms after the member had not demonstrated proof of COVID-19 vaccination or of medical exemption as required by the order adopted by the House on 25 November 2021.

Naming of a Member During Oral Questions

On 8 December, disorder arose in the Chamber and Member of Parliament Raquel Dancho (Kildonan—St. Paul, CPC) was heard accusing the Parliamentary Secretary to the Minister of Indigenous Services Vance Badawey (Niagara Centre, LIB) of lying. The Speaker called the House to order and asked Ms. Dancho to withdraw the statement. She did so immediately. He then asked her to apologise, and she remained silent. After asking for an apology a second time, the Speaker named Ms. Dancho and ordered her to withdraw from the Chamber for the remainder of the sitting day, pursuant to Standing Order 11. In addition to being barred from the physical Chamber, Ms. Dancho was not allowed to join the virtual parliament for the remainder of the sitting day, since no procedural distinction is made between members participating virtually and those present in person.

Senate

Question Period with Ministers of the Crown

On 7 December 2021, the Senate adopted a motion for the Senate to invite ministers of the Crown to participate in Question Period at least once every second week that the Senate sits, as determined by the Government Representative in the Senate, after consultation with the Leader of the Opposition and the leaders and facilitators of all recognised parties and recognised parliamentary groups. The Question Period lasts a maximum of 60 minutes. On 9 February 2022, the Honourable Jean-Yves Duclos, P.C., M.P., Minister of Health, was the first minister to take part in Question Period as per the provisions of this order.

Emergencies Act

On 14 February, the Government of Canada issued a declaration of a public order emergency, pursuant to the Emergencies Act. On 21 February, as part of proceedings required after the invocation of the Emergencies Act, which requires the Senate to confirm the declaration, a motion was adopted establishing the schedule and outline of the next four sitting days, from 22 to 25 February, during which the Senate would sit from 9. am to 9.00pm. The motion further stipulated that the only item of business before the Senate would be a motion to confirm the declaration of a public order emergency.

The motion was to be taken up at the start of each sitting and debated without interruption, except for one-hour pauses at noon and at 6.00pm. During debate on the motion on the afternoon of 23 February, Senator Gold, the Government Representative in the Senate, announced that the government had revoked the declaration of a public order emergency pursuant to the Emergencies Act. With leave of the Senate, the motion was then withdrawn, and the Senate resumed sittings the next day following the rules, orders and practices that were otherwise in effect. A special committee of the two houses was subsequently appointed, in early March, under the terms of the Act, to review the exercise of powers and performance of duties while the emergency was in effect.

Displays, exhibits and props

On 5 April, the Standing Committee on Rules, Procedures and the Rights of Parliament tabled a report concerning the use of displays, exhibits and props in Senate proceedings. The committee noted with approval the flexibility inherent in the non-codified practices on the matter, and that items of cultural or religious significance would generally be acceptable, if not used as tools in debate.

Saskatchewan Act

On 1 March, a government motion authorising an amendment to the Constitution of Canada to be made by proclamation issued by Her Excellency the Governor General with respect to repealing Section 24 of the Saskatchewan Act was referred to the Standing Senate Committee on Legal and Constitutional Affairs. The committee presented its fourth report relative to the motion on 31 March. On 7 April, the Senate adopted the report on division and accordingly the motion was also deemed adopted.

Parliament of Canada Act

On 23 June, Royal Assent was given to Bill C-19, An Act to implement

certain provisions of the budget tabled in Parliament on 7 April 7 2022 and other measures, which included amendments to the Parliament of Canada Act, regarding additional annual allowances of senators and the appointment of Officers of Parliament, among others, to take account of recent structural changes in the Senate (including the establishment of recognised parliamentary groups in addition to recognised parties).

Hybrid sittings

At the end of June, provisions concerning hybrid sittings of both the Senate and Senate committees lapsed, and the Senate and its committees thus resumed sitting in person. Joint committees, however, retain the authorisation to sit in hybrid mode until June 2023, and two standing Senate committees (Audit and Oversight, and Conflict of Interest for Senators) have retained this authority for the rest of the session. Provisions allowing for documents to be deposited electronically with the Clerk of the Senate, in lieu of physical copies, were also extended to the end of the current session.

Alberta Legislative Assembly

50th anniversary of Alberta Hansard

On 8 March 2022, Speaker Cooper marked the 50th anniversary of Alberta Hansard in the Chamber noting that millions of words each session are transcribed by Hansard staff. Hansard was established in Alberta following the passage of a Government motion on 8 March 1972, to provide a true transcript of parliamentary proceedings, to be printed and distributed under the authority of the Speaker.

50th anniversary of broadcasting proceedings

2022 also marked the 50th anniversary of the broadcast of proceedings at the Legislative Assembly of Alberta, the first parliament in Canada to do so. Periodic radio broadcasts of the proceedings had occurred since the 1930s, but it was only by the late 1960s that television broadcasting was seriously considered in Alberta. On 9 March 1972, the Assembly passed a resolution, with the support of all political parties, to broadcast the proceedings by audio and video means, and to allow newspapers photographers to take pictures, all under the guidance of the Speaker. Subsequently, the Chamber was renovated to accommodate television cameras and shortly thereafter, the proceedings were regularly televised. "Gavel-to-gavel" coverage began in 1978 and continues to be provided today.

Unparliamentary language

In March 2022, a serious incident of the use of unparliamentary language

occurred at the Legislative Assembly of Alberta. An Independent Member was tabling documents (in Alberta, Members are allowed to make voluntary tablings under the item of business Tabling Returns and Reports in the Daily Routine), and in a description of one of the tablings, the Member stated that the then Minister of Environment and Parks "again tried to dupe the House ..." In response, the Minister of Environment and Parks became animated and started to heckle, responding to the language used by the Member, to which Speaker Nathan Cooper responded, in turn:

Order. If the Minister of Environment and Parks wants to call a point of order, he's welcome to rise to his feet. Using language that's unparliamentary, including an F-bomb directed at the Speaker, is wildly inappropriate ...

The Minister did call a point of order, on which Speaker Cooper ruled that the Member who accused the Minister of trying to dupe the Assembly was to apologise and withdraw these remarks. The Minister of Environment and Parks, after being called to order for his outburst, also apologised for and withdrew the offensive, unparliamentary language.

British Columbia Legislative Assembly

Administration and governance

The Legislative Assembly Management Committee (LAMC) approved the first Legislative Assembly Administration Strategic Plan, which identifies priorities for the next three years. The plan was developed through meetings and focus groups with employees and is intended to enable the Administration to best respond to the needs of the Legislative Assembly and its Members. It will be updated on an annual basis with input from Members, employees, and other stakeholders.

Additionally, LAMC unanimously adopted the *Legislative Assembly Governance Framework*, which outlines a framework, processes, and practices to support good governance. The Governance Framework identifies clear roles, responsibilities, and accountabilities for administration and decision-making. It is believed to be a first-of-its-kind governance framework for a parliamentary institution in Canada.

The Legislative Assembly Administration released a discussion paper on reconciliation with Indigenous Peoples titled *Paddling Together: Setting a Reconciliation Course for the Legislative Assembly Administration*. The paper addresses the colonial legacy of the Legislative Assembly and identifies specific commitments towards reconciliation for the Legislative Assembly Administration. *Paddling Together* was developed by a cross-departmental working group of Assembly employees in collaboration with an Indigenous leader and included input from Indigenous partners.

LAMC also approved a proposal to develop on-site childcare for

staff. Providing on-site childcare is one of many steps being taken by the Legislative Assembly to become a more family-friendly and inclusive workplace. LAMC directed staff to create a concept plan for establishing a temporary, modular childcare facility before a permanent location can be developed. LAMC also agreed that spaces for Legislative Assembly and caucus staff should be prioritised over spaces for elected Members.

LAMC determined that the Legislative Assembly's proof of COVID-19 vaccination program would not continue past 30 June 2022. The program had been in place since 13 September 2021, and applied to anyone entering a building on the Legislative Precinct.

Continuation of hybrid proceedings

At the beginning of the third session of the 42nd Parliament, in February, the Legislative Assembly adopted a sessional order which allowed Members to participate in House proceedings virtually. This enabled the continuation of hybrid proceedings, which have been permitted through sessional orders since June 2020. In practice, most Members regularly attended in person, but occasionally chose to participate virtually due to illness, scheduling issues, or other reasons.

Parliamentary committees continued to allow virtual presentations, as they have since hybrid proceedings were first adopted. This has supported participation by presenters living in different areas of the province or for whom attending in person may be challenging for other reasons.

Suspension of proceedings and co-development of bill

Twice in 2022 the Legislative Assembly agreed to suspend proceedings to allow Indigenous leaders to make remarks from the floor of the House. The suspension of proceedings took place upon the tabling of an action plan to implement the *Declaration on the Rights of Indigenous Peoples Act* and the introduction of Bill 38, the *Indigenous Self-Government in Child and Family Services Amendment Act*. The remarks were included in an appendix of the Official Report of Debates of the Legislative Assembly.

Bill 38 also marked the first time a piece of legislation was co-developed with Indigenous peoples in BC. The *Indigenous Self-Government in Child and Family Services Amendment Act* transforms the statutory framework governing child welfare in BC to enable Indigenous communities to assume responsibility over child and family services. The changes were developed in co-operation with Indigenous Nations and other Indigenous partners.

Hansard Services

Hansard Services began to use automated speech recognition technology

to create the initial drafts of transcripts of House proceedings. Previously, editors had to transcribe debates from audio recordings. Now, creation of first drafts will be automated, allowing staff to focus on editing and producing high-quality transcripts. Hansard also began providing American Sign Language interpretation for daily broadcasts of Routine Business in the House to support accessibility for members of the public viewing House proceedings.

17 October marked the 50th anniversary of Hansard Services' publication of the daily, substantially verbatim Official Report of Debates of the Legislative Assembly, which were published for the first time for the first sitting of the First Session of the 30th Parliament in 1972. Hansard Services celebrated this anniversary with an event held in the Legislative Library.

Manitoba Legislative Assembly

Bill 26 and hiring of Independent Officers

On 1 June 2022, Bill (No. 26) – The Officers of the Assembly Act (Various Acts Amended), which changed the process for appointing Independent Officers of the Assembly, received Royal Assent and came into force. Previously, Independent Officers were appointed by Order in Council on the recommendation of the Standing Committee on Legislative Affairs. Now, the Standing Committee on Legislative Affairs must make a recommendation to the House and the Officer is appointed by resolution of the Assembly.

The only exception is the position of Clerk, which is considered by the Legislative Assembly Management Commission (LAMC). The Commission in turn makes a recommendation to the Assembly and the Clerk is appointed by motion of the House. For all Officers of the Assembly, remuneration and salary offers are now decided by LAMC, whereas previously Executive Government made this determination. In addition, on the recommendation of the applicable Officer of the Assembly, and with the prior approval of LAMC, Deputy Officers can be appointed, as can a Deputy Clerk of the Assembly.

One impediment that has arisen involves the appointment of an Officer during a period of time when the Assembly is not in session as it is not possible for a motion to be adopted regarding the appointment. This issue will be reviewed and remedied in the legislative provisions.

Online Committee Registration Form

Partly inspired by requests from the public for such a service, a brand-new tool has been made available to allow members of the public to register

online to speak to a Bill at Committee as opposed to registering by phone. This tool allows people to go to a link on the Assembly website, answer some questions and provide some information, and then the registrant will automatically appear in the database of presenters. The information is then used to create presenters' lists and other documents essential to committee work, as well as provide information for Hansard, Committee Reports, Committee Clerks' notes, and so on. Presenters may also use this tool to indicate if they are appearing virtually or in person, if they require translation services, and will also allow them to provide written submissions.

Newfoundland and Labrador House of Assembly

Colonial Building – The Seat of Democracy for a Colony, a Dominion and a Province

In September 2022, Colonial Building reopened, after a number of years of restoration. Colonial Building was the home of the provincial legislature from 1850 to 1960, when the House of Assembly moved to the newly constructed Confederation Building, where it remains to this day. To celebrate the reopening, the House of Assembly held a special two-day

Members of the House of Assembly, 1932–1934.
The Rooms Provincial Archives Division,
B 16–129.

First Provincial House of Assembly. Archives and Special Collections Division, Queen Elizabeth II Library, Memorial University of Newfoundland, Smallwood Collection.

Members of the House of Assembly, 2nd Session, 50th General Assembly, October 5, 2022. Collection of the House of Assembly of Newfoundland and Labrador. Photo by Maurice Fitzgerald.

sitting at Colonial Building to begin the Second Session of the 50th General Assembly in October 2022.

Newfoundland was first granted self-governance with the establishment of representative government in 1832. Between 1833 and 1850, in the absence of a legislative building, the House of Assembly met in four temporary locations in St. John's. Arguably, the most famous of these was its first location: the tavern of Mary Travers, the woman who seized property and sessional papers of the first legislature until payment of funds in arrears. Later, the Great Fire of 1846 would destroy another temporary location – there was an obvious need for a permanent solution.

On 24 May 1847 – Queen Victoria's birthday – the first purpose-built Legislature for the Colony of Newfoundland had its first cornerstone laid. Separate from other government offices, Colonial Building became the new home of Parliament when it opened on 28 January 1850.

Ontario Legislative Assembly

Bill 51

Bill 51, the Legislative Assembly Amendment Act, 2022, came into force on December 8, 2022. Bill 51 made significant changes to the Office of the Assembly ("OA"), the Legislative Assembly of Ontario's ("Assembly") administrative arm, particularly with respect to the appointment of Sergeant-at-Arms ("SAA") and the powers and responsibilities of the Board of Internal Economy ("BOIE" or "Board").

Prior to the enactment of Bill 51, the Sergeant-at-Arms was appointed by the Speaker like other OA employees. Bill 51 introduced an appointment and removal process for the SAA similar to that for the Clerk. The SAA is now appointed by Order of the Assembly and, unless decided otherwise by unanimous consent of the Assembly, is selected by unanimous agreement of a panel composed of one Member from each recognised party, chaired by the Speaker who is a non-voting member of the panel. The Assembly may also remove or suspend the SAA for cause by Order passed by a vote of at least two thirds of Members.

Prior to Bill 51, the Board of Internal Economy was generally responsible for the OA's financial affairs and approving the Estimates. Despite its broad authority, the Board was not involved in the direct appointment, management, or dismissal of OA employees, which were responsibilities of the Speaker. Bill 51 provided the Board with broad authority over OA employees. Post Bill 51, the Board is responsible for the appointment, dismissal, suspension, and reprimand of OA employees and can prescribe their duties and functions.

Bill 51 also shifted various responsibilities related to the legislative

precinct from the Speaker to the BOIE. The legislative precinct is now under the control of the Board rather than the Speaker. However, control of the legislative precinct with respect to its physical protection and security remains with the Speaker who retains responsibility for the Legislative Protective Service (LPS). Further, the Board is now also responsible for allocating office space within the legislative precinct and preparing accessibility plans.

While Bill 51 assigns new responsibilities to the BOIE, delegation provisions allow the Board to delegate its new powers and responsibilities to the Speaker, subject to any conditions or restrictions it may impose. The Speaker can also delegate any of their powers and responsibilities to the Deputy Speaker or OA employees. Delegations by the Speaker are subject to any conditions or restrictions they themselves impose, or that were already imposed by the BOIE. Bill 51 also introduced a unique provision enabling the Lieutenant Governor in Council to, by Order, grant a former Clerk of the Assembly the right to use the honorific title "The Honourable" in English or "l'honorable" in French. As far as we know, Ontario is the first jurisdiction in Canada where an honorific title is available for a former Clerk.

Quebec National Assembly

Oath of allegiance

After the general election of October 2022, some elected Members stated publicly that they would not take the oath of allegiance to the King required by the Constitution. This led to some controversy in Quebec, and public figures argued that the Assembly should not enforce the requirement to take the oath. In November 2022, the outgoing President, who did not seek re-election but remained in office until replaced, ruled that the Members who did not take the oath would not be allowed to take their seat in the Assembly. This ruling was subsequently upheld by the new President. On 1 December 2022, three Members who did not take the oath showed up at the doors of the National Assembly Chamber and asked to be allowed in. The sergeant-at-arms denied them passage.

On 9 December 2022, the National Assembly passed an Act to recognise the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly, effectively abolishing the oath of allegiance. Since then, the three remaining Members who did not take the oath have sat in Parliament and taken part in proceedings.

Saskatchewan Legislative Assembly

The Legislative Assembly Amendment Act, 2021

In the autumn of 2021, the Saskatchewan government introduced legislation to reduce the jurisdiction of the Legislative Protective Service, led by the Sergeant-at-Arms. Bill No. 70, The Legislative Assembly Amendment Act, 2021, redefined the term "legislative precinct" to consist of the floor of the Chamber of the Legislative Assembly. It also established a "legislative district," which encompasses the remainder of the Legislative Building and a defined parcel of land surrounding it and provided for the government appointment of a Director of Legislative Security who is responsible for the security of this district.

The bill received Royal Assent on 18 May 2022 and came into force on 19 October 2022. Responsibility for security services in the legislative district was then transferred from the Sergeant-at-Arms to a newly established Legislative District Security Unit (LDSU), which reports to the Minister of Corrections, Policing, and Public Safety. The Sergeant-at-Arms remains responsible for security of the legislative precinct, which now consists solely of the floor of the Chamber.

CYPRUS

House of Representatives

Combatting corruption

In January 2022, the House passed a bill transposing into national law the provisions of the EU Whistleblower Directive 2019/1937, referred to as the "The Protection of Persons Reporting Violations of the EU and National Law 2022." The said legislation is part of a broader legislative reform seeking to create a strong framework for enhancing transparency and combatting corruption.

In this context, in February 2022, the House passed a law establishing an Independent Authority against Corruption as well as a law regulating political lobbying. Regarding the law regulating political lobbying, it calls for the Republic of Cyprus to conform with the recommendation of the Group of States Against Corruption (GRECO) regarding the prevention and combatting of corruption.

Internship programme

Additionally, in April 2022, the House introduced for the first time a traineeship programme addressed to university students, offering internships of up to two months, during the summer period. The programme was very successful with around 25 students successfully applying and participating

in its inaugural season.

GUYANA

National Assembly

Promoting Parliament to the People

As a part of an ongoing effort to sensitise citizens to institutions of democracy, particularly the work of the Parliament of Guyana, Honourable Speaker Manzoor Nadir has embarked on several initiatives including outreaches to children under 10, Youth Debating Competition and Youth Parliament, outreaches to communities, television and radio programmes and promoting the work of Parliament through sports.

The inaugural Speaker's National Youth Debating Competition (SNYDC) saw the participation of 48 youths from 16 youth groups across the Education Districts of Guyana in 2021. This initiative continued in 2022, serving as a feeder into the Annual Youth Parliament 2022.

The 2022 Youth Parliament brought together 86 participants: 40 from the junior category and 46 from the senior category. The participants from the junior category were selected by the Ministry of Education. Participants for the senior category were selected from the Second Speaker's National Youth Debating Competition, the University of Guyana (UG), the University of the West Indies (UWI), and other educational institutions throughout Guyana.

Continuing in the vein of promoting the work of Parliament, Honourable Speaker Manzoor Nadir conducted 5 television interviews, including 2 Globespan interviews on parliament, and continued the Christmas Season Outreach by distributing toys and parliamentary paraphilia to children below the age of 10 in the Administrative Regions of Guyana, during 2022.

Clerk of the National Assembly Outreach Programme: Visit to Former Members of Parliament

The Clerk of the National Assembly, Mr. Sherlock E. Issacs, A.A. initiated an outreach programme to visit, express thanks, and check on the welfare of former Members of the National Assembly. The outreach would also allow young citizens of Guyana to get to know the former Members of Parliament. According to the Clerk, this was his way of checking on the welfare of the former Members of Parliament who spent long hours in the National Assembly debating policies and making laws for the good Government of Guyana. During 2022 several Former Members of Parliament were visited.

Mr. Isaacs informed the former Members of Parliament of his commitment to producing an archival project in the form of a booklet

which will be presented, by him, to each former Member. The booklet will include background information, and a compilation of speeches, Bills, or Motions presented in the house by each former member. The former Members were presented with Certificates of Appreciation, Plaques for their years of dedicated service, and COVID-19 packages containing vitamins and cleaning supplies, among other things. Mr. Isaacs, during each visit, assured the former Members of Parliament that his secretariat will continue checking on their welfare on a quarterly basis.

ISLE OF MAN

Tynwald

Prayers reformed in the House of Keys

The practice of starting each day in the House of Keys with prayer was subject to modest reform in May 2022 after two thorough and wide-ranging debates.

The role of Chaplain of the House of Keys was introduced in 1863, just three years before the introduction of popular elections to the House. Under the Standing Orders as they stood at the time of the September 2021 General Election, the Chaplain's appointment expired upon the Dissolution and it was one of the first duties of Members after the Election to nominate a successor. By January 2022 no nominations had been made.

The Standing Orders also provided that each day should begin with prayers read by the Chaplain, or in the Chaplain's absence by the Speaker, or in the Speaker's absence by the Deputy Speaker. The vacancy in the role of Chaplain was a matter of particular discomfort for the Deputy Speaker, an avowed atheist.

Inferring from the lack of nominations an evolution in the House's attitude to the need for a Chaplain, and possibly to the need for prayers themselves, the Management and Members' Standards Committee reported with recommendations on a new way of starting the day which would have avoided the need to fill the vacancy. Based on the Scottish Parliament's Time for Reflection but given the Manx-language name Smooinaght (translating as "thought" or "consideration"), this would have involved "Member-nominated contributors offering short orations that were either educational, philosophical, religious, secular or otherwise." The Committee's recommendations were structured to allow the House to choose between the status quo; Smooinaght; or a period of silence.

In a lengthy debate on 8th February 2022 in which 22 of the House's 24 Members spoke (the 23rd having leave of absence and the 24th being in the Chair) it became clear that while there was a wide spectrum of opinion in

the House, Smooinaght was not going to be the compromise that brought people together. Instead, the House resolved on an amendment, "that as a matter of principle every Member should be free to participate in prayers or not according to their individual conscience"; and the implementation of this principle was referred back to the Committee.

By the time of the Committee's second report, in May 2022, the landscape had been materially changed by the emergence of nominations for the role of Chaplain, one of which the Committee had decided to put forward for the approval of the House. This paved the way for a different sort of compromise. There would still be a Chaplain who would still say prayers at the beginning of each sitting day but, in a change to the previous dispensation, Members would now be allowed to be absent from the Chamber during prayers. Furthermore, in the Chaplain's absence the obligation to say the prayers would no longer revert automatically to the Speaker but could be passed under the Speaker's authority to some other person, for example to another minister of religion suggested by the Chaplain.

By the end of 2022 a number of Members had taken up the option of absenting themselves from the Chamber during prayers. The new possibility of bringing in a different person to say prayers in the Chaplain's absence was yet to be tested.

Resolution against Russian invasion of Ukraine

On 15 March 2022 it was resolved "That Tynwald supports Ukrainian sovereignty, democracy, independence and territorial integrity; condemns the Russian invasion of Ukraine; is committed to fully supporting international sanctions against Russia; and further supports the protection of refugees and humanitarian relief in Ukraine."

In procedural terms this was notable because it is so rare for Tynwald to express an opinion on a matter of foreign policy. Although there is no written constitution setting limits on what Tynwald can discuss, it is a settled constitutional convention that, as a Crown Dependency, the Isle of Man is represented by the United Kingdom in international affairs.

That said, a joint statement by the United Kingdom and Isle of Man Governments in 2007 entitled noted that the Isle of Man has an international identity which is different from that of the UK and said "The UK recognises that the Isle of Man is a long-standing, small democracy and supports the principle of the Isle of Man further developing its international identity."

In moving the resolution quoted above, the Deputy Chief Minister Jane Poole-Wilson MHK said: "This is not something we would normally do. We do not conduct foreign policy and we do not normally comment on

world events, but with the strength of feeling in the Chamber and in the Island more widely, it feels like the right thing to do."

Debate on time limits for submission of business (July 2022)
Under the Standing Orders of Tynwald adopted in 1995 papers to be laid (whether subject to a vote or not) were required to be to circulated to all Members two weeks before a sitting. Government Departments occasionally consulted the public on proposed secondary legislation or gave advance copies of it, in draft form, to Tynwald Members. But this was very much the exception rather than the rule. The result was that on the first Monday of every month from October to July every Member was faced with an enormous "Tynwald bundle" of material, much of it statutory, that they would be expected to vote on only two weeks after receiving it.

The significance of this burden must be understood in the context of a parliamentary system in which every Member is obliged to be present for every item of business, every Member (with very limited exceptions) is obliged to vote for or against every motion and Members have very little if any support to call on from party colleagues or politically appointed staff.

This system was significantly reformed in 2021. A new Register of Business was constructed on the Tynwald website to which Ministers were enjoined by a new Standing Order to submit their secondary legislation and other Tynwald business "as soon as possible, in order to allow the maximum time for consideration." At the same time other new Standing Orders provided that business should be submitted six weeks before the sitting – although a safety valve (or "fast track") was built into the system allowing use, in exceptional circumstances, of the old two-week deadline, subject to the consent of the Chamber itself.

The new Standing Orders and the Register of Business were brought into effect in October 2021. The "exceptional circumstances" safety valve immediately came into regular use for business considered by Ministers to be sufficiently urgent. To date the Chamber has never declined to give its consent. Nevertheless, some business has followed the new six-week timescale.

In July 2022 the system was debated on a backbench motion by Mrs Daphne Caine MHK "That Tynwald is of the opinion that the requirement for all business to spend six weeks on the Register is excessive, and refers the matter to the Standing Orders Committee for reconsideration."

An amendment to Mrs Caine's motion tabled by Ms Joney Faragher MHK proposed to bypass the Standing Orders Committee and change the relevant time limit to three weeks there and then. This amendment was passed in the House of Keys but defeated in the Legislative Council. The

mover could have called for a combined vote at the next sitting but did not do so, and as a consequence the motion was carried in its original form. At the end of the calendar year 2022 the matter remained before the Standing Orders Committee.

Publication of Members' circulars

In addition to the formal sittings of the House of Keys, the Legislative Council, Tynwald Court, and Committees, Members also meet regularly in private in the Legislative Buildings. Such meetings serve various purposes including Government briefings, briefings by parliamentary committees, and briefings on procedural developments. Papers or presentations are often referred to during such private meetings. Sometimes the presentations, or other papers referred to, are circulated by email to all Members shortly after the meeting and copied to the Clerk of Tynwald and his staff, who hold them for future reference by Members. The fact that such meetings take place is no secret, with reference to them being made fairly frequently during public proceedings.

A Freedom of Information Request received in March 2022 seeking information about such meetings was refused by the Clerk of Tynwald on grounds that disclosure would infringe the privileges of Tynwald. However, on considering the matter further the Tynwald Management Committee decided that the system should be reformed.

Under a new Standing Order adopted in November 2022 and an associated Practice Note issued by the Clerk of Tynwald with the approval of the President of Tynwald and the Speaker of the House of Keys, the presumption is now that information about all meetings in the Legislative Buildings will be published, including any presentations and papers referred to which have subsequently been circulated to all Members (whether of the House of Keys, the Legislative Council or Tynwald Court), unless the Member circulating the information gives an express instruction that the information is not to be published.

The new arrangements are intended to improve the transparency of activities undertaken on behalf of the public within the publicly owned Legislative Buildings, while preserving Members' right to gather in private and enabling the parliamentary authorities, when so instructed, to hold information in confidence on behalf of all Members.

JAMAICA

Parliament of Jamaica

Parliament's Marking of the 60th Anniversary of Jamaica's Independence

2022 marked Jamaica's Diamond Jubilee, celebrated under the theme Jamaica 60 – Reigniting a Nation for Greatness. It took on an added significance occurring as it did at a time when the Government and people of Jamaica were attempting to return to "normalcy" after the COVID-19 pandemic and served to not only be the simple marking of a momentous milestone of Jamaica's nationhood but also an authentic expression of the indomitable Jamaican spirit and an opportunity to take stock of the nation's progress and to determine its priorities for the future.

The Jamaica 60 flavour, therefore, permeated the walls, halls and activities of the Parliament "Jamaica 60" décor was mounted on the façade and public areas of George William Gordon House, the current home of Parliament. The décor featured the theme and black, green and gold, the colours of the Jamaican flag.

The highest point of Parliament's celebration of *Jamaica 60* was the special Joint Meeting commemorating the 60th anniversary of Jamaica's Independence. However, prior to this special sitting the country's Diamond Jubilee was marked by a series of activities designed to keep this anniversary at the forefront of parliamentary and public thought.

On the eve of the 60th Anniversary of Independence the Parliament hosted a special Joint Meeting to Commemorate the 60th Anniversary of Jamaica's Independence. His Excellency the Most Honourable Sir Patrick Linton Allen, ON, GCMG, CD, KSt.J, Governor-General of Jamaica, delivered the main address. To mark the occasion a commemorative "Jamaica 60" plaque was unveiled by the Most Honourable Andrew Holness, ON, PC, MP, Prime Minister, and Mr. Mark Golding, MP, Leader of the Opposition.

The meeting saw the attendance of local dignitaries and members of the diplomatic corps. The Parliament also had the privilege of playing host to two visiting delegations who were in the island to mark the Diamond Jubilee: a delegation from the Republic of Namibia led by the Honourable Christine Hoebes, Minister in the Presidency, as well as a delegation from Bermuda led by the Honourable E. David Burt, Premier of Bermuda.

It could be said that the speeches for the day emphasised that the vicissitudes the country had faced since independence had all contributed to shaping present-day Jamaica. The President of the Senate and the Speaker of the House, Honourable Marisa Dalrymple-Philibert, CD, MP, recollected the strides the nation had made since independence in their addresses. Prime Minister, the Most Honourable Andrew Holness, ON,

PC, MP, and Leader of the Opposition, Mr. Mark Golding, MP, both echoed these sentiments and also used their speeches to share their visions for the future of Jamaica.

Visits to Parliament

Noted poet and novelist and Poet Laureate of Jamaica, Olive Senior, was invited by the President of the Senate to do a reading of selected pieces of her work at the start of the 25 March 2022 sitting. Ms Senior's visit was well received by the Members of the Senate, as the selections she chose to share evoked a nostalgic image of Jamaica. Prior to the presentation, the Poet Laureate met the President of the Senate, women Senators, and other officials.

The Jamaican Parliament also received addresses by two Heads of State, His Excellency Paul Kagame, President of the Republic of Rwanda on 14 April 2022 and His Excellency Ram Nath Kovind, former President of the Republic of India on 17 May 2022. Jamaica and Rwanda entered into diplomatic relations in 1998 and India has the distinction of being one of the twelve countries with which Jamaica established diplomatic ties at independence in 1962. The Rwandan and Indian heads of state were received at meetings of the House to which Members of the Senate were invited.

Heritage Week, in October took on added significance in 2022 when His Imperial Highness Prince Ermias Sahle Selassie, President of the Ethiopian Crown Council, paid a courtesy call on Senator the Honourable Thomas Tavares-Finson, ON, PC, MP, President of the Senate, and the Honourable Marisa Dalrymple-Philibert, CD, MP, Speaker of the House of Representatives, on 14 October 2022. His Imperial Highness is a grandson of His Imperial Majesty Haile Selassie I, late Emperor of Ethiopia, an important figure in Jamaica's cultural life.

National Youth Parliament of Jamaica

The National Youth Parliament of Jamaica (NYPJ) also marked the 60th Anniversary in their first wholly in-person sitting since the onset of the COVID-19 pandemic. The NYPJ convened at Gordon House under the theme "REIGNITED: Empowering Youth for Jamaica 60 & Beyond." The sitting saw the 70 participants debating motions related to youth development in the areas of "Parenting and Education", "Psychological Well-being", "Affordable Housing and Finance", and "Financial Literacy and Under-Employment."

JERSEY

States of Jersey

New electoral system implemented

June 2022 marked the first elections in Jersey since revisions had been made the Electoral and States of Jersey Laws. Changes included the abolition of the role of Senator (created in 1948 and elected on an Island-wide mandate), increasing the number of Deputies across nine new constituencies and the creation of a Jersey Electoral Authority to oversee the election process. There was also the extension of postal voting as an option for all electors rather than just those out of the Island on polling day and the inclusion of 'None of the candidates' as a voting option whenever the number of candidates was the same or less than the vacancies, thereby ensuring all elections were competitive and no Members were elected unopposed.

Jersey welcomed a second CPA Electoral Observation Mission (the first having overseen the 2018 elections); there were 98 candidates for 49 positions and although the majority were independent, for the first time there were candidates from four parties, three of which had been formed in advance of the elections. 24 new Members were elected; 13 Members are now affiliated with a party (Reform Jersey doubled their representatives in the Chamber to 10); there are now 21 women in the Assembly (the highest number previously having been 14 in 2018) and Jersey appointed its first female Chief Minister.

Members Remuneration Review

In April 2022 the Assembly agreed a new system for setting Members' pay through the implementation of the States of Jersey Remuneration of Elected Members Law 2022. Prior to this, a Remuneration Board put forward recommendations periodically. The new process sees a reviewer appointed who will undertake a review and produce a report within 12 months of appointment. For the first time there will also be a formula proposed to index link Members' pay for the future. The reviewer will be appointed in early 2023.

NEW ZEALAND

House of Representatives

State occasion—address by President of Ukraine

The Standing Orders were amended in 2014 to allow the Business Committee to arrange for a "State occasion" to be held. This broad power was intended to be very flexible, so that cross-party support could be

obtained for special parliamentary events to be held, such as a speech from the Sovereign without the need for prorogation for a State opening, or an address by a foreign leader. However, the procedure had never been used until it was proposed late in 2022 that members receive a live video address from His Excellency Volodymyr Zelenskyy, President of Ukraine. Members of the Business Committee agreed this was a parliamentary moment of huge importance, and the State occasion was held at 8am on 14 December 2022. The President gave his speech in Ukrainian, with simultaneous interpretation into English.

Accessibility for New Zealanders Bill—public engagement

The Government introduced the Accessibility for New Zealanders Bill, which seeks to address systemic accessibility barriers that prevent disabled people and their families from living independently and participating in all areas of life and aims to grow accessibility practices across New Zealand. The bill received its first reading on 2 August 2022 and was referred to a select committee for nine months, which is much longer than the usual six months. The Social Services and Community Committee accordingly decided to give an extended period of three months for the public to make submissions. The bill was made available in several alternative formats, such as screen reader friendly, large print, braille, and audio versions, and the general policy of the bill was provided in Easy Read and New Zealand Sign Language versions. The committee is expected to present its report in May 2023.

Proposal for statutory entrenchment

Like the United Kingdom, New Zealand does not have an overarching, entrenched constitution. However, a few important constitutional and electoral matters are statutorily entrenched, such as the minimum voting age and the three-year electoral term. Entrenchment is achieved through a provision in the Electoral Act 1993 (s 268), which provides that the specified "reserved provisions" can be repealed or amended only with the support of at least 75 percent of all members of the House or through a majority at a national referendum. This protection is through "single entrenchment"—that is, the entrenching provision is not itself entrenched. When this arrangement was first established in 1956, it was understood that one Parliament could or should not formally bind another, and single entrenchment provided a sufficient moral obligation to ensure these important constitutional settings would not be adjusted at a political whim. As a corollary, in 1995 the House adopted a rule that no future proposal for statutory entrenchment could be passed unless that proposal itself achieved

the same level of support in the House as it sought to impose through entrenchment. This rule is now found in Standing Order 270.

Since that rule was adopted in 1995, there have been very few proposals for entrenchment. However, one was unexpectedly raised in November 2022 during the latter stages of the Water Services Entities Bill, which was a controversial piece of legislation dealing with the establishment of organisations to manage and invest in infrastructure for water services across the country. The House accorded urgency to the bill's committee of the whole House stage, which resulted in debate being drawn out over a number of days. A member of a non-Government party lodged an amendment to entrench a clause in the bill intended to protect against the privatisation of water services. In the light of Standing Order 270, and since the member's party and the Government party's members together comprised about 60 percent of the House, the member's entrenchment proposal was for the clause to be entrenched with a threshold requiring a 60 percent majority for its repeal or amendment. When the vote on the relevant provisions came around late one evening, the Deputy Speaker (who was chairing the committee of the whole House) drew attention to the member's entrenchment proposal, and the fact that it required a special majority to pass. Surprisingly, the Government party voted in favour of the proposal, and it was adopted as a provision in the bill. The committee stage was eventually completed, with the bill set down for its third reading on the next sitting day.

Before the next sitting day came around, however, the late-night adoption of the entrenchment provision was noticed by public law experts, who successfully caught the attention of the media. They generated a level of public indignation about the process and lack of notice for such a constitutionally significant change. Another strong basis for criticism was that the entrenched provision related to substantive public policy (the provision of water services), unlike the constitutional nature of the existing reserved provisions.

The Government quickly reversed its position, with Ministers describing the adoption of the entrenchment provision as a "mistake." On the next sitting day, the bill was recommitted to debate an amendment to remove the entrenchment provision. This was agreed, before the bill was finally passed. The entrenchment proposal therefore never reached the statute book.

The Standing Orders Committee later agreed to consider whether the rules and principles for the House's consideration of entrenchment proposals should change. This topic will be dealt with in the committee's broad review of the Standing Orders, which is intended to conclude before the 2023 general election.

UNITED KINGDOM

Northern Ireland Assembly

Political instability

On 4 February 2022 the DUP's Paul Givan MLA resigned as Northern Ireland's First Minister, citing the Protocol on Ireland/Northern Ireland as his reason. Upon his resignation, Sinn Féin's Michelle O'Neill MLA also ceased to hold office as deputy First Minister.

When Mr Givan resigned, it was still the case under the Northern Ireland Act 1998 that there was then a statutory period of seven days during which the offices of First Minister and deputy First Minister needed to be filled or else an election would be called. However, on 8 February 2022, the UK Parliament passed the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022. It amended the Northern Ireland Act 1998 in a number of ways, one of which was to extend the period of seven days to a maximum period of 24 weeks, allowing the Assembly to continue meeting until its planed dissolution on 28 March 2022.

Although there was no Executive during this period, all other Ministers continued to hold office (and continued to hold office after the election until their successors were appointed up to a maximum period of 24 weeks). The Business Committee therefore continued to schedule sittings of the Assembly as normal and the scrutiny of legislation going through the Assembly continued until the scheduled dissolution.

Assembly election

The Assembly election was held as scheduled on Thursday 5 May 2022 and Sinn Féin won the largest number of seats for the first time. As the largest party, they would be able to nominate a First Minister and the DUP, as the largest unionist party, would be able to nominate a deputy Fist Minister. However, the DUP had made clear during the election campaign that they would nominate neither a First Minister nor a deputy First Minister until their concerns with the Protocol on Ireland/Northern Ireland had been addressed.

The Assembly met following the election on Friday 13 May 2022 when Members gave the undertaking, designated as either Nationalist, Unionist or Other, and then took their seats. Following this there was an election for a Speaker. The Northern Ireland Act 1998 provides that the Assembly must elect a Speaker – with cross-community support – before it can carry out any other business. At this sitting of the Assembly the DUP said that they would not support the election of a Speaker at that time, due to their ongoing concerns with the Protocol. This meant that no Member proposed

as Speaker could gain the necessary cross-community support. The Assembly therefore adjourned, unable to carry out any further business.

During 2022 the Assembly met again on a further 4 occasions. At each of these sittings it attempted again to elect a Speaker but failed to do so for the same reasons.

The Northern Ireland Act 1998 had provided that if the Assembly had not met and elected a Speaker, and if a First Minister, deputy First Minister and new departmental Ministers had not been appointed before 28 October 2022, there must be another Assembly election. However, the Northern Ireland (Executive Formation etc) Act 2022, which received Royal Assent on 6 December 2022, extended this period further. This Act also conferred powers on the Secretary of State for Northern Ireland to determine salaries and other benefits for Members of the Assembly in respect of periods in which the Assembly is not functioning. The Secretary of State subsequently used this power to apply a cut of 27.5% to MLA salaries.

Those Ministers who had continued to hold office following the election in May 2022 ceased to hold office on 28 October 2022. Since this date there have been no Ministers in Northern Ireland. The Northern Ireland (Executive Formation etc) Act 2022 made provision for the exercise of certain functions by departmental officials in the absence of Ministers.

Devolved legislative issues

The period from 1 January 2022 until the Assembly dissolved on 28 March 2022 was particularly busy as the Assembly sought to ensure that all introduced bills completed their passage. There were many late-night sittings, with multiple amending stages of bills being moved on the same sitting day. By the end of the mandate the Assembly had passed 46 bills in the period since January 2020.

One of these bills – the Abortion Services (Safe Access Zones) Bill – was subsequently referred by the Attorney General for Northern Ireland to the United Kingdom Supreme Court. The bill made provision in respect of safe access zones for premises providing abortion services and creates offences for carrying out certain acts in a safe access zone. The Office of the Attorney General for Northern Ireland said it referred the bill to the Supreme Court to consider whether the offence created by a provision within the bill is "*a proportionate interference with the rights of those who wish to express opposition to abortion services in Northern Ireland.*" On 7 December 2022 the Supreme Court gave its decision. The Court decided that the relevant provision was within the legislative competence of the Assembly.[7]

[7] The judgment is available here: supremecourt.uk/cases/uksc-2022-0077.html

Strengthening committee scrutiny

The Report of the Independent Public Inquiry into the Non-domestic Renewable Heat Incentive (RHI) Scheme in 2020 identified "limitations inherent in [the Enterprise, Trade and Investment Committee's] role" and found that "reasons for this included its own limited resources and its dependence on the Department for information and analysis to allow it to perform its challenge function robustly."

As a result, the Inquiry's report made recommendations around strengthened Assembly committees to increase scrutiny and help ensure that systematic changes were made and sustained, such as increasing the resources available to them. The Chairpersons' Liaison Group (CLG) reviewed committee scrutiny with a view to identifying how the recommendations of the RHI report could be implemented to strengthen the scrutiny role carried out by committees, particularly in relation to the scrutiny of primary and subordinate legislation by statutory committees. As a result of this review, in March 2022 CLG made a total of 33 recommendations aimed at strengthening the scrutiny of primary and subordinate legislation as well as the need for pre-and post-legislative scrutiny. CLG said it was essential its recommendations were acted upon to ensure that the Assembly delivers on its obligations as detailed in the RHI Inquiry Report.[8]

Procedural reform

The Committee on Procedures concluded two inquiries during this period: one in relation to the handling of legislative consent motions and one in relation to Private Members' Bills. In March 2022 the Assembly noted and debated the reports on these inquiries and agreed the various recommendations included in each.[9]

Sign language pilot

From December 2021 to March 2022, the Assembly held a pilot for the provision of live sign language interpretation of Question Time to the Executive Office (First Minister and deputy First Minister). The

[8] niassembly.gov.uk/globalassets/documents/committees/2017-2022/clg/reports/strengthening-committee-scrutiny/chairpersons-liaison-group-report-on-strengthening-committee-scrutiny.pdf

[9] A copy of each of these reports is available at the following links:

Report on LCMs: niassembly.gov.uk/assembly-business/committees/2017-2022/procedures/reports/inquiry-into-legislative-consent-motions/

Report on Private Members' Bills: niassembly.gov.uk/assembly-business/committees/2017-2022/procedures/reports/inquiry-into-private-members-bills/

interpretation was provided in British Sign Language (BSL) and Irish Sign Language (ISL). Due to the resignation of the First Minister in February 2022, the terms of the pilot changed, and Question Time interpretation was provided for other Executive Ministers and for tributes to the late Christopher Stalford MLA. This pilot ran in parallel to the manual subtitling of Question Time that was available on playback after Question Time. Going forward, the Assembly Commission will review the pilot and consider the future provision of sign language interpretation of Assembly business.

Unacceptable Behaviours Policy

In late 2020, the Speaker (as Chairperson of the Assembly Commission) and the Committee on Standards and Privileges agreed to form a working group, comprising members of the Assembly Commission and members of the Committee, to take forward development of a policy on the handling of complaints of inappropriate and unacceptable behaviours involving Members, Members' staff, Party staff and Assembly Commission employees.

On 3 March 2022, the Working Group agreed its report on the outcome of its policy development work.[10] The report includes a draft policy which aims to provide a consistent message to everyone working for or within the Assembly in relation to standards of behaviour and, in particular, the unacceptable behaviours that will not be tolerated. The draft policy includes clear descriptions of the range of unacceptable behaviours covered, including bullying, harassment, sexual harassment, and victimisation. It also sets out how complaints may be raised and provides for applicable investigative and adjudication processes, which take account of the sensitive nature of complaints under the policy. The report by the Group also includes a range of recommended reforms for the Committee to consider taking forward.

At its final meeting of the mandate, the Committee on Standards and Privileges considered the Group's report and agreed, in principle, that it was content with the proposed reforms and that it would recommend that its successor Committee considers taking these forward early in the next mandate as applicable.

Scottish Parliament

2022 has been a particularly busy year for the Scottish Parliament. Of note

10 niassembly.gov.uk/globalassets/documents/committees/2017-2022/standards-and-privileges/reports/working-group-on-an-unacceptable-behaviours-policy/report-on-the-development-of-an-unacceptable-behaviours-policy.pdf

was the passing of what proved to be a very contentious bill; the Gender Recognition Reform (Scotland) Bill (known as the "GRR Bill"), introduced on 2 March 2022.

A ministerial statement on the Bill was made the day after introduction. This is a relatively rare occurrence for legislation in the Scottish Parliament and indicated the anticipated level of interest the in Bill from both Members and the wider public.

At stage 1, the Parliament's Equalities, Human Rights and Civil Justice Committee received nearly 11,000 responses to its survey on the GRR Bill, over 800 detailed written submissions, held 8 evidence sessions with 40 witnesses and 4 informal, private sessions before published a Stage 1 report on 6 October 2022, with a majority of five members to two in favour of the general principles of the Bill.

After two meetings at Stage 2 to consider line-by-line amendments, the GRR Bill came before the whole Chamber in December 2022. After three consecutive days of sittings, the Bill passed at Stage 3 in Chamber on 22 December 2022 (86 for, 39 against, 0 abstained, 4 did not vote).

The sessions in the Chamber were unusually long with Parliament sitting as late as 1.34am on one of these days. These sittings were also characterised by the use of a variety of parliamentary procedures which had the result of delaying the start of proceedings on the Bill and extending the length of consideration. These included repeated use of points of order, pressing votes on all consequential amendments when the substantive amendment had been defeated, opposition to timetabling motions and votes on other business motions in respect of which multiple amendments were lodged. There were also several suspensions due to disturbances in the public gallery.

After the Bill passed on 22 December, following a four-week period, it would normally be the case that it became law after Royal Assent. On this occasion however, for the first time in the Parliament's history, the UK Government used its powers under section 35 of the Scotland Act 1998 to prohibit the Presiding Officer from submitting the GRR Bill for Royal Assent. Section 35 gives the Secretary of State for Scotland (a member of the UK Government) the power, in certain circumstances, to veto legislation enacted by the Scottish Parliament, even if it deals with a devolved matter.

At the time of writing (21 March 2023), this remains the position.

COMPARATIVE STUDY: UNEXPECTED CHANGE IN THE HEAD OF STATE

This year's comparative study asked: What are the procedural implications for your legislature when there is an unexpected change in the head of state? What plans, if any, are there to review or change any such procedures?

AUSTRALIA

House of Representatives

The Sovereign is the Commonwealth of Australia's head of state. What transpires following an unexpected change in the head of state is a matter of practice, rather than written procedure for the Australian House of Representatives. There are no relevant provisions in the standing orders.

There have been only four changes to the head of state since Federation in 1901 (in 1910, 1936, 1952 and 2022). On only one occasion has the House been sitting.

On Wednesday, 6 February 1952, the Prime Minister (Mr Menzies) informed the House of the sudden death of His Majesty The King and moved that the House adjourn. Following some brief remarks by the Leader of the Opposition in support of the motion, the question was carried, and the House adjourned. The following day, after the Speaker had taken the Chair and read prayers, the Prime Minister moved that a resolution expressing gratitude and sympathy be transmitted through the Governor-General to Her Majesty The Queen. The House then adjourned until 19 February.

When the news of the death of Her Majesty Queen Elizabeth II was received in September 2022, the House was not sitting. The Speaker notified Members that the House would next meet on Friday, 23 September, at 8am. This meant that the House did not meet from 12 to 15 September as intended.

A national day of mourning was held on 22 September in honour of the life and service of the late Queen. On 23 September, the House met at 8am and standing orders were suspended to set the order of business for the day. The Prime Minister moved that an address to His Majesty King Charles III be agreed to, expressing deep sympathy for the death of Her Majesty and congratulating His Majesty on his accession to the throne. The Leader of the Opposition seconded the motion. The Deputy Prime Minister and the Leader of the Nationals spoke in support before all members present rose in silence, signifying their respect and sympathy. A further 109 members spoke in the debate before the address was agreed to and the House

adjourned.

While the Australian Constitution requires members to make and subscribe an oath or affirmation before taking their seats, the schedule provides that the name of the King or Queen in the oath or affirmation 'is to be substituted from time to time'. It is not the practice to take the oath again following the demise of the Crown.

No intention to review or change the procedures has been announced.

Senate

Procedural implications

The succession occurs automatically in accordance with Australian law. While there are traditional and ceremonial elements for a change in the head of state, there are few specific procedural implications for the Senate.

To observe the passing of Her Majesty Queen Elizabeth II, the Prime Minister announced that the House of Representatives would not sit again until the end of a 14-day period of national mourning. The Senate has the power to determine its own meetings independently of the House, including when to postpone scheduled sittings and when to meet again. Accordingly, to give effect to the same arrangement for the Senate, the Leaders of the Government and Opposition in the Senate wrote to the President requesting that the sitting week beginning 12 September 2022 be postponed. This procedure was also used to set aside sittings scheduled in August 2020 during the COVID-19 pandemic.

The Senate subsequently met on 23 September following a request from the Leaders of the Government and the Opposition in the Senate under standing order 55(2), which provides for the President to fix a day and time for the Senate to meet at the request of an absolute majority of senators. The meeting was to enable the Senate to consider an address to His Majesty The King expressing sympathy on the death of Her Late Majesty the Queen Elizabeth II, and acknowledging his accession to the throne.

Before adjourning as a mark of respect, the Senate agreed to meet from 26 to 28 September to make up for days set aside in observance of the Queen's death.

Changes to standing orders

Following the change to the head of state, the Senate standing orders were updated by clerical amendment to substitute references to Her Majesty the Queen with references to His Majesty the King.

Review of procedures

There are no plans to review or change procedures in the Senate relating to

a change in the head of state.

Australian Capital Territory Legislative Assembly

The standing orders are currently under review (inquiry commenced September 2022, still ongoing) which will propose all references to the "Queen" be updated to "Sovereign" so that they are gender neutral into the future. There are no other procedural implications from the change to the head of state.

New South Wales Legislative Assembly

The death of Her Majesty Queen Elizabeth II in September 2022 triggered a number of protocol measures around Parliament House including lowering flags to half-mast, hanging black pall ribbons on portraits of Her Majesty and offering a condolence book for Members and the public to pay tribute.

Both the Assembly and Council suspended their scheduled sittings from 13 to 20 September as a mark of respect, in addition to observing the National Public Holiday declared on 22 September. Both Houses also passed addresses of condolence and congratulation to His Majesty King Charles III, which were jointly presented to the Governor by the Presiding Officers accompanied by the Sergeant-at-Arms and Usher of the Black Rod.

Procedurally, there are no major procedural implications for the NSW Legislative Assembly should there be an unexpected change in the head of state.

The NSW *Constitution Act 1902* was amended by the *Constitution Amendment (Restoration of Oaths of Allegiance) Bill 2012* to provide for Members of Parliament and Ministers may make an oath or affirmation of allegiance to Her Majesty Queen Elizabeth II, Her heirs and successors as an alternative to the current pledge of loyalty to Australia and the people of New South Wales. This amendment allows for a change for a head of state to occur, without the need for Members to re-swear allegiance to the Sovereign.

New South Wales Legislative Council

While a change in the head of state prompts the activation of established protocols such as a period of mourning and interruption of consideration of business of the House, both constitutional provisions that apply to the Parliament and the procedures adopted by the Council continue to operate with little variation. Under s 4(B) of the *Constitution Act 1902* (NSW), it is not necessary for a Member who has taken or made an oath or affirmation of allegiance to take or make that oath or affirmation again after any demise

of the Crown, including by or on abdication. Similarly, while the standing orders previously in operation to 2004 made certain references to the Queen (eg. the procedures on the Opening of Parliament), a revision made in 2022 and formally approved by the Governor in 2023 saw all references changed to the term 'the Sovereign', avoiding use of the specific terms King or Queen.

A change in Head of State does however prompt some alteration to the sitting calendar and scheduling of business. On the passing of Her Majesty the Queen in September 2022, both the Legislative Assembly and Legislative Council suspended scheduled sittings from 13-20 September as a mark of respect. The National Public Holiday declared on 22 September was also observed. Both Houses subsequently passed Addresses of condolence and congratulation to His Majesty King Charles III, which were jointly presented to the Governor by the Presiding Officers accompanied by the Sergeant-at-Arms and Usher of the Black Rod.

Queensland Parliament

The Queensland Parliament does not need to be prorogued or dissolved in the event of the demise of the Crown – in fact the Constitution of Queensland 2001 expressly provides for its continuation.

In 1987, the Constitution (Office of Governor) Act 1987 amended the Constitution Act 1867 to alter the oath by removing the specific reference to Queen Victoria and adding the sovereign's heirs and successors; and omitting the requirement for members to retake the oath in the event of the demise of the Crown.

In 2022, the Queensland Parliament did however consider what courtesies should be observed. A cross-government working group provided official advice that flags (including Indigenous) would be at half-mast for the mourning period and the scheduled sitting days would be postponed with missed sitting days added to an amended sitting calendar. However, the House was required to be called back briefly to establish a public holiday for the National Day of Mourning. A condolence motion was moved in the House and presented to the state Governor.

South Australia House of Assembly

Like many other jurisdictions, the House of Assembly and Legislative Council together with the Government of South Australia had been planning for the transition that would occur upon the passing of Her Majesty Queen Elizabeth II. Given the unprecedented length of service that Her Majesty had provided to the Commonwealth, there was limited existing corporate knowledge of the previous transition period, and research was required to

review both procedural and ceremonial aspects of the previous transition to decide if those arrangements were still relevant in a modern context. Of particular consideration procedurally was what the House would do should the advice of the passing of the Sovereign be received while the House was sitting, as this had not occurred previously.

Also of interest to the House was preparations for the public ceremony for the reading of the proclamation of the new Sovereign by the Governor. This would require the attendance of the Presiding Officers, the Premier and other dignitaries in line with previous proclamations of this nature and the use of the Parliamentary precinct itself.

The passing of the Queen required the House to rearrange its sitting calendar. The House had sat on Thursday 8 September and adjourned at 5.34pm (Adelaide time), to Tuesday 20 September at 11.00am. With the next scheduled sitting week being 20 to 22 September and their being no mechanism under the Standing Orders to change the next sitting day to a date beyond the period of mourning. The House was therefore required to meet on 20 September to enable the next day of sitting to be moved to Tuesday 27 September which was outside of the mourning period. The House did use the opportunity to meet on 20 September to pass an Address of condolence to His Majesty King Charles III on the passing of Her Late Majesty the Queen Elizabeth II.

The Speaker issued the following statement via email:

> "The House of Assembly will meet on Tuesday 20 September 2022 for the business only of bringing on a condolence motion. The House will then adjourn to observe the convention that no business is to be considered in the period 14 days following the death of the Monarch."

The arrangements both procedurally and ceremonially proved to be suitable.

Unlike some other jurisdictions, The *Constitution Act 1934 (SA)* Section 42(2) allows the membership of the House to continue in office without being re-sworn upon the demise of the Crown due to the oath of allegiance or affirmation expressly stipulating that it is to the Sovereign and the Sovereign's heirs and successors.

Section 42(2) (2) of the *Constitution Act 1934* states:

> "(2) It shall not be necessary for any member of Parliament who has taken the oath prescribed herein to take the said oath again in the event of the demise of the Crown; such oath shall be deemed to relate to the Sovereign and the Sovereign's heirs and successors according to law."

In 2016, the South Australian Parliament enacted *the Constitution (Demise of the Crown) Amendment Act* which amended the *Constitution Act 1934* to insert a general demise of the Crown provision. To put beyond doubt the

effect of the demise of the Crown in this State, including the continuity of Parliament, public offices and legal proceedings, the amendment provides that the demise of the Crown has no other effect in law other than to transfer sovereignty.

Tasmanian House of Assembly

There are limited procedural implications in the Tasmanian Parliament when there is an unexpected change of the head of state. The House would acknowledge the change through the reading of the proclamation by the Governor.

Following the demise of the Crown on 8 September 2022, the House of Assembly met, as scheduled on Tuesday 13 September. Following the acknowledgement of the traditional people and prayers, the proclamation of King Charles the Third was read by the Speaker. Leave was then granted to the Premier for the suspension of standing orders to move a condolence motion for the late Queen Elizabeth II. A Joint Resolution of condolence was agreed to by both the House of Assembly and Legislative Council. As a mark of respect for the late Queen, the House then immediately adjourned following the condolence motion until 27 September 2022.

In 2015 changes were made to the *Constitution Act 1934* through the *Promissory Oaths (Consequential Amendments) Act 2015*. This consequential amendments Act, along with the *Promissory Oaths Act 2015*, updated the previous Promissory Oaths Act of 1869 to create more modern provisions that codified who should take oaths, the form of oaths and the ability to take an affirmation. Section 18 of this new Promissory Oaths Act saw the inclusion of a section which meant that should there be a change of sovereign, reference to Her Majesty or the Queen is deemed to be a reference to the King or His Majesty respectively. Consequently, a change in sovereign would not result in needing to swear in members again following any change.

There are no current plans to review or make change to procedures surrounding the change of a head of state.

Parliament of Victoria

In the event of the demise of the Crown, the Parliament of Victoria is not dissolved unless prorogued or dissolved by the Governor. However, under the Victorian Constitution, members are required to retake their oath or affirmation to the Crown's successor before they are permitted to sit or vote.[1] Parliamentary committees must also cease operation until members

[1] *Constitution Act 1975* (Vic) s 23(2).

are re-sworn.

If Parliament is sitting when informal news is received of the demise of the Crown, each House is likely to adjourn until a message is received from the Governor. If the demise occurs during a non-sitting period, historically, the Parliament has resumed at the prescribed time and the Governor, having officially notified both Houses of the demise, orders the members to retake their oath or affirmation before sitting or voting.

On 13 September 2022, following the death of Her Late Majesty the Queen Elizabeth II, all members of the Parliament of Victoria had to be re-sworn in and pledge their allegiance to His Majesty King Charles III. The proceedings are essentially the same as the proceedings for swearing in members at the opening of a new Parliament.[2] The Governor appoints a commissioner to administer the oaths and affirmations. Justice Karen Emerton, Acting Chief Justice of the Supreme Court was appointed as the Governor's Commissioner for the Legislative Council. Justice Phillip Priest, Judge of the Court of Appeal was appointed as Commissioner for the Legislative Assembly.

After the swearing in, members in both Houses contributed to an address to the new King before adjourning for the day. Originally, the week of 13 September 2022 was scheduled to be the last sitting week of the 59th Parliament before the November 2022 election. Both Houses resolved to cancel the remaining sitting days for that week out of respect for the Queen Elizabeth II, and instead met the following week for two days to complete their remaining business for the parliamentary session.

Parliamentary staff meet regularly with Government House to review arrangements and protocols surrounding the demise of the Crown. Our documentation and processes are currently being reviewed to incorporate learnings from this event.

Western Australia Legislative Council

In 2017 the Western Australian jurisdiction passed the *Constitution Amendment (Demise of the Crown) Act 2017*. The Act amended the Western Australian Constitution Act 1889 and has the effect of transferring all the functions, duties, powers, authorities, rights, privileges and dignities belonging to the Crown to the Sovereign's successor.

The Act facilitated the smooth transition in Western Australia without requiring MPs to, for example, re-swear oaths to the sovereign etc.

All other traditional and official observances upon the demise of the Crown were unimpeded and occurred as expected.

[2] *Constitution Act 1975* (Vic) s 23(1).

CANADA

House of Commons

Procedural Impact of the demise of the Crown

Pursuant to the Parliament of Canada Act 1982, the sovereign's death does not have the effect of dissolving or proroguing Parliament. Similarly, an otherwise unexpected change in the head of state would also not have the effect of dissolving or proroguing Parliament. Provisions included in the *Interpretation Act* ensure that allegiance is automatically extended to the new sovereign, so members of the House of Commons are not required to swear a new oath of allegiance.

Response by the House of Commons

The Speaker recalled the House of Commons so that members could make speeches of condolence and pay tribute to the Queen on September 15 and 16.

Response by the Government of Canada

Members of the Privy Council assembled at Rideau Hall on Saturday, September 10, to proclaim the accession of the new sovereign. The Queen's Privy Council for Canada became the King's Privy Council for Canada. The Government of Canada announced a 10-day period of mourning. During this period, the flags on all Government of Canada buildings and establishments in Canada and abroad were flown at half-mast, the Centre Block was illuminated in royal blue, and the Royal Cypher was projected on the Peace Tower from dusk to dawn. A national commemorative ceremony was held at Christ Church Cathedral in Ottawa on Monday, 19 September, the last day of the official mourning period. 19 September was designated by the Prime Minister as a one-time National Day of Mourning and a holiday for the public service of Canada.

Senate

No specific procedures relating to an unexpected change in the head of state are provided for in the *Rules of the Senate*. In the case of the demise of the Crown, section 2 of the Parliament of Canada Act states that Parliament shall not be interrupted: "[it] shall continue, and may meet, convene and sit, proceed and act, in the same manner as if that demise has not happened."

Nevertheless, certain steps are taken by the Senate following such a change to express loyalty to the new Sovereign and, when appropriate, express its sympathy. Although practices have varied over the years, the steps taken following the passing of Her Majesty Queen Elizabeth II are

described below.

Adjournment of the Senate
Parliament was already adjourned for the summer when Her Majesty passed. However, it should be noted that if a Sovereign were to die while the Senate is sitting, the Government Representative in the Senate would likely rise to make an announcement and then move that the Senate adjourn.

Prayer
There are references to the Sovereign in the prayers read by the Speaker at the start of every sitting. These references were adjusted to reflect the gender of the new Sovereign.

First sitting following the passing of Her Majesty Queen Elizabeth II
When the Senate resumed after the summer adjournment, its first sitting was devoted to honouring the late Sovereign. At the start of the sitting, the Senate observed a minute of silence in memory of Her late Majesty. Following the minute of silence, the Senate adopted a motion setting special provisions for that sitting. The motion provided that tributes to Her Majesty The Queen would be held for an unlimited time, followed by the reading of any message from the House of Commons in relation to Her Majesty's death and the consideration of any government motion moved for a humble Address to His Majesty The King relating thereto, after which the Senate was to adjourn. The motion also specified that the Senate would not suspend for the dinner break and provided for the placement of a government inquiry on the Orders of the Day for the next sitting, calling the attention of the Senate to the life of the late Sovereign.

The Speaker read a message from the House of Commons requesting that the Senate and the House unit to present a humble Address to His Majesty The King. A motion to agree with the House of Commons was moved and adopted without debate. The Senate immediately adjourned after all proceedings relating to Her Majesty's death were completed.

Parliamentary documents
Although in more recent cases a black border has been added around the title pages of the *Journals of the Senate*, a decision was made not to use them this time. The regnal year, which appears on the cover page of the Journals, was however adjusted to reflect the change of Sovereign. The updated regnal year also appears on the cover page of all bills introduced since the change of Sovereign.

Oaths

Senators appointed before the demise of the Crown were not required to retake the oath or affirm allegiance to the new Sovereign. However, the texts of the oath and solemn affirmation were adjusted following the change of Sovereign and all new senators appointed since have pledged their loyalty to the King.

Alberta Legislative Assembly

God Save the Queen, which takes place on Thursday afternoon, was changed to the Royal Anthem in the Standing Orders, as was an additional reference to the Queen (i.e., Her Majesty), which has been changed to His Majesty. Otherwise, there have been no further procedural implications.

British Columbia Legislative Assembly

At the opening of the fall sitting, the Speaker, Hon. Raj Chouhan, made a statement regarding the death of Her Majesty Queen Elizabeth II and the ascension to the throne of His Majesty King Charles III. The Speaker noted the Queen's long service, visits to British Columbia, and that 13 Lieutenant Governors and 13 Premiers served during her reign. Then-Attorney General Murray Rankin, KC, introduced Bill 27, *Attorney General Statutes Amendment Act (No. 2)*, which included changes to the *Queen's Counsel Act* to become the *King's Counsel Act* and to amend other statutory provisions to reference His Majesty rather than Her Majesty.

The first Member to swear their oath of allegiance to His Majesty The King was Elenore Sturko, MLA for Surrey South.

Section 20 of the provincial *Constitution Act* provides that a Legislative Assembly is not dissolved by a demise of the Crown but may continue activities as if the demise had not occurred. Section 21 of the provincial *Interpretation Act* states that officeholders continue in their roles following the demise of a Crown and are not required to take an oath of allegiance to the new Sovereign.

Manitoba Legislative Assembly

Section 6(1) of *The Legislative Assembly Act* states that the Legislative Assembly shall not determine or be dissolved by the demise of the Crown, but shall continue and may meet, convene and sit, proceed and at, in the same manner as if the demise had not happened.

The Assembly was not in session when Her Majesty Queen Elizabeth II passed away, and when the Assembly next sat in session, a motion of condolence was debated and adopted.

Since that time, a by-election has been held and the successful candidate

took the Oath of Allegiance to His Majesty King Charles III.

Procedurally, wording was revised and updated to include reference to His Majesty instead of Her Majesty. All estimates resolutions had to be updated to change this wording. For the Royal Assent ceremony wording was changed such that the Clerk now says "in His Majesty's name, Her Honour assents to these Bills" as opposed to "In Her Majesty's name. God Save the King is now sung instead of God Save the Queen.

Ontario Legislative Assembly

While there are few procedural implications, there are a number of administrative, operational and protocol-related implications for the Legislative Assembly of Ontario when there is an unexpected change in the head of state.

The Office of the Assembly has a monarch succession working group which was created to review procedures that may be required in the event of a change. The working group consists of representatives from the different Branches of the Assembly. Each representative is responsible for identifying documents or procedures where reference is made to the Monarch and for setting up plans on how to implement changes with as little interruption as possible.

Under the Canadian *Constitution Act, 1867*, Members are required to take an oath of allegiance before taking their seat in the legislature. The language of the oath makes reference to the Crown as follows: "I ... do swear that I will be faithful and bear true allegiance to His Majesty King Charles III." While there is no requirement for Members to take a new oath when a new sovereign succeeds the throne, Members may choose to re-take it.

Certain publications like the Journals, committee reports, and bills have the King's name and year of reign on the title pages. In addition, the enacting clause of bills refers to "His Majesty" and there are also visitor services publications and educational materials that reference "His Majesty the King." In some cases, like in vendor contracts, specific references to the "King" have been replaced with reference to the "Crown" to eliminate the need for revisions.

In the House, a few official scripts are also affected. At the opening of Parliament, the Speaker informs the Lieutenant Governor of his or her election and call on Her Honour to acknowledge the ancient rights and privileges of Parliament. On behalf of the Lieutenant Governor, the Government House Leader replies to the Speaker. This exchange refers to the "King" and "His Majesty." In Ontario, each sitting day starts with the Speaker reading the Lord's Prayer, followed by one of a selection of

other prayers, passages, and moments of silent reflection that represent the demographic composition of the province. The non-denominational prayer refers to "His Gracious Majesty King Charles III." Also, the motion for an address in reply to the Speech from the Throne refers to "His Majesty's most dutiful and loyal subjects."

The granting of Royal Assent to bills, its subsequent announcement in the House and the parliamentary notice on the Ontario Gazette all refer to the Monarch. There is also general use of "His Majesty's Loyal Opposition" when referring to the Official Opposition during debates.

Certain procedures are followed after the legislature receives official confirmation of the demise of the Sovereign from the Office of the Lieutenant Governor such as flying the official flags of Canada and Ontario at half-mast and hanging black ribbon along the Monarch's portraits in the precinct.

The Monarch Succession Report is maintained by the Clerk's Office and is reviewed annually with the working group. Procedures are updated regularly to ensure that there is very little implication for the legislature when there is a transition to a new Sovereign. Where appropriate, references are now made to the "Crown" which eliminates the need to revise documents and scripts.

Quebec National Assembly

In recent years, as the prospect of Her Majesty's passing grew closer, there has been some debate in Quebec as to whether the demise of the Crown would result in the dissolution of the National Assembly.

The former Legislature Act provided specifically that the legislature would not be dissolved by the demise of the Crown. This provision was not included in the Act respecting the National Assembly, which replaced the Legislature Act in 1982. Instead, it provided that "[o]nly the Lieutenant-Governor may dissolve the National Assembly" before the expiry of a Legislature. It was unclear whether this was sufficient to prevent the dissolution of the Assembly in the event of the death of the sovereign.

To dispel any uncertainty, just over a year before Her Majesty's passing, the National Assembly passed An Act respecting the demise of the Crown, which provides that the demise of the Crown does not terminate the activities of Parliament, the Government or the courts, or any office or employment.

In this case, however, the demise of the Crown occurred while the Assembly was already dissolved and a general election was underway. On 28 August 2022, royal proclamations were issued under the Queen's name to dissolve the Assembly, call for a general election, and convene the new

Parliament on 15 November 2022. After the election, at the government's request, a new proclamation was issued under the King's name to postpone the convocation of Parliament to November 29. This was His Majesty's first act in his official capacity as King in Right of Quebec.

Saskatchewan Legislative Assembly

In Saskatchewan, the death of a monarch results in the delivery of an Humble Address expressing the Assembly's condolences followed by a transmittal motion stipulating that the Humble Address be forwarded to the new monarch through the proper channels.

A moment of silence is typically observed as well. Following the death of Her Majesty Queen Elizabeth II, which occurred when the Assembly was not in session, the moment of silence was held on the first day back during the Lieutenant Governor's delivery of the Speech from the Throne.

Additionally, an accession proclamation ceremony was held shortly after the Queen's death at Government House in Regina. On the formal advice of the Premier, the Lieutenant Governor issued a statement under the Great Seal of the Province of Saskatchewan announcing Her Majesty's death and the accession of His Majesty King Charles III. The ceremony occurred following the official proclamation ceremony held in London and was similar to events held in Ottawa and across Canada. The ceremony was a formal means of conveying the news that a new sovereign had taken the throne and a symbolic reaffirmation of Saskatchewan's loyalty to the new monarch. All three branches of government were present to witness the signing of the proclamation. The Speaker, Deputy Clerk, and Deputy Sergeant-at-Arms attended on behalf of the legislative branch, with the Deputy Sergeant-at-Arms bearing the mace.

When King George died in 1952, the first sitting day following death was marked with a black border in that session's Journal. The same practice will be followed in the Journal for the third session of the twenty-ninth legislature during which Her Majesty died.

There are no plans to review this procedure at this time.

Yukon Legislative Assembly

Upon review of our procedures for changes in a head of state, in this case from Her Majesty Queen Elizabeth II to His Majesty King Charles III, the Yukon Legislative Assembly determined that little action was required by Members in this regard. This is because Members swear allegiance to the Sovereign before taking their seat. The Oath of Allegiance, as stipulated in Canada's Yukon Act, is taken from the Fifth Schedule to the *Constitution Act, 1867*. Section 46(1) of Canada's *Interpretation Act* provides that it is

unnecessary for an oath of office or allegiance to be re-taken in the event of the demise of the Crown. This means that Members' currents oaths are still valid and that any future taking of the Oath of Allegiance will be updated when next swearing-in is required, likely after the next election. The Yukon Legislative Assembly will need to make minor adjustments to the Standing Orders – namely, Standing Order 19(j), which prohibits .".. speak[ing] disrespectfully of Her Majesty or of any of the Royal Family..." – with respect to the new Sovereign, but this does not affect the operation of the Assembly.

ISLE OF MAN

Tynwald

With the Lord of Man having been identical with the British Sovereign since 1765, changes in the head of state over the past 250 years have seldom been entirely unexpected.

The Demise of the Sovereign on Thursday 8 September 2022, though unexpected in terms of the date itself, had nevertheless long been anticipated. Detailed procedural plans had been put in place and maintained in an increasing state of readiness over the preceding 10 to 15 years.

Manx tradition since 1830 has been that each new Head of State has been proclaimed on Tynwald Hill in a ceremony reminiscent of the annual Tynwald Day ceremony. Hansard records of these ceremonies are held from 1901, 1910, 1936 (twice) and 1952, each one having taken place around a week after the preceding demise.

Tynwald Day is a major community event involving several hundred participants in addition to all 35 Members of the Island's legislature. Although the ceremony dates back more than a thousand years, it continues to be developed and refined every year, with detailed planning taking place in earnest over a period of about three or four months.

A change in the head of state therefore presents an administrative challenge in squeezing work that normally takes three or four months into about a week.

By 2022 an additional challenge had arisen of an expectation, arising in London, that His Majesty would be proclaimed simultaneously, just two days after the demise, in all the Crown Dependencies together with Scotland, Wales and Northern Ireland.

The plans included an opportunity for Tynwald Court, as part of the traditional ceremony, formally to approve a resolution of loyalty and condolence moved by the Chief Minister. There was not planned opportunity for the making of tributes to Her Majesty by Members in

a formal parliamentary setting. On seeing such tributes being made in Westminster, the parliamentary authorities gave brief consideration to making similar arrangements in Douglas but quickly decided against.

The challenge of co-ordinating proclamations with neighbours was resolved by introducing a new, additional proclamation ceremony at Government House in Onchan to coincide with those other jurisdictions mentioned above. This took place on Sunday 11 September 2022.

The traditional proclamation ceremony at Tynwald Hill took place on Friday 16 September 2022.

There are no plans to change the procedures. They will be reviewed on an annual basis to ensure that the learning acquired by relevant office-holders through the experience of operating the procedures September 2022 is recorded and shared, and that an appropriate state of readiness is maintained in anticipation of the next change.

JERSEY

States of Jersey

A special States sitting was convened at 3.00pm on 9 September 2022 and included an Island-wide one minute silence.

The Bailiff paid tribute to Her Majesty The Queen, followed by the Chief Minister and the Chair of the Privileges and Procedures Committee and then all States Members who wished to do so were afforded the opportunity to pay tribute to The Queen.

In line with devolved administrations and the other Crown Dependencies the Proclamation of the new King was made at noon on Sunday 11 September. The Proclamation was read out in the Chamber by the Bailiff before it was also read out in public in the Royal Square outside the States Building and then registered in the Royal Court. During the period of mourning the Royal Mace was shrouded in a black hood.

There are no immediate plans to alter the procedures.

NEW ZEALAND

House of Representatives

Like many Commonwealth legislatures, New Zealand's House of Representatives set aside its normal business to mark the death on 8 September 2022 (UK time) of Her Majesty Queen Elizabeth II and acknowledge the accession to the throne of His Majesty King Charles III. When the House next met, on 13 September, the Speaker read the

Governor-General's message formally announcing the Queen's death, and the Prime Minister moved that the House send an Address to the King and proposed its wording. During the debate that followed many members took the opportunity to express their heartfelt appreciation of the late Queen's long service. In their speeches, some members respectfully drew attention to the Crown's involvement in New Zealand's history of colonisation. The Address was adopted and then signed by the Speaker, and given to the Prime Minister to take with her for delivery to the King when she travelled to the United Kingdom for Her Majesty's funeral.

The House then adjourned for the week. To enable this, the Business Committee determined a variation to the 2022 sitting programme. This meant the House could adjourn without needing a separately debatable adjournment motion. One small procedural matter was for the House to extend the date set out in the Standing Orders for the main Appropriation Bill to be passed.

The following week, the House accorded urgency to a bill to declare a national holiday on 26 September 2022, the day of the national memorial service for Queen Elizabeth II. In the weeks that followed, the Government moved a number of motions to extend sittings, which more than made up for the lost sitting week.

The procedural steps taken following the death of Her Majesty Queen Elizabeth II were based on precedents set by the House following the deaths of Prince Philip, Duke of Edinburgh, Diana, Princess of Wales, and His Majesty King George VI.

New Zealand has quite a bit of flexibility with House arrangements due to the powers the Business Committee has to adjust due to unforeseen circumstances. There are no plans to review or change any procedures.

UNITED KINGDOM

House of Commons

Operation Marquee

The demise of Her Majesty Queen Elizabeth II on 8 September 2022 began a period of national mourning – and intense behind the scenes Parliamentary activity. There is always a great deal of contingency planning around Royal deaths. There are divergences of doctrine between the two Houses. In the House of Lords, it is obligatory to take the Oath or make the affirmation afresh on demise of the Crown. In the House of Commons it is optional, since the original promise is not just to the Monarch but to their "heirs and successors." That had been the case since at least the 1930s, but there are also wider societal changes to take into account.

The death of the Duke of Edinburgh in 2021 had shown that there was now an expectation that when someone as central to national life as the Duke died almost all MPs would wish to pay tribute – and be expected to do so. The arrangements for Operation Marquee (the name given to Parliament's plans in the event of the Queen's death) accordingly had to take account of the fact this would be doubly so for the Queen. There were less obvious reasons for change too – the efficiency of modern transport paradoxically delayed the Accession Council – as many more Privy Councillors could get to London in a reasonable time, it was reasonable to allow a pause for the Council to gather, rather than to hold it almost immediately after the demise. Precedent had to be abandoned. In 1952, the King died in the morning of 6 February, the House met at 2.30pm that day, and suspended until after the Accession Council which had taken place at 5.00pm. From 7.00pm onward Mr Speaker and others took the Oath, as they did for several days following. Debate on the motions for Addresses, when they came on 11 February, was very brief – the only speakers were the Prime Minister, the Leader of the Official Opposition, the Leader of the Liberal party and Walter Elliot MP, speaking for the backbenches. But of course there is nothing new in tailoring precedent to circumstances. In 1952, the fact the Queen was not in the country meant the two parts of the Accession Counsel took place on different days, the first on 6 February, for the proclamation of the new Monarch, and the second on 8 February at which the Queen made her declaration.

The plans in place from 2020 onward allowed for two days of parliamentary tributes: it was not clear whether those would take place on a motion for an address or informally. There were also significant uncertainties about the timing of oath taking: it was considered important this should be after the Accession Council, but the timing for that could not be decided far in advance. And if time was allowed for making tributes, when would there be time for those Commons members who wished to take the oath again to do so, particularly as the King was expected to receive Addresses in Westminster Hall on the third day after the demise? It has to be remembered that during this period, intense arrangements were also being made to prepare for first the presentation of Addresses and then for the use of Westminster Hall, and the precincts in general, for the Lying in State.

In the event, the effort that had gone into scenario-planning paid off. There were bold motions allowing the Speaker, first alone, then in consultation with Ministers, to determine the time of sittings. Tributes began on 9 September, informally, before the Accession Council on 10 September. Immediately following the Accession Council, the Speaker and

a few others took the Oath, before tributes continued. The Address itself was moved formally at the end of proceedings. The House then sat for oath-taking in the period between the funeral and the resumption of business. Issues such as the treatment of programmed bills or of private Members' business lost in the period were dealt with by a series of motions moved on 22 September when the House resumed business properly.

The time the House met on 10 September had to be altered at the last minute to ensure that the Cabinet could be present to take the Oath in a seemly way at the beginning of that first post Council sitting (a suggestion they come in to do it later was firmly rejected: the oath may not be legally required, but the symbolism of the first business after the Council being the taking of the oath is important). The Legislation Office and the Table Office had to think ahead both to make sure MPs were informed about what we expected to happen in good time, and to sort out the motions required to put everything back together again. None of this was visible.

And all this was a procedural backwater. Between 14 and 19 September Parliament and the Civil Service worked together to make sure the main event ran smoothly. Parliamentary proceedings and Royal Addresses were eclipsed by the slow flow of the public all the way from Southwark Park some four miles away along the south bank of the Thames, and over Lambeth Bridge and to the Lying-in-State. Westminster Hall was closed for an hour each day (in the early hours) for cleaning and maintenance, but otherwise there was a steady, silent, flow of people, interrupted only when the guard around the coffin was changed in an intricate, wordless, military dance ordered by beats of the officer's staff on the stairs in Westminster Hall.

House of Lords

The Succession to the Crown Act 1707 provides that if there is a Parliament in being at the time of the Sovereign's death, "such Parliament shall immediately after such Demise meet convene and sit and shall act notwithstanding such Death or Demise." The purpose of this provision at the time it was enacted (when the question of who would succeed the last Stuart monarch, the childless Queen Anne, was of acute concern) was presumably twofold: to ensure that Parliament would not be dissolved following her death, and also that Parliament would meet without delay in order that members could affirm their loyalty to a new, Hanoverian monarch. The Act did not require members to take the oath of allegiance to a new monarch, but in the following 300 years this was the uniform expectation and practice.

Move on 300 years, and the statutory requirement for Parliament to

meet "immediately" remains in force. This presented Parliament with a procedural conundrum as it drew up contingency plans for the demise of Her Majesty Queen Elizabeth II. As the submission from the House of Commons notes, the delay in scheduling the Accession Council, to allow more Privy Councillors to attend what was for the first time a televised occasion, had a knock-on effect upon Parliament. While there is no statutory definition of "immediately", it was clear that delaying the first sittings of the two Houses until after the Accession Council, potentially two full days after demise, could be reputationally and politically damaging.

As a result, plans were drawn up for the Houses to meet *before* the Accession Council—but this in turn threw the second objective of the Succession to the Crown Act (allowing members to pledge allegiance to the new monarch) into question, since only after the new monarch had been proclaimed, following the Accession Council, would it be possible to take the oath of allegiance or make the solemn affirmation.

As long ago as 1866 the Parliamentary Oaths Act required members of both Houses to take the oath of allegiance at the start of each new Parliament, but placed no duty upon members to take the oath to a new monarch, should they succeed mid-Parliament. Taking this into account, the Speaker of the House of Commons ruled that taking oath following demise should be voluntary for MPs—though it was expected that many members would wish to do so.

In the Lords, on the other hand, the Procedure and Privileges Committee decided, following a private discussion in early 2020, to preserve the longstanding rule that members of the House should take the oath to the new monarch before being allowed to take part in proceedings of the House or its committees post-demise. It was accepted that this was a rule adopted by the House, not a statutory requirement—but a rule nonetheless.

It was thus clear that members of both Houses would take the oath following the Queen's demise. But they could not do so until after the Accession Council. It was agreed therefore that the two Houses could, in a departure from convention, meet before the Accession Council, thereby complying with the requirement in the Succession to the Crown Act 1707 to meet and act "immediately." But it would not be possible for members either to take the oath or to undertake any substantive business, such as moving a motion to agree an Address of Condolence to the new monarch. Instead, the meeting would be an opportunity for members to offer tributes to the late Queen. The Houses would then adjourn for the Accession Council, reconvening thereafter, at which point key figures in each House would take the oath. After that tributes would continue for as long as required, before, at the end of proceedings, each House formally

agreed the Address to the new monarch.

In summary, the plan mixed ancient constitutional conventions, statutory requirements and procedural principles with a hint of contemporary political pragmatism. In the event, and despite the shock of the announcement of the Queen's death (made shortly after the House rose on Thursday 8 September), the plan was delivered successfully.

The chronology in the Lords was as follows:

- Friday 9 September: the House met at 12 noon; after a minute's silence, the Lord Speaker, party and group leaders, and the Archbishop of Canterbury all offered tributes. There was then a brief adjournment, and the House reconvened at 1.15pm, when all members were given an opportunity to speak. Although there was no formal list of speakers, the party managers agreed an informal running order for those who had indicated their wish to contribute. The House adjourned briefly to hear the King's address to the nation at 6pm, before resuming tributes. The House adjourned at 7.34pm.
- Saturday 10 September: following the meeting of the Accession Council at 10am, the House met at 1.00pm. Proceedings began with key members taking the oath of allegiance: the Lord Speaker, the Leaders and Chief Whips of the main parties, the Convenor of the Crossbench Peers, the Archbishop of Canterbury, the Senior Deputy Speaker and the Lord Great Chamberlain.[3] Tributes then

[3] The Lord Great Chamberlain is one of the Great Officers of State and part of the royal household. The role, like that of Earl Marshal, is hereditary, but whereas the office of Earl Marshal descends through one family (the Dukes of Norfolk) that of Lord Great Chamberlain is held 'in gross' by three families, who each hold 'shares' of the office. At any one time a single shareholder performs the office, for the duration of that reign; when the monarch dies the role passes to another shareholder. Up until 8 September the office was held by the Marquess of Cholmondeley; upon the Queen's death it passed to Lord Carrington.

This complex arrangement has implications for membership of the House. Under the House of Lords Act 1999, the general exclusion of hereditary peers from the House of Lords does not apply "in relation to anyone excepted from it by or in accordance with Standing Orders of the House." At any given time "90 people" are so excepted, but "anyone excepted as holder of the office or Earl Marshal or as performing the office of Lord Great Chamberlain, shall not count towards that limit."

Up until the Queen's death, the Marquess of Cholmondeley was a member of the House, as the person "performing the office of Lord Great Chamberlain." His putative successor in that office, Lord Carrington, was also a member of the House, having been elected in 2018 in accordance with Standing Order 9(2), which provides that "28 peers elected by the Crossbench hereditary peers" shall form part of the total of 90 excepted hereditary peers. The transfer of the office meant that Lord Cholmondeley ceased to be a member, as he was no longer "performing the office." Lord Carrington, despite taking up the office of Lord

continued, concluding at 6.30pm. The Leader of the House then formally moved that an Address of condolence be agreed, conveying the House's sympathy to His Majesty King Charles III and his family. This motion was agreed without debate, '*nemine dissentiente*', and the sitting was then briefly suspended. There was then an opportunity for all members present to take the oath or make the solemn affirmation.
- On the morning of Monday 12 September, the King came to Westminster Hall, where the Addresses of condolence agreed by both Houses were presented by the two Speakers. Each Speaker made a short speech before reading out the relevant Address and presenting a ceremonial copy (transcribed by a House of Lords colleague skilled in calligraphy) to His Majesty. The King then made a short reply, presenting copies to the two Speakers in turn. Following this ceremonial occasion, the House of Lords again sat purely for oath-taking, before adjourning for the remainder of the mourning period.
- Monday 10 October: the House resumed at the end of the previously scheduled September 'conference recess'. Throughout the week a steady stream of members continued to take the oath or make the solemn affirmation, but in other respects the business before the House was as normal.

In summary, the parliamentary procedures following from the death of the Queen, forming as they did just one part of a much wider national response, were delivered successfully. Those plans have subject to continuing review and iterative refinement—as they have been for many years. But no major changes to parliamentary procedures in this area are likely.

Scottish Parliament

As with other legislatures in the UK, the Scottish Parliament has recently experienced the death of the late Her Majesty Queen Elizabeth II and her succession by His Majesty King Charles III. As per plans set out in Operation Unicorn, there was an immediate suspension of business, which remained

Great Chamberlain, remains one of the 28, it being an unalterable fact that he was originally elected by the Crossbench hereditary peers.

Various consequences flow from this. The total number of hereditary peers sitting in the House of Lords under the terms of the 1999 Act has temporarily fallen from 90+2 to 90+1. But if there were to be a further change of monarch, Lord Carrington would, as one of the 28, remain a member of the House, unlike his predecessor as Lord Great Chamberlain. If, on the other hand, he pre-deceased King Charles III, the office of Lord Great Chamberlain would devolve to his heir (who would automatically become a member, as the person "performing the office"), while a vacancy would be created among the 28. Either way, the total number would at that point revert to 90+2.

in place for 10 days after the death. After a short period of time, there was a motion of condolence in the Chamber. Her Majesty The Queen's body was carried to Holyroodhouse where it was laid to rest, and then carried to St Giles' Cathedral on the Royal Mile in Edinburgh. Thereafter, Her Majesty The Queen's body was taken to London.

PRIVILEGE

AUSTRALIA

House of Representatives

On 5 September, the Speaker informed the House that the Leader of the Australian Greens had raised a matter of privilege with him while the House was not sitting. The matter concerned whether the former Prime Minister, the Member for Cook, had deliberately misled the House in the previous parliament by causing himself to be sworn into multiple ministerial portfolios without informing the House. The Speaker advised that, in his view, a *prima facie* case had not been made out that the House had been misled and that the misleading had been deliberate and, as such, he had not referred the matter to the Standing Committee of Privileges and Members' Interests.

Just prior to the adjournment of the House on Tuesday, 29 November, in accordance with standing order 106(c) the Clerk announced that a notice of motion had been received expressing censure of the Member for Cook. The following morning, the Leader of the House moved the motion of censure. The motion noted that, in the previous parliament, while Prime Minister, the Member for Cook had himself appointed to a number of ministerial portfolios without informing the cabinet, relevant departments, the House or the public. The motion proposed that the House censure the Member for failing to disclose these appointments. Prior to moving the motion, the Leader of the House advised that the House would not expect the normal time limits to apply to the Member for Cook's speech. A number of members spoke in the debate, including the Member for Cook, before the censure motion was carried on division. This was the first time that a former Prime Minister had been censured by the House.

On 1 December, the last scheduled sitting of the year, the Leader of the Australian Greens asked the Speaker to reconsider the matter of privilege in the light of both the report of an independent inquiry undertaken by Justice Virginia Bell AC and the Member for Cook's speech during debate the previous day. The Speaker advised that he would consider the matter and report back to the House. On 6 February 2023 the Speaker stated that he did not see *prima facie* evidence that the member had deliberately misled the House and therefore he was not able to give precedence to a motion to refer the matter to the Committee of Privileges and Members' Interests. He added that the House had addressed the matter through its censure of the Member.

Senate

Obstruction of committee inquiries

The Privileges Committee reported in March 2022 on a long-running dispute that saw the government withhold documents sought by the Economics References Committee, obstructing its inquiry into naval shipbuilding. The committee noted that the documents had been requested by the references committee in May 2020 but were not received until February 2022, finding that obstruction had occurred but recommending a contempt not be found. The committee again noted the practical and procedural difficulties in seeking to use contempt to solve political disputes. The committee also recommended that the Auditor-General conduct an audit of compliance by the Department of Defence with its obligations to provide timely and accurate information to the Senate and parliamentary committees and consider an audit of compliance by other large departments with those obligations.

Also in March, the Environment and Communications References Committee reported its concerns about representatives of a resources company who declined invitations and a subsequent summons to appear before its inquiry into the Beetaloo Basin. During the election period the Chair of the committee wrote to the then President of the Senate to raise the committee's concerns as a matter of privilege, for investigation as a possible contempt of the Senate.

On 4 August the new President made a statement noting that disobedience of lawful Senate orders and refusal to attend before a committee when ordered to do so may be dealt with as contempts and granting the matter precedence as a matter of privilege. However, given that the matter was raised by a committee of the previous parliament, the President left it to the newly established references committee to determine whether it wished to proceed in the Senate, or consider other actions first. The new committee chose to offer the company one last opportunity to assist the committee with its inquiry, with company representatives appearing at a public hearing in Canberra on 10 October.

Australian Capital Territory Legislative Assembly

Actions of WorkSafe ACT found to be a breach of the privileges of the Assembly

Following the presentation of the Budget Bills by the Treasurer on 2 August and its agreement in principle on 4 August 2022, the Assembly referred the Bills to a Select Committee Estimates 2022-23 for inquiry and report. In the lead up to the first hearings of that committee it became clear that the way that inquiry was to be conducted was in dispute, with the Executive keen for the hearings to be held remotely as they were at the height of

the pandemic for the previous budget, whereas the Select Committee were keen to conduct face to face hearings in accordance with the Assembly's COVIDsafe plan that had been adopted for the Assembly building.

On Friday 12 August two WorkSafe Inspectors entered the Assembly building and asked to meet with the Clerk and, subsequently the Select Committee Members to discuss how the Committee planned to undertake its inquiry into the budget. The visit followed from a complaint that had been made to WorkSafe on Thursday 11 August 2022 (later found by evidence to a Privileges Committee to be from the Manager of Government Business's Office), the details of which were never provided. It was noted that despite section 164(2)C of the Work Health and Safety Act requires an inspector, when entering a workplace under a power of entry, to advise any health and safety representatives at the workplace of the visit, no such notification was given.

Subsequently at 6pm Friday 12 August the inspector issued a prohibition notice on the Assembly building which prohibited "Undertaking any hearings or committee meetings...until a risk assessment has been undertaken, adequate control measures are implemented in line with the Hierarchy of Control, and consultation has been undertaken with all affected workers:."

On Monday 15 August the Speaker made a statement to the Assembly concerning the prohibition notice indicating she was seeking legal advice and that she would keep the Assembly updated. She tabled a letter she had written to the Work Health and Safety Commissioner asking the Commissioner to lift the prohibition order as the matter affected the privileges of the Assembly.

She then made a statement that she had received a letter form the Chair of the Select Committee on Estimates 2022-23 raising a matter a privilege, and after indicating that she would allow precedence to a motion, the Assembly established a Select Committee on Privileges relating to the actions of the Work Health and Safety Commissioner and any other person and whether they have improperly interfered with the free exercise of the authority of the Estimates Committee.

After discussions with WorkSafe, and after different risk assessments were undertaken, the inspectors lifted the prohibition notice was lifted on 19 August, which meant that the Select Committee proceedings had been delayed by a week. When the hearings commenced witnesses were able to appear face to face before the committee, although some witnesses did appear remotely.

The Privileges Committee conducted its inquiry receiving 6 submissions (with various supplementary submissions), and held public hearings on

two days, with the Work Health and Safety Commissioner, Speaker, Clerk, Manager of Government Business and the Select Committee on Estimates all appearing. As part of the Speaker's submission a Joint Opinion by Bret Walker SC and Jackson Wherrett was provided and as part of the Work Health and Safety Commissioner's submission a Joint Opinion by Saul Holt KC and Katharine Brown was provided. Although the existence of a Solicitor-General's Opinion on the matter was revealed during evidence given to the Committee, the manager of Government Business declined to provide the legal advice.

On Thursday 1 December 2022 the Select Committee reported to the assembly, with the Committee making four findings and ten recommendations. One of the findings was that the first Worksafe ACT prohibition notice improperly interfered with the free exercise of the Assembly and its committees and was therefore a breach of the privileges of the Assembly by Worksafe ACT. The Committee also recommended that Worksafe ACT develop a memorandum of understanding with the Assembly on how it will exercise its regulatory functions within the Assembly precincts, acknowledging the parliamentary privilege issues engaged.

Subsequently, the Assembly adopted all the findings and recommendations of the Select Committee.

New South Wales Legislative Council

Establishment of Independent Complaints Officer

On 10 August 2022, it was announced that former Fair-Trading Commissioner and lawyer, Rose Webb, had been appointed to the position of Independent Complaints Officer. Ms Webb formally began the role in September 2022, and prepared a protocol for the receipt, assessment and investigation of complaints, which was tabled in both Houses in November.

The position and powers of the Independent Complaints Officer were agreed to by both Houses by way of resolution in each House in March 2022. The Complaints Officer is tasked with "expeditiously and confidentially deal[ing] with low level, minor misconduct matters so as to protect the institution of Parliament, all members and staff." Such misconduct includes breaches of the Parliament's code of conduct (including misuse of entitlements). In addition to such minor matters, the Independent Complaints Officer also deals with instances of bullying and harassment. Although Ms Webb was appointed in August 2022, she can hear and investigate complaints dating back to when the resolutions of both Houses were passed in March 2022.

The Complaints Officer has extensive investigative powers, including the power to request the production of records and documents from members'

offices, and report any failure to comply to the Privileges Committee of the relevant House, which can determine whether the matter ought to be referred to the House for sanctioning. The Independent Complaints Officer system is to be subject to an initial review 12 months after the establishment of the position and once every parliamentary term after that.

The Special Commission of Inquiry into LGBTQI Hate Crimes

In May 2021, the Standing Committee on Social Issues tabled its final report into Gay and Transgender hate crimes committed between 1970 and 2010. Recommendation 1 was for the Government to establish a judicial inquiry or review to inquire into unsolved cases. On 13 April 2022, the Government implemented this recommendation by issuing Letters Patent, setting out the terms of reference for the establishment of a Special Commission of Inquiry. Part of the terms of reference directed the Chair of the Special Commission of Inquiry to consider the interim and final reports of the Standing Committee on Social Issues as part of its inquiry. The Special Commission began hearings in December 2022.

Given that the Special Commission traversed similar ground to that covered by the Standing Committee and called witnesses that also gave evidence before the Standing Committee, the Chair of the Special Commission wrote to the Clerk to seek guidance on the issue of parliamentary privilege. The Clerk advised the Chair that the fundamental principle to be observed is contained in Article 9 of the Bill of Rights, which is that proceedings in Parliament, including proceedings of a committee of the Parliament, may not be "impeached" or "questioned" in any "place out of Parliament." In considering the "impeached" or "questioned" components of the test, so long as the evidence given does not attempt to draw inferences or in other ways question the motives of the witnesses or committee members during the committee proceedings, its use before the Special Commission would not constitute a breach of parliamentary privilege.

Privileges Committee inquiry into the use of search warrants

On 16 November 2022 the Privileges Committee tabled its third report arising from the execution of search warrants by the Australian Federal Police (AFP) on 24 June 2020, as part of an investigation concerning a staff member to a member of the Legislative Council. The AFP executed search warrants on various premises connected with the staff member, as well as both the house and parliamentary office of the member.
This report addressed the policy issues that were raised in the first two inquiries, namely: the adequacy of the protocols of the AFP and the Independent Commission Against Corruption (ICAC) with respect to the

execution of search warrants on parliamentarians, the rights of staffers to claim privilege and the extent to which the translation and dissemination of parliamentary speeches is protected by parliamentary privilege.

The report contained two findings and six recommendations, the most pertinent of which are that a member's staffer has the right to claim privilege over documents sought to be seized in their own right as well as on behalf of their member, that translation of speeches given by members in parliament should be distributed with caution, as they may only receive qualified privilege and that there is a need to pursue a new memorandum with the ICAC to cover search and seizure powers on members and staff outside parliamentary precincts.

Queensland Parliament

The Queensland Parliament's Ethics Committee deals with complaints about the ethical conduct of members, and alleged breaches of parliamentary privilege by members of the Assembly and other persons. Several interesting privilege matters have been raised, but some are not yet resolved.

In 2022, the Ethics Committee considered an unauthorised disclosure of committee proceedings. The case involved media articles reporting on unpublished proceedings of the committee including quotes from a private hearing transcript and references to unpublished correspondence between the committee and senior parliamentarians and public sector officials.

Established procedures exist to guide committees to deal with such matters, and these, together with an audit authorised by the Clerk of the Parliament of secure electronic storage and meeting papers, took place. Whilst the Ethics Committee identified that the disclosure was unauthorised and improper, it was concluded that further investigation would not provide an outcome of responsibility. Had the source been identified, the committee would have likely found that person guilty of contempt.

The Ethics Committee did however make recommendations for all portfolio committees to reflect on their own processes and practices around confidentiality, noting the importance of balancing the interests of transparency and the need for certain proceedings to be confidential.

Victoria Legislative Council

Privileges inquiry into misuse of parliamentary and government resources

On 22 June 2022, the Legislative Council agreed to a motion, which was moved by Mr Adem Somyurek MLC, to refer an inquiry to the Privileges Committee to look into and report on matters raised by Mr Somyurek during public hearings held by the Independent Broad-based Anti-corruption Commission (IBAC) as part of the 'Operation Watts'

investigation. Operation Watts was investigating the use of government/parliament resources by a faction within the Victorian branch of the Australian Labor Party to conduct party-related business. It was a joint operation by IBAC and the Victorian Ombudsman to consider allegations of misuse of electorate and ministerial office staff and resources for branch-stacking and other party activities. Mr Somyurek was a key focus of the investigation.

During the Privileges Committee's own inquiry, the Operation Watts report was tabled (on 20 July 2022). The report noted there was 'extensive misconduct' by parliamentary members of the Moderate Labor faction. Regarding Mr Somyurek's actions, the investigation found he had committed several breaches in performing his parliamentary duties.

The Privileges Committee noted that the release of the Operation Watts report was a significant intervening factor for its inquiry. The Committee tabled a report on 18 August 2022, recommending that the House consider the findings of the joint IBAC and Victorian Ombudsman report on Mr Somyurek's actions. The report also recommended that the House, or by another referral to the Committee, should determine whether Mr Somyurek wilfully brought discredit upon Parliament, had committed a contempt of Parliament or any other relevant matters.

The House did not take further action. On 21 September 2022 the Parliament expired, and a State election was held in November 2022.

Privileges inquiry into breach of committee deliberations and report contents

In August 2021, the Legislative Council referred a matter to the Privileges Committee regarding a breach of committee deliberations and report contents. Prior to the tabling of its final report for the Inquiry into the use of cannabis in Victoria, details of the Legal and Social Issues Standing Committee's inquiry—including deliberations on the adoption of the report—were published in a newspaper. The House required the Privileges Committees to investigate the breach and determine whether any person had committed a contempt of Parliament.

On 31 August 2022, the Privileges Committee tabled its report. The report found that two members of the Committee, including the Chair, had provided information to the journalist who wrote the article:

- Patten MLC, Chair of the Legal and Social Issues Standing Committee, told the Privileges Committee that she had provided extracts from the Chair's foreword to the journalist.
- Mr David Limbrick MLC, participating member on the Legal and Social Issues Standing Committee, told the Privileges Committee that he had spoken to the journalist expressing his disappointment with

the outcome of the final report.

The Privileges Committee found that Ms Patten's action did amount to a contempt of Parliament because it was a wilful breach of committee confidence. It noted that the Chair's foreword constituted a part of the final report and its release prior to tabling was a technical contempt of Parliament.

In relation to Mr Limbrick, the Privileges Committee found that his actions did breach the Standing Orders of the Council which technically amounts to contempt, but it was not wilful or malicious.

In its report, the Privileges Committee did not recommend any actions for the House to consider, but it did ask for Ms Patten to make an apology to the House. Both Ms Patten and Mr Limbrick subsequently made apologies to the House.

Western Australia Legislative Council

The suspension of a member is a very rare event, yet in 2022 two members of the Legislative Council were suspended, albeit for vastly different reasons.

Non-compliance with an order of the Council:

On its first sitting day of 2022 the Council passed an Order updating an Order from 2021 requiring members to provide proof of their COVID-19 vaccination status, or proof of a valid exemption, to the Clerk. The terms of the order were such that any member who was non-compliant would be subject to an automatic and immediate suspension from the Chamber, Parliament House and the Committee Office.

One member of the Legislative Council was immediately suspended as they had not complied with the 2021 order and were instantly captured under the updated order just passed.

As the suspended member was also appointed to a standing committee, the effect of the order posed the question as to whether that member was prevented from participating in committee meetings remotely.

The President provided a ruling to the committee, and the Council, that the member was subject to a physical suspension only as the suspension did not arise from circumstance such as disorderly conduct in the proceedings of the Council. The suspension was specific in its effect in that it expressly suspended the member from 'attending' various rooms and buildings, not from their service to the Council.

Alleged misrepresentation of the Council's rules:

On 19 May 2022, a matter of privilege was raised in the Legislative Council following media reports of a bail variation application hearing

in the Magistrates Court. The hearing involved a member of the Council facing serious criminal charges.

The issue prompting the matter of privilege were media reports of the court proceedings. It was reported that the member had suggested in a sworn affidavit that he would have to resign from a Select Committee if his bail variation application was denied. The member had applied for the bail variation for the purposes of travel to Queensland to attend the Australian Medicinal Cannabis Symposium with the Select Committee into Cannabis and Hemp.

The member raising the matter of privilege alleged that the sworn affidavit misrepresented the practices and rules of the Legislative Council which had the potential to bring the Council into ridicule or disrepute.

The matter was referred to the Procedure and Privileges Committee (PPC) for inquiry.

The inquiry traversed questions regarding *sub judice* and comity between the Parliament and the courts, and focused on the obligations of members to be honest and truthful in all their public and private dealings, particularly where their conduct may reflect on the Council and its reputation.

The PPC found that the member had knowingly misrepresented the Council's practices and rules to the Court, and this conduct had the potential to negatively affect the reputation of the Council and its Committees. The PPC also found that the member had sought benefit in the bail variation proceedings by virtue of his membership of the Council and the Select Committee.

In its 68th Report, tabled on 18 October 2022, the PPC recommended that the member be suspended for the remainder of 2022, be found in contempt of the Legislative Council and discharged from membership of any Committee of the Parliament for the remainder of the 41st Parliament. The PPC also recommended the member undergo further training on parliamentary privilege and ethics, to be provided by the Clerk of the Legislative Council.

On 20 October 2022, the Council considered and agreed to all recommendations and the member was suspended.

CANADA

Manitoba

On 26 May 2022, MLA Fontaine (Member for St. Johns) rose on a Matter of Privilege regarding Hon. Mr. Fielding (Member for Kirkfield Park), the Minister responsible for the Manitoba Liquor and Lotteries Corporation, discussing Bill (No. 42) – The Liquor, Gaming and Cannabis

Control Amendment and Manitoba Liquor and Lotteries Corporation Amendment Act with the media prior to the Bill being introduced in the House. She argued that this violated the privileges of Members to fulfil their parliamentary functions, as well as flouted the practices of the Assembly. MLA Fontaine concluded her remarks by moving:

"THAT the introduction of Bill 42 be immediately stopped and treated as being out of order until such a time as this matter can be ruled on by the Speaker."

The matter was taken under advisement.

On 1 June 2022, the Speaker ruled that a *prima facie* case of privilege was not established, as MLA Fontaine did not provide specific evidence that the media received copies of the legislation or detailed information about specifics of the Bill in advance. In the absence of such proof, the Speaker could not rule conclusively that any privileges were breached. However, the Speaker also suggested that Members consider holding press conferences or media briefings after legislation has been introduced in the House, rather than before, to avoid infringing on the authority of the Assembly in the future.

On 23 November 2022, Mrs. Smith (Member for Point Douglas) rose on a Matter of Privilege alleging that, during Oral Questions the previous day, Mr. Pedersen (Member for Midland) struck her chair with the intent of stopping her from speaking in the Chamber. She stated that this action caused her to question her safety in the Chamber, particularly as an Indigenous woman. Mrs. Smith moved:

"THAT this House compel Mr. Pedersen to apologize for this action, refer this matter to a committee of the House to examine whether any further sanctions are necessary for Mr. Pedersen and to examine the question of how to ensure no MLA engages in any physical acts of aggression or any other act which prevents MLAs from performing their duties."

Mr. Pedersen spoke to the Matter of Privilege and apologised for causing "any harm or grief" to Mrs. Smith before the matter was taken under advisement.

On 1 December 2022, The Deputy Speaker ruled that a *prima facie* case of privilege was not established. He reasoned that Mrs. Smith did not prove that she had been obstructed in performing her parliamentary duties by Mr. Pedersen's action because her chair was struck while she was heckling, and heckling is not a protected parliamentary function. Furthermore, Mr. Pedersen unequivocally apologised for his actions, which, historically in the Manitoba Legislature and in other Canadian jurisdictions, is considered sufficient to conclude the matter. The second edition of Parliamentary

Privilege in Canada also states that, in Matters of Privilege, an apology closes the matter without the necessity of putting it to a vote.

However, the Deputy Speaker, in his ruling, did "strongly advise all Members to bear in mind how your actions in this place might be received by others and govern yourselves accordingly," and did further advise Members that, while they may disagree, they must do so respectfully.

Newfoundland & Labrador House of Assembly

Decisions Respecting Parliamentary Privilege in the Supreme Court of Newfoundland & Labrador in 2022

On 16 April 2020, Edward Joyce, the Member for Humber – Bay of Islands, filed a Statement of Claim as against Sherry Gambin-Walsh, Member for Placentia – St. Mary's (First Defendant); then Commissioner for Legislative Standards, Bruce Chaulk (Second Defendant); former Speaker of the House of Assembly, Perry Trimper (Third Defendant); and former Premier, Dwight Ball (Fourth Defendant).

All claims were made in the context of a complaint made to the Commissioner for Legislative Standards under the Code of Conduct provisions of the *House of Assembly Accountability, Integrity and Administration Act*, A subsequent finding that the plaintiff violated the Code of Conduct for Members; and a vote by the House of Assembly disciplining the Member (The Joyce Report, 18 October 2018).[1] The Member complied with the decision of the House in the matter, which required an apology and completion of respectful workplace training.

The Plaintiff's (Joyce) subsequent Statement of Claim included the following claims:

- "As against the First Defendant – defamation and malicious prosecution.
- As against the Second Defendant – defamation, malicious prosecution, negligent investigation and misfeasance in a public office.
- As against the Third Defendant – misfeasance in a public office.
- As against the Fourth Defendant – misfeasance in a public office."

The Plaintiff (Joyce) sought against the Defendants jointly and severally general damages to be assessed; special damages in the amount of $403,268.60; aggravated, punitive and exemplary damages to be assessed; costs, interest and such other relief as the Court deemed just.

On 11 August 2020, former member, Dale Kirby, filed a Statement of Claim as against then Commissioner for Legislative Standards, Bruce Chaulk (First Defendant); former member, Colin Holloway (Second

[1] assembly.nl.ca/business/electronicdocuments/JoyceReport2-2018-10-18.pdf

Defendant); Pam Parsons, Member for Harbour Grace – Port de Grave (Third Defendant); and Her Majesty in Right of Newfoundland and Labrador (Fourth Defendant).

All claims were made in the context of two complaints made to the Commissioner for Legislative Standards under the Code of Conduct provisions of the *House of Assembly Accountability, Integrity and Administration Act*, one of which resulted in a finding that the plaintiff violated the Code of Conduct for Members (Kirby Report, 3 October 2018).[2] The Member complied with the decision of the House in the matter, which required an apology and completion of respectful workplace training.

The Plaintiff's (Kirby) subsequent Statement of Claim included the following claims:

- "As against the First Defendant – breach of duty of care, negligent investigation, and malicious prosecution.
- As against the Second and Third Defendant – defamation and malicious prosecution.
- As against the Fourth Defendant – vicarious liability for alleged tortious conduct of the First Defendant."

The Plaintiff (Kirby) sought against the Defendants jointly and severally special, general, aggravated, and punitive damages to be ascertained; interest, costs and other relief the Court deems just.

On 30 November 2020, the Plaintiff (Kirby) discontinued the action against the First Defendant (Chaulk) and the Fourth Defendant (the Crown). This discontinuance had no effect on the action against the Second Defendant (Holloway) and Third Defendant (Parson), which continued.

Counsel for the defendants in both claims subsequently filed a joint application to strike on the basis of parliamentary privilege and the prerogative of the Crown. The application was heard on 8 and 9 December 2021.

On 22 December 2022, Supreme Court Justice, Sandra Chaytor, rendered her decisions in both matters, as follows:

- In *Joyce v. Gambin-Walsh*, 2022 NLSC 179, the plaintiff's claim as it relates to former Speaker, Perry Trimper; former Commissioner of Legislative Standards, Bruce Chaulk; and former Premier, Dwight Ball were struck in their entirety on the basis of parliamentary privilege and the prerogative of the Crown. The claim against Member Sherry Gambin-Walsh, as it related to the code of conduct investigation, was also struck on the basis of parliamentary privilege.[3]

[2] assembly.nl.ca/business/electronicdocuments/KirbyReport2-2018-10-03.pdf

[3] canlii.org/en/nl/nlsc/doc/2022/2022nlsc179/2022nlsc179.html

- In *Kirby v. Chaulk*, 2022 NLSC 180, the plaintiff's claim against Member Pam Parsons and former member Colin Holloway, as related to the code of conduct investigations, was struck in its entirety on the basis of parliamentary privilege.[4]
- Costs were awarded to the defendants to be assessed in accordance with Rule 55 of the *Rules of Supreme Court, 1986*.

In both decisions, Justice Chaytor found that the claims relating to Members' statements in the media were not covered by parliamentary privilege. These claims were not struck by the Court and the Plaintiffs were provided 30 days to file amended Statements of Claim (by February 27, 2023). Justice Chaytor ruled that the entire actions were to be struck as being deficient pleadings, in that they disclose no reasonable cause of action, if amended statements of claim were not filed by the prescribed date. Amended statements of claim were not filed by 27 February 2023, and the claims are considered struck in their entirety.

Saskatchewan Legislative Assembly

In March of 2022, a question of privilege was raised in which a member was accused of intentionally trying to mislead the Assembly by deliberately misquoting a minister. The Speaker deferred his ruling until a later date, but before any ruling was delivered, the member in question apologised and the matter was ended. It should be noted that this incident is the first time that a misquote has been escalated to a matter of privilege in Saskatchewan.

In a subsequent statement to the Assembly, the Speaker addressed a practice that had recently developed with respect to privilege cases. Members on both sides of the Assembly had begun sending multiple communications to the Speaker following the submission of a privilege letter, arguing the merits of the case. He stated that the Speaker would not take such communications into account to influence his decisions and, if members wished to debate matters of privilege in this manner, the rules should be changed to accommodate this practice.

A subcommittee of the Standing Committee on House Services was therefore established at the request of the government and opposition house leaders to study the issue and its recommendations were presented to the full committee on 5 December 2022. The committee's proposed rule changes were outlined in a report, which was presented and concurred in by the Assembly later that day.[5] The Assembly subsequently passed a

4 canlii.org/en/nl/nlsc/doc/2022/2022nlsc180/2022nlsc180.html

5 docs.legassembly.sk.ca/legdocs/Legislative%20Committees/HOS/Reports/221205Report-HOS.pdf

motion formally adopting the changes to rule 12. The *Rules and Procedures of the Legislative Assembly of Saskatchewan* have been updated accordingly.

KENYA

National Assembly

Breach of the privilege accorded a Member to substantiate claims or allegations

On 12 April 2022, a Member made certain claims and allegations touching on the conduct of a State Officer. Ordinarily, the Standing Orders require that conduct of a state officer may only be discussed in the House upon a substantive motion of which three days' notice ought to have been given. In the instant case, there was no motion before the House. Accordingly, the Speaker required the Member to take responsibility for the facts in the claims and allegations made in the House by substantiating them according to Standing Order 91 of the National Assembly Standing Orders or withdrawing and apologising to the House. The Member committed to substantiate, upon which the Speaker directed that the Member substantiate the allegations two days later.

On the occasion when the Member was given the opportunity to substantiate the allegations, the Member made reference to documents that had not been authenticated by the Speaker and determined as admissible. When called upon to table them for Speaker's determination before referring to them as the authority for substantiation of the allegation so made, the Member declined and persistently continued to refer to the documents. The Member also persistently made fresh allegations over and above those that the Speaker had directed the Member to substantiate.

Consequently, when the House reconvened on 10 May 2022, the Speaker determined the documents as inadmissible and found the Member to have been in breach of the privilege accorded her to substantiate allegations and for deliberately misleading the House on the basis of inauthentic documents. The documents relied upon were established to have been newspaper excerpts that were not verified. The Speaker ruled the Member out of order for breach of privilege and ordered that the Member had forfeited the privilege of any further opportunity to substantiate the claims. The Speaker further directed that the documents relied on and the claims made thereof be expunged from the records of the House.

In order to forestall recurrence of a similar case, the House amended Standing Order 87 to preclude a Member from referring to extracts from print media or electronic media as an authority in the Member's speech, including substantiation of claims or allegations. In the circumstances, the House could not proceed to transact business, hence, the Speaker adjourned

the Sitting forthwith on account of gross disorder.

Contempt of the authority of the Speaker by a Member by refusing to withdraw from the House when ordered to do so, with the help of other Members
During the Sitting of the House on 14 April 2022, a Member uttered some unmentionable words directed to the Presiding Officer. The Speaker found the Member to have breached the rules requiring Members to be decorous in their language in the House. The Speaker called out the Member and ordered him to withdraw from the Chamber immediately. The Member refused to withdraw from the Chamber as directed.

In addition, some Members aided the Member's defiance of the Speaker's orders by milling around him and obstructing the Serjeant-At-Arms from accessing the Member so as to forcibly withdraw him from the Chamber following the Speaker's order.

The defiance of the Speaker's orders by the Member, with the support of other Members, was contemptuous to the House as exemplified in the Speaker. The House was adjourned thereafter due to the grave disorder that arose in that sitting.

When the House reconvened on 10 May 2022, the Speaker suspended the Member from the service of the House for gross disorderly conduct for a period of five days. The Speaker further directed that the Member would not be allowed access to the precincts of Parliament or attendance to any Committee meetings or parliamentary functions during the five days of the suspension. He stressed that any Committee meeting attended by the Member during the five days should be invalid since the Member was now deemed to be a stranger. Further, the Member was barred from attending any committee meetings as a member of the public.

UNITED KINGDOM

House of Commons
The Committee of Privileges continues its inquiry into the matter referred on 21 April 2022, namely the question of whether or not the former Prime Minister misled the House in responding to questions on "Partygate." The Committee has now issued three reports on this matter. The first (the Committee's second report of this session) set out the procedure the Committee proposed to follow. The second dealt with an Opinion from Lord Pannick and Jason Pobjoy questioning the fairness of the Committee's processes. The Committee responded to requests from Mr Johnson's lawyers for a statement setting out the issues the Committee would raise with him in oral evidence in the third publication (its Fourth Report of the

current session). The Committee took evidence from Mr Johnson on 21 March 2023.

The Clerk of the Priviliges Committee, Dr Robin James, provides a fuller account of this episode elsewhere in this edition.

On 29 November 2022 a separate matter was referred to the Committee, namely the conduct of John Nicolson MP. The Committee has published no material related to this matter as yet.

House of Lords

Paragraph 18 of the House of Lords Code of Conduct states that "Members are required to treat those with whom they come into contact in the course of their parliamentary duties and activities (including parliamentary proceedings) with respect and courtesy. Behaviour that amounts to bullying, harassment or sexual misconduct is a breach of this Code."[6] This provision, which was added to the Code in April 2019, means that in the Lords (unlike in the Commons, where the rules on bullying, harassment and sexual misconduct are free-standing, and do not form part of the Code of Conduct) complaints relating to such behaviour are addressed to the Commissioners for Standards. The two Commissioners are appointed by the House, and act on behalf of the House: their formal investigations are thus protected by parliamentary privilege.

These provisions gave rise, on 19 January 2022, to a short debate on an unrelated committee appointment motion, during which several members of the House of Lords raised the question of how far parliamentary privilege protected members against allegations of bullying or harassment.[7]

Just over a week earlier, on 10 January, the House had debated an amendment to the Police, Crime and Sentencing Bill. This amendment would have required that transgender prisoners, whether serving custodial sentences or on remand, be housed in the prison estate by reference to their sex registered at birth. Although the amendment was ultimately withdrawn, four members spoke in support of the amendment.

Later the same evening the Commissioners received a complaint from a member of the public, alleging that the remarks made by the four members constituted bullying—that is to say, "offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or

[6] Code of Conduct, paragraph 18

[7] See Lords Hansard, 19 January 2022: hansard.parliament.uk/lords/2022-01-19/debates/186DAEF5-320C-4A1B-A1B1-E92D85842E0F/ConductCommittee

threatened."[8]

One of the Commissioners then undertook a preliminary assessment of the complaint, as required by the Code. A key objective of preliminary assessment is to "screen out complaints which fall outside the scope of the Code." On this occasion the Commissioner dismissed the complaint as not engaging the Code—the statements made by the members were expressions of opinion on an issue of public policy, and were not addressed at named individuals, still less at the complainant. The Commissioner then wrote to the four members on 12 January, notifying them both that a complaint against them had been received, and that it had been dismissed without the need for an investigation. The reason cited by the Commissioner was that complaints of bullying, harassment or sexual misconduct can only be made by those directly affected by the alleged behaviour.

In the debate on 19 January, several members challenged the Commissioner's actions. They asserted that, by dismissing the complaints because of what they described as a "technicality", the Commissioner had given the impression that the complaints may have had some substance. It was also suggested that the Commissioner's letters notifying the members concerned that there had been a complaint against them, may in themselves have had a threatening or chilling effect, thereby eroding the principle of freedom of speech.

Following this short debate, the Conduct Committee, which oversees the Code of Conduct, published a report which sought to clarify the position.[9] The Committee underlined that Article 9 of the Bill of Rights, and the freedom of speech it protects, are fundamental constitutional principles. But the Committee noted that the Commissioners for Standards, as officers of the House, "are an integral part of the House's self-regulating structure", and that Article 9 therefore "has no direct bearing upon their work."

The Committee also highlighted those provisions of the Code of Conduct and the Guide to the Code of Conduct that protect freedom of speech, including the clear statement that the remit of the Commissioners does not extend to members' "views or opinions", and the recognition in paragraph 29 of the Code that the constitutional principle of freedom of speech should be a "primary consideration."

It follows that, although the Commissioners could in principle investigate things said or done by a member during a proceeding of the House or a

[8] Guide to the Code of Conduct, paragraph 124

[9] Conduct Committee, Freedom of speech and the Code of Conduct, 6th Report, session 2021-22, HL Paper 166: publications.parliament.uk/pa/ld5802/ldselect/ldcond/166/16602.htm

committee without breaching Article 9, such an investigation would have to cross a high bar. Members' expressions of views or opinions, however offensive to certain people, could not form the basis for an investigation. But a sustained attack on an identifiable individual, designed to belittle or intimidate them, could in theory allow that individual to make out a *prima facie* case that they had been a victim of bullying or harassment, thereby triggering a formal investigation. Happily, this remains a hypothetical scenario, as no such complaint has ever been made.

STANDING ORDERS

AUSTRALIA

House of Representatives

A series of changes were made to the standing orders at the beginning of the new Parliament.

On opening day (26 July), the House agreed to amend standing orders to appoint general purpose standing committees and, as a reflection of the increased number of crossbench members in the 47th Parliament, explicitly provide for one crossbench member to sit on each of these committees. It also increased the membership for most of these committees. Standing orders relating to the Privileges and Members' Interests Committee and the Selection Committee were amended in similar terms.

The following day the Leader of the House moved several amendments to the standing orders—some of which, he said, would make the parliament a healthier and more family-friendly workplace and would increase opportunities for crossbench members. The proposed amendments included:

- reducing the time limit for questions asked by crossbench members from 45 seconds to 30 seconds, consistent with time allowed to other members (SO 1)
- earlier meeting time of 9am on Wednesdays and Thursdays (SO 29)
- if a suspension of standing orders is moved during question time, a minister may require that proceedings take place at a later hour (SO 47)
- time for ministers to make statements on significant matters on Wednesday and Thursday mornings, if required (SO 50A)
- divisions and quorums between 6.30pm and 7.30pm deferred until the next sitting (SOs 55, 133)
- new procedures for the passage of bills considered urgent (SOs 82, 85)
- specific opportunities for crossbench members to participate in question time, members' 90 second statements, members' constituency statements, the grievance debate, the adjournment debate in the House and Federation Chamber and the matter of public importance discussion (sessional order 65A).

The amendments were debated and an amendment to proposed SO 85 (proceedings on urgent bills), moved by an independent member, was carried. The proposed amendments, as amended, were agreed to on

division.

On 2 August, the House agreed to amend the Federation Chamber order of business (SO 192) so that the Federation Chamber would meet earlier, at 9.30am, on Wednesdays and Thursdays, consistent with the earlier meeting times in the House.

On 5 September, standing orders were suspended to allow an independent member to move an amendment to sessional order 65A. The amendment provided that, during question time, priority would be given to crossbench members seeking the call to ask the fifth, thirteenth and seventeenth questions. When adopted on 27 July, the sessional order originally gave priority to crossbench members for the fifth, thirteenth and twenty-first questions. However, the member explained that question time often concluded before the twenty-first question, leaving crossbench members with two rather than three questions. The amendment was carried on division.

On 8 September, the Leader of the House moved a motion to allow for members granted leave of absence to participate remotely in Federation Chamber proceedings through the official video facility. The motion provided that members participating remotely could make a speech from their electorate office or a Commonwealth parliament office but could not be counted for a quorum or move or second a motion or an amendment. The Leader of the House explained that the motion was in response to the Jenkins review into Commonwealth parliamentary workplaces and sought to make the House more family friendly. He added that members were now taking longer periods of parental leave to care for their new-borns and this change would allow those members to continue to represent their constituents in parliament while on leave. The Manager of Opposition Business spoke in support and the motion was agreed to on the voices. The new provision has not been used to date.

Australian Capital Territory Legislative Assembly

Continuing Resolution 5AA – Commissioner for Standards informing members where he has received a complaint against a Member but has decided not to investigate.

Following a person lodging a complaint against a member that they may have breached the Members Code of Conduct and the Commissioner believing on reasonable grounds that there is insufficient evidence to justify an investigation or that the complaint is frivolous, vexatious, or only for political advantage, the Commissioner will inform the complainant that the matter will not be further investigated.

Following several matters not being investigated, it was observed that

the member complained about had no knowledge that a compliant had been lodged. On 10 February 2022 the Assembly amended continuing resolution 5AA to ensure that the Commissioner will now also inform (without revealing the complainant's identity or the nature of the complaint) both the Committee and the member the subject of the complaint that a complaint has been received but not further investigated.

Standing Order 113A – Change to method of asking questions without notice
Standing order 113A requires that questions without notice shall not conclude until all non-executive Members rising have asked at least one question. This has meant that each question time 15 principal questions and 30 supplementaries are asked each sitting day. It also means that the Leader of the Opposition can only ask one principal question a day (although she can ask several supplementaries).

The Opposition had sought to amend the standing order and referred the matter to the relevant committee for consideration. When the committee indicated that the matter could wait until the major review of standing orders scheduled for later this year, an opposition member lodged a notice which would allow the Opposition the same number of questions but allow them to have whichever member they wished to ask the question, rather than stipulating that each MLA must ask one question only. On 31 May the assembly agreed to change the standing order so that questions without notice can be asked by any member, provided they are equivalent to the number of non-executive members present in the chamber from either party or group represented in the Assembly. This will mean that the Opposition could have just one Member ask all 9 principal questions, and other opposition Members could ask the 18 supplementaries to the principal question.

New South Wales Legislative Assembly

In anticipation of the end of the 57th Parliament (which ended in March 2023), the Speaker tabled the final report of the Standing Orders and Procedure Committee's inquiry into the modernisation and reform of parliamentary process and procedures in November 2022.[1] The report recommended key immediate changes to the Standing Orders and proposed future areas for consideration in the next Parliament.

The House adopted all the immediate changes recommended in the

[1] parliament.nsw.gov.au/ladocs/inquiries/2545/Final%20Report%20-%20Modernisation%20and%20reform%20of%20practices%20and%20procedures%20-%20November%202022.PDF

report, including clarifying processes for the election of the Speaker and consideration of motions of dissent to a Speaker's ruling. The House formalised a number of sessional orders related to Question Time, electronic and out of session tabling of documents and allowing all Members to move a motion to suspend standing orders without leave during certain times.

Additionally, in October, the House resolved to adopt a sessional order to introduce a requirement on Members with carriage of a bill to address, where practicable, matters raised by the Legislation Review Committee (LRC) during the second reading debate or through correspondence to the Committee. This sessional order was the result of a November 2018 recommendation by the LRC that Members with carriage of legislation should be required to address matters raised by the LRC during debate on a bill.[2]

New South Wales Legislative Council

Adoption of new standing orders

In March 2022, the Procedure Committee concluded its review of the standing and sessional orders of the Legislative Council, tabling a report containing 89 recommendations. Proposed new standing orders were drafted to incorporate long-standing sessional orders and more generally to simplify and update the procedures of the House. One of the major changes was the adoption of a 10.00pm "hard adjournment" (brought forward from midnight), which requires the business of the House to be interrupted at that time for the adjournment debate. This has been introduced to promote healthier working hours for members and staff. Another is the formal adoption of a Business Committee to identify items for debate on private members' days. An additional change is the insertion of specific standing orders to define and deal with how personal information is to be treated in returns to orders for papers.

In May 2022, after a lively debate and the incorporation of a number of amendments, the standing orders proposed in the report were adopted on a trial basis to commence in June 2022. At the conclusion of the trial period, a second review was conducted to consider the effectiveness of the new standing orders. The new standing orders, recommended by the committee, were adopted by the House on the second last sitting day of the 57th Parliament. The Governor approved the standing orders in February 2023, in time for the opening of the 58th Parliament in May 2023.

[2] parliament.nsw.gov.au/ladocs/inquiries/2456/Final%20report%20-%20operation%20of%20the%20Legislation%20Review%20Act%201987.pdf

South Australia House of Assembly

Acknowledgement of country and traditional owners

On 6 September 2022, the House agreed to the motion of the Premier that Standing Order No. 39 be amended to provide that the Speaker read an acknowledgement of country and traditional owners at the start of each sitting day in addition to a prayer. This reflects the practice of the House since 2010 (Speaker Breuer made an acknowledgement at the start of each sitting week), and 2016 (Speaker Atkinson made an acknowledgement on each sitting day). The new acknowledgement of country was first read on Wednesday 7 September.

Victoria Legislative Council

In the final sitting week of the 59th Parliament, the Legislative Council Procedure Committee tabled its report on the *Standing Orders review 2022*. Throughout the 59th Parliament, the Committee had been reviewing and considering changes to the Standing Orders with a view to:

- improve efficiency in the Chamber
- reflect the increased diversity of the House compared to when the rules were written
- better reflect the Council's role as a House of Review
- improve the accessibility to the rules of the House
- increase the relevance and responsiveness of the rules
- clarify contradictory and irrelevant rules

On the same day the report was tabled, the Legislative Council adopted all the recommendations of the report with the new Standing Orders taking effect on 20 December 2022 (first sitting of the 60th Parliament).

The new Standing Orders included:

- setting Question Time to include eight questions from non-Government members and four ministers' statements
- a procedure for a 30-minute debate on certain petitions on Wednesdays
- a requirement that a minister must respond in writing to all petitions referred to them within 30 days
- providing Standing Committees the ability to self-refer inquiries
- a requirement that the President reports to the House every six months on all outstanding government responses to Committee reports that were due in the preceding 12 months

Other changes included:

- a starting time of noon for Tuesday sittings
- a minister's ability to declare an extension to the sitting from the Table during Committee of the whole
- the removal of the requirement to give notice of an intention to make

a statement on a report, paper or petition
- removal of the requirement for a minister to table answers to questions on notice and adjournment matters in the House or incorporate them in Hansard – instead they are published online at the time they are received
- broadcast and recording rules were broadened to allow filming, photography, broadcast and re-broadcast of the Council and Council committees as per the guidelines and rules issued by the President
- excluding participating members on Standing Committees from being counted for the purposes of forming a quorum

While not included in the Procedure Committee's report, the Council made one additional change to Standing Orders via a motion moved by leave on the same day. This change, which was agreed to by the House on the voices, provided for the Chair to make an Acknowledgement of Country after reading the Lord's Prayer at the start of a sitting day.

CANADA

House of Commons

On 3 June 2021, Bill C-5 an Act to amend the Bills of Exchange Act, the *Interpretation Act* and the Canada Labour Code (National Day for Truth and Reconciliation) received royal assent, which added a new holiday, namely, National Day for Truth and Reconciliation, which is observed on 30 September. This national day seeks to honour First Nations, Inuit and Métis Survivors and their families and communities and to ensure that public commemoration of their history and the legacy of residential schools remains a vital component of the reconciliation process. On 2 May 2022, the House amended Standing Order 28(1) to add the National Day for Truth and Reconciliation as a day when the House shall not meet, as follows, "*Standing Order 28(1), "The House shall not meet on New Year's Day, Good Friday, Easter Monday, the day fixed for the celebration of the birthday of the Sovereign, St. John the Baptist Day, Canada Day, Labour Day, the National Day for Truth and Reconciliation, Thanksgiving Day, Remembrance Day and Christmas Day. When St. John the Baptist Day, Canada Day or the National Day for Truth and Reconciliation fall on a Tuesday, the House shall not meet the preceding day; when those days fall on a Thursday, the House shall not meet the following day*."""

The House also provisionally amended or suspended several other standing orders to provide for administrative and procedural requirements related to hybrid sittings. It provisionally suspended Standing Order 17, which requires members to rise from their assigned seat to be recognized

by the Speaker. It also suspended, for members participating remotely, Standing Order 62, regarding the ability to move a motion to recognise another member for debate than the one called upon by the Speaker.

The House also provisionally amended the following Standing Orders to bring down to five the number of members required to rise in order for a motion to be withdrawn: S.O. 26(2) (motion to continue or extend a sitting), S.O. 53(4) (motion related to a matter of urgent nature), S.O. 56.1(3) (routine motions by ministers) and S.O. 56.2(2) (motions concerning committee travel).

Senate

Speaker pro tempore

The first report of the Standing Committee on Rules, Procedures and the Rights of Parliament, entitled *Amendments to the Rules — Speaker pro tempore*, which had been presented on 29 March, was adopted by the Senate on 7 April. This report provided for elections to this position to be by secret ballot, rather than by nomination by the Committee of Selection.

Committees

The third report of the Standing Committee on Rules, Procedures and the Rights of Parliament, entitled *Amendments to the Rules — Committee mandates*, which had been presented on 6 April, was adopted by the Senate on 12 May. This report standardised committee mandates and changed the name of three committees.

Standing Committee on Audit and Oversight

On 23 June, the Senate adopted the sixth report of the Standing Committee on Audit and Oversight, which recommended appropriate consequential amendments to the *Rules of the Senate* necessary for the implementation of the *Senate Audit and Oversight Charter*, in relation to the committee's mandate and procedures.

Alberta Legislative Assembly

Following the 2019 provincial general election, the Standing Orders of Assembly were amended to change the process by which Private Members' Bills were considered. Each such Bill was now automatically referred to the newly established Standing Committee on Private Bills and Private Members' Public Bills following First Reading. The new Standing Order also provided that the Committee consider the Bill for up to eight sitting days after which it must report its disposition that the Bill proceed or not proceed to the Assembly, which in turn had to ratify the committee

recommendation (or not) through a vote of concurrence.

In 2022, the Assembly made a number of amendments to its Standing Orders, including the repeal of this new Private Members' Bills process. Through these recent amendments, Private Members' Bills are no longer automatically referred to a committee (however, the Assembly may still resolve to refer a Bill). Instead, Bills that receive First Reading are placed on the Order Paper for Second Reading according to their order of precedence and debated for up to two hours after being called, after which the Assembly decides the disposition of the Bill, thus restoring the procedure on Private Members' Public Bills that had been in place since 1993.

Additional Standing Order amendments in 2022 are as follows:

Introduction of Guests, previously completed by the Speaker, has been amended so that Members may introduce Guests. Also, an overall time limit of four minutes has been added to this item of business.

The number of Members' Statements was reduced from nine to seven.

Several administrative changes have been made to the process by which Private Bills proposals are submitted.

Manitoba Legislative Assembly

Sessional Order – Covid Related (Virtual Hybrid Sittings)

The Sessional Order passed on 7 October 2020 which allowed for virtual hybrid sitting in order to cope with sittings during the COVID pandemic, described in considerable detail in the 2020 edition of *The Table*, was amended on numerous occasions. Most of the amendments in November 2020, December 2020, May 2021, December 2021, March 2022 and December 2022 were to continue to extend the order ultimately to 1 June 2023 when the House is scheduled to rise and likely be followed by a Fall election. The last amendment in December 2022 also deleted a provision regarding Standing Committee membership to reflect a recent Rule change that allows House Leaders to determine the size and composition of Committees.

Other significant developments in 2022 included rule changes as the Legislature passed further changes to the Rules of the House that took effect at the start of the Fall Sitting effective from 28 September 2022. Some of the Rule changes include:

- Amending the provisions regarding the qualifications and deadline days for Specified Bills.
- Removing the 10-day notification period for calling meetings for the Rules or Public Accounts Committees.
- Formally recognising and empowering the PAC Steering Committee comprised of the Chair, Vice-Chair, Auditor General, Committee

Clerk and Research Officer.
- Adding provisions for a dress code, specifying that while participating in a sitting of the House, Members are to dress in a professional contemporary business attire or traditional Indigenous attire or traditional culture or ethnic attire that does not offend the dignity of the Assembly. Previously, Members could only wear traditional Indigenous cultural or ethnic attire with the permission of the Speaker.
- Making permanent the current practice of having an Indigenous Land Acknowledgement read at the start of each sitting day following the Daily Prayer.
- Clarifying that digital as well as paper copies of documents may be used during proceedings.
- Clarifying speaking time exceptions.
- Refining some processes for Standing Committees including questioning of public presenters on legislation.

Ontario Legislative Assembly

On March 9, 2022, the House passed a motion making major permanent changes to the Standing Orders. The amendments included, but were not limited to, changes to the schedule of the House, the make-up of standing committees, the consideration of Private Bills and the allocation of Vice-Chair positions.

One amendment granted the Government House Leader the ability to temporarily change the House schedule. The amendment allowed the Government House Leader to convene the House at 9.00am instead of its regular 10.15am on a sitting Monday if notice was given no later than the previous sitting Thursday at 12.00pm The schedule was also changed to include an "Introduction of Government Bills" proceeding prior to the existing Introduction of Bills proceeding.

Previously, notice requirements for Private Members' Public Business (PMPB) required that an item of business had to appear on the *Orders and Notices Paper* (the Order Paper) two weeks in advance of the date it was to be considered during PMPB. This notice requirement was amended so that the item of business not only has to appear but must be specifically designated on the Order Paper, eight sessional days in advance of its debate day. There were also contingencies added for when a Member fails to designate business for consideration before the deadline. Should a Member fail to designate an item, the first eligible public bill standing in their name would be designated; if the Member did not have a public bill on the Order Paper, then the first eligible motion in their name would be designated. If the Member has no business on the Order Paper by the deadline, the

Member loses their place in the order of precedence and the House would not conduct a Private Members' Public Business proceeding on that date.

Other amendments eliminated and combined several standing committees. The Standing Committee on Estimates was eliminated and the mandate for examining the Government's expenditure estimates was added to the mandates of several other Committees. The prescriptive process for the consideration of Estimates was also largely eliminated, with individual committees being given the authority to determine the timing of estimates consideration.

A new method of consideration of Private Bills also came into force at the start of the 43rd Parliament. Previously, all Private Bills that were introduced stood referred to a specific committee. Under the new Standing Orders, Private Bills are placed on the Order Paper for Second Reading instead of being automatically referred to this committee. If a member of the Committee or five members of the Assembly, who are not of the Committee, file a request with the Clerk to review the Bill, the order for Second Reading is discharged and the Bill is referred to the Committee for review. Where no request is made within 16 sessional days of the Bill being introduced, the Order for Second Reading may be called at the discretion of the Government House Leader. Once called, the Speaker shall, without debate or amendment, put all questions necessary to dispose of this stage of the Bill. A Private Bill given Second Reading would then be ordered for Third Reading, and the Order for Third Reading would be immediately called, and the question put by the Speaker without debate or amendment.

Another permanent change was the addition of an extra Vice-Chair on each standing committee when there are three or more recognised parties in the House.

Quebec National Assembly

After the general election of October 2022, Members conducted negotiations to organise the work of the new Legislature. As part of the agreement reached, the Standing Orders were subject to some minor permanent amendments, and to more extensive temporary amendments for the duration of the 43rd Legislature.

The permanent amendments concern the number of Statements by Members per sitting, the convening and hours of meeting of committees, and the digital tabling of documents.

The temporary amendments implement various points of agreements reached by Members during the negotiations. This includes the definition of parliamentary groups, which has been extended to all parties represented in the Assembly following the general elections, the hours of sitting, the

composition and hours of meeting of committees, the timetable for committee consideration of estimates of expenditure, and various other aspects of proceedings.

A major parliamentary reform was undertaken in the previous legislature. The project is still ongoing. Propositions include electronic voting, the institution of a parliamentary budget officer, new rules for the recognition of parliamentary groups, and various measures to increase public participation in parliamentary proceedings such as the institution of a Chamber of Citizen Affairs.

Saskatchewan Legislative Assembly

Under agreement of the House leaders, rule 12, which concerns privilege, was revised. Upon receipt of a notice of a question of privilege, the Speaker is now required to provide the written details and the proposed question of privilege to any member who is the subject of a question of privilege, as well as the House Leaders and any independent members, as was required previously. House Leaders and/or any member who is a subject of a question of privilege are now permitted to submit written responses to questions of privilege prior to the Speaker delivering a ruling. This practice by House Leaders had developed in recent years, despite the privilege rules providing no authority or structure for the Speaker to consider such responses. Rule 12 was therefore updated to accommodate this practice as well as ensuring that any member who is the subject of a question of privilege is directly notified, as a matter of natural justice, and allowed to respond. The notice period for the submission of a question of privilege was changed to provide the Speaker time to consider responses before making a ruling.

Rule 160 (4), (5), and (6) were updated to reflect changes in the jurisdiction and responsibilities of the Sergeant-at-Arms. The changes were the result of the passage of *The Legislative Assembly Act 2021* described in the miscellaneous notes.

ISLE OF MAN

Tynwald

Tuesday 29 March 2022 saw the first instance of a "Principles stage" in the Legislative Council, the Standing Orders relating to the consideration of primary legislation in that Chamber having been significantly revised with effect from the 2021/22 parliamentary session.

Previously all Bills had gone through four stages in the Legislative Council: first reading, second reading, Clauses stage and third reading. The first reading had been a debate on the principles of the Bill leading to a

binary decision as to whether the Bill would progress or not; the second reading had been much the same but had been followed on the same day by the Clauses stage, involving line-by-line consideration and the opportunity to make amendments. The third reading had been a further in-principle debate leading to a final binary decision.

Under the new regime the old first and second readings are replaced by a new "Principles Stage." There follows an optional "Evidence Stage" before the familiar Clauses Stage. The process concludes with a "Final Stage" which is the equivalent of the old third reading.

JAMAICA

Parliament of Jamaica

The Standing Orders of the House of Representatives was amended to allow for the establishment of a Bicameral Caucus of Women Parliamentarians by establishing a Caucus of Women Parliamentarians as a Sessional Select Committee of the House of Representatives.

KENYA

National Assembly

In June 2022, just before the end of the Term of the 12th Parliament, the House made comprehensive amendments to the Standing Orders. This was undertaken in line with Standing Order 264, which requires the House to undertake a periodic review of the Standing Orders once in the Term of a Parliament.

Among key highlight of new procedures introduced through the amendments are:

Co-sponsorship of Bills by two or more Members of the House and nomination of a Senator to co-sponsor a Bill once it is referred to the Senate for consideration. The new innovative procedure was intended to improve bicameral consideration of Bills by having a Member in the second Chamber who takes up ownership of the Bill and marshals its consideration in the second Chamber.

Empowering the Speaker to discharge a Member from the Committee responsible for powers and privileges if the Member breaches the Code of Conduct for Members of Parliament. Considering that the committee performs a quasi-judicial function, the import of the amendment was to give the committee the moral audacity to handle cases of breach of privilege and code of conduct. Further, the amendment was intended to ensure the

Committee is trusted as the custodian of ethics, integrity and discipline of Members.

Split of certain committees and creation of new committees to enhance efficiency in the discharge of specialised mandates. The Public Investments Committee was split to three, namely the Public Investments Committee on Governance and Education, the Public Investments Committee on Commercial Affairs and the Energy and Public Investments Committee on Social Services, Administration and Agriculture. Further, the Budget and Appropriations Committee was split to create two committees, namely, the Budget and Appropriations Committee and the Public Debt and Privatisation Committee. In addition, the House created new specialised committees, such as the Public Petitions Committee to be exclusively consider public petitions and the Diaspora Affairs and Migrant Workers Committee responsible for matters of Kenyan migrant workers in the diaspora.

Establishment of a caucus of independent Members of Parliament for purposes of facilitating them to discharge their role in the National Assembly while operating independently from political parties.

Provision for the House to record tributes to a deceased Member of Parliament, former Member or distinguished person and transmission of certified copies of the Hansard to the family of the deceased.

Provision for gazettement of a Members' Roll at the end of a Term of Parliament and designation of a member as a Ranking Member of the House.

NEW ZEALAND

House of Representatives

There were no significant amendments to the Standing Orders in 2022. In New Zealand, the House's Standing Orders are reviewed by a Standing Orders Committee before each general election (every three years), and amendments are adopted by the House to come into force for the following term of Parliament. This review was initiated in 2022 and will be completed in 2023. Outside of the triennial review, the House may adopt temporary rules (sessional orders) to trial new procedures or respond to changes that occur during a parliamentary term. There were two significant sessional orders in 2022.

Declarations of inconsistency

In August 2022, the House of Representatives adopted a sessional order that sets out procedures for the House to deal with declarations of inconsistency with the New Zealand Bill of Rights 1990 or Human Rights

Act 1993. The procedures provide that a declaration of inconsistency is considered by a select committee and subject to debate in the House on the declaration, the committee's report, and the Government response to the declaration.

The New Zealand Supreme Court's 2018 judgment in Attorney-General v Taylor ([2018] NZSC 104) confirmed that senior courts have the power to issue declarations that legislation is inconsistent with rights and freedoms protected under the New Zealand Bill of Rights Act 1990. A statutory process already existed for the Human Rights Review Tribunal to make declarations of inconsistency under the Human Rights Act 1993 in respect of laws that are inconsistent with the right to freedom from discrimination. However, until the Supreme Court's judgment in the Taylor case, it had not been clear that the senior courts had the jurisdiction to make declarations of inconsistency in respect of rights and freedoms protected under the Bill of Rights. A declaration of inconsistency is a statement that a law limits specified rights in a manner that cannot be demonstrably justified in a free and democratic society. In New Zealand, the courts cannot strike down validly made statutes, and their jurisdiction to made declarations of inconsistency is an important constitutional development.

A bill was introduced in 2020 to create a statutory mechanism for bringing declarations of inconsistency to the attention of the House, with the aim of facilitating consideration by Parliament and the Government. During its consideration of the bill, the Privileges Committee, following a recommendation from the Standing Orders Committee, proposed a parliamentary process to be adopted through a sessional order to work in tandem with the statutory mechanism. This approach avoided the need for the legislation to detail the House's procedures for dealing with declarations of inconsistency.

The sessional order was adopted by the House on 23 August 2022, following the bill's third reading. It provides that, when a declaration of inconsistency is drawn to the House's attention, it is referred to a select committee for consideration and report within 4 months. As amended, the New Zealand Bill of Rights Act 1990 also requires the Government to respond to the declaration within 6 months. Both of these deadlines can be extended by the Business Committee. Once the Government's response is presented, the House must debate the declaration, the select committee's report, and the Government's response together. It is expected that the sessional order will be incorporated into the Standing Orders when they are reviewed in 2023, so the procedure for considering and debating declarations of inconsistency will become a permanent part of the House's rules.

As it happened, the new statutory mechanism and accompanying parliamentary procedure were promptly activated. In November 2022, the Supreme Court declared that New Zealand's minimum voting age of 18 is inconsistent with the right to be free from discrimination on the basis of age, following a case taken by the Make It 16 campaign.

The Attorney-General accordingly presented a paper to the House, drawing its attention to the declaration, which was referred to the Justice Committee for consideration.

Remote participation

In February 2022, the House adopted a sessional order to allow members of Parliament to attend sittings of the House remotely. The sessional order empowered the Business Committee to determine when members may attend remotely and outlined changes to the rules of the House when members attend remotely.

The change was necessary as travel was discouraged due to a spike in cases in the pandemic. At the time, the Government restricted travel between regions, particularly out of New Zealand's largest city, Auckland. Members were exempt from the restrictions when attending parliamentary business, but many opted to follow the rules that were set for their constituents. Parties also agreed that the number of people in the Chamber should be minimised to reduce the risk of spreading COVID-19. The Business Committee therefore determined that members could participate remotely in sittings of the House as long as any part of the country was subject to certain levels of public health restrictions. Members from across the House participated remotely at various times, through simultaneous Zoom meetings that were hosted by staff of the Office of the Clerk. Members sought the call using the chat feature, and when called to speak they appeared on screens in the Chamber and were shown on Parliament TV.

Remote participation in sittings ended when the public health restrictions were mostly lifted later in 2022. After that, the sessional order was still in place but had no operational effect and was to lapse when Parliament was dissolved for the 2023 general election.

UNITED KINGDOM

House of Commons

Standing Orders were amended to reflect the proxy voting pilot. This allowed Members who were granted a proxy vote to be able to take part in other Parliamentary proceedings on the estate (eg. speak in a debate in the Chamber but vote by proxy in the divisions). The reason of "serious long-

term illness or injury" was also added to SO No. 39A, until 30 April.

The pilot has been reviewed by the Procedure Committee, with their findings and recommendations set out in a report.[3] A Government response is expected before the temporary SOs expire on 30 April.

The SOs relating to the Committee on Standards and the Independent Expert Panel (IEP) were also tidied up to acknowledge the new Code of Conduct, allow the Committee to require specific documents or records in the possession of a Member, to make the IEP the appeals body in standards cases, and to stop Members being able to vote on the motions relating to their own conduct.

House of Lords

Two sets of substantive amendments were made to the Standing Orders in 2022:

An addition was made in January to SO 21 so that the House may refuse or end leave of absence on the application of the Commissioner for Standards or the Conduct Committee, where this is necessary either to enable the Commissioner to conduct an investigation under the Code of Conduct, or to enable the Conduct Committee to impose or recommend the imposition of a sanction on a member of the House.

In February the House agreed that Members should vote in the lobbies by presenting a valid security pass to one of the pass-reader machines located there. Consequential amendments to the Standing Orders were agreed.

Additionally the demise of Queen Elizabeth II and the accession of King Charles III meant that large numbers of technical amendments were required to the Standing Orders – to replace "Her Majesty" with "His Majesty" and "the Queen" with "the King." These were made in October.

Northern Ireland Assembly

Significant amendments to Standing Orders agreed during 2022 were as follows:

- 1 March 2022 – A number of amendments were made to give effect to the outcome of the independent review of the adequacy and effectiveness of the statement of entitlements for an official Opposition.
- 14 March 2022 – Standing Order 3A (and other consequential amendments) – to allow a Member, where exceptional circumstances prevent that Member attending in person the first meeting of an Assembly after dissolution, to designate as Nationalist, Unionist or Other by means of submitting a notice to the Speaker.

[3] committees.parliament.uk/work/7358/proxy-voting-review-of-illness-and-injury-pilot/

Scottish Parliament

The Standing Orders of the Scottish Parliament do not currently provide for proxy voting. In November 2022, the Standards, Procedures and Public Appointments Committee concluded an inquiry which recommended this situation change by way of a temporary rule change to allow proxy voting in certain circumstances, for example, illness, parental leave and bereavement.

Standing Orders have now been revised to include this temporary rule change.

SITTING DAYS

Figures are for full sittings of each legislature in 2022. Sittings in that year only are shown. An asterisk indicates that sittings were interrupted by an election in 2022.

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL
Aus House of Representatives	0	7	3	0	0	0	3	4	8	3	11	2	41
Aus Senate (election)	0	3	3	0	0	0	3	4	8	3	8	2	34
Aus Australian Capital Territory LA	0	3	3	3	3	5	0	3	3	6	5	1	35
Aus New South Wales LA	0	6	6	0	6	6	0	3	3	6	6	1	43
Aus New South Wales LC	0	3	6	1	6	6	0	3	3	6	6	1	41
Aus Queensland Parliament	0	3	6	0	6	4	0	5	2	8	5	2	41
Aus South Australia HA (election)	0	0	0	0	7	5	3	0	6	3	8	1	33
Aus Tasmanian HA	0	0	9	0	7	5	0	6	7	5	6	0	45
Aus Victoria LA (election)	0	6	6	3	6	6	0	8	4	0	0	1	40
Aus Victoria LC (election)	0	6	6	3	6	6	0	9	4		0	1	41
Aus West Australia LC	0	6	6	3	6	3	0	8	4	9	8	1	54
Can House of Commons	1	17	13	11	17	17	0	0	10	16	17	10	129
Can Senate	0	7	10	6	10	12	0	0	6	10	11	7	79
Can Alberta LA	0	3	16	7	11	0	0	0	1	0	2	9	49
Can British Columbia LA	0	11	11	8	14	2	0	0	0	13	7	0	66
Can Manitoba LA	0	0	15	14	13	1	0	0	2	12	14	1	72
Can Newfoundland and Labrador HA	0	0	3	7	14	1	0	0	0	11	5	0	41
Can Ontario LA (election)	0	4	15	9	0	0	0	13	5	4	14	5	69
Can Quebec NA (election)	0	12	9	9	10	7	0	0	0	0	2	6	55
Can Saskatchewan LA	0	0	16	12	12	0	0	0	0	3	18	4	65
Can Yukon LA	0	0	17	15	0	0	0	0	0	13	15	0	60

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL
Cyprus House of Representatives	4	5	5	3	3	5	3	0	3	3	4	4	42
Isle of Man House of Keys	1	3	4	1	3	2	0	0	0	3	4	2	21
Isle of Man LC	0	0	2	0	2	0	0	0	0	1	2	1	8
Isle of Man Tynwald Court	2	2	1	2	1	1	4	0	2	1	1	1	18
India Punjab LA	0	0	3	1	0	6	0	0	3	1	0	0	14
India Uttar Pradesh LA	0	0	1	0	8	0	0	0	5	0	0	2	16
India West Bengal LA	0	0	15	0	0	11	0	0	7	0	9	0	42
Jamaica House of Representatives	4	3	5	5	9	7	3	2	8	7	5	4	62
Jamaica Senate	3	3	1	1	2	3	3	1	4	3	4	2	30
Estates of Jersey	3	3	16	5	1	1	4	0	5	2	4	5	49
Kenya National Assembly (election)	1	16	13	9	13	6	0	0	1	12	19	4	95
New Zealand House of Representatives	0	6	12	6	10	11	3	11	8	6	7	5	85
UK House of Commons	18	14	20	7	11	16	13	0	9	14	19	13	154
UK House of Lords	16	14	23	9	11	16	14	0	6	14	18	15	156
UK Northern Ireland Assembly	7	10	10	0	2	0	0	1	0	1	0	1	32
UK Scottish Parliament	10	9	15	6	12	13	0	0	10	6	14	10	105

UNPARLIAMENTARY EXPRESSIONS

AUSTRALIA

House of Representatives

"I said the Prime Minister was a fraud…"	8 February
"So this weak, inexperienced…leader of the Labor Party… is a major threat to the Australian economy."	10 February
"It's a brave choice by the Liberal Party, given their great hero is Robert Gordon Menzies, a man known to be a Nazi appeaser…"	10 February
"This is why the Australian people are demanding an independent national anticorruption commission. An Albanese Labor government will deliver one; this corrupt Liberal government will not."	14 February
"He's tricked, he's lied, he's played on our fears. To Hawaii he fled in the midst of a fire, A hose he didn't hold; he was labelled a liar. Our global relations have hit a new low. "Did he lie?" a journo asked. I don't think, I know."	14 February
"We've got another Manchurian candidate—"	16 February
"For anyone to stand up in this place and back in paedophiles, back in murderers, back in—"	16 February
"This is without a doubt the most corrupt, rotten and wasteful government in the history of our nation."	16 February
"—I am giving a lesson in budgets for dummies over there—"	30 March
"You take the cash—John Setka's blood money."	6 September
"Fifty shades of flex!"	26 October
"The member for Deakin had more people working on branch stacking in his office than the ACCC had working on this project."	7 November

Expression	Date
"It's the biggest bloody Ponzi scheme—"	8 November
"I note the interjection by the member for Jagajaga, who has suckled on the teat of the ABC…"	8 November
"You sit down like a petulant child."	9 November
"We've heard the blather and the noise from the bin chickens over there…"	9 November
"You're obviously getting a feed!"	10 November
"…a bunch of political bin chickens…"	10 November
"If dopey looks could power an energy system we'd have it nailed."	10 November
"He's a grub."	28 November
"The fools on that side of the House…"	29 November
"But even knowing this as I took on this role, some of the messages that I've received during this time have been truly breathtaking, with one of the more recent—and I'll apologise in advance for offence—saying, 'You ****ing ugly big nosed slut. And you're a fat ****. Climate change is bullshit.'"	29 November
"When they get the Liberals or the LNP—the 'lying narcissist party'—they get nothing, and this has been a real problem."	1 December
"In the six months since he took charge of the ministry, the Member for Whitlam has chewed up the furniture, rubbed his bum on the carpet and cocked his leg over his parliamentary colleagues, the financial sector and the voters of Australia."	1 December

Australian Capital Territory Legislative Assembly

Expression	Date
"They laundered it"	1 June
"Washing machine (*referring to money laundering*)"	1 June
"Protection racket"	19 October

Queensland Parliament

“We will screw it down a little bit more on farmers.”	29 March
“I thank the member for his question. I am happy to organise a hearing test for him in case he has not listened to the last few answers.”	19 May
“This mob are quick to get their hands on that bucket of money.”	23 June
“What chumps!”	24 June
“... only to be told, ‘No, bugger off.’”	16 August
“That proves one thing: you do not have to have a long neck to be a goose!”	17 August
“That Labor minister said to a female on this side of the House, ‘You stupid, dopey woman’ ...”	12 October
“Grubs.”	27 October
“This is an opposition that has the gall to criticise the name of a handful of buildings and this is an opposition that is well known for their racist slurs, their misogyny, their demeaning attacks on health workers—”	8 November
“... it starts with ‘bull’ and ends with ‘it’.”	29 November
“In the name of my Lord Jesus Christ ...”	1 December
“... the question very specifically asked about Labor’s fart tax on cows ...”	2 December

Victoria Legislative Assembly

“Barking dog”	9 June
“Bullshit detector”	30 August
“Absolute tosser”	1 September
“Class traitor”	1 September

Victoria Legislative Council

"Premier's pillow"	9 March
"Smashing the crap out of them"	6 April
"Even Ms Taylor might be able to understand it, it is so simple."	22 June
"Oh keep going, smugness. Keep going."	18 August
"Smug, smug, smug."	18 August
A member accused another member of having a muzzle on in reference to their face mask	1 September
"You're a piece of work, aren't you?"	1 September

CANADA
House of Commons

"Pissed off"	28 February
"Jumpsuit Steven"	28 February
"Misogynist pig"	23 March
"Crook"	5 May
"Lapdog"	9 May
"Owning (*a member*)"	19 May
"Eff off"	13 June
"Go home. You do not belong here"	3 November
"For Christ's sake"	17 November
"Clown" (*referring to another member*)	7 December

British Columbia Legislative Assembly

"Hookwinking"	28 February
"Arsonist"	21 November

Manitoba Legislative Assembly

"So-called Minister"	29 November

Newfoundland and Labrador House of Assembly

"Coward"	6 April

Ontario Legislative Assembly

"Hypocritical / hypocrisy"	24 February and 24 November
"For his donation and years of loyalty to the Conservative Party, Lang is being rewarded with a cushy $440,000-per-year salary"	28 February
"You can't talk out of both sides of your mouth"	2 March
"Mislead"	2 March and 1 November
"Simply not the truth"	7 March
"Passion doesn't give one the right to misrepresent information or the facts"	22 March
"Corrupting the planning system with special favours to his friends and donors"	22 March
"He's not just intellectually bankrupt, but he is a mean-spirited—"	29 March
"Pull the wool over Ontarians' eyes"	6 April
"Writing cheques to the people of this province ahead of an election so that they can buy votes"	6 April
"Is this just ignorance, is it incompetence or is this a new level of disrespect"	11 April
"Making stuff up"	12 April
"Instead of being straight with Ontarians"	12 April

"Scandal-ridden, plagued, crooked"	13 April
"Stack the deck"	18 August
"He made two inaccurate statements twice in one morning, will the minister explain why he thinks misleading residents is a better strategy—"	23 August
"Because they can't win the confidence of the people, they come here, they obfuscate, they try to delay things, because for the NDP, delay is victory"	25 August
"Revisionist history from the hateful eight"	6 September
"Misleading and unfair"	7 September
"What happens when your mayor calls women reporters 'bitches'"	7 September
"One of the most politically corrupt government this province has ever seen"	27 October
"Thinly veiled attempt by the government to try to distract"	31 October
"Misleading Ontarians with the austerity budget and punishing education workers with legislated poverty by taking away their collective bargaining rights and disrupting human rights"	1 November
"Acting like a dictator and a thug"	2 November
"Pissed off"	2 November
"Spins in her tales"	15 November
"Playing 'let's make a deal' politics"	21 November
"Setting up a system where he can serve up our greenbelt and farmland to his rich friends for donations to the Ontario PC Party"	21 November
"It doesn't matter how many times you repeat a falsehood; it's still a falsehood"	24 November
"How much speculative profit is the Premier giving his friends and PC donors"	29 November

"Understand how corrupt this looks"	29 November
"She mischaracterizes Bill 23 often"	29 November
"Jiggery-pokery"	29 November
"Thinks part of his job description is to make his very rich friends even richer"	1 December
"There's a pattern of people gaining inside knowledge and advance notice of this government's decisions"	1 December
"The person who is supposed to be telling the truth to our youngest Ontarians isn't"	6 December
"If you're going to destroy democracy, you want to do it under the cover of darkness"	6 December
"Mendacious propaganda"	7 December
"There's a perception that someone is unfairly lining their pockets. The perception is that the Ford government is unfairly giving a benefit to a small sliver of their supporters"	7 December
"They talk out of both sides of their mouth"	7 December

Quebec National Assembly

"Salir la réputation (des gens)" ("Smear the reputation (of the people)")	24 February
"Honte": "j'aurais… d'être un député libéral" ("I would be ashamed to be a Liberal MP")	22 March
"Petite politique": "faire de la …" (literally "little politics", meaning petty politics, partisan squabbling)	23 March
"Indécent" ("Indecent")	24 March
"Rouler le monde dans la farine" (literally, "rolling people in flour", meaning to fool, to scam, to deceive people)	29 March
"Incompétent": "c'est un … total" ("Incompetent": "he's a total …")	7 April

"Arrogant(e)": "celui qui le dit, celui qui l'est", en parlant du premier ministre, d'un ministre ("arrogant": "he who says it, he who is it", speaking of the Prime minister or a minister)	3 May
"Foutaise" ("hogwash")	3 May
"Hypocrisie" ("Hypocrisy")	3 May
"Âneries" (literally, "donkey business", meaning nonsense, idiocy)	5 May
"Mauvaise foi" ("Bad faith")	8 June
"Malhonnête" ("Dishonest")	8 December

Saskatchewan Legislative Assembly

"Goldilocks and the rest of her squad over there"	7 March
"The hypocrisy of the pearl clutching of a member who heckled"	14 March
" . . All of those fine sentiments were a hoax, a sham . . . Will he commit to doing the work . . . Without his fingers crossed?"	28 April
"the Leader of the Opposition would splice comments to politicise a conversation"	28 April
"Misogyny and White supremacy are in this chamber every day"	5 May
"Why don't you just tell the truth and say you don't give a shit about anyone"	18 May
"The GTH [Global Transportation Hub] land scandal that ripped off nuns and that, you know, filled the pockets of those with connections to this government"	15 November
"Lie detector" (*stated when an emergency alert went off during a member's comments*)	16 November
"We've seen this crappy movie before"	17 November

Yukon Legislative Assembly

"Fearmongering"	24 October
"Peddling fear"	24 October

INDIA

West Bengal Legislative Assembly

"Shedding crocodile tears"	14 June
"Loud wailing on account of bereavement"	14 June
"Puppet"	15 June
"Hanged"	16 June
"The mother is being burned to death"	16 June
"Arbitrary	17 June
"Alms"	21 June
"Dogs and patients share beds due to lack of service"	22 June
"Mad or insane"	22 June
"To act as a stooge"	22 November
"Thieves view all others present in the universe as thieves"	22 November
"Den of corruption"	24 November
"Monkey"	30 November

Rajasthan Legislative Assembly

"Useless and worthless..."	10 February
"Cheaters.... cheater..."	10 February
"Their masters Modi ji, Shah Saheb, who have all become agents of Adani and Ambani in politics,..."	10 February
"Speaker of the Lok Sabha...."	11 February
"This Rajiv Gandhi Study Circle is no other, this Rajiv Gandhi Study Circle has come, it has brought the paper by pilfering it..."	24 February
"There are such sons-of-disrepute, sitting in this Legislative Assembly of Rajasthan, who humiliate their parents too..."	2 March

"This amendment is being brought to hide the sins of this government and also because you must have heard that a deaf and dumb girl was raped in Alwar and the government and the officials all accepted that she was raped and her private part was hurt by sharpened mattles, then in a closed room, the people sitting in the government concocted a story and a delivery boy of Zomato was hired"	4 March
"Because many of their people have been involved in crimes, they are exposed when their FSL reports come out and that's why I described the incident of Alwar, to hide the sin that how such rape has come in the FSL report. They are conspiring to suppress such cases by bringing this amendment and getting the subordinate officials to investigate, this is the intention of this government, so this bill is being brought because many of their people, their family members, their friends, their supporters are involved in such crimes, so this bill is being brought to set them free and to get rid of them, or to prevent them from being punished, so that they can submit false FSL reports, therefore, this bill is being introduced and..."	4 March
"Amorous men..."	9 March
"Rajasthan is a state of masculinity... Rajasthan is of masculinity... Masculine..."	10 March
"The men of Rajasthan...they rape..."	10 March
"Girls of the Kanjar caste indulge in prostitution..."	11 March
"There is some association between the donkeys and the Congress, somewhere, there is an alliance and if you want to save the Congress, then the donkeys in Rajasthan...."	21 March
"...slavery of the same Gandhi-Nehru family..."	22 March

"...Investigators are also dishonest, those who open universities are also dishonest, those who give recognition are also dishonest, Those who present bills are also dishonest... Those who run the university are dishonest, those who inspect are dishonest... Do we want to make the children of Rajasthan dacoits, do you want to make them rapists, do you want to show thieves, do you want to show dacoits... Dishonesty... Those investigators who make them are also dishonest..."	22 March
"So how much money did you take, tell me how many crores of rupees you took and did not take..."	22 March
"Like you, you supported the incidents of burning women alive"	23 March
"At least don't call him an old man, he gets annoyed by being called old. Don't call him old, there will be trouble"	23 March
"The chair is working to curtail our rights in a way..."	20 September

ISLE OF MAN

Tynwald Court

"Dog shit"	20 July

House of Keys

"bullshit generalist policy people"	25 October

JERSEY

States of Jersey

"I would like to know who I can sleep with to get St. Saviour off the plan"	18 March
"Cat in hell's chance"	25 March

NEW ZEALAND

House of Representatives

"It's a Labour Party that the unions control, they fund, and they own it. And this is the payback to the unions."	5 April
"Well, let's look at the selection of the leader. It's done by the union movement."	5 April

"Oh, God, what a Neanderthal!"	10 May
"I thought it was question time, not excuse time."	30 August
"I want to inform the member that the cannabis referendum voted no, because I fear she may have broken the law before she gave that speech."	20 September
"Stop the fake news; stop the fake news."	22 September
"I am not prepared to be race-baited by that member."	26 October
"Those connections are historic, they're political, and they are, of course – financial. It's 'follow the money, honey.'"	26 October
"I predict that members opposite will get up next and will stand up and bark the same old lies."	16 November
"Get louder, bark, and go personal."	16 November
"Madam Speaker, I just wonder if you could explain for the benefit of the people watching at home which set of rules you are enforcing tonight. Is it the ones in the book or the ones you made up?"	22 November
"The 'Minister of Stuff-ups' seems to have left early to get—"	22 November
"Stop your National Party laundering, that would be one way."	7 December

BOOKS ON PARLIAMENT IN 2022

AUSTRALIA

Companion to the Standing Orders of the Legislative Assembly for the Australian Capital Territory, Second Edition, edited by David Skinner and Tom Duncan, ISBN (print): 9780642607188, ISBN (online): 9780642607195. An Australia Capital Territory official writes:

> The second edition of the *Companion to the Standing Orders* is a major update and reflects key changes to parliamentary law, practice and procedure that have occurred in the 13 years since publication of the first edition (2009). It includes commentary on amendments to the Australian Capital Territory (Self-Government Act) 1988 (Cth), the effects of the expansion of the Assembly from 17 to 25 members, and significant developments in the Assembly's standing orders and continuing resolutions. The editors trust that this second edition will remain a useful reference for members, their staff, parliamentary official, and others with an interest in the accountability and representative functions performed by the Legislative Assembly and its committees.

Parliament: A Question of Management, by V. M. Barrett, ANU Press, ISBN (print): 9781760465452, ISBN (online): 9781760465469.

CANADA

Alfred: premier député noir à l'Assemblée nationale du Québec, by Paul Morissette, Éditions du Mont-Royal, 923.2714 A392 M861 2022.

C'est pas un cadeau!: plongée au coeur de l'éthique parlementaire, by Éric Montigny and Steven Jacob, Presses de l'Université Laval, ISBN: 9782763759012. Kate Sinnott, a librarian with the Library of Parliament, writes:

> More than 10 years after Quebec's provincial legislature instituted its new code of ethics and conduct of the Members of the National Assembly, this book provides a detailed look at gifts given or offered to provincial parliamentarians. Published in French only, the authors investigate how the ethical culture has changed and developed in the years since the code. The book details those who give gifts, which parliamentarians are most likely to receive them, the types of gifts offered, and how the gifts are received and perceived. With guarantees of privacy, the authors were able to do detailed surveys and interviews with past and present parliamentarians.

A Resilient Crown: Canada's Monarchy at the Platinum Jubilee, edited by Michael D. Jackson and Christopher McCreery. Toronto: Dundurn Press,

ISBN: 9781459749702.

Selected Decisions of Speaker Geoff Regan, 2015-2019, by Geoff Regan, Ottawa: House of Commons, ISBN: 9780660447612. Published in both French and English, the full text is freely available on the Canadian House of Commons website.

A Very Canadian Coup: The Rise and Demise of Prime Minister Mackenzie Bowell, 1894–1896, by Ted Glenn, Toronto: Dundurn Press, ISBN: 9781459750180 (print), 9781459750203 (ebook). Kate Sinnott, a librarian with the Library of Parliament, writes:

> The 7th Canadian Parliament (1891 to 1896) was led by a quick succession of five different Prime Ministers. Of the first three, two died in office and one resigned due to ill health. The next, Mackenzie Bowell, was a Senator appointed as caretaker Prime Minister in late 1894, with the expectation that an election would be held the following spring. Instead, a January 1895 landmark court ruling regarding religious schools in Manitoba initiated dramatic political manoeuvring, finally resulting in what the author describes as a "bloodless coup" with Charles Tupper replacing Bowell as Prime Minister. While based on authoritative sources and including excerpts from official documents and correspondences, the book is written as a novelisation of event.

NEW ZEALAND

Matangireia: a space for Māori at Parliament: a centenary history of the former Māori Affairs Committee Room, edited by Ellen Andersen, Heritage New Zealand Pouhere Taonga, $45.00, ISBN: 9780473643560. A New Zealand parliamentary official writes:

> This book celebrates 100 years of Matangireia, the former Māori Affairs Committee Room at the New Zealand Parliament. Andersen captures the history behind the opening of Matangireia and the work that important Māori political figures undertook in collaboration with leading Māori arts practitioners and experts in mātauranga Māori (traditional knowledge and understanding) to create the space.

UNITED KINGDOM

Held in Contempt: What's Wrong with the House of Commons?, by Hannah White, Manchester University Press, ISBN: 9781526156693. Liam Laurence Smyth writes:

Hannah White, a former Clerk in the House of Commons, is now Director of the Institute for Government, a well-regarded London-based think tank. Taking as her starting point the unprecedented twin challenges

of Brexit, particularly in the 2017-19 Parliament, and of responding to the covid pandemic from 2020 to 2022, White argues that executive disregard for Parliament is becoming the norm and is linked to declining trust in the House of Commons both as an institution and as a collectivity of politicians.

In successive chapters, White argues that the House of Commons is side-lined, unrepresentative, arcane, exceptionalist and decaying. In the wake of the Brexit referendum, the House of Commons, most of whose Members had voted to Remain, struggled to come to terms with the imperative to implement a mandate to Leave. Prime Minister Theresa May, having thrown away her majority in the 2017 general election, chose to govern and to negotiate with the EU as if she commanded a normal parliamentary majority. Her failure to secure support for a withdrawal agreement led eventually to her replacement by Boris Johnson, who forced an early general election in December 2019 on a prospectus of getting Brexit done with an oven-ready deal. White finds that Johnson's victory resulted from his having deliberately pitted Parliament against the people. All too soon, Johnson had to face the global coronavirus pandemic, in which Parliament was little more than a bystander as successive waves of secondary legislation took the country into and out of lockdown, and back again. White perceives a downward spiral of trust and effectiveness as the public loses trust in minsters who appear to govern without checks and balances.

White notes the slow progress towards making the House of Commons more representative, with more than half of Labour MPs now being women. She notes the uneven spread of MPs from minority ethnic backgrounds, and the under-representation of minority gender identity or sexual orientation, despite the House of Commons being "the gayest Parliament in the world" (according to *Pink News*). White draws upon her own experience as a working mother in Parliament to call for a more welcoming physical environment in the Palace of Westminster. She identifies even greater deterrents to challenging white male hegemony in the stale culture of confrontational politics and in the social media vitriol directed disproportionately towards women.

White contends that the public cannot understand the House of Commons because of arcane procedures and jargon-filled language. White casts doubt on the likelihood of initiatives for radical reform coming from clerks, lest MPs having a better understanding of procedure would dilute the status that the 'high priests' drive from their clerkly expertise. White proposes a standing commission on procedural modernisation, with twice-yearly debates, ending in unwhipped votes, on implementing its proposals.

The exceptionalist character of the Commons has led in White's analysis to successive scandals over cash-for-questions, abuse of expenses, and

behaviour (bullying and sexual harassment). According to White, the credibility of the House of Commons is undermined by the difficulty it seems to experience in identifying what it needs to change and in achieving that change by itself.

The decay White identifies is both literal and metaphorical. In its literal sense, the continued fumbling over tackling the long overdue restoration and renewal of the Palace of Westminster is a shocking dereliction of the duty of care and an indictment of weak corporate governance.

In her conclusion, White calls for the culture of exceptionalism to be turned on its head so that the House of Commons can become an exemplar of best practice based on the highest standards of personal behaviour. Since the government's excessive control over the House of Commons is detrimental to its public reputation, reforms should rebalance control of the agenda between executive and its backbenchers and subject legislation to more through scrutiny.

The conclusion is not quite White's last word. Her foreword briefly notes the eruption of the partygate scandal over breaches of Covid regulations in Downing Street, and the winding up of the statutory Sponsor Body for rebuilding the Palace of Westminster. Both sagas continue to unfold.

TABLE 2023 INDEX

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;
		NSW	New South Wales;
Austr.	Australia; BC British Columbia;	N. Terr.	Northern Territory;
		NZ	New Zealand;
Can	Canada;	PEI	Prince Edward Island;
HA	House of Assembly;	Reps	House of Representatives;
HC	House of Commons;		
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 & LB	Newfoundland and Labrador;	WA	Western Australia.

GEOGRAPHICAL INDEX

For replies to the annual questionnaire, privilege cases and reviews see the separate lists.

Alberta
Notes: 90 188; 91 204
Australia
Foreign allegiances and the constitutional disqualification of members: 87 62
Notes: 87 77; 88 98; 89 120; 90 159; 91 182
Australian Capital Territory
Notes: 87 83; 88 102; 89 121; 90

163; 91 187
British Columbia
Notes: 87 104; 88 129; 89 140; 90 189; 91 205
Canada
Electronic voting in Canada's House of Commons: 90 56
The Centre Block rehabilitation project: 91 51
Notes: 87 98; 88 122; 89 137; 90 182; 91 199
Cyprus
Notes: 88 131; 89 144; 90 193; 91 212
Guernsey
Notes: 89 145; 90 194
Guyana
Notes: 87 107; 91 213
Isle of Man
Notes: 91 214
India
Notes: 87 109; 88 132
Jamaica
Notes: 91 218
Jersey
Notes: 88 134; 90 196; 91 220
Kenya
Notes: 90 196
Manitoba
Notes: 87 105; 90 191; 91 207
New South Wales
Practice makes perfect? (Or at least a little better) - Sessional Orders as a vehicle for procedural reform in the New South Wales Legislative Council: 91 62
Notes: 87 88; 88 107; 89 124; 90 165; 91 189
New Zealand
Party voting in the New Zealand House of Representatives: 86 40
Library researchers and select committees: 90 151
The adoption of the closure in the New Zealand House of Representatives: 91 83
Notes: 87 111; 88 135; 90 197; 91 220
Newfoundland and Labrador
Notes: 91 208
Northern Ireland
Notes: 87 124; 90 203; 91 223
Northern Territory
Is the official Opposition official? Opposing opinions in the 13th Legislative Assembly of the Northern Territory: 87 49
Interpretation in the Chamber: 88 92
Notes: 87 93; 89 127
Ontario
Uncharted territory: Ontario and the notwithstanding clause: 87 45
The provision of security in the legislative precincts in Ontario: 87 57
Sending for papers: The Laurentian University inquiry: 90 120
Notes: 87 106; 91 210
Prince Edward Island
Notes: 89 144
Quebec
Notes: 91 211
Queensland
Notes: 86 82; 87 94; 88 114; 90 176; 91 193
Saskatchewan
Notes: 87 107; 88 131; 91 212
Scotland
Testing the limits: Recent questions on the powers of the

Scottish Parliament and devolved autonomy: 91 93
Notes: 87 127; 90 206; 91 226
South Australia
Notes: 87 95; 88 119; 89 132; 90 177; 91 195
Tasmania
Notes: 87 96; 91 196
Tanzania
Notes: 87 114; 90 198
Trinidad and Tobago
Notes: 90 199
United Kingdom
Archibald Milman and the failure of Supply reform, 1882–1888: 87 7
Queen's Consent: 87 35
Archibald Milman and the evolution of the closure—Part 1: Origins to 1881: 88 5
Taking back control? Initiatives in non-government agenda control in the UK Parliament in 2019: 88 55
Archibald Milman and the evolution of the closure— Part 2: 1882–1885: 89 5
Scrutiny of Treaties by the House of Lords: An insider's reflections: 89 56
"Upon a greater stage": John Hatsell and John Ley on politics and procedure, 1760–1796: 89 66
Archibald Milman and the evolution of the closure— Part 3: 1885–1894: 90 8
The evolution of the Code of Conduct in the House of Lords: 90 61
"Much more than sufficient": Clerkly profits and patronage, 1796-1802: 90 77
Legislative consent: A convention under strain?: 90 131
Crown and Parliament: 91 7
Kangaroo court or defence of Democracy – the Privileges Committee's inquiry into Boris Johnson: 91 30
Archibald Milman and the crisis of legislation, 1880-1891: 91 139
"While the Sun shone": Hatsell, Ley and the problems of patronage, 1802-1812: 91 110
Notes: 87 118; 88 141; 89 146; 90 199
Victoria
Notes: 87 97; 88 120; 89 135; 91 197; 90 180
Wales
Notes: 87 129
Yukon
The Electoral Boundaries Bill in Yukon: 87 71

SUBJECT INDEX

Sources and authors of articles are given in brackets.

Boundary change
Uncharted territory: Ontario and the notwithstanding clause (Ontario LA, McCauley): 87 45
The Electoral Boundaries Bill in Yukon (Yukon LA, Kolody): 87 71

Closure
The adoption of the closure in the New Zealand House of Representatives (NZ Reps, Wilson): 91 83
Committees
Library researchers and select committees (NZ Reps, Slatter and Hellyer): 90 151
Conduct
Conduct in the Jersey states assembly (Jersey, Egan): 86 48
The evolution of the Code of Conduct in the House of Lords (UK HL, Wilson): 90 61
The Crown
Crown and Parliament (UK HC, D. Torrance): 91 7
Devolution
Legislative consent: A convention under strain? (UK HL, M. Torrance): 90 132
Testing the limits: Recent questions on the powers of the Scottish Parliament and devolved autonomy (UK Scot. Parl., McKay): 91 93
Former clerks
Archibald Milman and the failure of Supply reform, 1882–1888 (UK HC, Lee): 87 7
Archibald Milman and the evolution of the closure—Part 1: Origins to 1881 (UK HC, Lee): 88 5
Archibald Milman and the evolution of the closure— Part 2: 1882–1885 (UK HC, Lee): 89 5
"Upon a greater stage": John Hatsell and John Ley on politics and procedure, 1760–1796 (UK HC, Lee and Aschenbrenner): 89 66
Archibald Milman and the evolution of the closure— Part 3: 1885–1894 (UK HC, Lee): 90 8
"Much more than sufficient": Clerkly profits and patronage, 1796-1802 (UK HC, Lee): 90 77
Archibald Milman and the crisis of legislation, 1880-1891 (UK HC, Lee): 91 139
"While the Sun shone": Hatsell, Ley and the problems of patronage, 1802-1812 (UK HC, Lee): 91 110
Language
Interpretation in the Chamber (Austr, N. Terr., Hart): 88 92
Legislation
Queen's Consent (UK HL, Makower): 87 35
Taking back control? Initiatives in non-government agenda control in the UK Parliament in 2019 (UK, Lee and Berry): 88 55
Membership
Foreign allegiances and the constitutional disqualification of members (Austr. HR, Cornish): 87 62
Opposition
Is the official Opposition official? Opposing opinions in the 13th Legislative Assembly of the Northern Territory (N. Terr. LA, Tatham): 87 49
Restoration of Parliament buildings
The Centre Block rehabilitation project (Can. HC, Janse): 91 51
Privilege
Kangaroo court or defence of Democracy – the Privileges

Committee's inquiry into Boris Johnson (UK HC, James): 91 30
Powers
Sending for papers: The Laurentian University inquiry (Ontario LA, Wong and Tyrell): 90 120
Security
The provision of security in the legislative precincts in Ontario (Ontario LA, Wong): 87 57
Sessional Orders
Practice makes perfect? (Or at least a little better) - Sessional Orders as a vehicle for procedural reform in the New South Wales Legislative Council (NSW LC, Mignacca): 91 62
Treaties
Scrutiny of Treaties by the House of Lords: An insider's reflections (UK HL, Horne): 89 56
Voting
Electronic voting in Canada's House of Commons (Can HC, LeBlanc): 90 5

LISTS

Members of the Society

Abbreviations: R retirement, O obituary.
Agostino, J (R): 91 2
Armitage, B (R): 90 4
Benger, J (R): 91 5
Collett, P (R): 87 3
Coonjah, L (R): 82 4
Cornish, C (R): 89 2, 90 2
Denis, R (R): 89 3
Dufresne, P (R): 91 3
Egan, M (R): 91 4
Elder, D (R): 88 2
Evans, P (R): 88 4
Finnimore, S (R): 91 3
Gagnon, A (R): 90 3
Gonye, L (R): 90 2
Hallett, B (R): 87 3
Helme, P (R): 88 4
Holden, K (R): 91 3
Hughes, K (R): 91 6
Hutton, M (R): 89 4
Isles, R (R): 89 2
James, C (R): 88 3
Keith, B (R): 86 6
Kiermaier, M (R): 87 3
Labrecque-Riel, C (R): 89 2
Lakhanpal Mishra, S (R): 90 4
Leakey, D (R): 87 6
Martin, P (R): 90 3
MacKay, C (R): 87 5
MacMinn, E.G. (O): 91 4
McCormick, F (R): 88 3
Michaud, C (R): 89 3
Moyce, A (R): 88 4
Natzler, D (R): 88 4
Ollard, E (R): 90 5
Piccinin, C (R): 89 3
Pratt, N (R): 91 3
Poyser, C (R): 90 5
Proulx, N (R): 87 4
Purdey, R (R): 88 2
Reynolds, R (R): 87 5
Robert, C (R): 91 4
Rodrigue, P (R): 91 3
Sialai, M.R (R): 91 4
Socratous, S (R): 90 4

Sourial, S (R): 90 4
Shrivastava, S (R): 87 5
Tatham, M: (R): 90 3
Tudor, F.P (R): 91 6
Veletta, S (R): 88 2
Watson, C (R): 88 2
Weeks, M (R): 89 2
Young, A (R): 91 3

Privilege cases

* Marks cases when the House in question took substantive action.

Announcements outside Parliament
88 194 (Man. LA); 88 198 (Québec NA); 88 202 (Sask. LA); 89 231 (Can. HC); 90 261 (Québec NA); 91 258 (Man. LA)
Broadcasting
87 183★ (Queensland LA); 90 266 (NZ Reps)
Committees
Evidence: 87 182 (ACT LA); 88 186 (Austr. Reps); 90 252★ (NSW LC 253); 90 255 (Can. HC); 91 251 (Austr. Sen); 91 256 (Vict. LC)
Proceedings: 87 181 (ACT LA); 91 255 (Queensland Parl.)
Reports: 89 237 (Québec NA); 90 249 (Austr. Reps)
Conduct of members
90 252★ (ACT LA); 91 253★ (NSW LC); 91 255 (Vict. LC); 91 265 (UK HL)
Virtual proceedings: 89 251 (Can. HC)
Confidentiality
Committee proceedings: 87 186 (Can. Sen.); 88 194 (Can. HC)
Correspondence
90 249 (Austr. Reps)
Courts
91 260 (NF & LB HA)
Documents
87 180★ (Austr. Sen.); 87 185 (Can. HC); 88 188 (ACT LA); 88 191 (W. Austr. LC); 89 227★ (NSW LC); 89 228★ (NSW LC); 90 252★ (NSW LC); 90 255★ (Queensland LA); 90 259 (Manitoba LA); 90 266 (UK HC)
Freedom of speech
87 187 (Manitoba LA)
Health
89 230 (Vict. LC); 91 257★ (WA LC)
Interests (members')
90 249 (Austr. Reps)
Inter-parliamentary bodies
87 186 (Can. Sen.)
Intimidation of members
87 181 (Austr. Sen.); 88 186 (Austr. Sen.); 88 187 (Austr. Sen); 88 188★(Queensland LA); 90 259 (Man. LA); 91 258 (Man. LA)
Legislation
Acting in anticipation of: 88 196 (Québec NA)
Acting in the absence of: 87 188★ (Québec NA)
Media
Comments to: 87 190 (Québec NA); 87 194 (India LS)
Coverage of members' conduct: 87 194 (India LS); 87 195 (West Bengal LA); 87 195★ (Tanzania NA); 91 257★ (WA LC)
Social media: 90 259 (Manitoba

LA); 90 266* (Trinidad and Tobago Sen.)
Members' expenses
87 184* (Vict. LC); 87 186 (Can. Sen.)
Misleading the House
Backbencher: 88 191 (S. Austr. HA); 91 262* (Sask. LA); 91 263* (Ken. NA)
Minister: 88 196 (Québec NA); 88 201 (Sask. LA); 89 225 (Austr. Reps); 89 234 (Québec NA)
Prime Minister: 91 250 (Austr. Reps); 91 264* (UK HC)
Speaker: 89 230 (S. Austr.)
Official opening
Disclosure of contents of Speech: 87 192* (Québec NA); 90 259 (Man. LA)
Parliamentary precincts
Access to: 90 255 (Can. HC); 91 251* (ACT LA)
Visitors: 90 254* (Queensland LA)
Privilege procedure
89 231 (Manitoba LA); 89 239 (UK HC); 89 241 (UK HL); 90 255 (Can. HC); 90 264 (NZ Reps); 91 254 (NSW LC)
Search warrants
89 225* (NSW LC); 90 250 (Austr. Sen); 91 254 (NSW LC)
Speaker
Election of: 89 229 (S. Austr.)
Reflections on: 87 195 (West Bengal LA); 89 238* (Sask. LA); 91 264* (Ken. NA)
Surveillance of member
88 203 (RS); 90 255 (Vict. LC)
Voting
90 263* (Kenya NA)
Witnesses
Interference with: 87 182* (N. Terr. LA)
Refusal to appear: 87 196* (UK HC)

Comparative studies

Role of the Opposition: 87 138
The regulation of member behaviour: 88 154
Responding to the COVID-19 pandemic: 89 157
Committee powers to assist scrutiny of governments: 90 211
Unexpected Change in the Head of State: 91 228

Book reviews

A Very Canadian Coup: The Rise and Demise of Prime Minister Mackenzie Bowell, 1894–1896: 91 301
C'est pas un cadeau!: plongée au coeur de l'éthique parlementaire: 91 300
Companion to the Standing Orders of the Legislative Assembly for the Australian Capital Territory, Second Edition: 91 300
Essays on the History of Parliamentary Procedure, in Honour of Thomas Erskine May: 87 233
Exploring Parliament: 87 231
Held in Contempt: What's Wrong with the House of Commons?: 91 301
How Parliament Works: 87 244
Matangireia: a space for Māori at Parliament: a centenary history of

the former Māori Affairs Committee Room: 91 301
Travels with Members: A Clerk in Parliament: 90 298