The Table

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

EDITED BY
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VOLUME 72
2004

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

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ISBN 0-904979-29-6
ISSN 0264-7133

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THE TABLE
The Journal of The Society of Clerks-at-the-Table in Commonwealth Parliaments

EDITORIAL

If there is a single theme running through this year's Table, it is the modernisation of Commonwealth assemblies and parliaments with a view to engaging the public more effectively in political life. The section on Standing Orders shows that as far apart as Australia (both at national level and in New South Wales and Victoria), the North West Province of South Africa, and Jersey, attempts are being made to modernise rules of procedure, making them more accessible and 'user-friendly'. At the same time innovations are being introduced into committee working practices, designed to bring them closer to the public: Marc Bosc describes experiments in e-consultation in the Canadian House of Commons, while Siwan Davies describes the appointment of an independent investigator to assist a committee of the Welsh Assembly looking at the contentious issue of waste management.

How far should parliaments go in attempting to engage the public directly, by-passing traditional forms and procedures? As Marc Bosc comments, the challenge of e-democracy is to find a way to "harness [information] technology to greatest effect without undermining the role of parliamentarians". In other words, whenever technological or procedural innovation is contemplated, a balance must be struck between on the one hand modernisation, with a view to more direct engagement with the public, and on the other the values that underpin the traditional model of parliamentary democracy.

A privilege case from the Ontario Legislative Assembly illustrates the other side of the coin. The Speaker found that the provincial government's presentation of its 2003 budget outside Parliament constituted a *prima facie* contempt, even thought it was not forbidden by the rules of procedure. The government justified its action by claiming that it wished to engage in "a direct conversation with the people of Ontario." The Speaker's response expresses in the clearest terms the danger such an approach poses to parliamentary democracy as we understand it:

> "When the government or a member claims that a Budget presentation is needed outside the House well before it happens inside the House in order to communicate directly to the people or because of a perceived flaw in the

parliamentary institution, there is a danger that the representative role of each and every member of this House is undermined, that respect for the institution is diminished, and that Parliament is rendered irrelevant."

Yet while modernisation may be in the air, the pace of change varies dramatically across the Commonwealth. Stephen Redenbach's article, for instance, describes sweeping changes to the Victoria Legislative Council's composition, powers and procedures. In marked contrast, reform of the House of Lords has slowed, and, as the House of Lords entry in the "Miscellaneous Notes" section describes, attempts to reform the composition of the House, to create a separate Supreme Court, and to appoint a Speaker (and possibly to abolish the ancient office of Lord Chancellor), remain in the balance.

There are many other substantial articles in this year's *Table*, and it would be invidious to pick out just one or two. There are also some fascinating privilege cases, while the "Miscellaneous Notes", as ever, reveal the range of extraordinary events and complex problems that Table Clerks confront almost on a day-to-day basis. The value and interest of the *The Table* depend on the readiness of Clerks to share experiences and lessons learnt, and I would therefore like to take this opportunity warmly to thank all those who have contributed this year.

RETIREMENTS

Robert Doyle, Clerk of the Queensland Parliament, retired on 21 February 2003. Robert began his parliamentary career in 1962 working for the Legislative Council of Tasmania. In 1969 he was appointed Third Clerk at the Table in the Tasmanian House of Assembly. In 1979 he moved to Queensland, taking up an appointment as Clerk Assistant of the Legislative Assembly, with the role being reclassified as Deputy Clerk of the Parliament in 1983. Upon the retirement of Alan Woodward, Robert was appointed Clerk of the Parliament on 3 December 1991. By the time of his retirement Robert had served for over 40 years in three house of parliament in two states.

Geoff Westcott, Assistant Clerk and Clerk of Committees of the Victoria Legislative Assembly, resigned on 15 August 2003 after 34 years service with the Victorian Parliament.

Kazi Rakibuddin Ahmad, Secretary of the Bangladesh Parliament, retired on 30 November 2003, and on 3 December **Knondker Fazlur Rahman** was appointed in his place.

Pierre Duchesne, Secretary General of the National Assembly of Québec from 1984 to 2001 and thereafter Special Adviser to the Secretary General, retired from the service of the Assembly on 7 January 2004.

Miss C.M. (Mary) Newcombe retired as Greffier (Clerk) of the States of Jersey on 28 October 2002, after just over 2 years as Greffier and after over 34 years service in the States Greffe. **Mr Michael Nelson de la Haye**, formerly Deputy Greffier, was sworn to office as Greffier of the States on 5 November 2002 and **Mrs Anne Helen Harris**, formerly Assistant Greffier, was sworn to office as Deputy Greffier on the same day.

APPOINTMENTS AND HONOURS

Australia House of Representatives

Ms Robyn Webber has been promoted to the position of Clerk Assistant (Committees).

Victoria Legislative Assembly

Liz Choat, previously Manager, Procedure Office, was appointed Assistant Clerk and Clerk of Committees in 2003.

Victoria Legislative Council

Dr Ray Wright, Usher of the Black Rod, was awarded a Centenary Medal as part of Australia's Centenary of Federation celebrations. The criteria were that awards were anonymously nominated, evaluated and presented to people who had contributed to Australian society and culture. Ray's award as an 'historian and author' was presented at a ceremony on 9 May 2003.
E. George MacMinn, QC, presently in his forty-seventh year as a Table Officer, was awarded the Queen's Medal for Outstanding Service to the Legislative Assembly of British Columbia. **Ian D. Izard**, Law Clerk and Clerk Assistant, was awarded the designation Queen's Counsel by an order-in-council on 11 December 2003.

Québec National Assembly

Michel Bonsaint, formerly Director of Research in Parliamentary Procedure at the National Assembly of Québec, was promoted in 2003 to the position of Director General of Parliamentary Affairs.

Saskatchewan Legislative Assembly

Ms Iris Lang was appointed Clerk Assistant (Committees) in October 2003. Ms. Lang has served the Legislative Assembly for fifteen years in different capacities in Security, Administrative Services and Human Resources. She has a Bachelor's degree in Human Justice and a Human Resources professional designation. She replaces **Viktor Kaczkowski**, who left the Saskatchewan Table to return to his home in Ontario.

India Lok Sabha

Shri G. C. Malhotra, Secretary-General, Lok Sabha, was awarded the Indira Gandhi Priyadarshini award by the National Unity Conference.

South Africa

Ms Lucille Meyer has been appointed as the Assistant Secretary to Parliament with effect from 1 January 2003. **Ms M J Gaoretelelwe** is presently occupying the position of Acting Secretary to the North West Provincial Legislature, with effect from 11 September 2003. **Mr Herlu Smith** is presently occupying the position of Acting Secretary to the Eastern Cape Legislature, with effect from 2002.

Trinidad and Tobago

Ms Dawn Dolly has been appointed Clerk of the Senate.

QUESTIONS WITHOUT ANSWERS: JOINT MEETINGS OF THE AUSTRALIAN SENATE AND HOUSE OF REPRESENTATIVES

DR ROSEMARY LAING

Acting Deputy Clerk of the Australian Senate

Introduction

On successive days in October 2003, the Australian Senate and House of Representatives met simultaneously in the House of Representatives chamber to receive addresses from the Presidents of the United States of America and the People's Republic of China. It was the third such address by a US President but the first by a head of state of any other country (including our own).[1] Two senators were excluded from the address given by President Hu Jintao, apparently on the basis of disorderly conduct the previous day when both interjected during the speech of President George W. Bush. Three Senate committees subsequently examined aspects of these joint meetings, including the legitimacy of such an act of exclusion. This article provides a history of joint meetings of the Houses of the Australian Parliament and identifies questions of order and privilege that arose from the recent joint meetings. Arguably, some of these questions were already inherent in the arrangements for earlier joint meetings that were held on a more formal basis.

The constitutional basis for joint sittings

Joint sittings, as distinct from joint meetings, are authorised under section 57 of the Australian Constitution. They are held to resolve a legislative deadlock when the Senate has on three occasions rejected, unacceptably amended or failed to pass a bill (or bills) sent to it by the House of Representatives, with a general election for all members of both Houses intervening between the second and third such occasion. Under these provisions, the two Houses

[1] Joint meetings do not include openings of Parliament, twice addressed by Her Majesty, Queen Elizabeth II, when members of the House of Representatives are invited to attend in the Senate chamber. Also excluded from this examination are the so-called secret joint meetings held during World War II which were held in the House of Representatives chamber and attended by senators.

meet and vote as one for the purpose of passing bills that are eligible to be considered in this way.

There has been only one such joint sitting since 1901. Six bills were passed at a joint sitting in August 1974 after the double dissolution election that year.

Section 50 of the Constitution empowers each House to make "rules and orders" with respect to:

- the mode in which its powers, privileges and immunities may be exercised and upheld; and
- the order and conduct of its business and proceedings either separately or jointly with the other House.

The powers, privileges and immunities of each House, its members and committees are provided under section 49 of the Constitution to be "such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth".

Before the 1974 joint sitting, each House agreed to a set of rules for the joint sitting which included a mechanism for dealing with questions of order by providing how objections to rulings of the chair would be dealt with. Each House also resolved, adopting the language of section 50 of the Constitution, that the joint sitting constituted proceedings in Parliament and that the powers, privileges and immunities applying to a normal sitting of a House would apply to members and senators at the joint sitting:

> "That this Senate resolves that it be a rule and order of the Senate that, at a joint sitting with the House of Representatives, the proceedings are proceedings in Parliament, and that the powers, privileges and immunities of Senators shall, mutatis mutandis, be those relating to a sitting of the Senate."

The House of Representatives agreed to a mirror resolution. In explanation to the House after the resolution had been agreed to, the Attorney-General indicated that its purpose, authorised by section 50 of the Constitution, was to declare that the joint sitting was covered by parliamentary privilege, given that the powers, privileges and immunities of the House of Commons in 1901, inherited by the Houses of the Federal Parliament under section 49 of the Constitution, provided for no such body.

The effect of these resolutions is uncertain. They were not declarations under section 49 of the Constitution of the powers, privileges and immuni-

ties of the Houses because such a declaration could be made only by "the Parliament" which the Constitution defines as comprising the Queen, the Senate and the House of Representatives. Such a declaration would presumably take statutory form, as in 1987 when "the Parliament" made such a declaration in the form of the Parliamentary Privileges Act 1987. An underlying question is whether such a declaration could create a new kind of power, privilege or immunity, exceeding the scope of the powers, privileges and immunities inherited in 1901. In the event, there was no reason to test the effectiveness of the resolutions for the 1974 joint sitting. The High Court decided three cases arising from the joint sittings but none touched on any matter relating to the powers, privileges and immunities of the joint sitting.[2]

Joint meetings held pursuant to statute

The Constitution mentions joint sittings in another context. Under section 15, senators chosen to fill casual vacancies arising in the representation of a state are chosen by a joint sitting of the state houses. This model was followed in the Senate (Representation of Territories) Act 1974 (an Act passed by the 1974 joint sitting and surviving a High Court challenge). The mechanism chosen to fill casual vacancies in the representation of the Australian Capital Territory, then a non-self-governing territory, was a joint sitting of the Senate and the House of Representatives which would vote together to choose a replacement senator. In this role, the Houses functioned as an electoral college, as did the state houses under section 15, rather than exercising the legislative power of the Commonwealth as provided under section 57. Two casual vacancies were filled by this method before the ACT was granted self-government in 1989 and the ACT Legislative Assembly assumed that role.

Before each of the joint meetings to choose ACT senators to fill casual vacancies, in 1981 and 1988, both Houses again agreed to resolutions adopting rules for the joint meeting, including rules for the maintenance of order. Before the 1981 meeting, the Houses also adopted resolutions in similar terms to the resolution agreed to before the 1974 joint sitting but applying specifically to meetings held pursuant to the electoral law, declaring such meetings to be proceedings in Parliament and that the powers, privileges and immunities applying to each of the Houses would apply to their members at the joint meeting. Various laws were also amended, as they had been in 1974,

[2] For a summary of these cases, see Sir Anthony Mason, "The Double Dissolution Cases" in *Australian Constitutional Landmarks*, ed. H.P. Lee and George Winterton, Cambridge University Press, 2003.

to extend their application to joint meetings of this character. These included the Parliamentary Papers Act 1908, the Evidence Act 1905 and the Parliamentary Proceedings Broadcasting Act 1946.

The validity of holding joint meetings pursuant to statute, rather than under the direct authority of the Constitution, was never challenged, although doubts about the constitutionality of the meetings were raised at the time. It is arguable that the power of the legislature does not extend to authorising by statute a form of parliamentary meeting that is reserved for the special circumstances arising out of section 57. The members of the two Houses may be appointed as an electoral college to appoint territory senators but, arguably, that meeting is not a meeting of the Houses as constituted in Chapter 1 of the Constitution, and its proceedings are therefore not proceedings in Parliament, notwithstanding resolutions of the Houses declaring them to be such.

Joint meetings held pursuant to resolution

Aspects of the arrangements for the joint sitting in 1974 and the joint meetings held under the electoral laws in 1981 and 1988 were troubling in theory only. Although the 1988 joint meeting was robust in character, no issue arose at either this or the previous meetings to test the validity of the arrangements that had been agreed to. No further joint sittings or joint meetings pursuant to statute occurred, but during the 1990s and into the new century a practice developed of holding joint meetings pursuant to resolution, for ceremonial purposes.

On the occasion of the centenary of the first meeting of the Commonwealth Parliament in Melbourne on 9 May 1901, the Senate and House of Representatives met together in the Royal Exhibition Buildings in Melbourne. Proceedings followed the order of business set out in the resolutions agreed by each House; namely, addresses by various personages. There was, in effect, no chair of the meeting and at its conclusion the Speaker adjourned the House and the President of the Senate separately adjourned the Senate. It had been an inclusive and harmonious ceremony of national celebration at which best behaviour was on display.

On four other occasions since 1992 the Senate and the House of Representatives have met together by resolution, in the House of Representatives chamber, to receive addresses from foreign heads of state. These meetings were modelled on the practice of the United States of America. Australian Prime Ministers Menzies and Hawke had been invited to

address the US Congress, and the Australian government reciprocated by inviting Presidents George Bush (1992) and Bill Clinton (1996) to address the Australian Parliament, each House of which was then asked to agree to resolutions issuing the invitation and setting out arrangements for the meeting. Prime Minister Howard also addressed Congress in June 2002 and a reciprocal invitation was issued to President George W. Bush for 23 October 2003.

The joint meetings of October 2003

There had been some debate in the Senate over the years about whether the practice should extend to other heads of state but this idea had generally been rejected on the basis that Australia was simply reciprocating US hospitality. Indeed, a motion moved by Senator Brown (Australian Greens, Tasmania), noting the addresses by US Presidents in 1992 and 1996 and favouring the extension of similar invitations to heads of other states "where a special relationship is recognised or a special occasion is to be honoured", was rejected by a vote of 43 to 2 on 16 September 2003, before the October invitations had been mooted. However, the President of the People's Republic of China, Hu Jintao, was to be in Australia on 24 October 2003, the day following the US President, and a similar invitation was issued to President Hu. Neither invitation was without controversy given that popular opinion was divided on Australia's participation with the US in the war in Iraq, and that President Hu did not head a democratic regime. The government had taken parliamentary approval of the invitations for granted, meaning that failure by either House to agree to the resolutions would have been acutely embarrassing.

The resolutions of each House inviting the two presidents and setting out the order of business for the meetings took virtually the same form as the resolutions convening the earlier joint meetings to receive addresses from US Presidents in 1992 and 1996. For the 2003 meetings, the House of Representatives sent messages to the Senate indicating that the House had invited the relevant president to address a meeting of the House, inviting the Senate to meet with it for that purpose and providing for arrangements for the conduct of the meetings. The Speaker of the House of Representatives was to preside over the meetings of the two Houses and the only business to be conducted was the delivery of welcoming remarks by the Prime Minister and Leader of the Opposition, the address by the invited president and the adjournment of the meeting. No senator had a speaking role and the procedures of the House of Representatives were to apply "so far as they [were]

applicable". On receipt of the messages, the Senate also invited the relevant president to address a meeting of the Senate, accepted the invitation of the House to meet with it, and concurred with the resolution of the House in relation to the conduct of the meeting. Amendments moved in the Senate to alter the location of the meeting to the Great Hall in Parliament House, to provide for welcoming remarks by a representative of the Australian Greens and for the presidential address to be followed by five minute contributions and questions from other members and senators were defeated. These amendments signalled that the occasions would not be as free from controversy as those of 1992 and 1996.

Under the terms of the resolutions, these were separate but simultaneous and co-located meetings of the Senate and the House of Representatives, presided over by the Speaker of the House and following House procedures "so far as they [were] applicable". Unlike the Melbourne centenary meeting, however, the device of holding separate meetings was not reinforced by separate adjournments of each House.

Given the ceremonial character of these joint meetings, it is apparent that the possible need to deal with questions of order was dismissed as unlikely and, in any event, was presumed to be covered by the agreement to follow House of Representatives procedures "so far as they [were] applicable". Questions of the interpretation of this phrase had been raised in 1991 before the first such address by a US President early in 1992 but had not been revisited in any systematic fashion. How to resolve a question of order that might arise during a meeting of the Senate presided over by the Speaker of the House of Representatives, and possibly involving members of the House of Representatives voting on what occurred in a meeting of the Senate, remained unaddressed except by the highly problematic agreement that the procedures of the House would apply "so far as they [were] applicable".

During President George W. Bush's address on 23 October 2003, the two Australian Greens senators, Senators Brown and Nettle, both interjected and were ordered by the Speaker to leave the chamber. They did not do so, nor did they leave when approached by the Serjeant-at-Arms, who had been instructed to carry out the Speaker's order. One of their guests in the public gallery also rose in his place and called out. After the address, the Speaker stated that the two senators had committed an offence and called on the Leader of the House, who moved that they be suspended from the service of the House (*sic*), and the Speaker declared the motion carried. It was later claimed that the Speaker had ignored calls for a division, made by the required number of members under the procedures of the House. Under

those procedures, a first offence of this kind carries a suspension of 24 hours and it was subsequently claimed by the Speaker that the effect of the resolution was that Senators Brown and Nettle were held to be excluded from the address by President Hu Jintao the following day.

As President Bush left the chamber but before the meeting was adjourned, he was greeted by various members and senators, and Senator Nettle sought to approach him to present him with a letter from the wife of one of the Australians detained at Guantanamo Bay in Cuba. She was prevented from doing so by an apparent crush of members and senators and in the jostling that followed, a member of the House of Representatives chamber staff was seen to put a hand on her arm or jacket, apparently in an attempt to restrain her. All of this was caught on camera by a US television crew which had filmed the incident from the public gallery. This action in itself was a breach of the rules of the House which require all television footage of the chamber to be taken from the official house monitoring system. The presence of the camera in the gallery was unauthorised and the subject of the filming was also contrary to rules which require cameras to focus on the person speaking and not on peripheral events.

Later that day the Speaker advised the President of the Senate that Senators Brown and Nettle would not be permitted in the House of Representatives chamber for President Hu's address the following day. The President advised the two senators and both Presiding Officers signed a directive to security staff that Senators Brown and Nettle were not to enter the House of Representatives chamber and, if necessary, "preventative force" should be used to stop them. The Speaker also decided that guests of the Australian Greens senators and their House of Representatives colleague would not be allowed into the public gallery, from where they might disrupt proceedings, but should be redirected to the glazed gallery on the upper floor. It later emerged that Chinese officials had expressed concern to the Presiding Officers that there be no embarrassing incidents during or surrounding President Hu's address. On 24 October Chinese security officials joined Australian security officials in the chamber galleries and precincts, as US security officials had the day before. The address by the Chinese President passed without incident.

The aftermath

The Senate referred various aspects of these events to its Committee of Privileges on 29 October 2003. The question of rules for any further joint

meetings had been referred to its Procedure Committee on the previous day. Arrangements for the joint meetings and what transpired were also examined by the Senate Finance and Public Administration Legislation Committee during the course of its supplementary hearings on the Budget estimates on 3 and 4 November 2003. At these hearings, evidence was given by the President of the Senate, officers of the Department of the Senate and the Joint House Department (as it then was) which was responsible for security, as well as by the Minister representing the Prime Minister, and officers of the Department of the Prime Minister and Cabinet which had been responsible for the bulk of the arrangements for the ceremonial meetings. Neither the Senate nor any of its committees could examine the actions of the Speaker or officers of the Department of the House of Representatives, but the Speaker did contribute a submission to the inquiry by the Committee of Privileges, consisting of his statements to the House and his answers to questions asked by members.

Questions

A threshold issue that arises is whether there is any constitutional basis for joint meetings of the Senate and the House of Representatives, other than joint sittings held pursuant to section 57 of the Constitution. On one view, the answer is no, and the reference in section 50 of the Constitution to the order and conduct of the proceedings of a House "either separately or jointly with the other House" is a reference to a joint sitting under section 57, not to any other sort of joint meeting. The opposing view is that section 50 authorises joint meetings of any kind. The issue has never been adjudicated, but if there is no constitutional basis for such a meeting, the question which follows is whether such meetings may nonetheless be "proceedings in Parliament" on some other basis. How does parliamentary privilege apply to such meetings? Can it apply to a joint meeting of the two Houses as distinct from meetings of the individual Houses? Did the acceptance by the Senate of the procedures of the House of Representatives "so far as they [were] applicable" amount to a "waiver" of privilege, or of the Senate's control of its own proceedings, to any extent. Indeed, is such a waiver conceptually, let alone legally, possible?

A further threshold issue is whether a resolution applying the procedures of the House of Representatives to the meeting, necessarily authorised the powers of the House to be applied to a meeting of the Senate, thereby authorising the Speaker to "name" apparently disorderly senators and call for a

motion to be moved to suspend the senators "from the service of the House" (*sic*), which also had the effect of suspending them from a meeting of the Senate without a vote of the Senate. On what basis may one House enforce orders against the members of another House who are participating in a meeting of their own House?

There is also a difficulty for the Senate in investigating what might have happened at the joint meeting because of the jurisdictional limits which prevent one House from inquiring into the affairs of another. While each House is the guardian of its own powers, privileges and immunities, it is impossible to determine how the powers, privileges and immunities of the Houses interrelate when they hold simultaneous meetings in one location.

Both Senate committees inquiring into the joint meetings came to the same conclusion. The answers were impossible to determine, but the solution was clear: there should be no such joint meetings in the future. If an invitation were to be issued to a head of state to address "the Parliament", in a parliamentary setting, then an invitation should be issued by the House of Representatives alone, in effect, by the government which controls that House. Senators could be invited to attend, but there would be no concurrent meeting of the Senate and their status as guests of the House and the authority of the Speaker over the proceedings would be clear. The Senate has yet to consider the committees' reports.

The final question that arises is "why does it matter?" A practical example may provide the best illustration. After the joint meetings, a story was circulated that the exclusion of the two Greens senators had the effect of excluding one of them from subsequent meetings of the Senate, because he had earlier in the year been suspended from a sitting of the Senate and, under Senate rules, a second offence in a year attracts a seven day suspension. It could have been easier for the government to obtain a Senate majority for the passage of legislation. No attempt was made to raise this argument in the Senate, probably because of the enormity of its implications. If, during the period that one or two senators were suspended by the means described above, the Senate passed a contentious bill that would otherwise have been defeated by the votes of those senators, the consequences would be self-evidently serious. Such a situation would certainly have resulted in a legal challenge, and the High Court, however reluctantly, would have been called upon to determine these difficult questions.

SUPPLY MOTIONS AND BILLS IN THE HOUSE OF COMMONS: THE IMPACT OF RESOURCE ACCOUNTING AND BUDGETING

COLIN LEE
Clerk of Supply, United Kingdom House of Commons

Background

Supply procedure is the method by which the House of Commons makes provision for the statutory authorisation of ordinary annual expenditure by the Government and by certain non-Government bodies, including the House of Commons itself.[1] For over a century, the form of the motions authorising such expenditure and of Supply Bills changed very little. Such a motion and Bill from the 1890s were almost indistinguishable from their counterparts in the 1990s, except in the scope and extent of the expenditure to be authorised. Changes in Supply procedure during the twentieth century were largely concerned with limiting the duration of proceedings on these motions and Bills and with the abolition (in 1966) of the Committees of Supply and of Ways and Means. However, the period since 2001 has seen substantial changes in the content of Supply motions and Bills, principally reflecting a transition from a solely cash-based system of parliamentary control to a dual system of control, both of the cash expended in a particular year and of the resources attributed to that year using the conventions of accruals-based accounting.

Historically, Supply proceedings provided an opportunity for Members of the House to scrutinise—and very occasionally to reduce or even reject—Government expenditure proposals set out in the Estimates. The growth in Government control in the House and the development of other methods of scrutinising expenditure and administration—most notably through select committees—has reduced the importance of Supply proceedings in the House's business. Opportunities for debate on motions authorising expenditure and the Bills arising from such motions have gradually been restricted.

[1] For a description of expenditure that is excluded from the requirement for annual statutory authorisation, see First Report from the Procedure Committee, *Estimates and Appropriation Procedure*, HC (2003–04) 393, p 39, n 2.

Since 1982 almost all debates on Supply motions have taken place on 'Estimates days', of which there are three each session, when the Estimates to be taken separately and the subject of debate are chosen by the Liaison Committee, composed of the chairmen of select committees.[2] All remaining amounts requested in Estimates are authorised in 'roll-up' motions, the questions on which are put without debate and without possibility of amendment on three occasions during each session.[3] All Supply motions when agreed to serve as founding resolutions for Supply Bills—Consolidated Fund and Appropriation Bills—which pass through the House without any possibility of debate or amendment.[4]

Despite the progressive reduction in debate on Supply proceedings throughout the twentieth century, their constitutional function remained unchanged. Money could not be released from what is in effect the Government's bank account—the Consolidated Fund—without the authorisation first of a resolution of the House of Commons and then of ensuing Supply legislation. The Appropriation Bill, passed at the conclusion of a session's Supply proceedings, gave effect to detailed parliamentary control over expenditure by appropriating all of the sums voted during a session for each financial year to specific services identified in the Estimates.

Proposals for resource accounting and budgeting and resource-based supply

In the November 1993 Budget the Government announced proposals for a change from cash to accruals for both accounting and budgeting in Government departments. Accounting on an accruals basis means that costs are recognised in the accounts at the time they are incurred—when goods or services are received, or assets consumed—rather than transactions being recorded when cash changes hands. The aim of the changes was to encourage departments to improve the use of their resources by putting emphasis on what was produced rather than what was available to spend; capital

[2] Standing Order Nos 54 and 145(3); *Erskine May: Parliamentary Practice* (23rd Edition, 2004 (hereafter *Erskine May*)), pp 873–875. For debates on Supply motions other than on Estimates days, see *ibid*, pp 876–877.

[3] Standing Order No 55; *Erskine May*, pp 875–876.

[4] Standing Order No 56. Debates on Third Reading were permitted until 1966; debates on Second Reading were permitted until 1982. Since that year, provision has existed for both questions to be put forthwith. Between 1982 and 1995 there was an all-night adjournment debate on the day of Second Reading which replaced the earlier provision for debate on Second Reading itself. All Supply Bills also pass through the Lords without debate: *Erskine May*, pp 568, 880.

expenditure would be more realistically accounted for, reflecting its opportunity cost and consumption over time; assets and liabilities would be more transparently reported.[5]

The initial Government consultation in 1994 focused on the processes after and before parliamentary authorisation, namely the changes to the nature of departmental accounts to be issued after the conclusion of a financial year and the ways in which government spending plans would be developed in resource terms. The effects on the way in which Parliament might approve the plans which were subsequently to be accounted for were only mentioned briefly.[6] However, the overall proposals would take some years to develop and implement and the Treasury made it clear that select committees of the House of Commons would be consulted about the proposed changes.[7]

Prior to the introduction of Resource Accounting and Budgeting, the Estimates were divided into Classes, broadly aligned to the main Government departments, and these Classes were in turn divided into Votes, of which there were around 100 in total, which to some extent reflected programmes or themes of expenditure. Thus Class VI (Department of the Environment) had eight Votes, with titles such as 'Housing and construction', 'Regeneration and countryside and wildlife', 'Environmental protection and water' and 'Local government and planning'.[8] Any Vote could be recommended for separate debate on an Estimates day. The motion for such a debate approving the requested expenditure set out the extended description of the services covered by the vote (the 'ambit') and could then be the subject of an amendment to reduce the cash to be allocated to a specified service within that ambit.[9]

The Government proposed to replace the system of Votes in Classes with single Estimates for each department presenting accounts, with those Estimates being the subject of dual authorisation for both the resources requested by that department and the cash to be released from the Consolidated Fund to underpin the resource requirement. Under the 1995

[5] *Better Accounting for the Taxpayer's Money: Resource Accounting and Budgeting in Government: A Consultation Paper*, HM Treasury, July 1994, Cm 2626, pp vii–viii.

[6] *Ibid*, paras 3.34–3.36.

[7] *Ibid*, p vii.

[8] *Supply Estimates 1997–98: Main Estimates*, HM Treasury, March 1997, HC (1996–97) 335, pp 99–120.

[9] Sixth Report from the Procedure Committee, *Procedure for Debate on the Government's Expenditure Plans*, HC (1998–99) 295, paras 19–21; Journal of the House of Commons (hereafter CJ) (1994–95) 449.

proposals, for many departments there would be only a single resource total to be voted, and for all departments there would be a single total of the annual cash implications of those resources.[10] This would have implied a marked reduction in the level of detail at which formal parliamentary control was exercised, making it possible for departments to switch expenditure between very different areas of expenditure without the need for additional parliamentary authorisation. That concern led the Comptroller and Auditor General to suggest that, where departments had several large and distinct programmes, resources ought to be voted separately at programme level.[11]

Partly in response to such concerns, the Treasury decided in 1997 that Estimates would be divided into 'Requests for Resources' reflecting functions or objectives so that "departments will request resource provision from Parliament at broadly the same level as existing Votes".[12] When these proposals were considered by the Procedure Committee in 1997–98, it was envisaged in a memorandum submitted by the then Clerk of the House that any Request for Resources would be liable to be chosen for a separate vote, with an accompanying but separate motion for the total cash requirement for the Estimate as a whole.[13] However, following further discussions with the Clerks, the Treasury proposed in 1999 that there should be a single Supply motion for any Estimate selected for debate, authorising both the resources required for all of the Requests for Resources within the Estimate taken together and the net cash requirement for the Estimate as a whole.[14] The motions relating to particular Estimates chosen for debate under the new arrangements would not set out the description of the services covered as had been the case under the old arrangements. The ambits listing the functions to be resourced were to be linked to individual Requests for Resources, which were not to be separately voted.[15]

[10] *Better Accounting for the Taxpayer's Money: The Government's Proposals*, HM Treasury, July 1995, Cm 2929, paras 2.8–2.13.

[11] *Resource Accounting and Budgeting in Government: The White Paper Proposals*, Report by the Comptroller and Auditor General, April 1996, HC (1995–96) 334. See also Ninth Report from the Committee of Public Accounts, *Resource Accounting and Proposals for a Resource-based System of Supply*, HC (1996–97) 167, para 47.

[12] Minutes of Evidence taken before the Treasury Committee on Thursday 4 December 1997, *Resource Accounting and Budgeting*, HC (1997–98) 410, p 15.

[13] Second Report from the Procedure Committee, *Resource Accounting and Budgeting*, HC (1997–98) 438, p 77.

[14] Minutes of Evidence taken before the Treasury Committee on Tuesday 7 March 2000, *Resource Accounting and Budgeting*, HC (1999–2000) 308-i, pp 111, 121–122.

[15] *Ibid*, pp 108–109.

Parliament would continue to exercise formal control at the level of Requests for Resources by means of the sessional Appropriation Bill. Under the new system, it was envisaged that these Bills would still perform their long-standing functions of allocating all amounts authorised during the session to particular services in particular financial years, and limiting the purposes for which such amounts could be expended by repeating the ambits set out in the Estimates. In this way, the Appropriation Act would continue both to establish the limits in relation to which accounts are audited and to underpin the constitutional requirement that money be spent only for the purposes authorised by Parliament.[16] In 1999, the Treasury set out proposals for the form of an Appropriation Bill to appropriate both the resources for each Request for Resources and the accompanying cash requirement for each Estimate. The Clerks were consulted on these proposals, not least because the Clerk of Supply would remain responsible for the preparation of such Bills.[17] The proposed new format for Appropriation Bills was subsequently endorsed by the Liaison Committee.[18]

The Government Resources and Accounts Act 2000 and the implementation of resource-based supply

The Government recognised that new legislation would be required to create a new framework for central Government accounts and to reflect a system for the authorisation of resources parallel to that for the authorisation of cash, and initially envisaged consulting the relevant select committees on such legislation in draft.[19] In fact, the Government Resources and Accounts Bill that was introduced in November 1999 had not been available in draft. Like the legislation that it in part amended and in part superseded (most notably the Exchequer and Audit Departments Act 1866) and the Government's original proposals, the Bill concentrated upon the preparation and scrutiny of accounts, rather than the process of parliamentary authorisation itself. Criticism during the Second Reading concentrated on the inadequacy of consultation, the scope of public spending to be subject to Resource

16 HC (2003–04) 393, pp 42, 43.

17 HC (1999–2000) 308–i, pp 111, 119–121.

18 Third Report from the Liaison Committee, *Resource Accounting and Budgeting*, HC (1999–2000) 841, para 10.

19 Eighth Special Report from the Treasury Committee, *The New Fiscal Framework and the Comprehensive Spending Review: The Government's Response to the Eighth Report of the Committee in Session 1997–98*, HC (1997–98) 855, p xxi; HC (1998–99) 295, pp 69, 90–94; HC (1999–2000) 308–i, p 113.

Accounting and concerns about the effects of the Bill on the position of the Comptroller and Auditor General.[20]

It was only in Standing Committee that the consequences of Resource Accounting for Supply were made explicit in the Bill, by an amendment to require the Comptroller and Auditor General to satisfy himself "that resources authorised by Parliament to be used have been used for the purposes in relation to which the use was authorised".[21] The "use" of resources was defined as meaning "their expenditure, consumption or reduction in value". In effect, because the Comptroller and Auditor General would audit accounts for judgments on intangible matters such as the depreciation of assets, Parliament would be required to "authorise" judgments about the value of such intangibles.[22] It is notable that, since the introduction of Resource Accounting, a considerable proportion of 'Excess Votes'—the process whereby the House provides for retrospective authorisation in cases where limits set in Appropriation Acts are shown to have been exceeded in audited accounts—have arisen from changes in the valuation of assets.[23]

The Bill also translated the parliamentary control of Government income that was to be retained by Government departments rather than being surrendered to the Consolidated Fund into the language of resources. Such retained income, known as 'appropriations in aid', was also to be accounted for in accruals terms, so that income was to be recognised in accounts at the time it became due rather than at the time cash was received (with an accompanying capacity to write off bad debts).[24] The retention of Government income had been subject to parliamentary control since the Public Accounts and Charges Act 1891, but the new provision made explicit for the first time the established practice since the 1891 Act, that any retention authorised by the Treasury was subject to limits set in an Appropriation Act.[25] Two types of appropriations in aid were to be controlled in future: 'operating appropriations in aid', which comprised income arising from the activities described within a particular Request for Resources, and 'non-operating appropriations in aid', which comprised capital-related receipts such as rental income.[26]

[20] HC Deb, 6 December 1999, cols 572–655.

[21] Stg Co Deb (1999–2000), Stg Co A, 13 January 2000, cols 133–135; Government Resources and Accounts Act 2000, c 20, section 6(1).

[22] *Ibid*, section 27; Stg Co Deb (1999–2000), Stg Co A, 13 January 2000, col 135.

[23] *Supply Estimates 2002–03: Statement of Excesses*, HM Treasury, March 2004, HC (2003–04) 351.

[24] HC (1997–98) 855, pp xx, xxv–xxvii.

[25] Government Resources and Accounts Act 2000, section 2.

[26] HC (1997–98) 855, p xxv.

The Government Resources and Accounts Bill received Royal Assent in July 2000 and Resource-based Supply was implemented with effect from financial year 2001–02. The first Resource-based Supply motions, which gave advanced authorisation of amounts for the early part of that financial year (the 'Votes on Account'), were passed on 15 March 2001. A simplified form of the traditional method of authorising cash was adopted—"that a sum, not exceeding £508,690,000, be granted to Her Majesty out of the Consolidated Fund"—and resources were authorised in terms which mirrored the provisions of the Government Resources and Accounts Act 2000: "That resources, not exceeding £410,620,000, be authorised … for use".[27] The first Resource-based Appropriation Bill was passed in May 2001.[28]

The first amendment to a Resource-based Supply motion was to a motion considered on 27 June 2002. The form of the amendment reflected the fundamental principle of financial procedure that the Crown's recommendation reflected in the content of the Estimates fixes the upper limit of a charge, so that any amendment must be expressed in the form of a proposal for a reduction. The amendment sought to reduce resources in relation to a specified service within the ambit of a particular Request for Resources, thus effectively translating into Resource-based Supply the level of detail to which amendments could relate under cash-based Supply.[29] The Treasury had initially suggested that amendments should seek both to reduce resources and to encapsulate the cash consequences of the change in resources, but the Procedure Committee had concluded that such a requirement would place an unacceptable burden upon Members.[30]

The frequency of Appropriation Bills and other changes agreed in 2004

The changes introduced in 2001–02 were designed in part to improve the effectiveness of Government accounting. The same objective led the Treasury to propose a further change in parliamentary practice in

[27] CJ (2000–01) 229.

[28] *Ibid*, 355, 366; Appropriation Act 2001, c 8. In the following Session, the Bill which became the Appropriation Act 2002 failed to include the new column required to modify limits on non-operating appropriations in aid. Because the error was not detected until after some resource accounts affected had been audited and certified, a new Supply motion and rectifying legislation were needed in the new Session: HC Deb, 3 December 2002, cols 865–879; Appropriation (No. 2) Act 2002, c 44; *Erskine May*, p 879, n 2.

[29] CJ (2001–02) 642–643; *Erskine May*, pp 857, 874.

[30] HC (1997–98) 438, para 27.

September 2003. The Treasury and the National Audit Office (NAO)—the parliamentary audit body headed by the Comptroller and Auditor General—had a shared interest in promoting the 'faster closing' of accounts, ensuring that accounts are presented to the NAO and then signed, certified and laid before the House as soon as possible after the end of the financial year to which they relate. The Treasury identified a barrier to faster closing imposed by the House's procedure for appropriation.[31]

The exercise of legislative control over the purposes and extent of public expenditure principally through an annual Appropriation Act has represented a cornerstone of the power of the House of Commons in financial matters since at least 1689. A key principle underpinning the Supply proceedings of the House is that Supply resolutions (even when given initial statutory effect through a Consolidated Fund Act) are effectively provisional in nature and must be validated by an Appropriation Act passed during the same session as those resolutions. By long-standing practice, the passage of an Appropriation Act is usually reserved for the close of a session's Supply proceedings, most commonly in July. There have been occasions when more than one Appropriation Bill has been passed in a single session, but these have been due to exceptional circumstances, most notably when further Supply has been authorised after the conclusion of the House's normal sessional Supply proceedings or when the usual cycle of Supply proceedings (beginning in December and concluding in July) has been interrupted by a General Election.[32]

The effect of this practice has been that additional expenditure provisionally authorised in December and March for the financial year ending in the latter month has not been validated for the purposes of audit until mid-July, sometimes very shortly before the Commons rises for the summer adjournment. To enable the accounts of the departments concerned to be prepared and to be certified and laid before the House much more promptly after the conclusion of the relevant financial year, the Treasury proposed the introduction of a second Appropriation Bill in March each year appropriating Supply for the financial year about to be completed and for the year before that which was the subject of Excess Votes.[33] The Chief Secretary to the Treasury set out his detailed proposals in a submission to the relevant select committees in January 2004. The Committee of Public Accounts supported

[31] HC (2003–04) 393, pp 16–17.
[32] *Ibid*, pp 43–44, 53, 55.
[33] *Ibid*, pp 14–15.

the proposal, considering that "accountability will benefit from resources accounts that can be available earlier".[34] The Procedure Committee considered the case for the change in the light of a memorandum from the Clerk Assistant of the House of Commons.[35]

That memorandum identified two underlying historical reasons for the practice of unified sessional appropriation. Until 1966 Commons procedure provided for the twin track authorisation of individual items of expenditure—via the Committee of Supply—and of the funding of such expenditure by grants from the Consolidated Fund and loans—via the Committee of Ways and Means. When these processes using two types of Committee of the whole House were distinct, appropriation awaited the conclusion of both sets of proceedings and ensured that the total sums granted could be reconciled with the individual items of expenditure authorised. The other reason was that reserving appropriation until towards the end of the session was seen as a check upon the premature dissolution or prorogation of Parliament by the executive. The Clerk Assistant concluded that, insofar as these reasons remained relevant, the necessary formal safeguards would be maintained with two Appropriations Bill during a session, principally because the advance provisional authorisation for expenditure in the financial year starting in April given early in the session would remain to be appropriated in the second, summer, Appropriation Bill. The memorandum also endorsed the benefits of two Appropriation Bills identified by the Treasury: facilitating faster closing, providing earlier statutory authorisation for expenditure resting on the sole authority of the Appropriation Act and clarifying the distinct treatment of different financial years in the appropriation process.[36]

The Procedure Committee supported the proposal in a Report published in early March 2004, which also recommended that the Treasury publish an annual list to demonstrate that the main underlying objective—earlier presentation of departmental accounts—was being achieved.[37] The Government accepted this last recommendation, and the Report, and thus the proposal, was approved by the House after a short debate on 12 May 2004.[38] The new arrangements will be implemented with effect from Session 2004–05 and, as

[34] *Ibid*, p 56.
[35] *Ibid*, pp 38–55.
[36] *Ibid*, pp 43–47, 53–54.
[37] *Ibid*, paras 4–11.
[38] First Special Report from the Procedure Committee, *Estimates and Appropriation Procedure: The Government's Response to the Committee's First Report*, HC (2003–04) 576, p 1; HC Deb, 12 May 2004, cols 432–439.

was noted during the debate, there will be interest in whether the Government's stated aim to publish all accounts for 2005–06 by July 2006 will be fulfilled.[39]

The same Report from the Procedure Committee and resolution of the House also endorsed another departure from a long-standing practice, whereby future Appropriation Bills may reduce limits on expenditure set in a previous Appropriation Act when functions are transferred from one Department to another or when an increase in one Request for Resources is financed by a reduction in another Request for Resources within the same Estimate.[40] Both the Treasury and the Procedure Committee noted that reductions to previous limits set in an Appropriation Act were only being agreed to in these narrow circumstances; substantive reductions in expenditure are not within the scope of the change.[41]

The Report and resolution also endorsed a further change to the content of Supply motions proposed in the Clerk Assistant's memorandum to the Procedure Committee. Hitherto, these motions have referred only to limits on net expenditure. It has been considered satisfactory for the parliamentary approval of gross expenditure, achieved by setting limits on income that may be retained and used by departments, to be reserved for the passage of the Appropriation Bill.[42] Because the requirement for statutory authorisation of such limits in an Appropriation Act is now an explicit requirement under section 2 of the Government Resources and Accounts Act 2000, the Clerk Assistant suggested that it was desirable for the motions to make reference to those limits. This gives clearer effect to the general rule of the House that bills brought in upon resolutions should not contain substantive content that is not authorised by those resolutions.[43] At the conclusion of debate on 12 May 2004, the House agreed changes to the relevant Standing Order which, in part, facilitated this modification to Supply motions, a modification which had effect for the motions introduced in June 2004 to authorise the Main Estimates for 2004–05.[44]

[39] HC (2003–04) 393, pp 16, 34–35; HC Deb, 12 May 2004, col 434.
[40] HC (2003–04) 393, pp 17–20, 35, 47–48; HC Deb, 12 May 2004, cols 432, 434.
[41] HC (2003–04) 393, para 16 and p 35.
[42] *Ibid*, pp 48–50; HC (1997-98) 438, p 77.
[43] HC (2003–04) 393, pp 49–50; *Erskine May*, p 907.
[44] Standing Order No. 55; HC Deb, 12 May 2004, cols 439–440; Votes and Proceedings, 24 June 2004.

Concluding remarks

Compared with the changes in accounting and budgeting practice within Government, the changes to parliamentary practice resulting from Resource Accounting and Budgeting have been minor and largely consequential in nature. The changes have been Treasury-driven. Although the final form of Resource-based Supply has reflected comments and proposals from the relevant select committees and from the Comptroller and Auditor General, parliamentary involvement has been limited and reactive. As the Clerk of the House observes in the Preface to the 2004 edition of Erskine May, "the full implications of this shift from the hard reality of cash to the more shifting sand of accountancy conventions have yet to be fully appreciated".[45]

The changes have modernised the formal mechanisms of parliamentary control of public expenditure and its purposes, but have not necessarily closed the gap between the theory and the practice of parliamentary control of expenditure. For some, this is a cause of frustration. One Member of the House has expressed the hope that—

> "Treasury Ministers and the House authorities … will reflect on how the House can in future give a critical examination of the Estimates … because otherwise, it seems to me, we just reinforce the charade of this House of Commons … rubber-stamping tablets of stone handed down by the executive of the day."[46]

Whether or not this view is widely shared, the tablets of stone are changing. Following the process of consultation leading to the latest changes to Supply procedure, the Treasury has agreed to prepare a template for the Introduction to each Estimate and has also agreed that all departments should submit an 'Estimates memorandum' for the appropriate departmentally-related select committee.[47] A dialogue has been initiated between the Government and select committees about the additional information to be provided in this way.[48] The shortening of the period between the authorisation of Estimates and the publication of the accounts, which is facilitated by the switch to two Appropriation Bills each session, may assist parliamentarians and others to scrutinise programmes from planning at one end to outcomes at the other. A final change resulting from the recent process and

[45] *Erskine May*, p ix.
[46] Andrew Mackinlay MP, HC Deb, 3 December 2002, col 871.
[47] HC (2003–04) 393, paras 23–26 and pp 33–34.
[48] HC Deb, 12 May 2004, cols 432–433, 438–439.

the Report of the Procedure Committee may also assist select committee scrutiny: the minimum period between the laying of Estimates and their authorisation prescribed in the relevant Standing Order has been increased form eight days to fourteen days.[49] The onus is now to some extent on select committees to determine the extent to which the process of authorising expenditure constitutes a rubber stamp.

[49] HC (2003–04) 393, paras 17–21 and pp 32, 50, 57.

E-DEMOCRACY AND THE WORK OF PARLIAMENTARY COMMITTEES[1]

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Introduction

In the past couple of decades, the myriad technological advances that have created what some call the 'information society' have transformed society worldwide. Citizens today are accustomed to having instantaneous access to information, the ability to send messages anywhere to anyone and the ability to converse electronically with a multitude of institutions. Naturally, citizens expect similar connectivity to, and responsiveness from, democratic institutions. This expectation has give rise to the expression 'e-democracy'.

Parliaments, like other institutions, have generally kept pace with evolving technology. At a minimum, many parliaments have web sites that contain general information about the parliament, its members and the work it performs. Some have even established mechanisms that allow citizens to interact directly with parliamentarians. The challenge now is to further harness that technology to greatest effect without undermining the role of parliamentarians. What does this mean for parliaments and their elected representatives? What does this mean for clerks and secretaries-general charged with the administration of these democratic institutions? Several jurisdictions, notably in North America and Europe, have experimented with new technology applications in a parliamentary context.

Historically, a hallmark of our profession has been our ability to anticipate events and the needs and demands of parliamentarians. It can be argued that at a time of declining voter participation and increasing cynicism towards political and parliamentary institutions, there has rarely been a more appropriate time for us to position our respective institutions so that parliamentarians may have full access to all the tools they need to respond better to the demands of citizens.

However, before this can be done, the expectations of citizens must be correctly identified. The needs and expectations of parliamentarians must

[1] This article is a revised version of a paper presented at the October 2003 meeting of the Association of Secretaries General of Parliaments in Geneva.

also be known. Tools must be identified. The most appropriate forums for meeting parliamentarian and citizen expectations must be found. Preferred conditions for the successful and rewarding use of technology in a parliamentary context must be set out.

Committees are an integral part of the parliamentary system, and many politicians find that committee work is one of the most satisfying and fulfilling parts of their jobs. Committees are more collegial and informal that the main Chamber itself, and the atmosphere is often less partisan and adversarial. They provide opportunities to make constructive contributions to the legislative process and to the discussion of public issues, as well as to scrutinise government and administrative actions. At the same time, committees allow citizens to participate in the legislative process as witnesses or by making representations; they can also allow politicians to represent actively the concerns and interests of their constituents. This paper will therefore review the issues raised above in reference to the experience of House of Commons committees, with particular reference to 'e-consultation'—a series of techniques and mechanisms that harness the powers of new technology to provide stakeholder inputs into decision-making.

What do citizens want from committees?

Citizen expectations can be said to fall into three broad categories: the desire for information, the desire to be consulted and, thirdly, the desire to engage in dialogue with parliamentarians and with each other.

Information

The public expects an acceptable level of online information. This means having a committee web site that is up-to-date, well designed and easy to use. The site must have excellent search capabilities so as to be easily accessible by the average citizen and even by schoolchildren. In our experience, speedy access to committee information, including membership, minutes of proceedings, transcripts, official reports and studies, reference material, links to pertinent government departments or studies and e-mail addresses and other contact information is essential. Without such information, meaningful consultation is difficult and productive dialogue virtually impossible.

It is likely that in the not too distant future, on-line multimedia access to committee meetings will also be expected. The public should soon be able to view a broadcast, replay a broadcast, call up the transcript, cross-reference to statements made in the main Chamber by parliamentarians and further drill

down on any issue of interest. In other words, the possibilities are wide—and expensive.

Consultation

Consultation is not a new concept or idea brought about by technology. Traditionally, committees have consulted a wide range of citizens as part of their decision-making process. They regularly invite private individuals, experts, representatives of groups and organisations, lobbyists, public servants and ministers to appear before them in order to elicit information relevant to their current work.

Committees select witnesses largely on the basis of two criteria: the type of study and the amount of time available. When committees are not able to hear the testimony of all of those who wish to appear, they may ask potential witnesses to submit written briefs instead of testifying in person.

Committees hear from witnesses either in Ottawa (in person or through video tele-conferencing), or by travelling to regions where the witnesses reside.

Over time, however, we have seen a trend toward committees hearing selectively, in Ottawa, from what some call the 'usual suspects'—the experts, lobbyists, groups and other 'professional' witnesses, but less and less from the general public.

Now technology, under the right conditions, has opened up new possibilities for citizens. It is fast and easy to send e-mail to a committee. Citizens expect timely responses. They expect acknowledgement of the views they have put forward. They expect the committee to recognise their contribution. Most importantly, they want to be heard.

Dialogue

Traditionally, after the presentation of the brief or the witness's opening statement, the members of the committee may ask questions. Many committees have agreed to limitations on the amount of time available to each member (and including the witness's response) and have also agreed on the order in which members will ask questions. For many witnesses, this can be a distinctly unsatisfying experience that does not approach their view of what a productive dialogue ought to be. The interaction is stilted and truncated.

For this reason, many committees have in recent years varied the format by holding town hall or round table type hearings, where witnesses hold a real dialogue not only with committee members, but with each other as well. Yet because of the general emphasis on the 'usual suspects', some argue that

the general public remains suspicious of the outcomes.

Technology has been used to enhance this approach, with consultation and dialogue taking place via the Internet. Public expectations are great, with some citizens believing that because access is easy and views are easily shared, decision-making ought to be shared also. As we will see, it is this expectation that worries many parliamentarians.

What do parliamentarians want from committees?

Although the benefits of new technology might elicit a mixed response from parliamentarians flooded with e-mail, it would be difficult to find one who in committee does not want to have a more meaningful role in the legislative process, to be able to represent actively the concerns and interests of constituents, to influence the political decision-making process, and to have recognition and credit for time invested in committee work. In pursuit of these objectives parliamentarians are open to the use of a variety of tools. They do not see it as a case of either/or. Indeed in some cases—agriculture and fisheries come to mind—parliamentarians have a distinct and well-founded preference for travelling to the regions and meeting face to face with citizens. The underlying objective of many Chairs and members is to right the balance of power between the executive and legislative branches of government. By redefining the role of committees *vis-à-vis* the government and the public, parliamentarians also hope to increase their legitimacy.

Yet what parliamentarians do not want is just as important. With very few exceptions, they do not want technology to lead to direct democracy—mob rule, as some would call it—or endless referendums. They also fear being flooded with submissions they cannot process in a reasonable time—in other words, they want to remain in control of the consultative process. They care deeply about and wish for citizen engagement, but not at the expense of their own role and duty as elected officials. After all, they recognise that the greatest consultation of all—elections—takes place regularly to hold them accountable for their decisions and actions.

What new tools are available?

The traditional means of committee consultation and dialogue have already been described: hearings, witnesses, written submissions, supplemented by travel or video tele-conferencing where circumstances warrant.

Today, most communications outside of these methods occur via the

Internet. E-mail is widely used as an administrative and communication tool. But in the context of committee consultation and dialogue, the newest stable of tools, of which e-mail is but one, is collectively referred to as e-consultation.

E-consultation borrows from the traditional, and builds upon it; a study commissioned by the House of Commons identified as many as eight e-consultation tools:

- *E-mail* can provide any e-consultation activity with a wide array of qualitative input.
- A *document solicitation mechanism* allows a participant to work through a series of steps on a web site before submitting a document. An electronic document is attached or uploaded through the web site and received by the consultation point of contact, in our case the committee clerk. It is also possible to perform screening and require registration before a submission is made in this manner.
- An *automated submission process* uses a series of web forms to allow a participant to make a contribution to an e-consultation. It moves beyond e-mail and electronic documents by providing a structured approach to the qualitative data input (highlighting of key words to filter inappropriate submissions or to facilitate analysis of particular issues).
- *On-line opinion polls* are the electronic cousin of the traditional public opinion polls conducted by market research firms. Generally a series of questions are provided with predetermined answer options, which allows results to be tabulated and analysed, although open-ended questions can also be used.
- *Issue polling* involves outlining an issue through information sources, such as a background document and then asking the participant to provide comments in a structured format.
- A *consultation workbook* is an interactive tool that allows participants to work through an issue, identifying pros and cons, and to make choices based on the impartial information provided to them.
- *Discussion boards* or newsgroups are electronic forums where questions or ideas can be posted and responded to by interested persons.
- *Discussion forums* use different forms of chat technologies to allow participants to discuss ideas on-line in real time. Structure can range from moderated question and answer sessions to completely open interaction.

These tools provide increased access, are modern and relevant, flexible, participative, informative, can accommodate vast numbers of participants (costs may vary), can be replicated from committee to committee and, if properly designed, can provide a committee with actionable results, often in real time.

What method under what conditions?

There is no unique, correct way for a parliamentary committee to approach consultation and dialogue with citizens. Depending on the target audience, the timeline, the budget and the study, any number of combinations and permutations are possible. Committees should ask themselves whether the issue on which consultation and dialogue are desired is of specialised or general interest, whether participation is expected to be high or low, whether they are seeking qualitative or quantitative inputs, whether the issue is contentious or not, whether the audience is largely the general public, experts or a mixture, whether they are seeking opinions or deliberation, and whether it is a short or long term exercise.

The House of Commons Experience

The Subcommittee on Persons with Disabilities conducted a successful pilot e-consultation in 2003. There was broad agreement that the Canada Pension Plan Disability Program, a program designed to provide financial assistance to disabled Canadians, was not working as it should. Led by its Chair, the Subcommittee decided to examine the issue using every available means, including e-consultation tools. Three such tools—e-mail, issue polling and document solicitation (share your story and proposed solutions)—were used. The Subcommittee deemed it essential to tie on-line components to the traditional off-line study methods. It likewise found that pre-existing broad consensuses on the issue being studied, as well as ongoing and active political support were critical success factors. It is interesting to note that the parliamentarians heavily promoted this particular e-consultation exercise. The Subcommittee also used common marketing techniques, such as "e-mail-to-a-friend" and sending updates to subscribers to the site.

Other critical success factors included bringing all relevant administrative partners together at the outset, allowing adequate time for planning and development of the e-consultation exercise, establishing appropriate project management mechanisms and of course ensuring adequate financing. The

pilot cost approximately $250,000 CDN to design, launch, e-consult, analyse and report, not counting internal staff costs which, if tallied, would probably be equivalent to or exceed the actual cash outlay. A major component of staff cost in this kind of activity is related to analysis of qualitative data, a very labour-intensive process that is difficult to automate.

Despite the relatively high costs and major time commitment, members of the Subcommittee felt that e-consultation was a positive experience, giving citizens unprecedented access to them as they conducted their study. They also concluded in their report that e-consultation represents "the next step in the path towards greater participation by citizens in Canada's democracy."

Other considerations

Several key issues must be addressed in any e-consultation. Participants often want assurances that their privacy will be safeguarded when they first register on the site—system and e-consultation security are therefore essential. In a similar vein, parliamentary privilege limitations must be clearly indicated by way of a disclaimer to participants, be they citizens or parliamentarians. The stability of the technical infrastructure must be tested before e-consultation begins. Balanced information must be presented to participants. Sufficient time must be allowed for the process to run its course and not too much time should be expected of participants. Access should be fast and easy. Participants and parliamentarians need to know at the outset how results will be used. Ownership and recognition of contributions should be as transparent as possible. Experienced moderators must be used if real-time chats or discussion board practices are contemplated. Finally, there must be an exit strategy to bring the e-consultation to a close and make that fact clear on the web site. This may include updating the text of the website, shutting down the consultation tools and contacting consultation participants and subscribers to inform them of the results of the committee study.

Next Steps

Web site redesign and e-consultation readiness

A key lesson learned from the Subcommittee's experience was that it is critical to have comprehensive information available about the committee, its work and Parliament as a starting point for any e-consultation project. The current House of Commons committee web sites provide basic information about the work of committees, but only limited means for the public to gain

detailed information about the committee's members, activities, studies and reports and how to interact effectively with the committee and its members.

A number of steps have been taken to allow us to provide more information about committee work and to position ourselves to meet future committee requests for e-consultation.

First, to ensure that all committees have more comprehensive information-based web sites, a project to redesign the current web sites was undertaken in June 2003. A multidisciplinary working group of House of Commons and Library of Parliament employees was established to redesign the current web sites and to plan for future enhancements. The new sites, to be launched at the start of the 38th Parliament, will include more comprehensive information about committees, their members, their mandates, their meetings, and their work. New features of the site will include a subscription function, allowing users to subscribe to receive e-mail notification about committee meetings and work; a witness search function, enabling users to search for information about witnesses who have appeared before committees by committee, by study, and by witness name or organisation; a meeting search function giving users the ability to search for meeting information by study; and an e-mail-this-page function, allowing users to e-mail committee information to others. The working group is also developing procedures and business processes to maintain, support and further enhance the information on the sites.

Second, to be prepared should we be called upon to provide the support for a future e-consultation exercise, the working group is also creating a set of guidelines, considerations and tools that can be used by Members of Parliament to help them decide whether or not they wish to begin an e-consultation and what the scope of the e-consultation might be. It is recognised, however, that each future e-consultation undertaking by a committee will have to be planned, scoped, funded and implemented as discrete projects.

The project underway to renew the existing committee web sites is but the first step in a multi-stage approach that must be undertaken to ensure that the House of Commons and Library of Parliament staff are ready to respond to requests for increased information about committees and to requests for e-consultation. Not only will it be important to keep the content of the new sites up-to-date, but we must also be able to respond to the changing demands of Members of Parliament and the public to more effectively take advantage of the opportunities offered by the power of the Internet.

ParlVU

Web casting provides exciting possibilities as a means to bring the work of Parliamentarians closer to the people. Begun as a pilot project in 2002, and gradually extended to more and more internal users, ParlVU was launched on the Internet in February 2004. ParlVU provides users with access to the live web cast of the House of Commons Chamber proceedings and of televised committee meetings. Users have the choice of English, French or floor sound and may also opt for either the high or the low-resolution video. An audio stream is also available on its own. Audio streams of all non-televised public committees with audio choices of floor, English and French feeds are currently available to Parliament Intranet users and will be widely available on the Internet in Autumn 2004.

In the future, archives of the meetings will also be available on demand, allowing users to replay the web casts of committee meetings at their leisure.

Conclusion

Even with the best planning and preparation, challenges remain for any consultation and dialogue, be it on-line or off-line. The vagaries of parliamentary activity may cause a loss of momentum; the costs may be prohibitive; sufficient time may not be available; interest groups may hijack the consultation; or technical complexities and glitches in a poorly designed exercise may discourage participants. In addition, the validity of the information collected may be open to question.

That being said, the opportunities afforded to committees by the use of a mix of technologically innovative and traditional tools are great. Under the right conditions and with the proper controls in place, the demands of citizens to be heard and to have access to committee information and records can more easily be met. Participation can increase, leading to more meaningful consultation and dialogue. Stakeholders see results and are kept informed. The community of interest is broadened. Citizenship is enriched. Parliamentarians too are advantaged: their committee role is strengthened, their influence and credibility increases, and they become part of the modern wave, guiding it rather than being driven by it. The Internet publicity alone of a properly run e-consultation to individual parliamentarians is invaluable.

Our role is to ensure that parliamentary infrastructure is equipped to meet these modern demands, should they be made. We must ensure that informational sources are objective, complete, up-to-date, well maintained and accessible and ready as a basic platform of data from which any type of

consultation and dialogue can be launched. We have a lot to gain by making full use of these new opportunities and a lot to lose by not being prepared for parliamentarians' demands when they inevitably come.

In the end, as administrators of assemblies and parliaments, new technology is for us a resource to be tapped for the benefit of parliamentarians and citizens alike, and the general benefit of the institutions we serve.

A PERIOD OF REFORM FOR VICTORIA'S LEGISLATIVE COUNCIL

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Introduction

On 27 March 2003 Victoria's Upper House, the Legislative Council, passed the Constitution (Parliamentary Reform) Bill. This legislation encompassed the most comprehensive changes to the State's parliamentary system since the establishment of responsible government in 1856. Many of the Bill's provisions related specifically to the Legislative Council's role, structure and powers although, in many respects, the impact of these reforms is still to be felt: much will change at the next State election due in November 2006 and in the subsequent Parliament.

While the significance of the Constitution (Parliamentary Reform) Act 2003 ensures that it will be a major focus of this article, the Act can also be viewed as the culmination of a series of reforms and developments which resulted in the Legislative Council functioning very differently during 2003 than at any other time in its history. These changes related to the Council's composition, its choice of President and its Standing and Sessional Orders.

Election 2002: ALP in power

With the exception of a short period in 1985, the Australian Labor Party (ALP) had never enjoyed a majority in its own right in the Legislative Council. This provoked resentment within the Labor Party which considered that a House that had originally been established to preserve privilege and moderate the 'excesses' of democracy, continued to discriminate via an unfairly weighted electoral system (more on this later). The party's inability to win control of the Upper House prevented Labor governments from implementing some of the reforms that were closest to their heart. Amongst these were parliamentary reforms: in the case of the Legislative Council, abolition was advocated for many years, although this view had moderated considerably by the time the Bracks Labor Government won office in 1999.[1]

[1] Abolition of the Legislative Council had ceased to be formal Labour Party policy in 1985.

The State election on 30 November 2002 returned the Labor Government with a landslide 62 (previously 44) out of 88 Legislative Assembly seats. In some respects, the outcome in the Council was more extraordinary. The Labor Party, which had previously held only 14 seats out of 44 and was given virtually no chance of winning a majority in the Upper House, won 25 seats. Included amongst these were five seats it had never previously held and a newly created seat it was not expected to gain.

Thus, when the new Parliament opened on 25 February 2003, not only did the Legislative Council have a very new complexion in terms of membership, with the ALP clearly the major party in the House (its closest rival, the Liberal Party, reduced from 24 Members to 15), but crucially, the Government now possessed an absolute majority in both Houses. This was essential for a government wishing to introduce significant constitutional changes, as the repeal or alteration of key sections of the Constitution Act 1975 were required to be passed by an absolute majority of the Members of both Houses at the second and third reading stages.

Election of President

The Council's first sitting day of 2003 was also significant as it saw the election of a new President to replace the Honourable Bruce Chamberlain who had held the office since October 1992. At the time of his retirement, Mr Chamberlain was the longest serving Presiding Officer in the Australasian and Pacific region.

The House elected the Honourable Monica Gould to the Chair. Ms Gould's appointment was particularly notable as she became the first woman to assume this office in the Council's history (no woman had even been elected to the Council prior to 1979). The Parliament's willingness to embrace change was reinforced by Ms Judy Maddigan's election as the Legislative Assembly's first female Speaker and the appointment of Ms Glenys Romanes as the Council's first female Deputy President and Chair of Committees. Ms Gould's election was also significant as she became only the second member of the Labor Party to become the Council's presiding officer. In addition, Ms Gould's assumption of the Presidency involved a move from the very prominent and politically partisan positions of being a Minister and Leader of the Government in the Council in the previous Parliament.

Introduction of new Standing and Sessional Orders

On 31 October 2002, on what transpired to be the 54th Parliament's final sitting day, the Council agreed to adopt new Standing Orders with effect from the first sitting day of 2003. The revised Standing Orders were based on recommendations presented by the Standing Orders Committee which had commenced its inquiry in 2001. The significance of the reform was partly historical: this was the first major revision of the Council's Standing Orders since 1924. In terms of the nature of the reforms, some of the more important aspects included: omission of 33 obsolete Standing Orders and the addition of 37 in their place; incorporation of certain Sessional Orders (some of which had been trialled in 2002); many changes to ensure clearer and gender neutral language; and a new system of numbering the Standing Orders on a chapter by chapter basis. The Committee also recommended that the House adopt Standing Rules of Practice to supplement the Standing Orders. These rules concerned questions, answers to questions on notice, urgency motions, daily adjournment speeches, incorporation of material into Hansard, and the transmission and broadcasting of proceedings.

The new Standing Orders were the product of a lengthy and extensive review which modernised and simplified the Council's procedures and gained the House's unanimous support. In contrast, the House's new Sessional Orders, which came into effect on 26 February 2003, were contentious and opposed by the non-government parties which argued that the changes were designed to stifle debate and undermine their capacity to scrutinise the Government and its legislation. Significantly, many of the new Sessional Orders, which had been approved by Cabinet prior to their introduction into the Council, reflected the Legislative Assembly's procedures. The Assembly was, of course, the House from which most of Cabinet came and it was that House's procedures with which those Ministers were most familiar. This included the new Leader of the Government in the Council who had transferred Houses at the general election.

It was acknowledged by all parties that the new Sessional Orders constituted some of the most far-reaching modifications of the Council's procedures in its history. Arguably, the two most important reforms concerned time limits and the adoption of a Government Business Program.

Time Limits

Prior to 2003, the application of time limits to Members' contributions was limited to occasions such as the Adjournment debate and questions without

notice. Time limits had never applied in the Council to debate on Bills: some argued that this had greatly enhanced the House's capacity to act as a House of Review.

Under the new Sessional Orders, time limits of 60 minutes for the lead Government and Opposition speakers and 45 minutes for the lead third party speaker apply to Government and General Business motions, second reading debates and the Address in Reply. Other Members are restricted to 15 minutes with this limit further reduced to 10 minutes after one-third of Members have spoken and 5 minutes once two-thirds of Members have spoken.

Restrictions imposed through time limits apply not only to individual contributions but to the House's overall sitting times. Previously, there was no set time for the Council's adjournment each day. The new Sessional Orders require the President to interrupt the House's business at 10 p.m. on Tuesday and Wednesday and at 4 p.m. on Thursday. Unless a Minister moves that the sitting continues, the President is required to propose the House's adjournment. On most Tuesdays and Wednesdays during 2003, the House went on the adjournment at the nominated time. As Thursday was nearly always the final sitting day of the week, it was common (on 80 percent of occasions) for the sitting to be extended past 4 p.m.

Government Business Program

A Government Business Program has never previously operated in the Legislative Council. The Program allows the Government to set times and dates by which particular Bills or specified items of business must be completed in a sitting week. On expiration of that time, the Chair will bring proceedings on any remaining Bills or motions to a close and put any questions required to finalise these matters. Thus, a form of 'guillotine' has been introduced into the Council.

The 'guillotine' has been given flexibility via the option in the Sessional Orders for the Government Business Program to be extended—until 10 p.m. on Thursday and, if required, the House can sit on Friday until 4 p.m. solely for the purpose of completing the Program. During 2003, although a Friday sitting looked to be a possibility if not a likelihood on a number of occasions, only one such sitting for the year actually transpired.

Other notable innovations for the Council within the new Sessional Orders include:

- an overall limit of fifteen on the number of 90-second Members' Statements that can be made each day, with each Member limited to one

per week and no party entitled to more than 50 percent of a sitting week's potential statements;
- identical restrictions to those above now apply to the raising of matters on the daily Adjournment debate;
- disorderly Members can be sent to a 'sin bin' for up to thirty minutes (a procedure not applied during 2003); and
- the incorporation of second reading speeches into *Hansard* on Bills transmitted from the Assembly.

Finally, it is worth noting that on the Council's last sitting day of 2003 the Government gave notice of further proposals for modifying the Sessional Orders (which are not as dramatic as the changes of 2003). Included amongst these, however, would be the introduction, for the first time in the Council's history, of formal procedures for dealing with Ministerial Statements. At present, the relevant Standing Order only prescribes the points in proceedings at which such a Statement may be made. If the proposed Sessional Order is adopted, the new procedures will not only be more detailed but will include the imposition of time restraints. The Minister and the lead speakers of other parties (if a take note motion is moved) will be restricted to twenty minutes and the total debate on a motion to take note of a Ministerial Statement will be limited to two hours.

Constitutional reform

With the Government in control of both Houses, it wasted little time in pursuing a parliamentary reform agenda focused on the Legislative Council, with the Constitution (Parliamentary Reform) Bill introduced into the Assembly during the first sitting week of 2003 and transmitted to the Council by the end of the following sitting week. Before examining the reforms in detail, it is helpful to briefly consider the Bill's historical context, particularly in relation to the alleged weaknesses of the Legislative Council and previous attempts to deal with these.

Criticism of the Council

The Legislative Council's critics have traditionally concentrated on issues such as:

1. The Council's power to block Supply. This was a power exercised on ten occasions, the first time in 1865 and the last in 1952 when a conservative Country Party Government fell after Supply was rejected by Labor Party

and dissident Liberal Party Members of the Upper House. In addition, Supply had been delayed or threatened on several other occasions, most recently in 1965. Although the Labor Party had not always been the victim of these occurrences, it was particularly hostile to the Council's power to block or hinder the passage of Supply given its view of the House as a conservative, elitist institution.[2]

2. The Legislative Council's indissolubility. The Council had the capacity to block Supply and other legislation, bring down a government and, on occasions, to force the Legislative Assembly's dissolution, yet it was not fully answerable to the electorate for its actions as it had never, technically, been dissolved. Until 1961, Legislative Council elections were not even held on the same day as Legislative Assembly general elections. After this, concurrent elections for both Houses occurred, although Legislative Councillors continued to serve fixed six year terms with only half of the Council facing the voters at each election. This latter provision remained intact even after further reforms in the mid 1980s resulted in Legislative Councillors being elected for two terms of the Assembly rather than for a fixed term.

Not only did the Council's indissolubility attract criticism in terms of its lack of accountability, it was seen by many critics as the cause of a 'stale' mandate in which half of the House's membership had won their seat years earlier at the election before last. On occasions, this created a situation where the Legislative Assembly, fully elected at the previous election, had important legislation blocked by an Upper House which only partly reflected the public's current views.

3. The failure of Victoria's Constitution to provide a satisfactory means to settle deadlocks between the two Houses was another contentious issue. Although deadlock provisions existed, these provisions tended to be overly complicated and, therefore, not implemented. For example, amendments to the Constitution, which came into effect in 1985 but were never invoked, encompassed Bills of Special Importance provisions which provided the grounds for the early dissolution of the Assembly if such a Bill was twice rejected by the Council.

4. Another perceived weakness of the Legislative Council related to the voting system and the use of preferential voting, rather than proportional representation, for Upper House elections. This produced election results in which the major parties in Victorian politics dominated at the expense of

[2] It was not until 1950 that property qualifications for Legislative Council Members and voters were fully removed.

small parties and independents. At the same time, the representation won by the major parties often was not in proportion to their share of the vote.[3]

Past attempts to abolish or reform

As stated previously, the view that it would be preferable to abolish the Legislative Council was one to which the Labor Party (amongst others) subscribed for many years. This was reflected in Legislative Council abolition bills introduced into the Upper House by the Labor Opposition in March 1959, April 1976 and June 1979. On each occasion these Bills were defeated overwhelmingly by the non-Labor majority.

Then between 1979 and 1983, although the Labor Party did not abandon the idea of abolition, it also adopted a more limited approach in the form of a Constitution (Council Powers) Bill intended to remove the Upper House's capacity to force the government to an election by blocking Supply. This was pursued by John Cain both in Opposition and later as Premier. Despite several attempts, this Bill was unsuccessful; however, in May 1984 legislation was introduced into the Legislative Assembly which achieved some of the Labor Party's desired aims. The Constitution (Duration of Parliament) Bill provided for minimum terms (except in exceptional circumstances) for the Assembly of three years and a maximum of four years, with Legislative Councillors serving for two terms of the Assembly. The Bill was eventually passed by the Council in September 1984 and had the significant effect of removing much of the incentive for the Upper House to block Supply in a Parliament's first three years as this was unlikely to lead to a general election.

Upon winning office in late 1999, the Bracks Government attempted to achieve further parliamentary reform through two Bills which would have reduced Legislative Councillors' terms to the same as those of Assembly Members and would have established proportional representation as the voting system used in Legislative Council elections. These Bills were defeated in the Council in October 2000.

Most recent reform process

The Bracks Government's response to the Council's rejection of its two reform Bills was to establish a Constitution Commission in March 2001 to examine legislative reforms to enhance the Legislative Council's effective-

[3] The ALP pointed to instances such as the elections for the Legislative Council in 1999 when they attracted 42.2 percent of the primary vote yet gained only 31.8 percent of seats, while the Liberal Party won 54.5 percent of the seats having attracted 39.7 percent of the primary vote.

ness, as well as considering other issues associated with parliamentary reform. The Commission was chaired by a former Supreme Court judge, with the other two Commissioners being former Liberal Party parliamentarians, one of whom had been President of the Legislative Council. The Commission consulted with the public, community groups, academics and current and former parliamentarians. It conducted public consultation sessions and seminars. The Commission's recommendations formed the basis of the *Constitution (Parliamentary Reform) Act* that was assented to on 8 April 2003. The Act's key features are:

Supply. The Act has explicitly removed the Legislative Council's power to block Supply. The Legislative Council can scrutinise Appropriation Bills and even suggest amendments to these. However, if an Annual Appropriation Bill has not been passed by the Council within one month of having passed the Assembly, the Bill must be presented to the Governor for Royal Assent. Under the Constitution as it operated previously, it was possible, under certain conditions, for the Assembly to be dissolved if a Bill dealing exclusively with appropriation was rejected or delayed by the Council; however, the government did not have the option of presenting the Bill for formal assent without the approval of both Houses.

Indissolubility. Fixed terms have been introduced for both Houses of Parliament with elections being held on the last Saturday in November every four years. A fixed four year term can only be altered in exceptional circumstances which are prescribed in the Constitution. In all cases, the Legislative Council shall exist only until the Legislative Assembly is dissolved, whereupon all of the Legislative Council will face the voters. Therefore, the Legislative Council is no longer indissoluble and Council Members have been placed on an equal footing with the Assembly in terms of length of tenure.

Deadlocks. As outlined earlier, Victoria's Constitution previously lacked a satisfactory mechanism for settling deadlocks between the Houses. In the case of ordinary, non-appropriation bills, a dispute resolution process has been introduced which includes the establishment after each State election of a Dispute Resolution Committee drawn from the membership of both Houses and the various political parties (and independents). This Committee will attempt to find a solution to the impasse if the Legislative Council rejects a Bill. If this process fails, the deadlocked Bill can become a ground for a double dissolution or, alternatively, the Bill can be held over

until the next general election. In either case, if the Bill is again passed by the Assembly it can be returned to the Council. If the Bill is not passed by the Council within two months, a joint sitting of both Houses can be convened where a majority of the total number of Members of both Houses is required for the Bill to be passed.

Electoral System. The Constitution (Parliamentary Reform) Act 2003 has incorporated major changes in the electoral system, in particular the shift from preferential voting to proportional representation in Legislative Council elections. The Council's 22 Provinces of two Members will be abolished to be replaced by eight electoral regions with five Members each. Thus, the Council's membership will be reduced from 44 to 40 after the next State election in November 2006. A number of other electoral reforms have flowed on as a result of the central change to the electoral system. These include:

- giving voters a choice between above and below the line voting;
- the adoption of optional preferential voting within the new proportional representation system; and
- a requirement for candidates to disclose their place of enrolment on the ballot paper.

A further reform related to the change in the electoral system concerns the President's role in the Chamber. In the expectation that proportional representation will produce a Legislative Council in which numbers are tight and no party has a clear majority, the President's voting status will change, with the President having a deliberative vote but no longer able to exercise a casting vote.

Other reforms. The new Act has introduced a number of other reforms that do not specifically relate to the Legislative Council. The most significant of these concerns the processes by which Victoria's Constitution can be altered. Previously, any constitutional reform could occur simply through the passage of legislation although, as noted previously, some Bills required the support of an absolute majority of the total number of the Members of each House. The new Act has established core provisions within the Constitution which can only be changed through a referendum. These provisions include:

- the number of Members and the quorum of both Houses of Parliament;
- the Legislative Council's loss of the right to block Supply;
- the dispute resolution process for Deadlocked Bills;
- recognition of local government as an essential tier of government ; and

- continuance of the Auditor-General, Director of Public Prosecutions, Ombudsman and Electoral Commissioner as independent officers of the Parliament.

In addition, a number of procedural provisions of the Constitution can now only be passed through a 'special majority' consisting of 60 percent of the whole number of Members of the Assembly and Council respectively. These provisions include those related to Parliament's prorogation, dissolution and powers and eligibility requirements for Members and voters.

Consequences of these reforms

Thus, in a surprisingly short period between late 2002 and early 2003, the Legislative Council experienced a succession of major changes in its composition, the rules governing its procedures and the constitutional framework within which it functions. It is anticipated that the constitutional reforms will be of considerable long term significance (made more likely by the establishment of core provisions which can only be changed through a referendum). However, at this stage it is not possible to assess the reforms' impact in any detail as a number do not yet apply (e.g. the new electoral system), or the Government's comfortable majority in both Houses has ensured that the reforms have not needed to be implemented (e.g. provisions associated with the passage of Appropriation Bills; new dispute resolution process).

In relation to the Council's new Sessional Orders, these have resulted in a substantial cultural change by creating a House that is more tightly regulated in a manner similar to the Lower House. Although the Government has been prepared to extend consideration of its Business Program past 4.00 p.m. on Thursday rather than apply the guillotine (and on some weeks a Program has not been introduced), individual Members have had their contributions restricted by an array of time limits. There have also been occasions when the prescriptive nature of the new Sessional Orders have reduced the House's flexibility in dealing with unforeseen circumstances as they have arisen.

Ultimately, assessments of whether the Council needed to have some of its procedures radically overhauled, whether these reforms have excessively restricted debate and whether the changes have created a House which functions more efficiently, come down to political judgements (perhaps partly depending on which side of the House Members are currently sitting). Certainly, 2004 will see the House continuing to go through a process of adjustment and 'fine tuning' of the new procedures.

THE JURIDICAL PROTECTION PLAN FOR MEMBERS OF THE NATIONAL ASSEMBLY OF QUÉBEC

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Juridical protection and the scope of parliamentary rights, privileges, and immunities

It is well known that the Members of the National Assembly of Québec enjoy certain rights, privileges, and immunities which vest them individually and collectively "with full independence for the carrying out of [their] duties".[1] However, the role of parliamentarians has evolved much during recent decades, and this has increasingly exposed them to judicial proceedings, especially since they began to open offices within their electoral divisions where they and their staff receive constituents to whom they offer opinions and advice. In cases where constituents believe they may have suffered some prejudice as a result of the advice they have been given, one can easily imagine them bringing civil proceedings against a Member, even though the burden of proof with respect to liability would rest on the plaintiff's shoulders. Members who have found themselves in such a situation would doubtless state that while they ultimately won their case, it cost them dear to be obliged to assume their own judicial and extrajudicial fees and costs.

Members are also called upon to speak publicly outside the parliamentary precincts, that is to say in places where they do not enjoy the immunity afforded by the privilege of freedom of speech. Notwithstanding this lack of immunity, they may on such occasions advance points of view that prove unwelcome to certain groups or individuals, particularly when controversial matters of public interest are at issue. In these circumstances some may be tempted to try to silence a Member, for example by suing him or her for libel and thereby placing the matter before the courts.

Finally, one former Member of the National Assembly was even indicted for fraud and breach of trust against the Assembly with the result that, for all practical purposes, she found herself compelled to abandon her political

[1] *Act respecting the National Assembly* (R.S.Q., chapter A-23.1), s.43.

career and assume the costs of her own defence in respect of the accusations brought against her – accusations of which the court subsequently acquitted her entirely.

Juridical protection for Members Before 1998

The foregoing examples illustrate the situations in which, before 1998, Members of the Assembly could find themselves obliged to confront civil proceedings or criminal charges. To be sure, they could request financial assistance for their defence from the Office of the National Assembly; whether or not to grant such a request was, however, entirely at the discretion of the Office. In the majority of these cases, admittedly few in number, the Office contented itself with offering only nominal assistance to the Members in question, since it had been advised that it lacked sufficient legal grounds for employing public funds to provide any substantial assistance to Members facing proceedings for acts or omissions committed in the performance of their duties of office.

Juridical protection for Members since 1998

On 11 June 1998, the Parliament of Québec enacted amendments to the *Act respecting the National Assembly* that established a plan for the Members of the Assembly to supplement the protection afforded by the parliamentary rights, privileges, and immunities they already enjoyed collectively and individually as Members.

Under the new provisions of the Act any Member or former Member of the Assembly is entitled, subject to certain restrictions specified therein, to the payment of defence costs and judicial costs arising out of proceedings brought by a third party after 11 June 1998, for any act or omission in the performance of his or her duties of office. Members are also entitled to the payment of expenses incurred for counsel in the event they are summoned to appear at an inquiry, at a preliminary inquiry, or before a judicial or quasi-judicial body in connection with their duties of office. They are not entitled to the payment of any expenses, however, if they initiate proceedings themselves.

The Office of the National Assembly has defined defence costs by regulation[2] as extrajudicial costs, namely the fees or costs, including experts' fees,

[2] Regulation respecting the payment to a Member or a former Member of an amount paid as a result of proceedings or a summons to appear, adopted on 11 June 1998, by Decision 886 of the Office of the National Assembly

that a lawyer may charge for professional services relating to the practice of the profession of advocate and that are incurred in the defence of a client. Judicial costs are the costs taxable by the competent officer of a court. Experts' fees are the costs incurred by a lawyer to hire the expert consultants required for the defence. Finally, expenses incurred for counsel refer to the fees or costs charged by a lawyer to assist a Member or former Member who is summoned to appear in the circumstances described above.

Any Member or former Member who is in a situation that entitles him or her to the payment of such costs must apply to the Office of the National Assembly to fix the maximum amount payable. The Office may fix such an amount after having obtained the advice of the jurisconsult of the National Assembly. The jurisconsult[3] is the officer of the National Assembly responsible for providing legal opinions to Members regarding situations of incompatible offices and conflict of interest in which they may find themselves in the performance of their duties.

It is the responsibility of the Member or former Member to retain his or her own lawyer after having consulted the Speaker of the National Assembly. The fees payable for the lawyer's professional services are established on an hourly or a lump-sum basis as prescribed in the regulation referred to above. The hourly rate for lawyers is $50 CDN, $70, or $100 according to whether they have less than five years, five to ten years, or more than ten years of professional experience. The Office of the National Assembly may grant a higher rate, however, if the circumstances so warrant.

The Limits of juridical protection

The Act imposes certain limits on the protection it affords. Thus, in criminal proceedings the National Assembly will pay defence costs and judicial costs only if the case is withdrawn or dismissed, if the Member or former Member is acquitted under a judgment that has become *res judicata*, or if he or she has been discharged. In criminal matters, therefore, the Assembly will make no disbursement until one or the other of these events has occurred.

If the Member or former Member is found guilty of a penal offence, the Assembly may pay no costs or expenses and must furthermore recover any amount it may already have disbursed. Costs and expenses may nevertheless be paid, however, if the Office of the Assembly is of the opinion, after having

[3] Claude Bisson, former Chief Justice of the Court of Appeal of Québec, was unanimously appointed jurisconsult by the National Assembly on 19 June 1996.

obtained the advice of the jurisconsult, that the Member or former Member had reasonable grounds to believe that his or her conduct was in conformity with the law. In such a case the Assembly will also assume the payment of any pecuniary penalty. The reason for this exception is that in penal matters it is possible to commit an absolute-liability offence in good faith, with no wrongful intent on the part of the offender, and thus for a conviction to be warranted, since no defence of reasonable care is admissible in court.

In civil suits the Act provides that if through a judgment that has become *res judicata*—in other words, that is final, enforceable, and not subject to appeal—a Member or former Member has been found liable for damages resulting from some act or omission in the performance of his or her duties of office, and if the Office of the National Assembly is of the opinion, after having obtained the advice of the jurisconsult, that the Member or former Member acted in bad faith, the Assembly will assume none of the attendant costs or expenses and must, moreover, recover any costs or expenses it may already have paid.

In the absence of bad faith on the part of the Member or former Member the Assembly will pay the costs of any pecuniary penalty, including damages, imposed by a judgment in a civil suit in addition to the above-mentioned costs and expenses. It will make no such payment, however, if the Office of the Assembly is of the opinion, after having obtained the advice of the jurisconsult, that the Member or former Member committed a gross fault or ought to appeal the judgment.

Article 1474 of the *Civil Code of Quebec* defines gross fault as a fault that shows gross recklessness, gross carelessness, or gross negligence. As Jean-Louis Beaudoin explains, "Gross fault, as intended by the legislator in article 1474 of the *Civil Code of Quebec*, is serious, gross, and inexcusable misconduct which shows gross recklessness, carelessness, or negligence and therefore utter contempt for the interests of other individuals."[4] Dussault and Borgeat note: "Not defined by statute, the notion of gross fault is generally interpreted in case-law as involving an act committed by gross negligence, in bad faith, or with the intention to defraud."[5]

In summary, then, since 11 June 1998 the law in Québec provides that all Members and former Members of the National Assembly are entitled to the payment by the Assembly of defence costs and judicial costs arising out of

[4] Jean-Louis Beaudoin, *Les obligations*, 4th Ed., Yvon Blais, Cowansville, 1993, p. 457.

[5] René Dussault and Louis Borgeat, *Administrative Law, A Treatise*, 2nd Ed., vol. II, Carswell, Toronto, 1988, p. 147.

proceedings brought against them for acts or omissions in the performance of their duties of office. It further provides that the expenses incurred for counsel are to be paid where a Member or former Member is summoned to appear at an inquiry, a preliminary inquiry, or in judicial or quasi-judicial proceedings in respect of his or her duties of office. The Act likewise determines the cases in which the National Assembly is authorized to assume the payment of a pecuniary penalty, such as a fine or damages, arising out of a judgment against a Member. The Assembly will assume in totality the payment of penalties of this kind imposed by a court, subject to the conditions specified in the Act.

Conclusion

More than five years after its implementation the statutory juridical protection enjoyed by Members has received high praise, with some reservations.

First, since financial assistance has been granted only three times in five years, it is clear that the plan has not been abused. Second, it is significant that from 1998 onward no one has been able to intimidate a Member on the assumption that he or she would lack sufficient resources to assume the costs of a legal defence.

Above all, however, the juridical protection plan complements parliamentary privilege in regard to one of the three main duties exercised by Members. Their activities as legislators and as overseers of the public administration are carried out within the parliamentary precincts, where they enjoy complete immunity. That is not so, however, when they act as intermediaries between their constituents and the public administration, in which role they may be vulnerable to legal proceedings.

This is where the juridical protection plan assumes paramount importance and fully justifies its existence. Furthermore, it shields Members from the discretionary power of the Office of the National Assembly by entitling them to the payment of defence costs up to the maximum amount established by the Office once it has obtained the advice of the jurisconsult of the National Assembly.

In conclusion, then, Québec legislators broke new ground more than five years ago when they established by law a juridical protection plan for current and former Members of the National Assembly. This plan fills a significant legal void in giving Members the means to ensure that they enjoy complete independence in the performance of their duties.

SCRUTINISING WASTE—AN INNOVATIVE COMMITTEE PROCEDURE

SIWAN DAVIES

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Introduction

An innovative committee procedure—an independent investigation—was used during 2000-2002 to settle a long running controversy over a waste management facility at Nantygwyddon, in the south Wales valleys. This was one of the highlights of committee work during the first Assembly.[1] Now is an opportune time to evaluate the effectiveness of the independent investigation, as Assembly committees are the subject of constitutional debate following the publication of the Richard Commission report on the powers and electoral arrangements of the National Assembly for Wales.[2]

Challenges facing Assembly committees

The Assembly is a corporate body with no legal distinction between executive and legislature. It is required to establish committees mirroring the portfolios of Assembly Ministers, on which Ministers sit as full members. These Subject Committees undertake the traditional role of scrutiny of executive and legislation, but also have an explicit remit to develop policy. Early on during the first Assembly there were high expectations of Subject Committees and political will to work consensually across political parties, with many policies developed by Subject Committees adopted as government policy.

Despite its legal status as a corporate body, there has been a *de facto* move to a 'parliamentary' mode of operation, with the unanimous Assembly resolution of 14 February 2002 welcoming "the … principle that there should be the clearest possible separation between the Government and the Assembly

[1] The first Assembly was elected in May 1999 and sat until the second Assembly elections in May 2003.

[2] Commission on the Powers and Electoral Arrangements of the National Assembly for Wales (2004), *Report of the Richard Commission*, National Assembly for Wales: Cardiff.

which is achievable under current legislation."[3] In March 2003 the Richard Commission—an independent Commission established to assess the sufficiency of the Assembly's current powers and adequacy of its electoral arrangements—recommended the creation of a legislative assembly with primary legislative powers and a legal separation between legislature and executive.

Political parties in Wales are now considering the Richard Commission's proposals, which would require primary legislation at Westminster to implement. In the meantime, this practical separation of Government and Assembly and the Commission's assessment of the effectiveness of Assembly committees have placed greater emphasis and expectations on the scrutiny role of Subject Committees. However, as the Commission concluded: "Ministers' membership of Subject Committees … suppresses the development of a scrutiny culture in committee".[4] The challenge now facing Assembly committees is how to improve scrutiny in the face of this constitutional constraint.

The independent investigation conducted by the Environment Committee of the first Assembly offers one solution. It presents an alternative model to traditional committee scrutiny, by employing the services of an independent investigator to examine particular issues. This introduces expertise into the scrutiny process in a qualitatively different manner from the standard committee expert advisers or committee staff; the investigator controls the investigation of an issue, engages directly with stakeholders and prepares a report independently of elected politicians. Although this removes politicians from the mechanics of the scrutiny process, the political fallout from the results of the investigation and ultimate conclusions and recommendations are the subject of the usual party politics. This paper reflects on the advantages and disadvantages of this innovative procedure, and whether it offers a model for future committee scrutiny.

A local controversy

Nantygwyddon is a waste disposal site situated on a hilltop overlooking the community of Gelli in the Rhondda valley, South Wales. The site opened in 1988 and from the mid 1990s the local community became increasingly

[3] National Assembly for Wales (2002), *The Official Record*, National Assembly for Wales: Cardiff.

[4] *Op cit*, p. 79.

concerned about the effects of the site on their health and that of unborn children. Locals felt that the health authority and environmental regulator had failed to address their concerns. The protest against the site became a significant local political issue during the 2000 local government elections, in which Plaid Cymru The Party of Wales took control of the formerly Labour-led local council.

An innovative procedure

In July 2000 Plaid Cymru—the main opposition party in the Assembly—tabled a motion in the Assembly calling for a public inquiry into the health and environmental aspects associated with the Nantygwyddon waste disposal site. Opposing the proposal on grounds of cost, the Labour and Liberal Democrat parties tabled amendments proposing models for an Assembly investigation. Following a debate, the Assembly resolved that an independent investigation be conducted by the Environment Committee, with the assistance of an independent investigator. The presumption was that the investigation should be held in public, except where it was considered that this would prejudice the outcome of the investigation.

At its first meeting following the Assembly resolution, the Committee resolved that "the primary focus of the investigation is to be forward looking, seeking to identify lessons for the future, both in relation to the site and in relation to waste management issues more generally."[5] In keeping with the Assembly's resolution, the Committee adopted openness and transparency as its guiding operating principles. All evidence received was made publicly available and information offered 'in confidence' was not taken into account.

A year later the independent investigator reported to a packed Committee meeting at a theatre in the south Wales valleys. Within hours of recommending an end to the disposal of household waste at Nantygwyddon, the site was closed.

Reflecting on the investigation in its report to the Assembly, the Committee commented: "our investigation has been innovative and has set a precedent for the work of the subject committees … this type of investigation … shows the National Assembly working at its best, through addressing issues of local concern that are of wider significance to the whole of Wales."[6] The Committee undertook to review the process and learn lessons for future investigations.

[5] Environment, Planning and Transport Committee (2002), 'Terms of reference (Annex 2)', *Independent Investigation: Nantygwyddon Landfill Site*, National Assembly for Wales: Cardiff.

[6] *Ibid*, para. 1.11.

The independent investigation process

Following Committee agreement of the terms of reference for the independent investigation in September 2000, two initial meetings were held before the independent investigator took office. Evidence was heard from local residents about their concerns, followed by evidence from the main public bodies responsible for the establishment, management and regulation of the site. Both sessions, subsequent meetings and the independent investigator's public hearings, were held locally.

Appointment of the independent investigator was subject to an open competition. As the Committee did not itself have the power to appoint its own investigator, the preferred candidate was appointed by the Minister for Environment, upon the recommendation of the Committee Chair. David Purchon, the successful candidate for independent investigator, had previously served as President of the Chartered Institute of Environmental Health, adviser to the Chief Medical Officer for England, and as Director of Environmental Services of a large English city council.

Over a twelve month period, the independent investigator heard oral evidence in public, totalling 36 days, and examined written evidence presented to the investigation. Reports were commissioned from the British Geological Survey and the Institute for Environment and Health. Evidence presented to the investigation was made publicly available at a resource centre located in a local council building, and transcripts of evidence were published on the Assembly's website.

Regular progress reports were made by the independent investigator to the Committee in public, before he finally reported in December 2001. No draft report was published although, in accordance with best practice, the independent investigator provided an opportunity to those who were to be subject to criticism, and who had not previously had the opportunity to defend themselves, to do so. Before reaching its own conclusions, the Committee invited comments on the independent investigator's report from all involved in the investigation. As many of the recommendations related to the activities of the main public bodies involved in the management and regulation of the site, the Committee put questions to the local council, health authority and environmental regulator at a further public session.

Reporting to the Assembly, the Committee endorsed the recommendations of the investigator, calling for the cessation of household waste disposal at Nantygwyddon and for independent health and stability studies to be

undertaken. More generally, the Committee recommended improved transparency of public bodies and made specific recommendations relating to the future development of waste disposal facilities. The Assembly, departing from the usual 'take note' motion for committee reports, called on the relevant authorities to implement the Committee's recommendations.

Waste disposal at Nantygwyddon ceased in December 2001, within hours of the independent investigator's report to the Committee; the site remains closed. Liaison groups were established between public authorities and local residents to improve communication. The Assembly Government commissioned the recommended studies, which have recently reported.

Adequacy of powers

The Committee invited the views of participants on the innovative process of an independent investigation, which was considered to be a success and to offer a model for future investigations. The principal weaknesses identified by the Committee and participants stem from a comparison of the powers of the investigation with a conventional public inquiry.

Firstly, the investigator did not have power to summons individuals or documents, which were made available voluntarily. The Committee itself—and Assembly committees generally—had limited power of summons; the Government of Wales Act 1998 specifies those bodies and individuals to whom committees' power of summons relate. For example, this does not extend to serving or former members and officers of local councils. On balance, this was not considered to have affected the outcome of the investigation, but there was frustration that certain individuals were not required to account for their actions.

Secondly, the evidence presented to the independent investigator was—once published under the authority of the Committee—privileged for the purposes of the law of defamation. However, those giving oral evidence were advised by the independent investigator that they should not assume that their comments were privileged. In reviewing the independent investigation process, the Committee emphasised the importance for future investigations to balance the need to protect individuals from unfair and unsubstantiated allegations, with enabling views to be expressed frankly.

Finally, the independent investigator did not have legal counsel to advise on such matters, though he could seek advice from the Office of the Counsel General (the Assembly's legal service). The Committee recommended that future investigations appoint a dedicated legal counsel, to advise the inde-

pendent investigator and provide advice to lay people. However, it was acknowledged this would increase the cost of the investigation.

Furthermore, although the Assembly's Standing Orders make specific provision for the establishment of a public inquiry, there is no corresponding provision for initiating an independent investigation. The Nantygwyddon investigation was established following an amendment to a motion calling for a public inquiry. The Panel of Chairs of the first Assembly, which comprised the chairs of all Subject Committees, resolved to seek an amendment to Standing Orders to enable Subject Committees to initiate independent investigations. The request was considered by the Assembly's Business Committee, which advises on the management of the Assembly's business and on general practice and procedure of the Assembly, but was not progressed during the first Assembly due to concerns about who would finance future investigations. The renewed interest in committees following the publication of the Richard Commission report may prove an opportunity to revisit this.

A model for the future?

The independent investigation model has the following key benefits. Firstly, it introduces technical expertise into the scrutiny process in a direct way compared to the usual way assistance is provided to committees by expert advisers or committee staff; the investigator determines the investigation timetable, takes and analyses evidence, and reaches conclusions independently of the Committee. In the case of Nantygwyddon, this enabled a more thorough examination of the evidence than would have been possible had the investigation been conducted by the Committee. For example, the independent investigator heard oral evidence over 36 days, whereas Subject Committees met on average fortnightly during the first Assembly.

Secondly, whilst the independent investigation removes politicians from the detailed scrutiny process, the ultimate conclusions and recommendations are political and subject to normal party politics. As the Constitution Unit's "scrutiny under devolution" review concluded, "[w]hat the independent investigation achieved was to remove the scrutiny process from party politics entirely, but to keep it within that process for the purposes of influencing and decision making."[7] In the case of Nantygwyddon, there was potential

[7] Sandford, M and Maer, L (2003) *Scrutiny under Devolution—committees in Scotland, Wales and Northern Ireland*, The Constitution Unit: London.

for political divisions arising from a history of changing party political responsibility for the waste disposal site. However, as the terms of reference were focused on learning lessons, rather than attributing blame, the Committee was able to agree a unanimous report.

Thirdly, the process is more accessible than a traditional committee inquiry process. Openness and transparency were the operating principles of the Nantygwyddon investigation. Neither the independent investigator nor the Committee considered information offered 'in confidence'. Evidence presented to the investigator was made public as the investigation progressed. The benefits of such an approach were seen latterly during the Hutton inquiry.

Finally, this procedure could be used to resolve long running or contentious local issues and provide scope to learn wider regional or national lessons. In the case of Nantygwyddon, there were specific recommendations relating to a particular waste disposal site, but also more general recommendations relating to the accountability of public bodies to the local communities they serve.

Conclusion

The Environment Committee resolved a long running controversy by providing a public investigation that engaged local interests, whilst not losing sight of its wider scrutiny role. It also led to public bodies accounting for their actions in an open and transparent way. The independent investigation offers an alternative model of committee scrutiny by outsourcing the detailed scrutiny function and confining party politics to deliberations over the terms of reference and the conclusions of an investigation. Yet this model has only been tested in one case, and it remains to be seen, in light of the increased emphasis and expectations on the scrutiny role of Assembly committees after the Richard Commission, whether Nantygwyddon will remain a unique case.

SEIZURE OF A MEMBER'S DOCUMENTS UNDER SEARCH WARRANT

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Introduction

In a recent case in New South Wales, officers of an independent anti-corruption body executed a search warrant in the Parliament House office of a member of the upper House, seizing documents and various items of computer equipment. The incident, which was unprecedented in New South Wales, led to an inquiry by the House's privileges committee, which found that the seizure of at least some of the material involved a breach of the immunity conferred by Article 9 of the *Bill of Rights 1689*.[1] It also led to the development, and adoption by the House, of a particular procedure which allowed for the issues of privilege arising in relation to the seized material to be assessed and determined, while protecting the integrity of the evidence required in the relevant investigation.

As the case may raise issues of relevance to other Commonwealth Houses, an outline of the events which have occurred to date is provided below.

Execution of the search warrant

The warrant was executed by officers of the Independent Commission Against Corruption (ICAC),[2] in the office of the Honourable Peter Breen MLC, in the course of an investigation concerning Mr Breen's use of his parliamentary entitlements. Mr Breen had not been informed of the investigation, and was not present during the search. However, the Deputy Clerk of the House was notified of the search shortly before the officers arrived at

[1] Article 9 is in force in NSW by virtue of section 6 and schedule 2 of the *Imperial Acts Application Act 1969* (NSW). It provides: 'That the freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place outside of Parliament'.

[2] The ICAC was established by and operates under the authority of the *Independent Commission Against Corruption Act 1988* (NSW). Its chief functions include investigating and reporting to Parliament in relation to possible corrupt conduct of public officials, including members of Parliament.

Parliament. The Deputy Clerk advised the officers of the need to ensure that material covered by parliamentary privilege was not taken, and the officers indicated that they had no intention of violating privilege. Parliamentary privilege is expressly preserved by section 122 of the *Independent Commission Against Corruption Act 1988* (NSW).

Despite this express provision of the Act, and the assurances of the officers, it later emerged that some of the material taken may have been subject to parliamentary privilege, or may otherwise have been unlawfully seized. These concerns were communicated to the ICAC Commissioner, who undertook to implement certain interim measures to protect the seized material, until the question of the ICAC's right to access the material could be clarified. The seized material included various volumes of documents, two computer hard drives, Mr Breen's laptop computer, and an electronic 'imaged' copy of various information stored on the Parliament's computer network hard drives. Under the agreed interim measures, the seized computer equipment was to be returned to the Clerk of the House pending clarification of the issues, while the seized documents and the imaged copy were to be retained, but not viewed, by the ICAC.

At this point, the House, on the motion of Mr Breen, referred an inquiry to its Standing Committee on Parliamentary Privilege and Ethics in relation to the matter. Specifically, the Committee was required to examine and report on: (a) whether any breaches of the immunities of the House were involved in the execution of the warrant; (b) whether any contempts of Parliament were involved; and (c) what procedures should be established to examine and determine whether any of the documents and things seized were immune from seizure under the warrant by virtue of parliamentary privilege. The Committee reported on 3 December 2003.[3] Its main findings and recommendations are summarised below.

Privileges Committee findings

Breach of immunity

The question of whether a breach of immunity had occurred depended on three subsidiary issues, each of which involved the application of one of the key expressions used in Article 9. Those issues were:

[3] Standing Committee on Parliamentary Privilege and Ethics, *Parliamentary privilege and seizure of documents by ICAC*, Report 25, December 2003, Legislative Council, Parliament of NSW (available at www.parliament.nsw.gov.au).

- whether any of the material seized by the ICAC was within the scope of 'proceedings in Parliament';
- if so, whether the seizure of the material amounted to an 'impeaching or questioning' of parliamentary proceedings; and
- whether an ICAC investigation is a 'place out of Parliament'.[4]

In relation to the first of these issues, the Committee noted that the member had stated in Hansard that one of the seized documents was a transcript of interviews which he had used in the preparation of a speech to the House. The Committee concluded that this document fell within the scope of 'proceedings in Parliament', relying on an extended meaning of that expression which has been recognised in various contexts,[5] which encompasses not merely the formal transaction of business in the House or a committee, but also activities closely connected with or necessarily incidental to such transaction. As at least one of the documents seized had thus been found to attract privilege, the Committee viewed it is as unnecessary to further consider the status of the other seized material, and turned its attention to the other issues arising from Article 9.

The third issue was also relatively straightforward, and the Committee accepted, on the basis of legal advice and evidence, that an ICAC investigation is a 'place out of Parliament'.[6]

The second issue, however, proved to be more complex, partly because the evidence received by the Committee was conflicting. On the one hand, the ICAC's contention was that Article 9 does not prevent the seizure of material, but only any subsequent uses of that material which amount to 'impeaching or questioning'. On the other hand, the majority of the evidence received, including that of the Clerk of the Legislative Council, was that Article 9 can operate to prevent the seizure of material, where the circumstances are such that seizure itself amounts to an impeaching or questioning. The difficulties arising from the conflicting nature of the evidence were compounded by the fact that there is no judicial authority directly on the

[4] The Committee noted that these expressions have never been comprehensively and authoritatively defined, and that their precise meaning and scope is uncertain to some extent. Nevertheless, it was able to draw on sufficient sources of authority and principle concerning the interpretation of the expressions to reach firm conclusions on each of the three questions involved.

[5] See Standing Committee on Parliamentary Privilege and Ethics, *Parliamentary Privilege and seizure of documents*, Report 25, December 2003, Legislative Council, Parliament of NSW, pp. 7-17.

point.[7] Ultimately, however, the Committee accepted the view supported by the majority of the evidence, which was also consistent with the overriding principle which Article 9 is designed to protect.

In view of its conclusions concerning these three issues, and in the circumstances of the case, the Committee found that the seizure of the document in the execution of the warrant amounted to a breach of the immunity conferred by Article 9.

Contempt

Despite its finding concerning breach of immunity, the Committee found that no contempt of Parliament had occurred, as it did not appear from the evidence that the ICAC had acted with improper intent, or with reckless disregard as to the effect of its actions, in the execution of the warrant. In particular, the evidence showed that, both before and during the search, the ICAC had been concerned to comply with its obligations to preserve parliamentary privilege, and ICAC officers had expressed their intention not to take documents which might fall within parliamentary proceedings. However, the Committee also made a further finding, that any subsequent attempt by the ICAC to use documents which fall within the scope of proceedings in Parliament in their investigations would amount to a contempt.

Recommended procedure

The procedure recommended by the Committee for resolving the issues in this case essentially involved the following steps:

- the seized material was to be returned to the House, and inspected by the member concerned, together with the Clerk of the House and officers of ICAC;
- any documents claimed to be privileged were to be identified, and the remaining documents were to be released to the ICAC;
- in the event of any dispute as to whether particular documents were privileged, the question was to be determined by the House.

In recommending such a procedure, the Committee specified that the procedure was not intended to be taken as a precedent for future cases, as the

[7] In the one case to have been brought before the Australian courts in which this issue has been raised, *Crane v Gething* (2000) 169 ALR 727, which concerned the seizure of documents under search warrant in the offices of a senator, the question of the application of parliamentary privilege was not ultimately decided.

Committee believed that the issue of protocols for future cases should be referred to the Committee for further inquiry. Rather, the aim of the procedure was to provide a workable solution for the present case, "without compromising the ability of the ICAC to legitimately investigate members of Parliament and without undermining the very important principles embodied in the rights and immunities of the Parliament".[8]

The Committee also acknowledged that the recommended procedure differed from the procedure which has been followed in similar cases in the Australian Senate, where an independent 'legal arbiter' has been appointed to review material seized under warrant, and make an assessment as to whether any of the material was immune from seizure. In particular, the Committee noted that, unlike that procedure, its procedure included steps to enable the particular documents in dispute to be identified (documents which may prove to be only small in number), allowing undisputed documents to be returned to the investigative body at an early stage, and provided for the question of immunity from seizure to be determined by the House itself rather than an agent.[9]

Proceedings in the House

Adoption of procedure

Following the tabling of the Committee's report in the House, the House passed a resolution substantially incorporating the procedure recommended by the Committee (although with some modification), with a preamble outlining the principles underpinning the procedure. Key features of the procedure established by the resolution were:

- the seized material was to be returned to the President of the House, and retained in the possession of the Clerk, until the issue of parliamentary privilege had been determined;

[8] *Op. cit.* paragraph 4.8.

[9] Another difference between the Senate procedure and the Committee's procedure was that the Committee's procedure only provided a mechanism for determining whether documents were immune from seizure on the ground of parliamentary privilege, and did not provide for any determination to be made as to whether the seizure of particular documents may have been unlawful on other grounds. However, the Committee's report drew attention to a number of issues relating to the lawfulness of the ICAC's conduct which had been raised during the inquiry, including the lawfulness of the practice of 'imaging' computer hard drives in the execution of search warrants (which had occurred in this case).

- the member, the Clerk of the House, and a representative of the ICAC were to "jointly be present at" the examination of the material;
- the member and the Clerk were to identify any items claimed to be within the scope of 'proceedings in Parliament', according to a definition of that expression which was stated in the resolution, in the same terms as the definition contained in the *Parliamentary Privileges Act 1987* of the Australian Federal Parliament;[10]
- the ICAC was to have the right to dispute any such claims, and to provide reasons; the member was to have the right to provide reasons in support of any disputed claim;
- any items which the House determined as within the scope of proceedings in Parliament were to remain in the custody of the Clerk until the House otherwise decided, with a copy to be made available to the member;
- any items which the House determined were not privileged, or in respect of which a claim of privilege was not made, were to be returned to the ICAC.

In response to this resolution, the ICAC Commissioner advised that she was prepared to return the seized material as required, and was satisfied that the procedure would ensure that the integrity of the material was maintained until the ICAC's investigation was concluded. However, the Commissioner also "maintained the right of the ICAC to seek any judicial remedy in relation to use of the documents that should become necessary", and disputed the Committee's finding concerning breach of immunity.

Implementation of procedure

Following the House's resolution, all of the outstanding material seized by the ICAC was duly returned, and was inspected by the member, in the presence of the Clerk and a representative of the ICAC. Documents claimed to be privileged were identified, while material not claimed to be privileged was returned to the ICAC.

The ICAC then exercised its right to dispute the claim of privilege which had been made over some of the documents. Those documents related to a motor vehicle accidents compensation claim with which the member had originally become involved in his capacity as a lawyer before his election to Parliament. The member provided written reasons in support of the privilege

[10] See section 16(2) of that Act. There is no equivalent legislative provision in NSW.

claim relating to the documents, in which he asserted that he had used a number of the documents in connection with contributions he had made, as a member, to various proceedings in a committee of the House and in the House itself.

On 25 February 2004 the House resolved to refer the documents relating to the disputed claim of privilege to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report. The resolution of the House required the Committee to recommend to the House which of the disputed material falls within the scope of 'proceedings in Parliament'.

The Committee reported in relation to the matter on 31 March.[11] In its analysis of the documents and the application of parliamentary privilege in this case, the Committee noted that the documents in question had not been *created* for the purpose of parliamentary proceedings (as the evidence indicated that they had been created for the purpose of litigation). However, the Committee found that the documents had been *retained* by the member for purposes of or incidental to the transaction of parliamentary proceedings. It further found that, as the documents had been retained for such a purpose, they fell within the scope of 'proceedings in Parliament' within the meaning of Article 9. In light of these findings, the Committee recommended that the House uphold the claim of privilege made by the member in this case.

Resolution of matter

The day after the Committee's report was tabled, the House passed a resolution adopting the Committee's findings and recommendation, and upholding the claim of privilege by the member. The resolution also expressly reaffirmed that the House is the appropriate forum for resolution of issues of parliamentary privilege, including issues concerning material seized by search warrant from the member's parliamentary office in this case.

The ICAC is currently continuing its investigation into the member, although scheduled public hearings were recently cancelled when the appointed ICAC Commissioner revealed a conflict of interest. A new Commissioner is expected to be appointed shortly.

[11] Standing Committee on Parliamentary Privilege and Ethics, *Parliamentary Privilege and seizure of documents by ICAC No. 2*, Report 28, March 2004, Legislative Council, Parliament of NSW (available at www.parliament.nsw.gov.au).

VOTING IN ERROR IN THE STATES OF JERSEY

MICHAEL N. DE LA HAYE
Greffier of the States of Jersey

On 4 March 2003 the States of Jersey voted by 39 votes to 9 to introduce an electronic voting system. Although the decision was part of a wider package of reforms it was, in part, prompted by an incident that had happened several months earlier, which had drawn attention to the drawbacks of the previous voting system.

Until the electronic voting system was introduced votes in the States of Jersey were taken either through a standing vote or by an *appel nominal*. Although many non-controversial items were decided on a standing vote it was usual for any significant decision to be taken with an *appel nominal*. Any member could request that a vote be recorded in this way. In such a vote the names of members were read out by the Greffier of the States (Clerk) in order of seniority and members responded by stating '*Pour*' (in favour), '*Contre*' (against), or they abstained from voting. The Greffier and the Bailiff (Presiding Officer) recorded the results manually as the votes were called out and, once the votes were added up and checked, the result of the division was announced by the Bailiff.

The obvious drawback with the *appel nominal* was that members could, in theory, be influenced by the members voting before them particularly as in a non-party system in Jersey the results of votes are often difficult to predict. In addition many members noted down the total number of votes '*Pour*' and '*Contre*' as they were being cast and, although they did not necessarily record individual members' votes, they could, as a result, know the outcome of the division in advance of the formal declaration from the Chair.

The incident that led to considerable disquiet among members arose at the end of a three-day debate on a new migration policy. As Jersey is a relatively small island (55 square miles) with a population of some 87,000 the issue of population and immigration is always a matter of considerable political interest and the proposed new migration policy had led to a lively debate with no clear consensus among members. At the end of the debate it was inevitable that voting would be recorded in an *appel nominal*.

At the conclusion of the debate, Miss Mary Newcombe, the then Greffier of the States, was presiding over the Assembly. Although the Bailiff can

request an elected member to preside if neither he nor the Deputy Bailiff is available, he can also request the Greffier to preside for short periods and that had happened on this day.

Once the *appel nominal* had been taken, but before the result had been announced, Deputy D, who had voted '*Pour*', asked the Chair if he could change his vote. The Chair read out Standing Order 31(4) which was in the following terms—

> "If a member states that he voted in error or that his vote has been counted wrongly, he may claim to have his vote altered if his claim is made before the Bailiff has declared the result of the division."

The following exchange then took place—

> "Deputy D.: In that case I vote '*Contre*'.
> Chair: So you voted in error the first time?
> Deputy D.: Yes."

Once the votes were added up by the Deputy Greffier of the States and checked with the Greffier as acting President it was clear that the change of one vote from '*Pour*' to '*Contre*' had led to a tied vote, 23 in favour and 23 against. Article 21(3) of the States of Jersey Law 1966 provides that an officer of the States such as the Greffier has no casting vote when presiding and that, if the votes are equally divided, the question is determined in the negative. The proposition was therefore defeated.

Supporters of the proposition left the Chamber extremely unhappy about the result and, in particular, about the voting 'error', as they suspected that Deputy D. had, in fact, totalled the votes as they were being cast, and had taken a conscious decision to change his vote when he had realised that the proposition was about to be carried by 24 votes to 22. These suspicions were confirmed when Deputy D. spoke to the media outside the Chamber. He was quoted as saying "I could not accept that the decision was going to go forward on the basis of my single vote which I was not comfortable making." He stated that he appreciated that his name "would be mud" with at least half the Assembly but felt he had had to take action.

Supporters of the proposition were outraged. The President of the Policy and Resources Committee, who had brought forward the new migration proposals, told the local media that it was "reprehensible" that Deputy D. had misled the States by saying that he had made his vote in error and had then admitted afterwards that he had made a conscious decision to alter the

final vote. The President was quoted as saying "The whole matter has got to be reviewed by the Bailiff. The changing of the vote was illegal".

The matter was formally referred to the Bailiff and the procedures of other Commonwealth Parliaments were researched by the States Greffe on his behalf for guidance on the definition of 'voting in error'.

At the next meeting of the States the Bailiff made a statement giving his ruling on the matter. He pointed out that, in light of the unequivocal statement from Deputy D. when asked if had voted in error the first time, the Greffier, as acting President, had had no other option but to accept that he had voted in favour of the proposition in error and to allow him to alter his vote. The Bailiff continued as follows—

> "It seems that after the debate and outside the Assembly Deputy D. has indicated that after members had voted he became aware of the closeness of the vote and accordingly decided to change his mind. Members have asked whether knowledge of the likely outcome of the result of a division is a legitimate reason for a member to state that he voted in error.
>
> The answer to that question is 'no'. Deputy D. appears to have been under the misapprehension that he was entitled to change his mind and to cast his vote differently provided that the result of the division had not been declared. That is not a correct interpretation of Standing Order 31(4). The Standing Order is directed at the situation where, at the time of voting, a member mistakenly casts his vote the wrong way. If he realizes his mistake before the result of the division has been declared, Standing Order 31(4) allows him to correct it. A member is not entitled, under the influence of other considerations whatever they may be, to change a vote consciously and intentionally expressed at the time when his name is called. Such a vote cannot be described as one cast in error.
>
> It is regrettable that this misapprehension led to an outcome to the debate different from that which would otherwise have resulted. I have considered whether it is open to any member to request that the matter be re-opened and that the vote on the proposition of the Policy and Resources Committee be taken again. I have reached the conclusion that the answer to that question must be in the negative. History cannot be re-written. The acting President quite properly accepted the statement that Deputy D. had voted in error, allowed him to alter his vote, and then declared the result of the division. The fact that it has subsequently transpired that Deputy D. misunderstood his right under Standing Order 31(4) does not affect the validity of the result declared by the acting President."

The incident was not quickly forgotten by members and members who genuinely voted in error in subsequent *appel nominals* and asked to change their vote were usually labelled as "doing a Deputy D.".

The ability to amend a vote in error in Jersey is now a thing of the past with the introduction of electronic voting. Members have to check that the correct voting button on their desk is pressed before the Bailiff announces the closure of the vote and, once the vote is closed, the result cannot be changed or challenged. Perhaps some of the drama of the *appel nominal* has been lost but it would be difficult to argue that the new system is not more appropriate in a modern democratic Assembly.

RULING ON A MOTION OF URGENT PUBLIC IMPORTANCE

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Introduction

On 2 April 2003 the leader of the official opposition, Todd Hardy (New Democratic Party), rose on a point of order to request leave of the Yukon Legislative Assembly to adjourn the normal business of the House so that a matter of urgent public importance could be debated. At issue was a situation where Mr Hardy believed the Yukon Government was acting in contravention of its own *Government Accountability Act*. After hearing from Mr Hardy and two other members the Speaker, hon. Ted Staffen, ruled against Mr Hardy's request. The following procedural note outlines the circumstances of the request, the rules governing such requests and the reasons for the Speaker's ruling.

Circumstances surrounding the request

On 30 May 2002 Yukon Commissioner Jack Cable granted assent to Bill No. 59, the *Government Accountability Act*. The bill was one of five 'renewal' bills aimed at reorganizing Yukon's bureaucratic structure. At second reading the sponsor of the bill, then-premier Pat Duncan (Liberal) described the measurement of 'government performance' as the purpose of the legislation. The bill, she said, would require the government—

> "Clearly and distinctly [to] lay out where it wants to go, what it plans to do, what it expects to achieve and how it will measure the results."[1]

Central to this process were the government-wide and departmental 'accountability plans' that government would have to table with the main appropriation bills every year.

Both opposition parties—the New Democratic Party and the Yukon

[1] Yukon Legislative Assembly, *Hansard*, Second Session, 30th Legislature, volume 6, April 25, 2002, page 3378.

Party—opposed the bill. Both argued that the legislation was unnecessary and would only serve to insulate the cabinet from accountability. Shifting the focus to quantifiable measures, it was argued, would turn accountability into a bureaucratic, not a political, requirement.

In the general election of 4 November 2002 Yukoners elected a Yukon Party government. On 5 March 2003 the new premier, hon. Dennis Fentie, introduced Bill No. 27, *Act to Repeal the Government Accountability Act*. On 6 March hon. Mr Fentie introduced Bill No. 4, *First Appropriation Act, 2003-04*, without the accountability plans required by the *Government Accountability Act*.

On 1 and 2 April Mr Hardy questioned the premier during the Oral Question Period about the lack of accountability plans accompanying Bill No.4. He argued that the government was in contravention of the existing law. Hon. Mr Fentie argued that the government's intention to revoke the *Government Accountability Act* released it from any obligation to prepare plans the government considered time consuming and useless. Immediately after Question Period on 2 April Mr Hardy requested leave to present a motion to adjourn the ordinary business of the House.

Procedures regarding a motion of urgent public importance

This kind of request is provided for under Standing Order 16 of the *Standing Orders of the Yukon Legislative Assembly*.[2] Standing Order 16(4) says "The member requesting leave and one member from each of the other parties in the Assembly may speak to the request for not more than five minutes each."

The standing orders also describe the role of the Speaker in these circumstances. Once members have debated the request for leave, "The Speaker shall then rule whether the request for leave is in order and of urgent public importance and, if the Speaker (so) rules … the Speaker shall ask the Assembly whether the member has the leave of the Assembly."[3]

It is then up to the Assembly to decide if it wishes to debate the motion: "If three or more members rise in their places, the Speaker shall call upon the member who requested leave."[4] However, "If fewer than three members rise in their places, the question whether the member has leave to move the

[2] The Standing Orders may be viewed at: http://www.gov.yk.ca/leg-assembly/standing/chap2.html.

[3] Standing Order 16(5)

[4] Standing Order 16(6)

adjournment of the ordinary business of the Assembly shall be put immediately, without debate or amendment."[5]

If three members rise in their place or if a majority of members grant leave debate proceeds on the motion "That the ordinary business of the House be adjourned." It is also worth noting that "A debate on a matter of urgent public importance" is a matter for debate only and "does not entail any decision by the Assembly."[6]

Debate on the request

The crux of Mr Hardy's argument was his belief that it was "a matter of urgent public importance that the House has the opportunity to deal with Bill No. 27 without any further delay." He believed the immediate passage of Bill No. 27 would remedy a situation where "the Minister of Finance and other Cabinet ministers (are) not … in compliance with the *Government Accountability Act*." This, he said, raised "serious questions" regarding the government's "respect for the law."

Mr Hardy then read into the record portions of the accountability plan outlined in the *Government Accountability Act* that, in his view had not been complied with. He concluded his argument by saying:

> "The credibility of the budget now is also in question … the best we can do at this time is to deal with Bill No. 27 as a matter of urgent public importance. We need to end the situation that finds the ministers not in compliance with the letter and the spirit of the law, move forward, and then it will be all settled."

The leader of the third party, Ms. Duncan, made four points in her contribution to the debate. First, "that the government has broken the law" by not complying with the existing act. Second, that contrary to statements made by Premier Fentie, "the new budget document does not meet all of (the) tests" of the accountability legislation. Third, the "repeal of the *Government Accountability Act …* could have and should have been dealt with prior to this situation occurring." Her final point was that the approach taken by the government had placed it "above the law." Ms. Duncan also asserted that, "It may be that individuals do not hold the (same) vision of accountability … That is their prerogative; however, the law is [a] fact and the law must be

[5] Standing Order 16(7)
[6] Standing Order 16(10)

lived up to." She concluded by urging that Mr Hardy be given leave to present a motion to adjourn the ordinary business of the House.

The government House leader, hon. Peter Jenkins, derided Mr Hardy's request for leave as "a feeble attempt by the leader of the official opposition to delay the proceedings of this Assembly." He suggested the Assembly had a full agenda and should proceed with, and not adjourn, the ordinary business. As to the issue of accountability legislation hon. Mr Jenkins said, "at the end of the day, the accountability terms are virtually met, but in a different format" than in the existing legislation. Hon. Mr Jenkins concluded his remarks by asserting that "no laws or rules [have been] broken", and that the request for leave was an attempt to "circumvent the Standing Orders of this Assembly", which "clearly spell out that only governments have the ability to call government bills—full stop."

The Speaker's ruling

The Speaker then ruled on Mr Hardy's request for leave, ruling it out of order. The Speaker ruled that from a procedural perspective "the request for leave is not in order because Standing Order 16 cannot be used for the purpose of calling Bill No. 27 for debate … Standing Order 12(2) states that government business is to be called in such sequence as the government chooses. Standing Order 16 cannot be used to override the government's control of its own business under Standing Order 12." The Speaker continued:

> "Further, the leader of the official opposition has made statements that the Minister of Finance and other ministers are not complying with certain laws. It is stated at page 525 of *House of Commons Procedure and Practice* that, 'A direct charge or accusation against a Member may only be made by way of a substantive motion for which notice is required.'
>
> The leader of the official opposition could be understood to be verging on, if not making, a charge in this matter. The procedure followed in Standing Order 16 does not lead to a substantive motion as the motion before the House under the standing order would be, 'That the ordinary business of the Assembly be adjourned.' Therefore, if the leader of the official opposition wishes to pursue a charge, it is not procedurally in order to do so under Standing Order 16; rather, he must give notice of a substantive motion outlining the charge and the action he proposes be taken.
>
> I must, therefore, rule that the request for leave does not meet the

requirements of Standing Order 16 and that the ordinary business of the Assembly should not be set aside at this time." (*Hansard* 581; *Journals* 52-53)

As the request was not in order there was no need for the Speaker to rule whether the matter was of urgent public importance. The House then proceeded to Orders of the Day.

It is worth noting further that "The right to move the adjournment of the ordinary business of the Assembly … is subject to … restrictions … [one of which is that] the motion shall not anticipate a matter that has been previously appointed for consideration by the Assembly."[7] As Bill No. 27 was a government bill on the order paper it was, from a procedural perspective, appointed for the Assembly's consideration, even though the precise time for consideration was not set.

[7] Standing Order 16 (11)

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Proposed improvements to procedures for consideration of the estimates

2003 was a busy year for the Standing Committee on Procedure. In addition to the report *Revised standing orders*, outlined in the section on Standing Orders, the Committee reviewed arrangements for the annual consideration by the House of proposed government expenditure in its report *House estimates: consideration of the annual estimates by the House of Representatives*.

The 'estimates'—the details of proposed government expenditure contained in the main annual Appropriation Bill—are currently debated briefly during the consideration in detail stage of the bill, following a lengthy second reading debate (the Budget debate, a debate during which the normal rules of relevance are relaxed and Members can talk on any matter of individual concern). The estimates are not referred to House of Representatives committees, but they are considered by Senate legislation committees. The inquiry initially arose because of the desire of some Members of the House to participate in a similar 'estimates committee' process.

The Committee focused on the problem of time allocation, noting that in recent years the estimates debates had been curtailed because of the time restraints imposed by the need to have the appropriation legislation introduced in mid-May agreed to by both Houses of the Parliament before the beginning of the financial year on 1 July. The Committee's innovative solution was to make better use of the opportunities offered by the Main Committee for 'parallel processing' by separating the general budget debate from the second reading of Appropriation Bill (No. 1) in order to enable the estimates debates—the consideration in detail stage—to begin much earlier. The Committee proposed that the second reading would be agreed to without further debate immediately following the Leader of the Opposition's reply. After this, the 'budget debate' (on the motion 'That the House approves the Budget'), and the consideration in detail stage of the bill could take place concurrently.

Other recommendations aimed at making the proceedings more effective included advance programming of the debates with a timetable printed on

the Notice Paper; and opening statements by the responsible Ministers and possible statements by relevant committee chairs.

The Committee also recommended that the House refer the proposed expenditures to its standing committees or committees composed of House members of joint committees, and that hearings be held for those departments where the responsible Minister or Presiding Officer was a Member of the House of Representatives.

Right of reply of persons referred to in the House

A resolution of the House of 27 August 1997 enables a person who has been referred to in a debate in the House to make a submission to the Speaker, claiming that he or she has been adversely affected or that his or her privacy has been unreasonably invaded by reason of that reference, and requesting that an appropriate response be incorporated in the parliamentary record. If the Speaker is satisfied that the matter is not obviously frivolous, vexatious or offensive he or she refers the matter to the Committee of Privileges. The committee can recommend that a response by the person, in terms agreed by the person and the committee and specified in the report, be published by the House and incorporated in Hansard, or that no further action be taken by the House or the committee. After 12 submissions on which no further action was recommended, the first report by the Committee recommending the incorporation of a response in Hansard occurred in November 2003.

Attempt to reduce time taken for divisions

In the House of Representatives formal votes are taken by division, by Members dividing to sit on opposite sides of the Chamber, the 'Ayes' to the right of the Chair and the 'Noes' to the left. Two tellers (one from each side of the House, usually party whips) on each side record the Members present by marking names on a pre-printed list. A confirmatory count of numbers on each side is carried out concurrently by the Clerks at the Table.

In 2003 a trial was conducted involving doubling the number of tellers to eight, with two pairs of tellers (each pair counting a specific block of seats) to count each side. Evaluating the trial in its report *Trial of additional tellers* the Procedure Committee concluded that while the trial had been successful in saving time, there was a systemic problem (the use of four tellers sheets) which had caused an unacceptable level of errors. The time taken to record normal (four minute bell) divisions had been reduced by about two minutes per division—the average time per division including ringing of the bell of

about ten minutes was reduced to about eight minutes. However, for 31 percent of divisions the initial record contained errors.

Senate

Orders for documents: remedies for refusals

When possible remedies against government refusals to provide documents in response to Senate orders were considered in the past, one option always raised was that of deferring consideration of some or all government legislation until documents were produced. This measure has not been resorted to, except in cases where bills were deferred until information specifically relating to the bills was produced.

On 9 August 2003, however, bills to give effect to a government ethanol subsidy scheme, which involved changes to excise and customs tariffs, were deferred until the government produced the documents required by various Senate orders for documents relating to the ethanol scheme. The orders dated from October 2003, and at first the government promised to produce the documents, but later refused. It was claimed that the documents would throw light on an alleged 'special deal' between the Prime Minister and a particular company in relation to ethanol. As with other increases in tariffs, the bills validated tariff increases applied from the time of the government announcement. The bills were not passed, the tariff increases were not validated, and the scheme had to be implemented by other means.

Government advertising: order for documents

Another significant attempt to inject some accountability into problematical government expenditures was made when the Senate passed an order for documents requiring the tabling of statements providing details of any government advertising or public information campaigns costing more than $100,000.

This is an attempt to at least expose the extent of, if not control, the misuse of taxpayer-funded advertising campaigns to assist a government's re-election. The order incorporated guidelines recommended by the Auditor-General for government advertising campaigns.

A government statement was subsequently made to the effect that the government did not intend to comply with the order. The principal reasons given for the intended non-compliance were erroneous: the statement indicated that existing accountability mechanisms, including the Senate order for a list of contracts (see *The Table* for 2002, pp 17-21), covered the matter (in

fact the new order required further details of advertising contracts); and that the order would require officers to make subjective judgments about compliance with the guidelines (in fact the order calls for statements by ministers, not officers).

Government advertising campaigns known to be in train were then the subject of detailed questioning in estimates hearings. It is expected that further action will be taken in the Senate.

Claims of commercial confidentiality

The Senate passed a resolution declaring that claims of commercial confidentiality are not to be entertained by the Senate or its committees unless made by a minister and accompanied by a ministerial statement of the basis of the claim, including a statement of the commercial harm that may result from the disclosure of the information.

The resolution is another stage in senators' impatience with the use of commercial confidentiality as a dragnet excuse for withholding any and all information. The motion had its origins in the report by the Employment, Workplace Relations and Education References Committee on the government's refusal to provide information about university finances (see *The Table* for 2003, p. 98). One of the grounds of the refusal was that provision of the information would undermine public confidence in the higher education sector. The committee was able to obtain much of the missing information in the course of its inquiry.

Direction for continuation of estimates hearings

An order was passed in the Senate directing the Legal and Constitutional Legislation Committee to resume its estimates hearings, and directing that appropriate officers appear, for the purpose of examining a matter relating to asylum seekers and incorrect information given by ministers about whether the persons concerned had claimed asylum. The hearing duly occurred and officers were closely examined about the matter. The misinformation was put down to a mistake by officers.

Select committee on treaty

A select committee on a proposed Australia-United States free trade agreement was established by the Senate. There is a joint committee which examines all treaties proposed to be entered into by the Australian government, but, like all joint committees, it has a government party majority. As the government had already declared that the treaty should be approved, the

majority of the Senate decided that it should gather its own information about the implications of the treaty.

Governor-General

The Senate debated and passed a motion calling on the Governor-General to resign, or, in the event that he did not, for the Prime Minister to advise the termination of his commission. This unprecedented motion was moved by leave and passed without a division, although the government opposed the motion.

This matter arose from publicity about actions taken by the Governor-General when he was an Anglican archbishop in relation to abuses by the clergy. When asked about his actions in that previous capacity, the Governor-General made statements which aroused a furious debate about his fitness for office.

Senate standing orders prohibit disrespectful references to the Queen or her vice-regal representatives. This is more restrictive than the prohibition on offensive words applying to other protected office-holders, such as Members of Parliament and judges, under the standing orders. However, by granting leave to move the motion the Senate indicated that it was prepared to accept debate on the motion. There is also a general rule that a motion to impeach directly the conduct of protected office-holders suspends the limitation on debate to the extent required by the motion. Not only was this motion debated: there was also an earlier debate on the Governor-General by way of a motion to take note of answers to questions, without any points of order being taken on the questions or the debate. It was probably felt that the circumstances surrounding the Governor-General in themselves made the standing order inapplicable.

The resolution of the Senate was forwarded to the House of Representatives by message, but the government suppressed debate on the matter there. Neither House has the power to remove the Governor-General, who is appointed by the Queen on the recommendation of the Prime Minister. The Governor-General subsequently resigned.

Iraq resolution

A considerable amount of the Senate's time was taken up with continuing debate on the government's decision to participate in the war in Iraq. As noted in *The Table* for 2003 (p. 96), in Australia the executive government is able to engage in military action abroad without approval of the legislature. The government moved motions in both Houses to endorse the decision

retrospectively, but the Senate replaced this motion by one expressing disapproval. It was pointed out that if the government relied on prior authorisation by both houses of the legislature, like the United States administration, the authorisation would not have been forthcoming. The Australian Democrats reintroduced a bill dating back to 1985 to make such a provision.

The Senate was able to refer to a joint committee on intelligence agencies the failure to find weapons of mass destruction in Iraq. This reference was accompanied by suggestions that a purely Senate inquiry would occur if the government used its majority in the joint committee to frustrate the inquiry. The report of the committee was critical of the pre-war intelligence on Iraq, and indicated by its unanimity the continuing problem for the government relating to alleged weapons of mass destruction in Iraq. The inquiry by the committee would not have occurred but for the ability of the non-government parties in the Senate to bring about such an inquiry.

The Prime Minister was censured by resolution of the Senate over the failure to locate weapons of mass destruction in Iraq. This was the second occasion on which the then Prime Minister had been censured by the Senate; the first occasion was in 2002, for failing to prevent a parliamentary secretary from making unsubstantiated allegations against a justice of the High Court.

New South Wales Legislative Assembly

Review of the Parliamentary Precincts Act 1996

Section 33 of the Parliamentary Precincts Act 1996 requires that the legislation be reviewed within five years of the assent of the Act, i.e. by 10 July 2003, to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. In accordance with this provision, the Cabinet Office undertook a review which was tabled in the House in June 2003.

The views of the Presiding Officers were sought on the matter and it was concluded that the objectives of the legislation remain valid and that the legislation should continue, particularly in light of the need for increased security in the current environment.

Under the legislation the Presiding Officers are able to enter into a memorandum of understanding with the Police to assist with determining operational protocols. As part of the review process, the Presiding Officers requested that this be drawn to the attention of the Minister for Police and those relevant officers in the Local Area Command that is responsible for responding to incidents affecting the parliamentary zone.

As a result of the review a liaison group, to be chaired by the Manager, Parliamentary Security Services, and comprising Parliament House and nearby agencies such as the State Library, Sydney Hospital, and the Royal Botanical Gardens and Domain Trust, has been constituted to establish key contacts, exchange information of mutual concern and to provide a forum for the ongoing operation of the legislation.

Electronic and technical innovation—Video Hansard

During 2003 users of the Parliament's Intranet gained access to a new video Hansard, which is a world-first initiative using the flexibility of various online technologies to deliver a searchable repository of video, audio and text material relating to past and present parliamentary proceedings. Under this technology, the official Hansard text for the Legislative Assembly is aligned with the corresponding video. The resulting Video Hansard 'articles' are then available through the existing online search facilities and allow users to review an article by clicking on any section in the Hansard text.

At present Video Hansard is available online from the Parliament's Intranet for users within Parliament House only. Although, there are moves towards making the service publicly available via Parliament's website.

Archival video is available from the beginning of 2002, although not all proceedings are covered. Earlier archival material may be made available at a later date. Hansard articles for which there is video available are distinguished by the presence of a video link icon.

New video is released approximately three weeks after sittings. The current process is tied to the finalisation of the corrected copy Hansard, which normally occurs within two weeks.

Plain English summons and proposed consequential practice

The opportunity was taken to obtain Crown Solicitor's advising on a proposed plain English summons to be issued by Parliamentary Committees administered by the Legislative Assembly. That advising suggested a new plain English version of the summons. This new summons was adopted for use by committees administered by the Legislative Assembly during the second half of 2003.

In addition, the Crown Solicitor made two points in passing which had procedural impacts. They were:

- The *Parliamentary Evidence Act 1901* provides that a person (not being a Member) may be summoned by an order of the committee signed by

the Chairman. It is not as indicated on the old summons 'by the Chairman'.

- The new summons should bring to witnesses' attention, by way of a footnote, that they are entitled to be paid at the time of service of the summons reasonable expenses consequent on their attendance. The Crown Solicitor considers that "failure to pay reasonable expenses at the time of the service would constitute 'just cause or reasonable excuse' for non attendance" under the Parliamentary Evidence Act 1901.

The first issue was easily accommodated on the new summons form and on resolution of the committee.

The second issue obviously has cost implications. Current Legislative Assembly practice is to arrange the attendance of witnesses by telephone request and subsequent written confirmation. The summons was then issued to a witness upon their attendance on the day. It is estimated that over 98 percent of witnesses co-operate as it is their desire to appear before a committee on a consensual basis. That is, the vast majority of witnesses do not need to be compelled.

Committee staff discuss with some out of Sydney witnesses ways to provide transport (cab-charge, return economy airfare, kilometre allowance for cars, etc.), overnight accommodation and reasonable meal expenses as an inducement to get a person to give evidence. This existing practice accords with the Crown Solicitor's advising above.

In a 1980 advising (in relation to evidence and privilege of certain Aboriginal witnesses) the Crown Solicitor concluded:

> "If a witness attends before the Committee without having been summoned, and gives evidence on oath or affirmation under s.10 [of the Parliamentary Evidence Act], that is sufficient to establish that his evidence is given 'under the authority of this Act' within the meaning of s.12."

Therefore, as a matter of course, witnesses do not have to be issued with a summons but should be sworn or affirmed. It means that summonsing is a redundant procedure for routine hearings. It would also eliminate the possibility that witnesses, who otherwise might not do so, seek 'expenses'.

Accordingly, to compliment the plain English summons as a matter of general significance, the Speaker approved the following practice to be observed by committees in relation to the use of a summons:

- In the normal course of events no summonses be issued to witnesses;
- Confirmation of current practice to pay, with the prior approval by the usual authorities for expenditure, for the transport and reasonable expenses of key persons who might otherwise not appear before a committee;
- Reserve the use of a summons as a last resort to compel a person's attendance before a committee on a case by case basis after consultation with the Clerk-Assistant (Committees) for guidance; and
- As a summons is issued by a Chairman on an order from the committee that this be done by way of committee resolution.

New select and standing committees appointed by the House during 2003

Standing Committee on Natural Resource Management. In May 2003 the House resolved to appoint a new Standing Committee on Natural Resource Management. Under the terms of the resolution, the Committee is responsible for inquiring into and reporting on:

- current disincentives that exist for ecologically sustainable land and water use in New South Wales;
- options for the removal of such disincentives and any consequences in doing so;
- approaches to land use management on farms which both reduce salinity and mitigate the effects of drought;
- ways of increasing to up-take of such land use management practices;
- the effectiveness of management systems for ensuring that sustainability measures for the management of natural resources in New South Wales are achieved; and
- the impact of water management arrangements on the management of salinity in New South Wales.

Joint Select Committee into the Transportation and Storage of Nuclear Waste. In May 2003, a new Joint Committee was established by the Parliament to:

> "[C]onsider and report upon proposals by the Commonwealth Government to transport nuclear waste through and potentially store nuclear waste within New South Wales, with specific reference to the following matters:
>
> (a) logistical arrangements associated with the proposals, including sourcing, transport and storage of waste;

(b) health and safety risks associated with the transportation and storage of nuclear waste in New South Wales:
(c) extent of possible resource implications associated with the transportation and storage of nuclear waste within New South Wales; and
(d) any other relevant matter."

Under the resolution adopted by the House, the Committee was to report by 5 December 2003. However, this was extended by a resolution of the House to 17 February 2004.

New South Wales Legislative Council

2003 Election

Eight Members of the Legislative Council retired on the dissolution of the 52nd Parliament in February 2003, including a number of long-serving Members.

At the periodic Council election held on 22 March 2003 in conjunction with the general election for the Legislative Assembly, there were 284 candidates representing 15 groups and seven independent candidates. Of the 21 Members elected, eight were new Members. The result of the election, particularly the identities of the candidates who would fill the last four seats, was not known until 16 April, due to technical difficulties with the computerised count experienced by the State Electoral Office.

In the lead up to the election there was much media speculation about the chances of Pauline Hanson winning a seat at the election. As the count progressed it became apparent that either Pauline Hanson or John Tingle of the Shooters Party would take the last seat. John Tingle eventually won the seat, returning to the Council for a second term. The final result of the election was: ten ALP, seven Liberal/National, two Greens, one Christian Democratic Party and one Shooters Party. The composition of the Legislative Council is now 18 ALP, 13 Liberal/National and 11 Cross-bench Members.

The election result saw the ALP increase its numbers in the House from 16 to 18 at the expense of two Cross-bench Members. This result reflects changes to the system of voting introduced following the 1999 election when there was a record number of candidates and parties. Under the changes, the Senate style 'ticket' voting system was abolished and voters are now required to indicate their own preferences for groups above the line or vote for individual candidates below the line.

Of the 21 Members elected, six are women. This brings the number of women in the Legislative Council to 13 out of 42, up from 11 in the last Parliament. The average age of Members is now 51 years, down from 52 in the last Parliament.

New television cameras for the Legislative Council Chamber

On 2 September 2003 the President informed the House that a new television camera system had been installed in the Legislative Council Chamber and would operate from that day.

The new system has full digital capability and consists of three cameras which, from the commencement of proceedings each sitting day until the dinner adjournment, are controlled by an operator from a control room in the upper gallery. After the dinner adjournment, unless there is a requirement by the President or the Clerk for an operator to be on duty to cover a particular debate, the system reverts to a single fixed camera at the western end of the Chamber.

The new system provides broadcast quality picture to the internal television system, the webcast on the internet and to the media gallery television stations.

Innovative consultation methods in committee inquiries

Two recent NSW Legislative Council committees have made use of unusual approaches for promoting community consultation and participation during the inquiry process. These approaches have resulted in beneficial outcomes for both the inquiries and stakeholder groups.

A Select Committee was established by the Legislative Council to conduct an Inquiry Into Mental Health Services In New South Wales in December 2001. This was the first NSW Parliamentary inquiry since 1877 to look specifically into mental health and the first since 1846 on this subject to be conducted by a committee with a minority government membership.

The inquiry received 303 submissions from private citizens, mental health professionals, and non-government and government organisations and heard evidence from 91 witnesses. More than 100 of the submissions received were from individuals detailing their experience as consumers, carers and families. From many of these submissions, it became evident that there was a great degree of frustration and dissatisfaction with the mental health system. In particular, the absence of any independent review of various structural changes to care provision that occurred over the last 20 years contributed to a feeling of neglect amongst many stakeholders.

To provide this stakeholder group with an opportunity to communicate their concerns, the Committee conducted a forum at Parliament House, Sydney. Stakeholders were invited to attend the forum and submit expressions of interest to speak at the forum. Of the responses received, 30 speakers were selected by ballot, and each provided with five minutes to address the forum. More than 80 individuals registered attendance at the forum. The Committee members acted as observers and the speakers were not challenged on their information. Hansard was not present but an audio recording of the proceedings was made. The media were restricted to one camera for pooled footage.

The forum provided various beneficial outcomes. First, the forum gave many individuals an opportunity to publicly express their experiences and concerns. Second, the interaction of this stakeholder group in one place for the first time resulted in the establishment of various peer support networks. Third, the forum highlighted the community consultation and participation process of committee work, and demonstrated the influence of this process on the shape of the committee's recommendations. This in turn cultivated the feeling of community ownership of the recommendations.

In addition, the forum received interest from the national broadcaster's current affairs television program, *Four Corners*. *Four Corners* filmed the forum and produced a program based on the inquiry, later winning the Commonwealth Human Rights and Equal Opportunity Commission's Best TV Program for 2003 Award. This coverage greatly contributed to the ongoing profile of mental health in the public domain—normally an area not attracting significant media interest.

Following the success of the forum, a second forum was organised after the tabling of the Committee's Final Report. This forum was attended by over 130 individuals to discuss 'Where to from here?' This was unusual given that select committees cease to exist following tabling of a final report. As there was no authority to conduct formal committee business, this forum was not promoted as formal committee proceedings but rather as an opportunity to assemble stakeholders and obtain feedback on the Final Report and its 120 recommendations.

In December 2003 the Government tabled its response to the committee's final report, which stated that the Government welcomed the committee's report and would implement a number of its key recommendations.

The former Chair of the Committee (a non-government Member who retired at the 2003 election) has become an advocate for improved mental health services in New South Wales and was appointed by the NSW Health

Minister to chair a government taskforce to oversee the implementation of many of the Committee's recommendations.

The inquiry into Science And Its Commercialisation In New South Wales was equally innovative. On 3 July 2003 the Minister for Science and Medical Research asked the Legislative Council Standing Committee on State Development to inquire into publicly funded science and its commercialisation in New South Wales. At the time, this was a new portfolio for New South Wales and there was no established agency to provide advice and support to the Minister. At the commencement of the inquiry the Committee recognised that the broad science community in New South Wales, comprising individuals from a range of government departments, the education sector, private companies and representative organisations, would need to be consulted to determine both the extent of scientific research and its commercialisation and the most equitable and progressive ways New South Wales could benefit from these endeavours.

Following analysis of the submissions and the initial round of public hearings, the Committee determined that the public sector science community and Government would benefit from a more coordinated approach to communication among stakeholders. To facilitate this, the Committee invited the Commonwealth's Chief Scientist, scientists from cooperative research centres (CRCs), students and Government representatives to participate at a forum at Parliament House. The forum was conducted in the Legislative Council Chamber and was co-chaired by the Committee Chair and by a respected member of the science community. Members of the Committee attended to observe the proceedings.

One of the key aims of the forum was to further engage the science community and to provide stakeholders with some ownership of the inquiry, its processes and outcomes. The forum provided those CRCs based in New South Wales with their first opportunity to meet, as a group, with representatives from the NSW Government. As a result of the forum, these CRCs resolved to form a New South Wales representative council so that future approaches to the Government would not be on an individual, ad hoc basis but would have a more consistent and strategic approach.

The forum was digitally recorded and a professionally edited, hour-long DVD was produced. This DVD was tabled as part of the Committee's Final Report and was distributed with the report. Written reports normally represent a snapshot of stakeholder views supporting specific recommendations. The Committee decided to take this new approach and present the forum using an audio-visual medium to allow the passion and commitment of

stakeholders to be presented directly. This has been well received by both the participants in the forum and other interested parties.

Both the forum and DVD provide a tangible example of how one of the report's recommendations could be put into practice. The Committee has recommended that New South Wales conduct an annual 'Science in Parliament' day to bring the science community and Members of Parliament together. The forum afforded such participants an opportunity to see how such an event might be organised, and the DVD provided the inquiry's audience with a similar opportunity.

While the government response to the Committee's recommendations has not yet been tabled, there have been indications that the Government has already adopted some recommendations. For example, a key recommendation of the report was the establishment of a Ministry to assist the Minister for Science and Medical Research. The Government has since established this Ministry.

In conclusion, the participation and consultation mechanisms used during these two inquiries not only publicly promoted the work of committees, but helped to generate interest and foster communication among stakeholders. These less typical methods helped to assist Members produce valuable reports and to engage both stakeholders and parts of the broader community in the inquiry process.

Sessional Order—cut-off date for Government Bills

On 29 May 2003 the House again resolved that for the current session debate on the motion for the second reading on a Bill introduced by a Minister or received from the Legislative Assembly after a specified date, unless declared urgent, is to be adjourned at the conclusion of the Minister's second reading speech until the first sitting day in the next period of sittings. As in previous sessions, the sessional order was amended to allow for a change in the cut off date.

This procedure was first adopted as a sessional order on 20 March 2002, the intention being to alleviate the end-of-sittings rush by ensuring that no new bills are introduced in the final weeks of sittings.

Since first adopted by the House, there have been a number of occasions upon which a Minister has declared a Bill to be an urgent Bill. On each occasion the House has agreed, allowing the Bill to proceed through all stages in any one sitting of the House.

Queensland Parliament

Table Trainee Program

In late 2002 the Queensland Parliament commenced a Table Trainee Program, with the aim of developing a corps of experienced Table Officers. Officers were selected after an expression of interest was circulated.

During 2003 year a group of nine officers drawn from various parts of the Parliamentary Service underwent training in matters related to Parliamentary Law and Proceedings, Table duties and the related operations of the Parliament's Table Office and Bills and Papers Office. The training, directed by the Clerk of Parliament, included: lectures, problem-solving seminars, presentations by the officers on various topics and participation in the preparation of a Parliamentary Policies and Procedures Manual.

Under the Program five trainees, all Research Directors of Parliamentary committees, commenced performing Table duties in the Chamber, and several other trainees relieved in positions in the Table Office and Bills and Papers Office.

The Program, by enlarging the pool of officers available to sit in the Chamber, has eased the pressures on staff in that area during busy and lengthy sitting periods, as well as broadening the experience of the trainees. Similarly, it has provided a source of staff able to relieve in vacant positions in the Table Office and Bills and Papers Office.

Trainees have found Chamber duties, with their mixture of practical and theoretical skills, challenging at times, but feel they are progressing rapidly.

South Australia House of Assembly

A Joint Committee has been established, on the motion of the Premier, to inquire into the necessity of a Code of Conduct for Members of the South Australian Parliament. The Committee is expected to report early in 2004.

A Bill has been introduced to provide for a separate appropriation for the Parliament and the appointment of a Chief Executive to the Joint Services Division. Currently the Parliament's appropriation is incorporated in the Government's budget legislation and the joint services for the Parliament are administered by the Joint Parliamentary Service Committee (a committee of Members from both Houses) with the role of Chairman along with the role of Secretary to the Committee, alternating annually between the Presiding Members of the two Houses and their Clerks. The new legislation proposes a

permanent officer as Secretary to the Committee. The adjourned debate on the Bill is to be resumed in early 2004.

Victoria Legislative Assembly

Constitution (Parliamentary Reform) Act 2003—entrenchment provisions

One of the Bracks Government's election platforms was parliamentary reform and, after securing a second term at the November 2002 general election, it moved quickly to implement its plans. One of the first Acts passed by the 55th Parliament was the *Constitution (Parliamentary Reform) Act 2003* which focused on upper house reform. The Act is discussed in the article by Dr Stephen Redenbach in this issue.

Another aspect of the legislation was its introduction of three levels of entrenchment of constitutional provisions. Under the *Constitution Act 1975*, legislation to amend or affect various parts of that Act was required to be passed with an absolute majority at the second and third readings. Other sections required only a simple majority. Parliamentary reform legislation clarified that an absolute majority was required at the third reading only, thereby eliminating the legal confusion relating to the status of bills that may receive only a simple majority at one of these stages. The Act also introduced two extra levels of entrenchment to safeguard the provisions of the Constitution. Amendments to some sections are now required to be passed with a 'special majority' (three fifths of the whole number of the Members of the Legislative Assembly) and still others can only be altered at a referendum put to the Victorian people. As at the end of 2003, only one bill has required a special majority in the Assembly, which was easily obtained, and there have been no bills triggering a referendum. It is worth noting that in the current Parliament, the government has the numbers for a special majority in its own right, but it is quite possible that a future government may rely on minor parties and independents in order to pass legislation with special majority requirements.

The parliamentary reform legislation also established a dispute resolution process for deadlocked bills. This will take effect at the commencement of the 56th Parliament. It should be noted that in the course of the second reading debate, some Opposition Members expressed doubt about a parliament's capacity to legislatively bind the functions of a future parliament, and so it will be interesting to observe the way constitutional entrenchments and parliamentary composition is dealt with in future parliaments.

55th Parliament sessional orders

The opening of the 55th Parliament was held on 25 February 2003. The first sitting day was largely ceremonial, and on the second sitting day, the House considered, and adopted, sessional orders. The sessional orders were moved by leave, rather than on notice, and were dealt with as formal business. The Leader of the House moved that on adoption, the sessional orders would come into effect on the next day of sitting. This was to avoid the procedural difficulty that might have occurred if the sessional orders were adopted that evening, which was a Wednesday, and put into effect immediately. Under sessional orders, the House would have been required to proceed to the business set out in the sessional orders to follow formal business on Wednesday, which would have been Members' statements, and grievance debate. Therefore, on the Wednesday evening, the House operated under standing orders alone, with longer time limits for speeches applying, and the traditional adjournment practice.

Opposition, independent and government Members had amendments to the sessional orders. To enable each Member, and each amendment, to be dealt with fairly, the House decided to treat the amendment process much as it would for the Committee of the Whole stage when considering a bill, and employed the call list and order for moving amendments used then. The only difficulty was that because it was a motion before the House, no debate was allowed, and Members could not speak to the amendments, though Members accepted this.

The key changes from the previous parliament's sessional orders included shortening most of the time limits for various debates, providing for amendments to be circulated to bills not subject to the government business program (sessional order 6) during the second reading debate, and dispensing with notice for the introduction of government bills.

Free vote on legislation—all parties

In March the House considered the Health Legislation (Research Involving Human Embryos and Prohibition of Human Cloning) Bill. All parties allowed Members to exercise a conscience vote on the bill. It is most unusual for all parties, particularly the party responsible for the legislation (the government, in this case) to allow a free vote. The call allocation in the House usually rotates between the Government, Liberal and National parties for the first three speakers to establish which parties are for and against the question before the Chair, and then allocated on a representational basis after that. Clearly, this approach would not work in a situation where all three parties

were allowing Members to vote as they chose. It was also not possible to simply rotate between Members who were for and against the question, as some Members did not disclose their views until they spoke. Therefore the Speaker allocated the call in the usual party proportional basis, as this was deemed to be the fairest system, and allowed all Members to speak in turn. As it was, the bill passed the House after a considered and thoughtful debate.

Strategic Plan—One Parliament

In October the Presiding Officers released the draft Parliament of Victoria Strategic Plan for 2003–2006, entitled *One Parliament*. Its objectives are linked directly to Parliament's Corporate Plan, and were agreed to by the Department Heads and deputies.

One of the key features of *One Parliament* is the restructure of the five parliamentary departments. There is a need to maintain the independence of the two Houses, and so the two House departments (Legislative Assembly and Legislative Council) are to be retained, but the three other Departments are going to be brought together into one administrative area. These Departments are the Parliamentary Library, Hansard or Department of Parliamentary Debates, and Joint Services Department and will come together in one large Department of Parliamentary Services. This is similar to the organisational model employed in other Parliaments such as the Australian Federal Parliament and the Western Australian Parliament. It is felt that this will reduce areas of duplication, lead to better budgeting practices and lead to a more unified organisation. The position of Secretary of the Department of Parliamentary Services will be advertised in early 2004.

Motion to dismiss the Ombudsman

In April 2003 Victoria's long-serving Ombudsman, Dr Barry Perry, suffered a severe stroke. An Acting Ombudsman was sworn in for the duration of Dr Perry's illness. However, towards the end of the year, it became apparent that it was unlikely that Dr Perry would recover sufficiently from his stroke to resume the office he had held with great distinction. Under the *Ombudsman Act 1973*, the Ombudsman is able to resign (section 3(5)(a)), but there was some concern that Dr Perry was not well enough to resign his duties under the terms of the Act. The other option in the Act (section 3 (5)(b)) is that the Ombudsman be dismissed on the presentation of an address from both Houses of Parliament. With the understanding of Dr Perry's family, and the Ombudsman's Office, it was decided that a motion to dismiss the Ombudsman as a result of invalidity would be the most suitable approach.

On 26 November the Legislative Assembly and Legislative Council each passed an identical motion, which was put in an address to the Governor and signed by the Presiding Officers. The address requested the Governor in Council to dismiss Dr Perry as a result of his invalidity, in accordance with section 3(5)(b). During debate on the motion, Members paid tribute to Dr Perry and his dedicated service to the State of Victoria. It is the only time that the section of the Act has been invoked, and will serve as precedent for any other similar circumstances, such as the dismissal of a judge under the *Constitution Act 1975.*

Parliamentary Committees Act 2003

The *Parliamentary Committees Act 1968* was replaced by the *Parliamentary Committees Act 2003* in December. The new Act adopts the key recommendations of a report from the Scrutiny of Acts and Regulations Committee on ways to improve the parliamentary committee system. The new Act is intended to be more logically arranged, more accessible and understandable with the use of plain English, and clears up some procedural uncertainties of the 1968 Act.

The new Act provides for committee reports to be 'tabled' when the Parliament is not sitting, by giving a copy of the report to the Clerk of each House. A report handled in this way is deemed to be published as a parliamentary paper, thereby attracting parliamentary privilege. This means that a finalised committee report does not need to wait until Parliament is sitting (which may be some weeks) before being released. The new Act is available on www.parliament.vic.gov.au under 'Legislation and Bills'.

CANADA

House of Commons

Dividing a bill

Consideration of government Bill C-10 (*An Act to amend the Criminal Code (cruelty to animals and firearms)*), which the Senate had divided into C-10A (*An Act to amend the Criminal Code (firearms) and the Firearms Act*) and C-10B (*An Act to amend the Criminal Code (cruelty to animals)*) continued. (See the 2003 *Table*, pp. 116-17.)

The motion proposing that the House agree to waive its privileges in this specific case (not to be regarded as a precedent) and concur with the Senate's division of the bill was agreed to after the imposition of time allocation.

Two points of order were raised in connection with the motion:

- one claiming that the government was attempting to use time allocation improperly;
- the other that the motion was out of order because the House could not waive its privileges.

The Speaker did not agree in either case, and ruled accordingly.

Bill C-10A had already passed in the Senate without amendment, and subsequently received Royal Assent on 13 May 2003. Bill C-10B was returned to the House with amendments. The House considered the amendments and returned the bill to the Senate with further amendments. At prorogation, the bill was under study in a Senate committee.

Amendments at report stage

On 28 January 2003, during consideration at report stage of Bill C-13 (*An Act respecting assisted human reproduction*) the Speaker selected a large number of report stage amendments (107) sponsored by both government and opposition Members. The Speaker stated that he had selected certain motions from government backbencher Paul Szabo (Liberal) because, although Mr Szabo had attended clause-by-clause meetings of the Committee, he was not a member of the Committee and had not been permitted to propose his amendments. The report stage ruling represents a departure from the practice established following the Speaker's statement in March 2001 in which he announced stricter guidelines for the selection of amendments at report stage.

Previous question

During the week of 31 March 2003 the previous question was used on several occasions within a three-day period to curtail debate on government legislation (second reading debates of Bills C-20, C-28 and C-23).

On 2 April the previous question was moved in the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources during clause-by-clause study of Bill C-7 (*An Act respecting leadership selection, administration and accountability of Indian bands, and to make related amendments to other Acts*). During an *in camera* meeting, opposition Members apparently objected to a motion seeking to limit Members' speaking time. While speaking against the motion, Pat Martin (New Democrat) was interrupted by the Parliamentary Secretary who moved that the question be now put. The committee chair ruled the motion out of order, but the

ruling was appealed and overturned. The matter was subsequently raised in the House. The Speaker acknowledged that the moving of the previous question in committee runs contrary to practice, but reminded the House that committees are masters of their own proceedings and maintain the right to appeal rulings of the Chair. He reminded the House that the right to appeal Speaker's rulings was removed in 1965 and suggested that "it may perhaps be an appropriate time for the House to consider whether the rule permitting appeals of the chair's ruling retains its original justification".

Parliament of Canada Act amendments: ethics

On 30 April 2003 the government introduced Bill C-34 (*An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence).* The bill would establish the positions of the Senate Ethics Officer and the Ethics Commissioner. It would also establish a *Code of Conduct for Parliamentarians* intended for inclusion as a schedule to the *Rules of the Senate* and the *Standing Orders of the House of Commons*. At prorogation, the House had passed the bill and the Senate had adopted it with amendments. A message was sent to the House on 7 November 2003.

Casting vote (definition of marriage)

On 17 June 2003 the Prime Minister announced that the government would not appeal recent decisions of the courts of appeal in British Columbia and Ontario on the definition of marriage (the government subsequently withdrew its appeal of a similar case in Québec). At the same time, the Prime Minister announced that the Government of Canada would refer draft legislation legally recognizing the union of same-sex couples to the Supreme Court of Canada.

The government referred three main questions to the Supreme Court, seeking clarification on whether:

- the proposal falls within the exclusive legislative jurisdiction of the Parliament of Canada;
- the marriage of persons of the same sex is consistent with the *Canadian Charter of Rights and Freedoms*;
- the freedom of religion guaranteed by paragraph 2(a) of the Charter protects religious officials from being compelled to perform such a marriage if it runs counter to their religious beliefs.

Debate ensued across party lines. The Canadian Alliance forced a vote on the issue on a supply day by reintroducing a motion passed by the House in 1999, affirming marriage as a union between one man and one woman.

During debate, an amendment was moved by the Canadian Alliance. When the question was put, the result of the vote was a tie (134 Yeas; 134 Nays). The Speaker gave his casting vote in the negative in order to allow the original question to be put to the House unaltered. The main motion was negatived (132 Yeas; 137 Nays). In the history of the House, the Speaker has used the casting vote on only nine other occasions and these were all votes on a main motion.

Elections Act—political financing

On June 29, 2003, Bill C-24 (*An Act to amend the Canada Elections Act and the Income Tax Act (political financing)*) received Royal Assent. The bill has several components:

- A ban (with minor exceptions) on political donations by corporations and unions;
- A $1,000 restriction on corporate donations to MPs' riding associations;
- A $5,000 limit on donations from individuals;
- The registration of constituency associations, with reporting requirements;
- The extension of regulations to nomination and leadership campaigns; and
- Enhanced public financing of the political system, particularly at the level of political parties ($1.75 per vote).

Electoral boundaries—number of seats in the House

Representation in the House of Commons is readjusted after each decennial (10-year) census to reflect changes and movements in Canada's population. Based on the 2001 Census, the number of seats in the House of Commons will increase from 301 to 308. A new representation order was proclaimed on 25 August 2003, and comes into effect on 25 August 2004. Bill C-49 *(An Act respecting the effective date of the representation order of 2003)* was introduced in September to make the representation order effective on the first dissolution of Parliament that occurs on or after April 2004. The bill was passed in the House on 23 October 2003 and was being debated in the Senate at prorogation.

Public Service Modernization Act

On November 7, 2003 Bill C-25, the Public Service Modernization Act (short title) received Royal Assent. The bill will:

- repeal the current *Public Service Staff Relations Act* and enact a new Public Service Labour Relations Act to govern labour relations in the federal public service;
- repeal the existing *Public Service Employment Act* and enact a new Public Service Employment act to regulate appointments to the public service;
- amend the *Financial Administration Act* to transfer certain human resources management powers from the Treasury Board to deputy heads; and
- amend the *Canadian Centre for Management Development Act* to pave the way for the new Canada School of the Public Service.

Member's pecuniary interest

On 30 April the Standing Committee on Official Languages tabled its Sixth Report, recommending that the House suggest that its Board of Internal Economy make available a budget of $30,000 to cover a portion of the legal fees of the committee's chair, Mauril Bélanger (Liberal). Mr Bélanger had intervened in the appeal to the Federal Court of Canada of the court action *Quigley v. Canada*. At issue in the case was whether the *Official Languages Act* could be applied to the House to require the House to ensure that cable distributors broadcast House proceedings in both official languages. The appellants were Canada (House of Commons) and Canada (Board of Internal Economy).

A point of order was raised, alleging that Mr Bélanger had placed himself in a conflict of interest by signing the report because he had a direct pecuniary interest in the matter. The Speaker stated that, although no Member is entitled to vote upon any question in which he or she has a direct pecuniary interest, a committee chair does not take a position for or against the contents of a committee report. In signing, he or she merely attests that the report reflects the decisions of the committee.

(*Note*. On 3 December the Federal Court of Appeal delivered its judgement (citation 2003 FCA 465). The claim had been adjudicated in the Plaintiff's favour in Federal Court of Canada on 5 June 2002. The House of Commons appealed this ruling to the Federal Court of Appeal. By this time, however, Mr Quigley had acquired access to the televised debates of the House in the official language of his choice and new CRTC regulations

required cable companies to carry the debates in both official languages. For this reason, the Court dismissed the appeal on the grounds that the issue on appeal was moot.)

Information technology

On 29 January 2003 the Speaker addressed the issue of the use of internal electronic mail in response to a question of privilege raised by Jim Pankiw (Independent), who had alleged that senior government officials had impeded him in his duties by directing public servants to ignore and delete electronic surveys sent from his office. The Speaker stated that the volume and size of the Member's messages had interfered with the operation of the electronic systems of the House and government departments and agencies. Referring to "dangerous and reprehensible spamming," the Speaker stated that until specific guidelines were adopted to regulate mass e-mailings, he was directing officials to contact any Member whose activities impede the proper functioning of the systems, to inform that Member to cease such destructive activity and to propose alternatives where possible. Failure to comply will result in the suspension of the Member's account.

As of 22 September 2003 Members are able to access their e-mail and the Internet from their desks in the Chamber, which are now equipped with a power outlet and a network connection. This access was the result of a project to upgrade the technology infrastructure in the Chamber and the concurrence on 18 September in the Fourth Report of the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons.

Concurrence in the Fourth Report (mentioned above) also resulted in the launch of ParlVU on the parliamentary website (www.parl.gc.ca). ParlVU offers a live webcast of televised parliamentary proceedings from the Commons Chamber and two committee rooms. The audio feed of non-televised public committee meetings is available to users of the parliamentary intranet, and will be made available on the public website in the fall of 2004.

Changes in Members' allowances

The *Parliament of Canada Act* was amended to provide an additional allowance to Chairs and Vice-Chairs of Special Committees with effect from 28 July 2003. The additional remuneration is $10,000 per annum for Chairs and $5,200 for Vice-Chairs. An equivalent provision was already in place for Chairs and Vice-Chairs of Standing and Standing Joint Committees.

British Columbia Legislative Assembly

Citizens' Assembly on Electoral Reform

The Citizens' Assembly on Electoral Reform has begun deliberations on the future of the first-past-the-post electoral system used in British Columbia. The 160 randomly selected Assembly delegates—representing all 79 electoral districts, as well as First Nations communities—have recently completed the six full-weekend learning phase of the Assembly process. The delegates have received academic lectures from world-renowned scholars on electoral reform and discussed the positives and drawbacks of different electoral systems used throughout the Commonwealth.

The delegates are currently developing a preliminary statement on electoral reform for the citizens of British Columbia. This statement will serve as the basis for public consultation as the Assembly conducts 49 public hearings in May and June 2004.

From September to November 2004 the Assembly will reconvene to deliberate on whether a new electoral system for British Columbia is desirable. Should the Assembly decide that a new system is warranted, the Assembly will craft a referendum question that will appear on the ballot for the provincial election on 17 May 2005. If the referendum question receives 60 percent popular support in at least 60 percent of the province's electoral districts, an electoral system based on the recommendations made by the Assembly will be designed and implemented for the 2009 election.

Prince Edward Island Legislative Assembly

Warranting attendance of witnesses before a legislative committee

On 3 April 2001 the Standing Committee on Agriculture, Forestry and Environment was charged with conducting a full and complete examination of the events leading up to and subsequent to the discovery of potato wart fungus in the province in October 2000. The discovery of this disease was a major blow to the potato industry and devastated many sectors of the Prince Edward Island economy, with the United States border being closed to potato shipments for six months.

In September 2001 representatives of the Prince Edward Island Potato Board, the Prince Edward Island Potato Producers' Association, the provincial Department of Agriculture and Forestry, and the federally-mandated Canadian Food Inspection Agency were invited to assist the Committee's investigation by appearing before it to provide information and answer

questions relating to the matter. All parties accepted the Committee's invitation, with the exception of the Canadian Food Inspection Agency. Their response indicated that the CFIA was declining the Committee's invitation but would receive, and respond to, written questions from the Committee related to the potato wart issue.

The Committee met on 9 November to consider this response. As a result, a second written invitation, more strongly worded, was extended to the CFIA, expressing the Committee's disappointment and reaffirming the Committee's wish to have the CFIA appear at the public hearing scheduled for 14 November 2001. On 13 November the invitation was again declined and again the offer of assistance in answering written questions was made. The public meeting scheduled for the following day was cancelled.

A further response from CFIA was received in the form of correspondence containing a legal opinion from the Federal Department of Justice stating that it is beyond the constitutional authority of a provincial legislature to mandate an inquiry into the operations of a federal agency. Relevant case law cited was the Supreme Court of Canada decision of 1979 in *AG Quebec and Keable vs. AG of Canada*.

The Committee was faced with deciding whether to warrant the attendance of the provincially-resident CFIA officials. The Clerk's Office of the Legislative Assembly undertook a survey of legal databases concerning the jurisdiction of provincial legislatures as it applies to federal government employees. Legislative counsel was advised and an opinion was requested. The Legislatures of other provinces and territories were consulted as to their experience of circumstances where federal officials were warranted to appear before a standing committee of a provincial legislature. Responses to these inquiries were of mixed opinion, leading the Committee to understand that the power of a legislative committee to subpoena federal government employees is not clear cut.

In the *Keable* decision, the Supreme Court of Canada held that a provincial commission exceeded its authority in issuing orders seeking to compel the attendance of witnesses and production of documents in relation to the operations of the RCMP, which operates under the authority of a federal statute. It can be argued, therefore, that the constitutional jurisdiction of the Legislative Assembly does not include federal agencies acting in pursuant to federal statute, in this case, the Plant Protection Act. The Province of Prince Edward Island's Legislative Counsel was of the same opinion.

Responses from the legislative assemblies of the provinces of Alberta, Manitoba, Ontario, Quebec, Newfoundland and Labrador, and the territories

of Yukon and Nunavut indicated that they had not experienced a parallel set of circumstances. Several replies, however, offered the opinion that a Standing Committee of a provincial legislature is empowered to 'send for people, papers and records', which includes federal officials within the province. British Columbia and the Northwest Territories both had experience with a witness refusing to testify before a committee.

British Columbia faced this situation a few years ago, when David Anderson, then the Federal Minister of Environment, was asked to appear before the British Columbia Special Committee on the Multilateral Agreement on Investments. He declined to appear and the Committee felt that it was beyond its jurisdiction to compel a federal minister to appear before it due to the division of powers in the Constitution Act.

The Northwest Territories Special Committee on the Conflict Process issued invitations, followed by subpoenas, to a number of witnesses, including a television reporter employed by the Canadian Broadcasting Corporation. The reporter refused to be sworn in or to answer questions invoking journalistic privilege. In its report to the House, 23 October, the Committee considered that the contempt was based more on ignorance than malice, and the self-inflicted damage to the reporter's credibility was sufficient sanction.

After reviewing the information received, the Standing Committee on Agriculture, Forestry and Environment held discussions to decide a course of action. The Standing Committee met on 20 November 2001, following CFIA's second refusal to appear. It decided to proceed, re-scheduling the public hearing and issuing a third letter of invitation to the CFIA officials which outlined further action that the Committee might take to ensure their attendance. Media interest in these events was intense, with coverage of the Committee's decision appearing the next day in *The Guardian* and *The Journal-Pioneer* newspapers.

The public hearings took place on 12 December, with presentations made by the Provincial Minister of Agriculture and Forestry, the Provincial Deputy Minister of Agriculture and Forestry, the General Manager and the Assistant General Manager of the P.E.I. Potato Board and the President and Past President of the P.E.I. Potato Producers' Association. Representatives of each group expressed their disappointment that members of the Canadian Food Inspection Agency were not present. The meeting was open to the public and several members of the media were in attendance.

Following the public portion of the meeting, an *in camera* session commenced. A resolution was passed to subpoena the representatives of the CFIA.

Subpoenas were prepared and served on two representatives of the CFIA Charlottetown office directing them to attend a meeting of the Committee scheduled for 10 January 2002. The Department of Justice Canada responded to the Chair of the Standing Committee. In the correspondence, a request was made that the summonses be withdrawn, again citing the *Keable* decision as grounds, or, in the alternative, referring the matter to a judicial review.

The Federal Government made application to have the subpoenas stayed. The matter was heard on 7 January, and an interim declaration was made, granting a temporary exemption to the CFIA officials from complying with the summonses, and setting a date of 15 March to hear the case. A further postponement was granted, and arguments were heard on 11-12 June 2002. The case, with its implications for limiting inquiries between provincial governments and the Federal Government, drew the attention of the Speaker of the Legislative Assembly for Ontario, who was granted intervener status.

On 14 January 2003 The Honourable Mr Justice Wayne D. Cheverie, of the Supreme Court of Prince Edward Island, handed down his decision. In summary, it states:

> "It is my conclusion the Legislative Assembly of Prince Edward Island has the power to summon witnesses and order them to produce documents. This power is constitutional by virtue of the fact it is an exercise of inherent parliamentary privilege. The Committee of the House is an extension of the House and possesses the same constitutional power to summon witnesses and order them to produce documents. For reasons already given, I see no reason why the witnesses (the applicants Love and MacSwain) should be excused or exempt from the summonses. Finally, the Judicial review Act does not apply to a decision of the Committee.
>
> Therefore, the application (from CFIA) and the application for judicial review are dismissed."

The two CFIA representatives were again invited to appear on 24 April, but indicated, through their counsel, that the date was not suitable for them. Counsel did confirm, however, that the officials would be in attendance at a mutually convenient date. The Committee finally heard testimony from them on 15 May 2003, and was able to conclude its investigations.

Québec National Assembly

General Election

The National Assembly of Québec was dissolved on 12 March 2003, and a general election called for 14 April. This election returned 76 Members from the Québec Liberal Party, which now forms the government, 45 Members from the Parti Québécois, the previous governing party, and four Members from the Action Démocratique du Québec. Since the latter do not satisfy the criteria in the Standing Orders of the National Assembly for recognition as a parliamentary group (i.e. 12 Members elected or 20 percent of the total popular vote in the most recent general election), they are considered for procedural and administrative purposes as independent Members.

New Speaker

At the opening of the First Session of the Thirty-Seventh Legislature on 4 June 2003 the National Assembly of Québec unanimously elected Michel Bissonnet, Member for Jeanne-Mance-Viger, the new Speaker of the Assembly. Mr Bissonnet, who was first returned to the Assembly as a Member in April 1981, held the office of Third Deputy Speaker during the previous Legislature.

INDIA

Lok Sabha

Motion of No-Confidence in the Council of Ministers

On 18 August 2003 the Speaker of Lok Sabha, Shri Manohar Joshi, informed the House that he had received a notice of Motion of No-Confidence in the Council of Ministers from Smt. Sonia Gandhi, the Leader of Opposition. After seeking the leave of the House to move the motion, Smt. Sonia Gandhi initiated the discussion on the Motion. What followed was a marathon discussion of more than 21 hours, spread over two days, in which, besides the mover, as many as thirty-nine Members including the Prime Minister, Shri Atal Bihari Vajpayee, the Deputy Prime Minister, Shri L. K. Advani, and two former Prime Ministers, Sarvashri Chandrashekhar and H. D. Devegowda, and several Members of the Council of Ministers and Leaders of various political parties and groups, participated.

Before the Motion was put to the vote, Smt. Sonia Gandhi replied to the debate. When the House voted at midnight on 19 August, the Motion was

negatived with 189 votes in favour and 314 votes against. The debate was telecast and broadcast live on Doordarshan and All India Radio. This was the 26th No-Confidence Motion moved in the Lok Sabha so far and the first one against the Prime Minster, Shri Atal Bihari Vajpayee's Government in the 13th Lok Sabha.

Amendments to the Constitution

With the enactment of the Eighty-Seventh Amendment to the Constitution of India in May 2003, the basis for readjustment and rationalization of territorial constituencies in the States, without altering the number of seats held by each state in the House of the People (Lok Sabha) and Legislative Assemblies of the States, including the Scheduled Castes and Scheduled Tribes constituencies, has been fixed on the population ascertained at the census for the year 2001.

The Eighty-Eighth Amendment to the Constitution, also enacted in May 2003, provides for a levy of service tax by the Union and its collection and appropriation by the Union and States.

Keeping in perspective the cultural and geographical differences between the Scheduled Castes and Scheduled Tribes, the National Commission for Scheduled Castes and Scheduled Tribes, constituted in 1992, was bifurcated into the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes, by means of the enactment of the Eighty–Ninth Amendment to the Constitution of India in August 2003.

The Ninetieth Amendment to the Constitution, enacted in August 2003, protects the rights of non-tribals by maintaining existing representation of the Scheduled Castes and non-Scheduled Tribes in the Legislative Assembly of Assam from the Bodoland Territorial Council Areas District.

The Eighth Schedule of the Constitution has further been expanded to 22 languages by inclusion of 'Bodo', 'Dogri', 'Maithili' and 'Santhali' languages, by enactment of the Ninety-Second Amendment in December 2003.

The Amendment enacted in the Sixth Schedule to the Constitution in August 2003 provided for the constitution of Bodoland Territorial Council (BTC) Areas District within the State of Assam, which shall have legislative, administrative and financial powers in respect of specified subjects and also provided for adequate safeguards for the non-tribals in the BTC areas to ensure that their rights and privileges are protected.

Pensionary benefits

In December 2003 the Salary, Allowances and Pension of Members Act 1954 was amended to provide for payment of Rs. 3000/- per month to every Member who has served for any period in the Provisional Parliament or either House of Parliament. It also makes provision for increase of family pension from Rs. 1,000/- to Rs. 1,500/- per month to the spouse or dependent of a deceased Member.

Amendments to the Representation of the People Act

The Representation of the People (Amendment) Act 2003 amended the Representation of the People Act 1951, with a view to abolishing the requirement of residence in a particular State or Union Territory for contesting election to the Council of States from that State or Union territory. Before the passing of this Act, a person was not qualified to be chosen as a representative of any State or Union territory in the Council of States unless he was an elector for a Parliamentary constituency in that State or Union Territory. The Act also introduces open-ballot system for elections to the Council of States.

Iraq war

The war in Iraq came up for discussion during the Budget Session on a number of occasions. On 12 March Prime Minister Shri Atal Bihari Vajpayee made a statement in the House endorsing the validity of the Security Council Resolution as contained in its Resolution 1441. He further stated that the Government of India would strongly urge that no military action be taken which did not have the collective concurrence of the international community.

Report of Joint Committee on Pesticide Residues and Safety Standards for Soft Drinks, Juices and other Beverages

The reported detection of certain toxic pesticide residues in soft drinks by the Centre for Science and Environment was the other major issue to agitate Members. On 21 August the Minister of Health and Family Welfare, Smt. Sushma Swaraj, made a statement in the House regarding the reported detection of pesticides in soft drinks and responded to clarifications sought by several Members. Not satisfied, several Members demanded the constitution of a Joint Parliamentary Committee to enquire into the matter. Subsequently, on 22 August, on a motion moved and adopted in both the Houses, a Joint Parliamentary Committee consisting of fifteen Members, ten from Lok Sabha and five from Rajya Sabha was constituted.

In their report presented to the Houses on 4 February 2004 the Committee recommended that India should formulate its own food standards based on stringent scientific criteria, in keeping with internationally acceptable norms.

Distinguished visitor in Parliament Library

The new Parliament Library Building, Sansadiya Gyanpeeth, which was inaugurated in May 2002 by the then President of India, Shri K. R. Narayan, had a very special visitor during the year. On 28 April 2003, the Hon'ble President of India, Dr. A. P. J. Abdul Kalam visited the new Library Building and evinced keen interest in its functioning. The President desired that the Library should be digitalised as early as possible to provide easy access to information.

Rajya Sabha

The following Bills were passed during the year 2003:

The Delimitation (Amendment) Bill, 2003, passed by both Houses of Parliament in December 2003, provided for the delimitation of the Assembly and parliamentary constituencies on the basis of 2001 census to give effect to the Constitution (Eighty-Seventh Amendment) Act, 2003. It also provided for the inclusion of nominees of the Governor of the States of Meghalaya, Mizoram and Nagaland, where no State Election Commissioner exists, in the composition of the Delimitation Commission.

The Delimitation Commission was constituted in July 2002, to readjust the territorial constituencies of the seats in the House of the People (Lok Sabha) allocated to each State and the readjustment of the territorial constituencies of the total number of seats in the Legislative Assembly of each State and also to refix the number of seats reserved for the Scheduled Castes and the Scheduled Tribes in the House of the People. The Bill received the assent of the President on the 1 January 2004 and became Act No. 3 of 2004.

The Constitution (Ninety-seventh Amendment) Bill, 2003, passed by both the Houses of Parliament in December 2003, amended articles 75 and 164 of the Constitution providing that the total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15 per cent of the total number of Members of the directly elected House, the House of the People (Lok Sabha). Similarly in a State, the total number of Ministers, including the Chief Minister, shall not exceed 15 percent of the

total number of Members of the Legislative Assembly of the State. The number of Ministers, including the Chief Minister, in a State, however, shall not be less than 12.

The Bill also provided that a Member of Parliament or State Legislature who is disqualified for being a Member of the House under the provisions of the Tenth Schedule to the Constitution (Anti-Defection Law) shall be disqualified to be appointed as a Minister or holding any remunerative political post for the duration of the period commencing from the date of his disqualification till the expiry of his term of office, or till the date on which he contests an election to either House of Parliament or State Legislature, whichever is earlier. It also sought an amendment to the Tenth Schedule relating to the disqualification of Members of Parliament/State legislature on ground of defection by omitting paragraph 3 of the Tenth Schedule pertaining to the exemption from disqualification in case of split in a legislature party. The Bill received the President's assent on the 1 January 2004 and became the Constitution (Ninety-first Amendment) Act, 2003.

The Election and Other Related Laws (Amendment) Bill 2003, passed by both the Houses of Parliament in July-August 2003, amended the Representation of the People Act 1951, the Companies Act 1956, and the Income-tax Act 1961, by providing for contributions from any person or company other than a Government company to the political parties with the proviso that no political party shall be eligible to accept any contribution from any foreign source under the Foreign Contribution (Regulation) Act 1976. It proposed to amend section 13A of the Income-tax Act 1961, to raise the amount of voluntary contribution given by the companies and individuals to 20,000 rupees for which no record is to be maintained by the political parties, and the income tax relief shall be provided to such companies or individuals. However, declaration of the contribution in excess of 20,000 rupees received by the political parties shall be submitted to the Election Commission of India.

The Act also provided that the Election Commission during elections shall allocate time equitably to the recognized political parties on the cable television network and other electronic media. It further elaborated the expression "leaders of the political parties" and provided that travelling expenses incurred by such leaders in connection with the election and the expenditure incurred by the Government officials in respect of safety arrangements shall not be deemed to be the election expenditure incurred or authorized by a candidate of the political party or his election agent.

The Act also contained provisions for free supply of copies of electoral

rolls published under the Representation of the People Act 1950 by the Government to the candidates of recognized political parties. The Election Commission shall supply such items as decided in consultation with the Central Government, to the electors or to the candidates set up by the recognized political parties. The Bill received the assent of the President on the 11 September 2003 and became Act No. 46 of 2003.

200th Session of the Council of States

A significant parliamentary event during 2003 was the 200th session of the Council of States (Rajya Sabha)—a landmark event in our parliamentary system. A national level seminar, the first of its kind was organized on the occasion on the 'Role and Relevance of Rajya Sabha in Indian Polity' on 14 December 2003. As a unique gesture, students of the Central Universities, the Indian Institutes of Technology (IITs), the Indian Institutes of Management (IIMs) were invited to witness the proceedings of the Seminar and a total of 83 students attended.

Four publications were brought out to mark the occasion, namely, *Socio-Economic Profile of Members of Rajya Sabha (1952-2002)*; *Humour in the House: A Glimpse into the Enlivening moods of Rajya Sabha*; *Women Members of Rajya Sabha*; and *Private Members' Lelgislation*.

All those Members and former Members who had participated in more than 100 Sessions of the Rajya Sabha were felicitated by the President of India.

In November 2003 a Press & Media Unit was created to give publicity to the activities of Rajya Sabha in the print and electronic media. Webcasting of the live proceedings of Rajya Sabha, the first of its kind in the Indian Parliament and second in the world, was inaugurated by Hon'ble Vice-President of India and Chairman, Rajya Sabha, Shri Bhairon Singh Shekhawat, on 11 December 2003.

SOUTH AFRICA

National Assembly and National Council of Provinces

Constitution of the Republic of South Africa Fourth Amendment Bill: implementation of "floor crossing"

The package of four bills which made provision for public representatives at national, provincial and local government levels to change party allegiance without losing their seats was reported on in 2002 (see article in the 2003

Table, pp. 77-82). The constitutionality of the followings bills, assented to by the President on 19 June 2002, was challenged in the Constitutional Court by the United Democratic Movement (UDM) and several other parties:

- *The Constitution of the Republic of South Africa Amendment Act 18 of 2002*;
- *The Constitution of the Republic of South Africa Second Amendment Act 21 of 2002*;
- *The Local Government: Municipal Structures Amendment Act 20 of 2002*; and
- *The Loss or Retention of Membership of National and Provincial Legislatures Act 22 of 2002.*

On 4 October 2002 the Constitutional Court ruled only the *Loss or Retention of Membership of National and Provincial Legislatures Act (No 22 of 2002)* to be inconsistent with the Constitution and invalid. The Court ruled that if the government wanted to proceed with providing for floor-crossing at national and provincial levels, it could do so only by way of introducing an amendment to the Constitution. On 12 November the Minister for Justice and Constitutional Development duly tabled in Parliament the *Constitution of the Republic of South Africa Fourth Amendment Bill [B69-2002]*.

On 25 February 2003 the bill was adopted by the House after a division, and by the National Council of Provinces on 18 March 2003. The President assented to the *Constitution of the Republic of South Africa Amendment Act, 2003 (Act No 2 of 2003)*, which was published in the Government Gazette on 19 March. On the same day, the Speaker and the Chairperson of Committees made announcements in the House on aspects of the implementation and commencement of the Act. The Speaker alerted Members to the proper procedure as follows: the bill had been sent to the President for his assent, and Members had to note that the legislation would come into effect on a date set by the President by proclamation in the Gazette. The window period for Members to change party allegiance in terms of the legislation would commence immediately on the day following the date of the commencement of the Act. Any Member or party who wished to make any change during this period would need to complete a special form which was prepared for this purpose, and which would be available from the Chief Whip of any party, or from the Secretary to the National Assembly or the Undersecretary. Members and parties had to note that for purposes of informing the Speaker of any intended changes, they needed personally to submit the completed form, which would be the only valid form, to either the

Secretary to the NA or the Undersecretary. The form would include covering notes containing details which Members and parties would need to comply with in order for the change to be valid.

With reference to the Speaker's announcement concerning the implementation of the floor crossing legislation, the Chairperson of Committees subsequently announced in the House that the President, by proclamation in the Gazette, had fixed 20 March as the date on which the Act would come into operation. The window period would therefore commence at 00:00 on Friday, 21 March, that is immediately after midnight on Thursday night. He informed Members that completed forms should not be presented until the window period had opened.

The main purpose of the Act was to provide for a mechanism during the 15-day window period in terms of which:

- Members of the National Assembly or a provincial legislature could change their party membership only once by written notification to the Speaker of the legislature without losing their seats;
- A party could merge, subdivide, or subdivide and merge only once by written notification to the Speaker of the legislature;
- A Member could resign from a party to form another party by written notification to the Speaker of the legislature.

Prior to the window period Members were alerted to the following:

- A 'new' party within the legislature which had not been registered in terms of applicable law needed to formally apply for registration within the window period;
- Registration of the 'new' party needed to be confirmed by the appropriate authority (i.e. the Independent Electoral Commission) within four months after the expiry of the window period;
- Within seven days after expiry of the window period the Speaker would publish in the Gazette details of the altered composition of the legislature;
- Where applicable, a party was required within seven days after the window period to submit to the Secretary of the legislature a list of candidates. The list needed to be in a predetermined order and full names and identity numbers of candidates had to be furnished;
- Members had to personally submit their completed forms and provide positive identification to the Secretary to the National Assembly or the Undersecretary (two officials designated by the Speaker to receive

forms) during office hours, except for the last day of the window period, when both officials were on duty until midnight on 4 April. If, for unavoidable reasons, a Member could not personally submit the form, then he/she needed to make alternative arrangements with the Speaker's Office or with the two designated staff Members;

- Where a person signed on behalf of a party, only the signature of the designated representative of the party would be accepted.

All party membership changes that occurred in terms of Schedule 6A to the Constitution (floor crossing) were announced in the House daily by the presiding officers and published in the 'Announcements, Tablings and Committee Reports'. On 25 March the Speaker announced in the House that the Assembly would only adapt its operations and functioning at the close of the window period. In the interim, receiving parties had to make their own arrangements to accommodate new Members. She added that parties could raise with her specific concerns or problems which they encountered.

At the close of the window period, five new parties were created thereby bringing the total number of parties in the NA to 17. The altered composition of the 17 political parties in the Assembly was as follows:

Party	1999	7 April 2003
African National Congress (ANC)	266	275
Democratic Party (DP)	38	-
Democratic Alliance (DA)	-	46
Inkatha Freedom Party (IFP)	34	31
New National Party (NNP)	28	20
African Christian Democratic Party (ACDP)	6	7
United Democratic Movement (UDM)	14	4
Freedom Front (FF)	3	3
United Christian Democratic Party (UCDP)	3	3
Pan Africanist Congress (PAC)	3	2
Freedom Alliance (FA)	2	2
Minority Front (MF)	1	1
Afrikaner Eenheidsbeweging (AEB)	1	-
Azanian People's Organisation (AZAPO)	1	1
New Parties after floor crossing were as follows:		
National Action (NA)	1	
Independent African Movement (IAM)	1	

Independent Democrats (ID)	1
Alliance for Democracy & Prosperity (ADP)	1
Peace & Justice Congress (PJC)	1

Electoral Laws Amendment Bill

Prior to the enactment of the *Electoral Laws Amendment Bill* [B54D-2003] there was no legal mechanism governing the electoral systems to be used in the 2004 general elections. The 1999 elections were conducted in terms of the transitional arrangements set out in schedule 6 of the Constitution. Section 46 of the Constitution requires Parliament to, *inter alia,* pass an Act in terms of which an electoral system can be determined for the 2004 general elections.

The *Electoral Laws Amendment Bill* was introduced on 1 September 2003. The objects of the bill included revising voter registration, voters' rolls, voting districts, voting stations; making provision for only prisoners who are awaiting trial to vote; repealing obsolete provisions; providing assistance to disabled persons and conciliation in disputes. The bill sought to amend various provisions of the Electoral Act, 1998, the Electoral Commissions Act, 1996 and schedule 2 of the Interim Constitution which detailed the system of representation in the National Assembly and provincial legislatures. New provisions inserted by the bill included:

- *Voters' Roll.* The Chief Electoral Officer must provide, upon the payment of a fee, copies of the voters' roll to all the registered political parties contesting the elections. It is an offence to use the voters' roll for purposes other than the elections. Besides political parties, anyone using the voters' roll will face a fine or will be imprisoned for up to one year or will face both a fine and imprisonment.
- *Prisoners.* A person who is in prison on election day for the National Assembly or a provincial legislature and whose name appears on the voters' roll for another district is deemed registered for the voting district in which he/she is in prison. He/she may only vote if he/she is not serving a prison sentence without the option of a fine.
- *Electoral System.* The lists of candidates; the allocation of seats; the designation of candidates from lists as representatives in those seats; and the filling of vacancies in the elections to the National Assembly and provincial legislatures must conform to Schedule 1A of the Electoral Act, 1998.
- *Allocation of seats.* The final allocation of seats to a party will be based on

provisional allocations of such seats unless recalculated and/or adjusted. If a party forfeits a seat that was allocated to it, the seats provisionally allocated to other parties must be recalculated.

- *Designation of Representatives.* A party must indicate to the Electoral Commission from which list a candidate will be designated or in which legislature a candidate will serve. If a party fails to do so the name of such a candidate must be deleted from all the lists.
- *Vacancies.* A party must fill a vacancy by nominating a person from its original list or, where applicable, from a list submitted by a party in terms of item 5(2) of Schedule 6A to the Constitution. The members of a party represented in the legislature but which dissolves or ceases to exist must vacate their seats. The seats in question must be allocated to the remaining parties.
- *Party Registration.* A party shall apply to the Chief Electoral Officer, on a prescribed application form, for registration. The application shall be accompanied by, among others, the required documentation, the deed of the party's foundation; the prescribed amount; and that party's constitution.
- *Rejection of Party Registration.* The Chief Electoral Officer may not register a party if fourteen days have not elapsed since the submission of the application; if a proposed name or symbol resembles that of any other registered party; or if the proposed name or symbol contains anything which portrays the propagation or incitement of violence or hatred or which causes serious offence to any section of the population on the grounds of race, gender, sex, ethnic origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language; or which indicates that persons will not be admitted to membership or welcomed as supporters of the party on the grounds of their race, ethnic origin or colour.
- *Change of Party's Name or Symbol.* A party wishing to change its registered name or symbol must apply, on the prescribed form, to the Chief Electoral Officer. After satisfying him/herself, he/she shall withdraw the registration certificate issued to a party, and issue a new registration certificate reflecting the change.
- *Cancellation of Registration of Party.* The Electoral Commission may direct the Chief Electoral Officer to cancel the registration of a party when it is satisfied that such a party no longer functions or has no intention to participate or has not participated in a national, provincial or municipal general election.

The bill was passed by the National Assembly on 26 September 2003 and by the National Council of Provinces on 21 October 2003.

Electoral Laws Second Amendment Bill

The objects of the bill were to amend the long title of the Electoral Laws Amendment Act 2003, by substituting the more acceptable phrase 'voters with disabilities' for the politically insensitive phrase 'handicapped voters', and to amend the same Act so as to enable citizens who are temporarily absent from the Republic due to study, employment, sport, vacation or business activities to apply for special votes.

The bill was passed by the National Assembly on 25 November and by the National Council of Provinces on 27 November 2003.

Traditional Leadership and Governance Framework Bill

The *Traditional Leadership and Governance Framework Bill* [B58B-2003] was introduced on 4 September 2003. The purpose of the bill is to regulate matters associated with traditional leadership so as to achieve the overall objectives set out in the White Paper on Traditional Leadership and Governance, taking cognizance of the gender issue. The bill seeks to provide a national framework and norms and standards in terms of which provincial legislation will be enacted that will take into account provincial specifics.

The bill deals with a range of issues, including, the recognition of traditional communities and traditional councils; leadership positions within the institution of traditional leadership; roles and functions of traditional leadership; and dispute resolution and establishment of a commission on traditional leadership disputes and claims.

On 11 November the National Assembly adopted the report of the Portfolio Committee on Provincial and Local Government, which dealt with the bill.

The Committee noted that a legislative programme would be necessary to attend to outstanding issues from the White Paper and as a consequence of the passing of the Traditional Leadership and Governance Framework Bill. Some measures would be:

- Amendment of the legislation on the National House of Traditional Leaders and the various Provincial Houses of Traditional Leaders;
- Regulations required to be passed in terms of the bill;
- Amendments to legislation dealing with the pension, medical aid and other benefits of traditional leaders;

- Legislation assigning additional functions to traditional leadership as envisaged in the White Paper, where necessary; and
- Repeal or amendment of pre-1994 legislation dealing with traditional leadership.

The Committee concluded its report by stating that in view of the State's commitment to providing greater resources to, and enhancing the capacity-building programmes of, traditional leaders, there was a need for the Executive and Parliament to monitor the activities of traditional leadership institutions appropriately. The bill was passed by the NA on 11 November and by the NCOP on 26 November.

The bill specifically provides that any parliamentary bill pertaining to customary law or customs of traditional communities must, before it is passed by the House of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House of Traditional Leaders for its comments. The National House must comment within 30 days from the date of such referral.

Financial Administration of Parliament and Provincial Legislatures Bill

The Joint Rules Committee (the highest policy-making structure, which is chaired by the Presiding Officers of the two Houses), at its meeting on 19 September 2003, deliberated on the mechanism for a Bill on Financial Administration of Parliament to be initiated by Parliament. The Committee decided that a draft resolution be placed on the Order Paper of the National Assembly and the National Council of Provinces directing both the Portfolio Committee on Finance (an Assembly committee) and the Select Committee on Finance (a Council committee) to consider legislative proposals concerning the draft bill.

On 23 September the National Assembly adopted a motion instructing the Portfolio Committee on Finance to consider the subject of the financial administration of Parliament with a view to introducing a bill dealing with the matter and to report to the House by no later than the end of November 2003.

The Committee was unable to complete its work on the subject by the end of November and on 27 November the Assembly agreed to a motion to extend the date by which the Committee was to report to the House in accordance with the resolution adopted on 23 September 2003 to no later than 28 February 2004.

Protection of Constitutional Democracy against Terrorist and Related Activities Bill

The National Assembly passed the *Protection of Constitutional Democracy against Terrorist and Related Activities Bill* [B12B-2003] on 20 November 2003. The bill, *inter alia*, seeks to introduce measures to enable the Republic to combat the financing of terrorism, to facilitate the investigation of terrorist acts by providing for investigating powers and to provide for parliamentary supervision in respect of any notice issued by the President, pursuant to resolutions of the Security Council of the United Nations. In terms of the bill the President is required to give notice by proclamation in the Gazette of a specific entity that the Security Council of the United Nations has identified as being—

> "An entity who commits, or attempts to commit, any terrorist and related activity or participates in or facilitates the commission of any terrorist and related activity; or
>
> An entity against whom Member States of the United Nations must take the actions specified in Resolutions of the said Security Council, in order to combat or prevent terrorist and related activities."

Every such Proclamation must, in terms of the bill, be tabled in Parliament for its consideration and decision.

Judicial Matters Second Amendment Bill

The National Assembly passed the *Judicial Matters Second Amendment Bill* [B41 B-2003] on 12 November 2003. The Bill provides that the National Director of Public Prosecutions must submit a report to the Cabinet member responsible for the administration of Justice within 14 days after the end of January and of July of each year. The report should contain the particulars indicated in the Table of Awaiting Trial Accused in respect of each accused whose trial has not yet commenced and who, by the end of the month in question, has been in custody for a continuous period exceeding—

- 18 months from date of arrest, where the trial is to be conducted in a High Court;
- 12 months from date of arrest, where the trial is to be conducted in a regional court; and
- six months from date of arrest, where the trial is to be conducted in a magistrate's court.

The Cabinet member responsible for the administration of justice must table the report in Parliament within 14 days after receiving it.

Public Protector Amendment Bill

The *Public Protector Amendment Bill [B 6D-2003]* was introduced on 5 January 2003 and passed by the National Assembly on 29 May. The purpose of the bill is to further regulate the appointment of the Public Protector and the Deputy Public Protector. The Principal Act provided for the appointment of Deputy Public Protectors by the Cabinet member responsible for the administration of justice.

Apart from providing for the appointment of only one Deputy Public Protector, the amendment bill also shifts the responsibility for this appointment from the Minister to the President. As is the case with the Public Protector, the Deputy Public Protector must now be appointed by the President on the recommendation of the National Assembly. In the case of the Public Protector, a recommendation of the National Assembly for his or her appointment requires a supporting vote of at least 60 percent of Members. In terms of the amendment bill, for a recommendation of the National Assembly to be adopted concerning the appointment of the Deputy Public Protector, a supporting vote of only the majority of Members is required.

Temporary Electronic Voting System

In September 2002 the electronic voting system in the National Assembly became dysfunctional and a manual voting procedure was agreed to for the rest of that year. The manual procedure allowed for the recording in the Minutes of the House of the number of members of a party who had voted on a particular measure, but not for the recording of the names of Members individually.

During the recess a locally produced electronic voting system was installed, on a temporary basis, that had the capability, *inter alia*, to record names individually for the Minutes. At a meeting of the Chief Whips' Forum on 12 February 2003, chief whips and senior party representatives were briefed on the operation of the new system for the purpose of informing their party members.

They were given the following information about the system:

- Members no longer have to insert voting cards;
- A Member has to vote from his/her bench, as the voting system has been individualised to each particular bench;

- There are three voting buttons representing 'yes', 'no' and 'abstain';
- Two flashing lights indicate that the system has been activated;
- If a Member votes incorrectly, he/she has an opportunity to change his/her vote by simply pressing the correct button before the vote ends; and
- Members can approach the Table to have their names recorded manually if their units are faulty.

The temporary electronic voting system was used for the first time on 25 February to record the votes on the Constitution of the Republic of South Africa Third Amendment Bill and the Constitution of the Republic of South Africa Fourth Amendment Bill, both bills requiring a two-thirds majority. The voting system remained in use until the a new sound and voting system was installed towards the end of 2003.

Additional locations for wheelchairs in the Chamber

Following approval by the Speaker, work commenced on 8 July 2003 on providing the potential for 17 additional locations for wheelchairs in the Chamber. Previously there were only five locations for wheelchairs in the Chamber. Existing fixed seats were altered so as to enable these seats to be converted for wheelchair access at short notice. The work was completed on 2 September.

UNITED KINGDOM HOUSE OF LORDS

Recent months have seen several developments in relation to the future of the House of Lords, none of which has yet borne fruit.

House of Lords reform

After the votes on options for reform in February 2003 (see the 2003 *Table*, p. 34), the Joint Committee on House of Lords Reform resumed its deliberations and produced in April 2003 a Second Report putting forward proposals for further work that the Committee might usefully undertake with a view to reaching a "broad consensus" on the way forward. In an exchange of letters with the new Lord Chancellor, Lord Falconer of Thoroton, in November 2003, it was stated that a majority of the Committee agreed that a successor committee should be appointed in the new session, which began later that month. At the time of writing, however, no successor committee has been appointed.

In the meantime, on 18 September 2003, the Government announced proposals, in the absence of agreement on more substantial reform of the House of Lords, to remove the remaining 92 hereditary peers from the membership of the House, together with certain other changes (the setting up of a statutory appointments commission, disqualification of members sentenced to imprisonment for a year or more, and the introduction of a facility for members to resign their seats). The bill to implement these changes was to have been introduced in the House of Commons in March 2004, but just before the bill was to have been introduced the Government announced that it had decided not to proceed in the present Parliament.

The Lord Chancellorship

Lord Falconer had replaced Lord Irvine of Lairg as Lord Chancellor in a Cabinet reshuffle announced on 12 June 2003. Lord Falconer was appointed as Secretary of State for Constitutional Affairs as well as Lord Chancellor, with a new Department for Constitutional Affairs (subsuming the former Lord Chancellor's Department). It was announced that there would be a new supreme court, separated from the House of Lords; new arrangements for judicial appointments; and an end to the previous role of the Lord Chancellor as a judge and Speaker of the House of Lords. Once the reforms were in place, the post of Lord Chancellor would be abolished.

In relation to the Speakership of the House of Lords—an almost wholly ceremonial role for the Lord Chancellor—the Government's original announcement proposed that there should be "changes to Standing Orders enabling a new speaker—who is not a Minister—to be in place after the recess, subject to the wishes of the House". But after the then Leader of the House, Lord Williams of Mostyn, had conducted soundings he announced, on 25 June, that a select committee would be appointed to consider the matter in more detail.

The Select Committee on the Speakership of the House, chaired by Lord Lloyd of Berwick (a retired law lord), was appointed in July 2003 and reported in November. It recommended that the House should elect a speaker, whose title might be 'Lord Speaker', with a greater role than the Lord Chancellor has in relation to the House (for instance, in relation to administration), but no significant powers in the Chamber such as those exercised by the Speaker of the House of Commons—the House's tradition of self-regulation would continue.

In the face of some opposition to the introduction of new Speakership arrangements while the office of Lord Chancellor continued in existence, no

action has yet been taken on the report, and Lord Falconer has at the time of writing acted as Speaker for over a year, rather than the very few weeks which he might have expected on appointment.

The Constitutional Reform Bill

Meanwhile, the Constitutional Reform Bill, setting up a supreme court and enacting other reforms in relation to the Lord Chancellor and judicial appointments, was introduced in the House of Lords in February 2004. On 8 March 2004 the House voted, by 216 votes to 183, to refer the Bill to a select committee. A consequence of this development was that it became impossible for the Bill to complete its passage during the 2003–04 session, and it is expected to be carried over into the next session. The select committee on the Bill, chaired by Lord Richard (Leader of the House 1997–8), reported on 24 June 2004, and at the time of writing the Bill was due to begin consideration in Committee of the whole House on 13 July.

The Bill envisages that the present law lords would become the first members of the new supreme court, but that they (and other Lords who were judges) would be disqualified from sitting in the House while serving as judges. The timing of the implementation of this reform may depend on more than just the enactment of the bill, as in the first half of 2004 the identification of a suitable building to house the new supreme court became a matter of controversy. At the time of writing the choice had been narrowed down to two possible sites but no decision had been made.

So, despite the emergence of several Government proposals since mid-2003, the composition, judicial functions and Speakership of the House seem likely to remain as they are until some time after the next general election, expected to be held in 2005.

WALES NATIONAL ASSEMBLY

The elections of May 2003 returned an Assembly exactly balanced in terms of gender, with 30 male and 30 female Members. There were also 30 Government Members and 30 opposition Members. Figures for each party are Labour 30 (11 men and 19 women); Plaid Cymru 12 (6 men and 6 women); Welsh Conservatives 11 (9 men and 2 women); Welsh Liberal Democrats 6 (3 men and 3 women), and one independent (Dr John Marek, former Treasurer of the CPA). The First Minister, Rhodri Morgan, formed a Cabinet of five women and three other men beside himself.

ZAMBIA NATIONAL ASSEMBLY

Impeachment motion to impeach the President of the Republic

The motion was moved by Mr C U Sibetta, of the opposition United Party for National Development (UPND), Member for Luena constituency, on 12 August 2003. In moving the motion Mr Sibetta stated that according to Article 37(1) and (2) of the Constitution of Zambia, the House should resolve that the President of the Republic of Zambia, Mr Levy Patrick Mwanawasa, SC, be impeached for violation of the Constitution and gross misconduct, and that, upon adoption of this motion by the House, a tribunal be established under the same Article 37 to investigate the allegation levelled against him.

Some of these allegations were:

- Poaching of opposition Members of Parliament by appointing them as Ministers, by which they were deemed to have crossed the Floor;
- Violation of Article 68(1) of the Constitution, by nominating and appointing his personal friends, who were lawyers, as Members of Parliament and as Ministers with no regard to other special interests and skills. Due to this abuse, it was alleged that the President had not taken into account fully the following: provincial representation in Government; tribal balancing in Government; the needs of the disabled; gender representation; professions other than the law.
- With no regard for the law, such as the Zambia Police Act, it was alleged that he had removed Mr Francis Musonda from the post of Inspector-General on frivolous grounds, and had re-appointed Mr Zunga Siakalima as Inspector-General, a person who had retired thirteen years earlier;
- Disregard for the Judiciary, by rebuking judges for judgments that went against the Government and his party, and by appointing his relatives as judges;
- Instructing the police to arrest the Member for Moomba, for saying that people were dying of hunger in his constituency;
- Lowering the standards of the House by talking carelessly;
- Failing to pay the Zambia National Service money, which he owed it in his personal capacity;
- Receiving kick-backs on behalf of his party from dubious sources;
- Appointing his party cadres into Government and the Foreign Service;
- Failing to fulfil promises—he had told Parliament in his first address to

the House that within six months the issue of District Administrators would be resolved, but to date it had not been resolved;

- Protecting his wife from being quizzed by a Committee of the House on her activities and the use of public resources to run her private charity;
- Allowing the Secretary to the Cabinet, his uncle, to continue in office despite reaching retirement age;
- Firing Mr Fred Siame, the Auditor-General, without appointing a replacement, leaving the country without an Auditor-General from October 2002 to July 2003;
- Improper ratification of the appointment of a new Auditor-General, because the person appointed took office before the appointment was ratified by the House, contrary to Article 131 of the Constitution.

The motion was seconded by Mr T K Nyirenda, UNIP Member for Kasenengwa constituency.

After almost two days of emotional and heated debate, on 13 August, the motion was put to a vote. Notable among those who were in favour was Mr E P Kavindele, ruling party MP and former Vice-President.

The motion was defeated by 93 votes to 57, with Members from the ruling party and opposition Members in Government opposing it.

ANNUAL COMPARATIVE STUDY: PRIVATE MEMBERS' LEGISLATION

The questionnaire for 2003 asked:

Does your House permit Private Members' Legislation? If so, how many Private Members' Bills were introduced in 2003, and how many were passed by one or (in bicameral Parliaments) both Houses? Is any help provided for Private Members with drafting their legislation? Do any special procedures or practices apply to the passage of such legislation?

AUSTRALIA

House of Representatives

The House of Representatives standing orders make specific provision for Private Members' legislation. Twenty-one Private Members' Bills were introduced into the House during 2003, including a record seven on one day. None was passed by the House. Since 1901 seven Private Members' Bills and eight private Senators' bills have passed into law (the most recent case occurring in 2000).

Assistance with drafting Private Members' Bills (and amendments to government bills) is provided by senior House staff. This service is in addition to their other duties—there is not a specialised section dedicated to this purpose.

Private Members' Bills are considered during the Private Members' Business period on Mondays, when there is a maximum of 2 hours 15 minutes reserved for the presentation and consideration of committee reports and Private Members' business—the amount of Private Members' business time available depends on the amount of committee business which is taken first. During this period Private Members' Bills have priority over Private Members' motions. On occasion, if deciding to support a Private Member's Bill, the Government may provide time during government business time (following suspension of standing orders), or take a private senator's bill passed by the Senate as government business for its passage through the House.

The procedures which apply to the processing of Private Members' Bills are substantially the same as those for government bills. The major exception is that a Private Member can make a five minute statement on his or her bill at the time of presentation, before the bill is read a first time. The second

reading is then made an order of the day 'for the next sitting'. With a government bill the Minister in charge moves the second reading immediately after the first reading and delivers his or her second reading speech, after which debate is adjourned.

The occasion for the moving and consideration of a Private Member's Bill's second reading is a matter for the Selection Committee to determine—in practice few are selected. In the (rare) event of the second reading of any Private Member's Bill being agreed to by the House, further consideration has precedence of other Private Members' business. The five minute statement on presentation is additional time, not available for government bills—however, in practice the five minutes is likely to be the only time spent on the bill.

Senate

Senate standing orders do not distinguish between bills introduced by senators in a ministerial or private capacity. Therefore, any senator may introduce a bill and that bill will be dealt with in exactly the same way as a government bill. Once a bill is introduced into the Senate and is under the control of the Senate, the Senate may consider the bill and deal with it as it resolves. The Senate may not only reject or defer a bill, it may also proceed with a bill in spite of the wishes of the senator who introduced it, whether a minister or a private senator.

In 1988 the Senate ordered that a private senator's bill take precedence until a government minister made a speech on the second reading. In 2000 another such bill was given precedence over all government business. The Senate passed the bill and sent messages to the House of Representatives urging the bill's consideration, but the bill was suppressed by the government in that chamber.

In practice, the Senate devotes most of its legislative time to government business and, as a consequence, private senators' bills rarely pass the Senate. In 2003 15 private senators' bills were introduced. The Senate did not pass any of those bills.

Also, private senators' bills are unlikely to pass the House of Representatives because the ministry effectively controls the proceedings in that chamber. Since 1901 only eight private senators' bills have passed into law. A list of those bills is given below.

The Senate Department provides legislative drafting services to non-government senators. Sometimes private drafters are contracted to provide drafting assistance. Senate staff oversee the entire process for the introduction of a

private senator's bill, from the drafting of the bill's text to making the administrative and procedural arrangements necessary to facilitate a bill's introduction.

Private senators' bills passed into law since 1901

Commonwealth Conciliation and Arbitration Bill 1908;
Commonwealth Electoral Bill 1924;
Australian Capital Territory Evidence (Temporary Provisions) Bill 1971;
Wireless Telegraphy Amendment Bill 1980;
Senate Elections (Queensland) Bill 1981 (Act cited as *Senate Elections (Queensland) Act 1982*);
Income Tax Assessment Amendment Bill 1984 (No.2) (Act cited as *Income Tax Assessment Amendment Act (No.5) 1984*);
Smoking and Tobacco Products Advertisements (Prohibition) Bill 1989;
Parliamentary Presiding Officers Amendment Bill 1992.

New South Wales Legislative Assembly

Standing Order 202 of the Legislative Assembly provides that a public bill may be introduced by a Private Member.

The current routine of business (which has been amended by sessional orders) specifies that on those days allocated for General Business (i.e. Private Members' business) which is usually Thursdays, Private Members' Bills may be dealt with between 10.00 and 11.30 a.m. with any interrupted item of business set down as an Order of the Day for tomorrow with precedence of other General Business Notices and Orders of the Day for Bills.

Private Members' Bills in 2003 were as follows:

Action in relation to Bills	*Legislative Assembly*	*Legislative Council*
Introduced	17	9
Passed by the other House and introduced	3	-
Negatived at 2R stage	6	1
Adjourned	12	4
Referred to a parliamentary committee	1	-
Discharged	1	-
Withdrawn	-	1
Passed House	-	3

As the table above indicates 17 bills were introduced by Private Members in the Legislative Assembly and nine in the Legislative Council. Of these 26

Bills only three passed the Legislative Council and none passed through the Legislative Assembly. Of those three that passed the Legislative Council two bills have been adjourned at the 2R stage in the Assembly and the third was discharged from the Business Paper when introduced to the Legislative Assembly in accordance with standing order 164 as the second reading of an identical bill had already been negatived at the second reading stage earlier in the session. It should be noted that none of the Private Members' Bills were introduced by members supporting the Government.

All members can avail themselves of the services of the Parliamentary Counsel. This has been the case since the hung Parliament of 1991-95, where three non-aligned Independent Members of the Legislative Assembly held the balance of power and negotiated an agreement with the re-elected minority Government to this effect.

As noted Private Members can only introduce bills on General Business days. The Routine of Business, as amended by sessional orders, on General Business Days is as follows:

1. At 10.00 a.m. (Speaker takes Chair)
2. General Business Notices of Motions for Bills (concluding not later than 10.30 a.m.). Any interrupted item of business shall be set down as an Order of the Day for Tomorrow with precedence of other General Business Notices of Motions for Bills.
3. General Business Orders of the Day for Bills (concluding not later than 11.30 a.m.). Any interrupted item of business shall be set down as an Order of the Day for Tomorrow with precedence of other General Business Orders of the Day for Bills.
4. General Business Orders of the Day or Notices of Motions (not for Bills) concluding at 1.00 p.m. Any interrupted item of business shall be set down as an Order of the Day for Tomorrow with precedence of other General Business (not for Bills).
5. 1.00 p.m. to 2.00 p.m. consideration of Committee Reports presented (Speaker leaves Chair).
6. At 2.15 p.m. Speaker resumes Chair.
7. Ministerial Statements
8. Notices of Motions
9. Petitions
10. Placing or Disposal of Business
11. Formal Business
12. Committee Reports tabling

13. Call for Notices of Urgent Motions
14. Announcement of Matters of Public Importance
15. Questions
16. Ministerial Statements
17. Motions for Urgent Consideration
18. Matters of Public Importance
19. Business with Precedence
20. Government Business

In New South Wales, only Ministers can propose amendments to increase the appropriations unless the Governor has recommended by way of message that such a bill be passed. Section 46 of the *Constitution Act 1902* provides:

- It shall not be lawful for the Legislative Assembly to originate or pass any vote, resolution, or bill for the appropriation of any part of the Consolidated Fund, or of any other tax or impost to any purpose which has not been first recommended by a message of the Governor to the said Assembly during the session in which such vote, resolution, or Bill shall be passed.
- A Governor's Message is not required under this section or under the Standing Rules and Orders of the Legislative Assembly for a Bill introduced by, or a vote or resolution proposed by, a Minister of the Crown.

This principle is reiterated in Standing Orders 201 and 281 of the Legislative Assembly. Under these orders Private Members are unable to introduce any legislation that appropriates monies from the Consolidated Fund. In addition, Private Members cannot increase or add items of expenditure to any bills before the House.

Advice received from the Crown Solicitor on the matter has suggested that bills which do not appropriate monies but merely provide for the imposition of new taxes, surcharges etc., are in order, unless such bills appropriate that tax for a particular purpose. The only legislative provision in respect of bills imposing a new rate of tax or impost (for which there is no defined purpose) is that such a measure must originate in the Legislative Assembly (s. 5 of the Constitution Act 1902). The Crown Solicitor considers that such bills are in order because section 46 of the Constitution Act 1902 is concerned only with expenditure and not revenue.

Motions that do not refer to the appropriation of any specific money but merely call upon the Government to take certain steps have also been considered to be in order. For instance, a motion was moved by an Independent member for a Select Committee to be appointed to inquire into the

Government's home loan fund and that the Government provide the necessary financial resources to undertake the inquiry. When a point of order was raised that the motion contravened section 46 of the *Constitution Act 1902* the Speaker argued he could not support it as he did not consider that the motion was so specific that it came within the provision of Section 46 as it did not refer to the appropriation of any specific money (PD 20/4/1993, pages 1323 and 1330).

When public bills have been introduced by Private Members in the Legislative Council, the member who is to have carriage of the bill in the Legislative Assembly must inform the Chair. The Chair will then inform the House prior to the bill being introduced to the Legislative Assembly. Where an Order of the Day for a Private Member's Bill that originated in the Legislative Council is discharged and the bill withdrawn, a message is sent to the Legislative Council notifying it of this action.

Public bills introduced by Private Members can be restored to the business paper following prorogation of the Parliament in the same way that other bills may be restored. The current Standing Orders require a notice of motion to be given, ostensibly to enable the House to decide when the matter will go forward and who will have carriage of the bill if this is in doubt.

New South Wales Legislative Council

During 2003 nine Private Members' Bills were introduced in the Legislative Council. Three of these bills, the Quarantine Station Preservation Trust Bill, the State Arms, Symbols and Emblems Bill and the Local Government Amendment (No Forced Amalgamations) Bill, passed through all stages and were forwarded to the Legislative Assembly for concurrence.

The Local Government Amendment (No Forced Amalgamations) Bill was reported in the Legislative Assembly and read a first time on 17 October and was discharged from the Legislative Assembly Business Paper on 30 October. The Private Member with carriage of the bill in the Legislative Assembly had earlier in the year introduced a bill of the same name in the Legislative Assembly. The Legislative Assembly bill was negatived on division on 30 October and the Legislative Council bill, being an identical bill, was then discharged.

The Quarantine Station Preservation Trust Bill was reported in the Legislative Assembly and read a first time on 20 November and remains an Order of the day on the Legislative Assembly Business Paper. The Private Member with carriage of the bill had also earlier in the year introduced a bill of that name in the Legislative Assembly. In February 2004, the order of the

day for the second reading of the Legislative Assembly bill was discharged from the Business Paper and the bill withdrawn.

The State Arms, Symbols and Emblems Bill was introduced in the Legislative Council by an independent member on 22 May 2003 and forwarded to the Legislative Assembly for concurrence on 15 October. The bill was introduced in the Legislative Assembly by an independent member of that House and was read a second time, on division, with the support of Government members. The bill passed through all remaining stages without amendment on 26 February 2004 and was the first bill to receive assent in 2004.

Of the other bills introduced in the Legislative Council by Private Members in 2003, one was withdrawn, one was defeated on second reading and, at the end of the Parliamentary year, three remained items in the order of Precedence and one an item Outside the Order of Precedence on the Notice Paper.

The Parliamentary Counsel's Office, under an arrangement agreed to by the Government, is available to draft bills and amendments in committee for non-Government parties, groups and members subject to available resources and the services not interfering with the Government's legislative program. There is a limit on the hours of core drafting work devoted to these services. The allocation on a six-monthly basis for the members of both Houses combined is: Liberal and National Parties (the Opposition) 250 hours and other non-government members 25 hours each. Unused credits are transferable to a following period and can also be transferred to another member. The following special procedures which apply to the consideration of Private Members' business do not give priority to motions for the introduction of bills over other items of Private Members' business.

In order to provide a more efficient and equitable method of dealing with Private Members' Business, the House adopted a Sessional Order on 8 September 1999 that varied the procedures in the Standing Orders for the consideration of Private Members' Business. The Sessional Order has been adopted each session since with some minor modifications. On 14 October 2003 the sessional order was adopted as a proposed new standing orders.

According to sessional order items of Private Members' Business are considered on days set aside for General Business in the sequence established by a draw conducted by the Clerk of the House at the beginning of the session and from time to time.

Notices of Motions when first given appear under "Private Members' Business—Items Outside the Order of Precedence" in the order given. The items selected in the draw are shown under "Private Members' Business—Items in the Order of Precedence".

The establishment of an order of precedence for Private Members' Business does not prevent a Member from giving further notice of motions that are then listed on the Notice Paper under Items Outside the Order of Precedence in the order given.

An item of Private Members' Business listed in the Order of Precedence may be postponed. However, should this item of Private Members' Business be postponed for a third time, it is removed from Items in the Order of Precedence and set down at the end of Private Members' Business items Outside the Order of Precedence unless the House otherwise orders.

The procedure for conducting the draw for Private Members' Business is as follows:

- A random draw of 12 Members' names in the order of Government, Opposition and Cross Bench from items of Private Members' Business already placed on the Notice Paper establishes the order of precedence for 12 separate items.
- A Member is not included in the random draw of names if the Member already has an item listed in the order of precedence, or has previously been selected in a draw and had an item of business disposed of when there are other Members in the same group (Government, Opposition, Cross Bench) with notices on the Notice Paper who have not previously been selected in the draw.

Each Member whose name is drawn and who has more than one notice of motion on the Notice Paper notifies the Clerk which notice of motion is to be placed in the order of precedence. If a Member does not notify the Clerk within two working days, the first motion standing on the Notice Paper in the name of the Member is included in the order of precedence.

Unlike Government Business, time limits apply to debate on all Private Members' business. On the motion for leave to bring in a bill there is a maximum of one hour of debate and a limit of ten minutes per speaker. On the second and third readings of a bill there is no overall debate time limit but the mover is limited to 30 minutes and each subsequent speaker, and the mover in reply, may speak for not more than 20 minutes.

Northern Territory Legislative Assembly

The Legislative Assembly of the Northern Territory is a unicameral parliament. Standing Orders provide as a minimum that General Business, encompassing Private Members Business, must be held not less than once in

every 12 sitting days. The Chief Minister, or another Minister acting on his behalf, may arrange the order of government business notices and orders of the day on the Notice Paper as he thinks fit; and, unless otherwise ordered, government business shall, on each sitting day, have precedence over general business except that, on sitting days nominated by the Chief Minister or another Minister acting on his behalf, being not less than one in every 12 sitting days, precedence will be given to general business.

Private Members have the assistance of Parliamentary Drafters within the Office of the Parliamentary Counsel to construct any legislation required. To date this has been carried out very well as the Office is able to operate within an independent and secure framework internally. There have been no issues of privacy of business of government or Private Members legislation.

Since drafting of Private Members legislation has in the past 30 years been concentrated on minor legislative amendments and little new principal legislation there has been no resource allocation conflict between government and Private Members legislation programs.

Eleven Private Members' Bills were introduced in 2003. None was agreed to by the government or passed. (see table on page 131).

Queensland Legislative Assembly

Any Member of the Legislative Assembly can introduce a bill provided the rules relating to initiation procedures are observed. The order of business for each sitting day provides for the introduction of Private Members' Bills.

Until 1998 very few members who were not ministers introduced bills. However, nine Private Members' Bills were introduced in 2003 of which one was passed. Of the remaining bills introduced, four failed the second reading and four lapsed when Parliament was dissolved for the State election.

The following table provides a 10 year comparison of the number of Private Members' Bills introduced:

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Pass										1
Fail			1		5	11		7	8	4
W'drwn			1		2	2			1	
Lapse	1	1		1	2	4	2			4
Ruled out of order							1			
Total	1	1	2	1	9	17	3	7	9	9

Private Members' Bills introduced in the Northern Territory Legislative Assembly in 2003

Bill No.	Name	Member	Introduced	Defeated
124	Traffic Amendment Bill 2003	Mr Wood	26.02.03	13.08.03
126	Sentencing Amendment Bill 2003	Mrs Braham	26.02.03	13.08.03
129	Bushfires Amendment Bill 2003	Ms Carney	26.02.03	13.08.03
130	Criminal Code Amendment Bill 2003	Ms Carney	26.02.03	13.08.03
131	Container Deposit (Environmental Protection) Bill 2003	Mrs Braham	26.02.03	26.11.03
135	Bail Amendment Bill 2003	Mr Elferink	26.02.03	26.11.03
165	Criminal Code Amendment Bill (No. 2) 2003	Ms Carney	13.08.03	26.11.03
166	Sentencing Amendment Bill (No. 2) 2003	Ms Carney	13.08.03	
171	Motor Vehicles Amendment Bill 2003	Mr Maley	13.08.03	26.11.03
172	Liquor Amendment Bill 2003	Mr Elferink	13.08.03	26.11.03
173	Criminal Code Amendment Bill (No. 3) 2003	Mr Maley	13.08.03	26.11.03

The Parliamentary Service does not assist members with the preparation of bills. A member may request the Parliamentary Counsel to draft a bill (see *Legislative Standards Act 1992* (Qld) s 10). The request must be complied with unless the Parliamentary counsel considers that it would significantly and adversely affect the Government's legislative program.

As with Government bills, Private Members' Bills are required to lay upon the table for at least 13 calendar days before they can be debated further. It is then up to the Leader of the House to determine when the bill will be debated. However, if the House has not considered the bill since its introduction and 90 days has elapsed then sessional orders require debate to be brought on for the next sitting Wednesday evening. Debate continues each following sitting Wednesday evening until its consideration has been finalised. Most Private Member's Bills are not debated until this 90 day trigger.

Unlike Government bills, there is no legislative requirement for explanatory notes to be tabled. However over the last five years this practice has been adopted for Private Members' Bills.

Under sessional orders a member, other than the mover, can speak on the second reading of the bill for 10 minutes as opposed to 20 minutes for Government bills. However, other speaking times for the passage of the legislation are consistent with those for Government bills.

South Australia House of Assembly

Private Members are permitted to introduce legislation. Four and a half hours per week are provided for the conduct of Private Members Business which as well as Bills includes motions of any kind, the disallowance of subordinate or delegated legislation and debate on committee reports.

In 2003 37 Private Members Bills were introduced in the House of Assembly and seven of them subsequently received the assent of the Governor. The Office of Parliamentary Counsel (parliamentary drafters), employees of the government, are available to assist Members in the drafting of Bills. The Office of the Clerk provides procedural advice on their passage. Private Members may not introduce money bills.

South Australia Legislative Council

The Legislative Council of South Australia allows the introduction of Private Members' Bills. In 2003 25 Private Members' Bills were introduced, of

which two passed both Houses and were assented to, one passed the Legislative Council but lapsed in the House of Assembly, and the remainder lapsed in the Legislative Council. Parliamentary Counsel draft Private Members' Bills on instruction. The same procedures apply to Private Members' Bills as apply to Government Bills. However, a Minister will often assist the passage of a Private Member's Bill by moving a Contingent Notice standing in the Minister's name, i.e. "That the Standing Orders be so far suspended as to enable the Bill to pass through the remaining stages without delay". Standing Orders provide for Private Members' Business to take precedence over Government Business on Wednesdays, but on all other sitting days Government Business takes precedence.

Tasmania House of Assembly

Private Members' legislation is permitted, and 13 Private Members' Bills were introduced in 2003. Five were debated and negatived on second reading.

Limited assistance may be available subject to authorisation by the Government. There are no special procedures associated with the passage of such legislation.

Tasmania Legislative Council

The Tasmanian Legislative Council does permit Private Members' Legislation. In the past numerous Bills were introduced but in recent times there have been very few. In 2003 there were no Private Members' Bills. Members obtain the permission of the Leader of the Government's offices to have their Bills drafted by Parliamentary Counsel. There are no special procedures or practices applying to the passage of such legislation. All Bills are handled in exactly the same way—whether they are Government Bills or Private Members' Bills.

Victoria Legislative Assembly

Any member may introduce a bill as long as standing orders are adhered to. However, opportunity for Private Members to introduce bills in the Assembly are very limited because of the way the business of the Houses has been organized under sessional orders, which has consistently given government business precedence over all other business since Session 1972-73.

Private Members' Bills may be drafted by the Office of Chief Parliamentary Counsel (OCPC) but only after permission in writing by the Premier for each desired bill. The few Private Members' Bills which have appeared on notice have been privately circulated in advance. If requested, the Clerks have advised members on the form and layout of the bill—advising on the *content* of the bill is outside their purview. It is possible for a Private Member's bill to also be a private bill (for example, see the Scotch College Common Funds Bill, VP (1999–2002) pp 509–10).

The OCPC drafts all textual amendments to bills (government and non-government), including amendments desired by Private Members. However, in the drafting of amendments, government amendments are given priority. Over the years it has been considered as essential that the OCPC drafts Opposition amendments in case they are accepted by the Government. It has been the experience that when amendments that have not been drafted by the OCPC are accepted by the Government, consequential amendments may be missed and errors creep in to legislation, particularly in the case of complicated legislation.

Private Members' Bills have limited scope, because Private Members cannot obtain a message recommending an appropriation, as only a minister can present one to the House, and the Governor will only sign such a message on the advice of the Premier. Therefore, Private Members' Bills which cause an appropriation from the Consolidated Fund cannot proceed like government bills. This also applies to Private Members' amendments to government bills, which restricts the type of textual amendments a Private Member may move. Recourse is often had to reasoned amendments in such instances.

In the 54th Parliament (1999-2002), the government held power with the support of two independent members in the Legislative Assembly, and faced a hostile Upper House. This meant that the government relied on the independents and non-government members wherever possible to ensure the support of their own legislative program. As a result, an unusual number of Private Members' Bills were introduced in the 54th Parliament, with the government allocating time in the House for the debate of the legislation. Only a few bills were actually passed, and they tended to be uncontroversial and supported by all members. Some Private Members' Bills were initiated in and passed by the Opposition-controlled Legislative Council, but did not proceed beyond introduction in the Assembly.

See the following table for a list of Private Members' Bills introduced since 1993:

Bill	Member	Date introduced	Outcome
Equal Opportunity (Amendment)	Mr Cole	12 May 1993	Second reading not moved, bill lapsed
Petroleum Products (Pricing)	Mr Savage	24 May 2000	Withdrawn 6 September 2000
Petroleum Products (Terminal Gate Pricing)	Mr Savage	6 September 2000	Royal assent 21 November 2000, Act 71/2000
Crimes (Further Amendment)	Dr Dean	15 November 2000	Transmitted from Legislative Council. Second reading moved in Assembly 14 November 2000
Barley Marketing (Amendment)	Mr Steggall	7 June 2001	Transmitted from Legislative Council. Negatived in the Assembly 13 June 2001
Gaming and Tobacco Acts (Amendment)	Ms Davies	28 November 2001	Second reading moved 28 November 2001
Scotch College Common Funds	Mr Doyle	28 November 2001	Passed the Assembly, after being ruled a private bill but treated as a public bill, 28 November 2001. Royal assent 18 December 20002, Act 95/2001
Constitution (Parliamentary Terms)	Mr Ingram	17 April 2002	Second reading negatived 29 May 2002.
Summary Offences (Spray Cans)	Dr Napthine	15 May 2002	Transmitted from the Legislative Council.
Adventure Activities Protection	Ms Asher	29 May 2002	Transmitted from the Legislative Council.
Forests Legislation (Amendment)	Mrs Fyffe	11 Sept 2002	Transmitted from the Legislative Council.

Victoria Legislative Council

Private Members' legislation is permitted in the Legislative Council. However, none was introduced in 2003. When drafting legislation, Private Members can be assisted by the Office of the Chief Parliamentary Counsel Victoria provided that they have the Premier's permission: most requests of this kind are acceded to.

The procedures associated with the passage of Private Members' Bills are virtually the same as those for Bills introduced by Ministers with the obvious exception that the former are dealt with during General Business. On those occasions that Private Members' Bills went into Committee of the whole during the previous Parliament, the Private Member sat at the Table in front of either the Opposition or crossbenches (there were no Private Members' Bills from Government Members) to answer the Committee's questions.

BANGLADESH PARLIAMENT

Bangladesh permits Private Members' legislation, and two Bills were introduced in the Parliament in 2003. No Private Members' Bills were passed. The Legislative Drafting Unit of the Bangladesh Parliament Secretariat provides assistance with drafting Private Members' Bills. There are separate rules of procedure for processing such legislation.

CANADA

House of Commons

Chapter XI of the Standing Orders of the House of Commons sets out detailed provisions for Private Members' Business, including legislation. A member may also sponsor a public bill that originates in the Senate and is sent to the Commons after passage by the Senate.

In 2003 127 Private Members Bills were introduced. Of those, four Private Members' Bills were passed by both Houses and received Royal Assent in 2003 (Bills C-205 and C-227 had been introduced in 2002, and Bills C-411 and C-459 were introduced in 2003).

The House of Commons also passed five other Private Members' Bills. Bills C-212, C-249, C-250, C-260 and C-300 had all been introduced in 2002. With the exception of Bill C-212, these bills had been reinstated from the previous session.

In 2003, one bill (Bill S-5) originating in the Senate and sponsored by a

member of the House under Private Members' Business, was passed by both Houses and received Royal Assent.

A Private Member's bill is typically drafted on behalf of a Member of Parliament by legislative counsel employed by the House to ensure that it conforms to statutory law (including the review of the Canadian Charter of Rights and Freedoms and jurisdictional issues) and all relevant drafting conventions. In drafting Private Members' Bills, legislative counsel act on a Member's clear, written instructions about the purposes and objectives of the proposed legislation and ensure that the draft bill is acceptable in terms of its form and content. Members can also receive assistance from staff of the Library of Parliament to perform substantive legal or policy research that will enable them to develop their legislative proposal. When completed, Private Member's Bills are certified by legislative counsel pursuant to the Standing Orders of the House indicating that they are in the correct form. The certified copy of the bill is then sent to the Member who can introduce it in the House when he or she sees fit.

On 17 March 2003 the House of Commons adopted provisional Standing Orders for Private Members' Business, replacing Chapter XI of the Standing Orders (Private Members' Business (Standing Orders 86-99)). These provisional Standing Orders will remain in effect until 23 June 2004 or the dissolution of the 37th Parliament, whichever comes first. The rules governing Private Members' Business are as follows:

The List for the Consideration of Private Members' Business

- At the beginning of a Parliament or sometimes during the course of a Parliament, the names of all Members are drawn to establish a List for the Consideration of Private Members' Business.
- All Members' names are placed on the List whether they have submitted an item of Private Members' Business or not. Since the Speaker, Deputy Speaker, Ministers and Parliamentary Secretaries are ineligible to take part in Private Members' Business, their names are moved to the bottom of the List, where they remain as long as they hold office.
- In order to be placed in the Order of Precedence, a Member must have at least one of the following items: either a bill that has already been introduced and given first reading or a motion (including a motion for the production of papers that has been transferred for debate) that has been placed on notice.
- A Member who does not have at least one of the above items at the time his or her name is ready to be transferred to the Order of Precedence is

dropped from the List for the Consideration of Private Members' Business. He or she is only eligible again once the List is exhausted or at the beginning of the next Parliament.
- After the transfer of the first thirty names, the Order of Precedence is replenished when necessary by adding the names of the next 15 Members, with an eligible item, on the List.
- When fewer than 15 eligible names remain on the List, a draw is held to establish a new List.

Votability

- All items of Private Members' Business are votable by default.
- A Member who does not want his or her item to be votable must inform the Clerk in writing within two sitting days of being placed in the Order of Precedence.
- On the basis of the list of criteria established by the Standing Committee on Procedure and House Affairs, the Subcommittee on Private Member's Business may decide that a particular item should not be votable and report that decision to the Committee. The criteria are as follows: Bills and motions must not concern questions that are outside federal jurisdiction; they must not clearly violate the Constitution Acts, 1867 to 1982, including the Canadian Charter of Rights and Freedoms; they must not concern questions that are substantially the same as ones already voted on by the House of Commons in the current session of Parliament; they must not concern questions that are currently on the Order Paper or Notice Paper as items of government business.

The Appeal Process

A Member whose item is designated non-votable may initiate an appeal process which culminates in a secret ballot vote in the Chamber.

Debate

- One hour is provided each sitting day for the consideration of Private Members' Business.
- Votable items are entitled to two hours of debate and at least ten sitting days must elapse between the first and second hour of debate. When a recorded division is requested on an item, the vote is automatically deferred to the next Wednesday on which the House sits.

- Non-votable items, including those on which an appeal was lost, are entitled to only one hour of debate.
- During the first hour of debate on a votable item, the sponsor has a maximum of 15 minutes to make an opening statement, followed by five minutes for Questions and Comments. Other Members who wish to take part in the debate may speak for a maximum of ten minutes. At the end of the second hour or when no other Member wishes to speak, the sponsor has a maximum of five minutes to conclude the debate.
- The sponsor of a non-votable item has a maximum of 15 minutes to make an opening statement and a maximum of five minutes to conclude the debate. All other Members who wish to speak have a maximum of ten minutes.
- No dilatory motions are allowed during Private Members' Business.

Amendments

Amendments to motions or to the motion for the second reading of a bill may only be made with the consent of the sponsor. Such amendments are, as always, subject to the rules and practices of the House of Commons.

Senate

The Senate of Canada does permit Private Members' Legislation. In 2003 11 Private Members' Bills (originating in the Senate) were introduced in the Senate. Two of these bills were passed by the Senate and the House of Commons and became Acts of Parliament upon receiving royal assent.

The Law Clerk and Parliamentary Counsel Office of the Senate offers extensive assistance with the drafting of Private Members' Bills. Whether a Senator has a specific idea about what sort of provisions they want included in their Private Member's Bill or only a general notion of an issue that a bill is meant to address, the Law Clerk's Office works with the Senator to draft the desired legislation. While it is not required that Senators have their Private Members legislation drafted by the Law Clerk's Office, in practice Senators generally have their legislation drafted by the Law Clerk's Office.

When assisting a Senator with the drafting of a Private Member's Bill, prior to doing any drafting, the Law Clerk's Office scrutinizes the instructions received from the Senator to ensure that the bill would be 'legislatively' constitutional. That is, that it falls within federal jurisdiction under the Canadian constitution and that it would not offend the *Canadian Charter of Rights and Freedoms.*

In the Senate of Canada, there are generally no special procedures or practices that apply to Private Members' Bills as opposed to government bills. There are two minor differences between the treatment of Private Members' Bills and government bills: time allocation motions can only be adopted in regard to government bills; and the government may call its business as it wishes in the Chamber, while a Private Member's Bill is only considered in its proper sequence on the Order Paper. It should be noted that under the Constitution of Canada, no bill that originates in the Senate can require the government to spend money. Appropriation bills can only be originated in the House of Commons in Canada.

British Columbia Legislative Assembly

The British Columbia Legislative Assembly does permit Private Members' Legislation. In 2003 three Private Members' Bills were introduced—all by the Leader of the Opposition—and none progressed past introduction and first reading.

Policy input is provided by research assistance within each caucus. Drafting assistance is provided, where required. No special procedures or practices apply to the passage of Private Members' legislation in the British Columbia House.

Manitoba Legislative Assembly

The Manitoba Legislative Assembly does permit Private Members' legislation. Private Members can bring in either Private Bills or Public Bills. In 2003 there were seven Private Members' Public Bills introduced in the House. One received Royal Assent, on 4 December 2003.

Help is provided for Private Members in drafting their legislation. The Legislative Counsel Office drafts Private Members' Private and Public Bills, as well as drafting amendments to legislation for Members.

Private Members' Public Bills go through the same stages and processes as government legislation with the exception that debate takes place during Private Members Business on Thursday mornings.

Ontario Legislative Assembly

Ontario does permit Private Members' legislation and has fixed procedures for dealing with Private Members' Bills.

In 2003 144 Private Members' Bills were introduced; none passed. This was an exception—it is not uncommon for one or two (sometimes more) Private Members' Public Bills per Session to be passed.

Private Members have unlimited access to the drafting services of the Office of the Legislative Counsel, who draft all government, Private Members', private and committee Bills. Private Members also have unlimited access to the research services of the Ontario Legislative Library who greatly assist many members in the development of proposals and ideas that will eventually become bills.

There are limited and specific opportunities by which Private Members' Bills are dealt with by the House. Based on a random ballot drawn by the Clerk of the House at or near the beginning of a Session, an order list is established of all Private Members. Each Thursday that the House is in Session, it meets from 10 a.m. to noon to consider (for about one hour each) two items of Private Members' business, which can be either a resolution or a Bill. In an average, typical year, perhaps 20 or so Private Members' Bills arrive on the floor of the Legislature under this process.

As members' names move to the top of the list, they are entitled to designate an item of business for consideration on these Thursday mornings. If it is a Bill, the member is guaranteed to have the second reading motion on the bill come to a vote that day. If the second reading passes, the bill will continue through the remainder of the legislative process to be dealt with, essentially, at the discretion of the Government House Leader.

Prince Edward Island Legislative Assembly

Rule 63(1) states "Bills shall be known and distinguished as Public Bills, Private Members Bills, and Private Bills". Rules 63(3) and 63(4) go on to state, "Private Members Bills are Bills introduced by Members, other than Ministers of the Crown, relating to matters of administration or public policy of general application within the Province and which do not call for nor imply the expenditure of public funds or the imposition of any tax. Private Bills are those relating to private or local matters or for the particular interest or benefit of any person, corporation or municipality."

In 2003 one Private Members Bill was introduced (Bill 100, *An Act to Amend the Electoral Boundaries Act*). It did not pass. Legislative Counsel provides assistance with the drafting of Private Members' Bills and Private Bills.

Special Procedures

Rule 65 of our Standing Orders specifies the procedure for introducing a Private Members Bill:

> "65(1) A Private Members Bill is introduced upon motion for leave specifying the title of the Bill.
> 65(2) A motion for leave to introduce a Private Members Bill may be made only after notice.
> 65(3) A motion for leave to introduce a Private Members Bill shall be decided without debate or amendment but the Member seeking leave may give a succinct explanation of the provisions of the Bill.
> 65(4) Upon leave being granted for the introduction of a Private Members Bill, it shall forthwith be read a first time without further question put.
> 65(5) Subject to Rule 70, when a Bill is read a first time it stands ordered for second reading of the House, but a Bill shall not be read a second time until a copy has been on the desk of each Member for twenty-four hours."

Private Members business is scheduled for each Tuesday evening and Thursday afternoon, when "Motions Other Than Government" and "Orders Other Than Government" are called. This is the opportunity for Private Members to introduce and to call for first and second readings of Private Members Bills.

Once a Bill has been read a second time, it stands ordered for consideration in the Committee of the Whole. Following debate in Committee of the Whole, the Bill is either recommended or not recommended. If it is recommended, it stands ordered for third reading at the next sitting of the House, as for a Public Bill. If it is not recommended, Rule 67 states, "When a Committee of the House reports to the House that they do not recommend a Bill that has been referred to them, the Bill so reported shall not be placed on the Order Paper for consideration in Committee of the Whole House except upon motion which may be made without notice."

Québec National Assembly

Section 30 of the *Act respecting the National Assembly* (*Revised Statutes of Québec*, chapter A-23.1) stipulates that any Member of the National Assembly of Québec may introduce a bill; provided that only ministers may introduce bills that commit public funds, create a charge on the taxpayers, remit debts owing to the province, or alienate property owned by the province.

Bills introduced by Private Members at the National Assembly are few in number. During the abbreviated sessional periods of 2003 only two such bills were introduced, both by government Private Members, and both were passed. By way of comparison, during the same period the government introduced 38 bills, 28 of which were passed.

Private Members receive considerable assistance from the lawyers at the Legal and Legislative Affairs Branch of the Assembly (the Law Clerk). The branch's lawyers furnish the expertise required at each stage of the consideration of such bills, including research and legislative drafting, in order to ensure their legal and legislative coherence.

No special procedures apply in the case of government Private Members' legislation. However, since no time is set aside in the parliamentary calendar for government Private Members' business, these Members must rely on the government House leader's good offices to call their bills for debate, failing which they have no way of bringing them before the Assembly for further consideration once they are introduced.

Business standing in the name of Members in opposition is taken for two hours each Wednesday morning during "ordinary session" (which comprises, roughly, the months of March, April, May, October, and November), and opposition Members may elect to debate either bills or resolutions during the time allotted to them. Given the practical impossibility of gaining the passage of any bill that does not enjoy the government's favour, however, opposition Members rarely use this time to debate bills, preferring instead to call resolutions on topical matters. Nevertheless, if the ministry agrees with an opposition Member's bill, the government House leader can occasionally be prevailed upon to call such a bill for debate and passage during the time placed at the government's disposal.

Saskatchewan Legislative Assembly

In 2003 two Private Members' Public Bills were introduced but did not proceed beyond first reading. In previous years, a larger number of Private Member' Public Bills have been proposed but do not usually proceed beyond second reading. On average one such Bill is passed every five years.

The Office of the Legislative Counsel and Law Clerk provides assistance to Private Members in the preparation of legislation, including providing legal and drafting services. The office also provides assistance to lawyers in private practice where they have been contracted to draft legislation for a Private Member. This assistance can include providing guidance on the

format bills must adhere to and the process by which they are considered and passed by the Assembly.

Public Bills sponsored by Private Members must adhere to the same procedures as are applicable to the consideration of government sponsored Public Bills.

Yukon Legislative Assembly

The Yukon Legislative Assembly does permit Private Members' legislation. Two Private Members' bills were introduced and given first reading in 2003. One was given second reading, where it was defeated.

Where Private Members ask for help in drafting and formatting bills this is usually provided by the Table Officers. In some circumstances legislative counsel from the Department of Justice can be called upon for advice but this is the exception, not the rule.

Private Members' Bills must be called for debate during Orders of the Day on Wednesday when Private Members' business has precedence. The member in whose name the bill stands must identify the bill as an item of business on the preceding sitting day. If the bill is given second reading it will go immediately to committee of the whole for consideration, if the member so chooses. Should a Private Member's bill receive third reading and pass the assembly it is presented to the Commissioner for assent.

INDIA

Lok Sabha

The Indian Parliament does permit Private Members' Legislation. The number of Private Members' Bills introduced in the House of the People (Lok Sabha) during 2003 was 37. Eight Private Members' Bills were taken up for consideration and all these Bills were withdrawn by the respective Member-in-charge of the Bill by leave of the House after these Bills were considered and discussed by the House.

The primary responsibility for drafting of a Private Member's Bill rests on the member concerned. However, some members may not have the requisite legal background for drafting legislative proposals on subjects on which they want to move Bills. In such cases, the Lok Sabha Secretariat renders the necessary assistance to members in putting the Bill in proper form and language so that it is not rejected on technical grounds. The Library and

Reference, Research, Documentation and Information Service provides the necessary reference material to members to enable them to draft the Bills.

The general procedure applicable to a Government Bill also applies to a Bill sponsored by a Private Member. There are also certain special procedures governing Private Members' Bills. Motions for the introduction of all the Bills due for introduction on a particular day allotted to Private Members' Bills are included in the List of Business for that day. However, Bills seeking to amend the Constitution, apart from being subject to the normal rules applicable to other Private Members' Bills, have also to be examined by the Committee on Private Members' Bills and Resolutions, and only those Bills which have been recommended by the Committee for their introduction are put down in the List of Business for introduction.

After the Private Members' Bills are introduced and before they are taken up for consideration in the House, the Committee on Private Members' Bills and Resolutions classifies them according to their relative importance, nature and urgency in two categories. Category 'A' Bills have precedence over category 'B' Bills. A ballot is thereafter held for determining relative precedence of Private Members' Bills for discussion. The Bills are included in the List of Business for consideration in the order of priority determined by the ballot.

Once a Private Members' Bill is passed by one House and laid on the Table of the other House, any member may give notice of his intention to move for consideration of the Bill by the latter.

Rajya Sabha

During 2003 fifty-six Private Members' Bills were introduced in the House, of which four Bills were discussed. No Bill was passed by the House.

The prime responsibility of drafting a Private Member's Bill lies with the member concerned. The Rajya Sabha Secretariat, however, provides all possible assistance and advice on the technicalities of the Bill to the member, so as to ensure that the Bills are not rejected on technical grounds. The Secretariat examines the Bill in the light of constitutional provisions and relevant rules pertaining to legislation. In Rajya Sabha, the admissibility of a Private Member's Bill is decided by the Chairman.

After approval of a draft Bill, the requisite number of copies are printed and circulated to members. Two copies of the printed Bill are forwarded to the Ministry concerned and also to the Attorney General of India for information.

A member who wants to introduce a Bill is required to give a notice of his intention to move a motion to introduce the Bill. The period of notice to

move a motion for leave to introduce the Bill is one month, unless allowed by the Chairman to be moved at a shorter notice. A member can introduce a maximum of three Bills during a Session. In case the introduction of a Private Member's Bill is opposed on the ground of being outside the legislative competence of the House, the Chairman, if he thinks fit, may allow a discussion on the general issues raised in the Bill to decide the question of introduction of that Bill or otherwise.

Two and half hours, from 2.30 p.m. to 5.00 p.m. every Friday, are generally allotted for transaction of Private Members' Business. The Private Members' Bills and Resolutions are taken up on alternate Fridays. If the sitting earmarked for Private Members' Business happens to be on a holiday, the Chairman may direct the Business to be taken up on any other day during the week.

On the day allotted for transaction of Private Members' Legislative Business, Bills for introduction are set down as the first item in the List of Business. In the first phase, Private Members' Bills are introduced by Members-in-charge and thereafter, either Bills for consideration are taken up as per priority obtained by drawing lots, or the House resumes discussion on a part-discussed Bill. The practice has been evolved primarily to allow uninterrupted discussion on the Bill under consideration.

The relative precedence of notices of Bills given by Private Members is determined by lot, held in accordance with an order made by the Chairman, on a day not less than fifteen days before the day with reference to which the drawing of lots is held. The relative precedence is: (a) Bills for introduction; (b) Bills returned by the President for reconsideration; (c) Bills passed by Rajya Sabha and returned by Lok Sabha with amendments; (d) Bills passed by Lok Sabha and transmitted to Rajya Sabha; (e) Bills in respect of which motion for consideration has been carried; (f) Bills in respect of which a report of a Joint/Select Committee has been presented; (g) Bills which have been circulated for the purpose of eliciting pubic opinion thereon; (h) Bills introduced and in respect of which no further motion has been made; and (i) other Bills.

A Private Member's Bill originating in and passed by Lok Sabha and transmitted to Rajya Sabha may be taken up by any Private Member of Rajya Sabha so authorised by the member-in-charge of the Bill of the other House on a day allotted for Private Members' Bills. Sometimes either the member-in-charge of the Bill feels or there is a sense of the House to adjourn the ongoing debate on a Private Member's Bill. On a motion being carried, the debate on a Private Member's Bill is then adjourned to the next day allotted

for Private Members' Bills in the same or the next session. Such a Bill is not set down for further discussion automatically unless the member-in-charge has gained priority in the draw of lot. When the debate is adjourned *sine die*, the member concerned has to give notice for resumption of the adjourned debate, if he wishes to proceed with his Bill. The Bill is included in the List of Business only if its member in-charge gains priority in the draw of lot.

A separate Register is maintained by the Rajya Sabha Secretariat in which Bills introduced in the House by Private Members are entered. A Private Member's Bill pending before the House is removed from the Register of Private Members' Bills if the member-in-charge ceases to be a member of the House or is appointed a Minister or Deputy Chairman of the Rajya Sabha. A Private Member's Bill pending before the House is also removed from the Register of Bills if a measure substantially identical is passed by the House or the Bill is withdrawn by the member on that ground.

There is a general perception that chances of a Private Member's Bill being enacted are very bleak, since it has to overcome many hurdles before making its way into the Statute Book. First of all, a Private Member's Bill requires one-month notice for introduction. Then the member must get his name selected in the ballot and if financial implications are involved, the President's recommendation has to be obtained (it cannot be presumed to be automatic), and further the Bill must be supported by majority of the House. In brief, it can be said that the legislation is entirely in the hands of the Government and for a Private Member's Bill to become a law, the support of the Government and the Treasury benches is essential. Nevertheless, the Private Member's Bill serves a very useful purpose by drawing the attention of the Government to the desirability of legislation in a particular field or matter.

Often Private Members' Bills require a broader perspective. But they do cause ripples. This is why the majority of the Private Members' Bills discussed in the House are withdrawn after obtaining assurances from the Government that it will bring forward comprehensive legislation on the subject. Often the Government will not give any assurance of enacting such legislation, but it may adopt a procedure such as forwarding the idea initiated by the member to a proper forum to conduct in-depth study of the matter. The procedure for Private Member's legislation is thus quite effective in influencing thinking and drawing the Government's attention to issues of public importance.

Gujarat Legislative Assembly

The Gujarat Legislative Assembly permits Private Members' legislation. Twenty Private Members' Bills were introduced in the House in 2003, and no bill has been passed. No help is provided to Private Members in drafting such bills.

A special procedure up to the stage of first reading as been prescribed. Fifteen days' notice is required in respect of a motion for leave to introduce a Private Member's Bill. The last two hours of a sitting on the last but one working day each week aer allotted for the transaction of Private Members' business. Private Members' Bills and resolutions are taken up in alternate weeks. The precedence of bills which are at the same stage is determined by a ballot, generally held before the start of the session. The first four bills from the list are set down in the list of business for the day. The fourth bill may be moved up is for any reason any of the first three bills is not taken up.

Tamil Nadu Legislative Assembly

Procedures have been laid down in the Tamil Nadu Legislative Assembly Rules (Rules 123-164) for the transaction of Private Members' Bills as well as Government Bills. Rule 33(1) also stipulates the allotment of time for Private Members' business and the precedence of such business.

Assistance is provided as necessary in the drafting of Private Members' legislation. However, no notice to move for leave to introduce a Private Member's Bill was received in 2003.

Uttar Pradesh Legislative Assembly

No Private Members' Bills were introduced in 2003. Assistance is provided by the Assembly Secretariat as and when required. The legislative procedure for Private Members' Bills is the same as for Government Bills.

STATES OF JERSEY

The States of Jersey does permit Private Members to present Private Members' Bills but in practice there are very few such Bills, no more than one or two per year at the most. No special procedures apply to such Bills and they are dealt with in the same way as other Bills, except that when lodged *au Greffe* (the equivalent of first reading) they must be referred to the relevant Executive Committee for a report before they can be considered by the Assembly.

Private Members need to seek the assistance of the Law Draftsman's Office for the drafting of these Bills. As that Office works to an agreed legislation programme agreed annually by the States it is not feasible for lengthy Bills to be drafted for Private Members and, in practice, Private Members will usually take an 'in principle' proposition to the States seeking agreement on policy matters. If the 'in principle' proposition is adopted the relevant Committee will bring forward draft legislation as an 'executive' Bill.

LESOTHO PARLIAMENT

A motion for leave to bring in a Private Member's Bill was passed on 31 October 2003. The Bill will be tabled when Parliament resumes.

NEW ZEALAND HOUSE OF REPRESENTATIVES

The Standing Orders of the House of Representatives make provision for Private Members' legislation, called Members' Bills. In 2003, five Members' Bills were introduced, while two were passed.

Assistance is provided by the Office of the Clerk of the House of Representatives to members on request in drafting their Members' Bills. The resources of the Parliamentary Counsel Office, the Government's law drafters, are not generally made available to Private Members, though that Office may be required to report upon such bills to the Prime Minister or the Attorney-General under its governing Act. Parliamentary Counsel may in due course become involved in the details of a Member's Bill that has a prospect of passing the House to ensure conformity to normal drafting standards.

Assistance offered by the Office of the Clerk is limited, consonant with efficient use of resources. The drafting assistance is directed towards bills that are to be entered in a ballot; the Office does not provide a private drafting service or draft bills for members to circulate as discussion documents.

The current administrative arrangement is that a member seeking assistance from the Office of the Clerk first approaches the Clerk-Assistant (Research), who assigns a staff member acquainted with legislative forms and style or versed in law to help draft a Member's Bill. A timetable is agreed with the member, taking into account the size and complexity of the proposed bill and other Office commitments. Parliamentary party research units often act as members' agents in developing proposals.

Some special procedures apply to the passage of Members' Bills, more

particularly their introduction. Unlike for other types of bills (Government, private, or local), a selection process applies to the introduction of Members' Bills. Not only must a member give notice of intention on a sitting day to introduce a Member's Bill but if two or more notices are lodged, as is invariably the case, a ballot is held to determine the order which the bills will go forward. This is subject, however, to a rule that there may not be more than four orders of the day for first readings of Members' Bills before the House at any one time, and so the ballot (when there is one) determines also which bills will go forward.

Members' Bills are considered on alternate Wednesdays when the House is sitting. Notices of intention are therefore in practice usually lodged between 9 a.m. and 10 a.m. on the next sitting day, Thursday. The rate at which new Members' Bills are drawn out of the ballot depends on the progress of existing Members' Bills at various stages through the House (and sometimes, too, the time spent on preceding private bills and local bills).

If there are any Members' Bills set down on the order paper awaiting first reading, then the number of notices of intention that may be accepted is affected accordingly. Notices in excess of the number of places available are eliminated by the ballot, but the notices may be resubmitted on a future occasion, and usually are. In 2003 only two ballots were conducted, with some 30 bills entered in each ballot.

Once introduced, a Member's Bill follows essentially the same procedure as for the other bills. Standing Orders prescribe different numbers if call and speaking times in the first reading debate on Members' Bills, private bills and local bills, and Government bills.

As recently amended, the Standing Orders, for consistency with practice, now expressly provide not only that a local bill or a private bill that contains any provision affecting the public revenues and the rights and prerogatives of the Crown may not be passed unless the Crown has indicated its consent to that provision, but also a Member's Bill containing such a provision and requires the Crown's consent.

SOUTH AFRICA

National Assembly

The National Assembly permits Privates Members' Legislation, and below is the relevant extract from the Rules of the Assembly. In 2003 no Private Members' legislative proposals reached the stage of formal introduction.

"BILLS INITIATED BY ASSEMBLY MEMBERS IN INDIVIDUAL CAPACITY

Submission of legislative proposals to Speaker

(1) An Assembly member intending to introduce a bill in the Assembly in an individual capacity (other than as a Cabinet member or Deputy Minister) must submit to the Speaker a memorandum which—

(a) sets out particulars of the proposed legislation;

(b) explains the objects of the proposed legislation; and

(c) states whether the proposed legislation will have financial implications for the State and, if so, whether those implications may be a determining factor when the proposed legislation is considered.

(2) The Speaker must table the member's memorandum in the Assembly.

Referral of proposals to committee

(1) The Speaker must refer the member's memorandum to the Committee on Private Members' Legislative Proposals and Special Petitions.

(2) The Committee must consult the portfolio committee within whose portfolio the proposal falls.

(3) If the Committee after such consultation is of the view that the member's proposal warrants further investigation, but that it may have financial implications for the State request the Speaker to refer the member's memorandum that may be significant enough to affect its desirability, the Committee must request the appropriate portfolio committee to report on the financial implications of the proposal.

(4) After considering the member's memorandum and the portfolio committee's report, if there is such a report, the Committee must recommend that permission either be—

(a) given to the member to proceed with the proposed legislation; or

(b) refused.

(5) If the Committee recommends that the proposed legislation be proceeded with, it may—

(a) express itself on the desirability of the principle of the proposal;

(b) recommend that the Assembly approve the member's proposal in principle; or

(c) recommend that permission be given subject to conditions.

Consideration of legislative proposal by Assembly

(1) The Committee on Private Members' Legislative Proposals and

Special Petitions must table in the Assembly the member's memorandum and the Committee's recommendation, including any views of a portfolio committee on the financial or other implications of the proposal.
(2) The Speaker must place the Committee's report together with the member's proposal on the Order Paper for a decision.
(3) The Assembly may—
 (a) give permission that the proposal be proceeded with;
 (b) refer the proposal back to the Committee or the portfolio committee concerned for a further report; or
 (c) refuse permission.
(4) If the Assembly gives permission that the proposal be proceeded with, it may, if it so chooses—
 (a) express itself on the desirability of the proposal; or
 (b) subject its permission to conditions.

Preparation of draft bill

(1) If the Assembly gives permission that the proposal be proceeded with, the member concerned must prepare a draft bill, and a memorandum setting out the objects of the bill, in a form and style that complies with any prescribed requirements.
(2) The Secretary must reimburse a member for any reasonable expenses incurred by the member in giving effect to Subrule (1), provided that those expenses were approved by the Speaker before they were incurred."

Once permission is granted, the Assembly proceeds with the bill in the normal way, namely, the bill must be tabled and referred to the appropriate Portfolio Committee. The relevant Committee then reports on the bill to the House for Second Reading. By approving the Second Reading, the Assembly passes the bill. Thereafter it goes to the National Council of Provinces for concurrence.

National Council of Provinces

The Constitutional provisions

The Constitution of the Republic of South Africa (Act 108 of 1996) provides for various types of Bills, namely—

- Section 74 bills i.e. constitutional amendments;
- Section 75 bills i.e. Bills which provide for matters that are within the exclusive legislative competence of the national government;

- Section 76 bills i.e. Bills which provide for matters that are within the concurrent legislative competencies of national and provincial governments;
- Section 77 bills i.e. Money Bills. Bills that deal with the appropriation of monies or the imposition of taxes.

The Rules

The Rules of the National Council of Provinces provide for Members of the House to introduce section 76 Bills.

A Council member intending to introduce a Bill in the Council in an individual capacity must for purposes of obtaining the Council's permission submit to the Chairperson of the Council a memorandum which

- sets out particulars of the proposed legislation;
- explains the objects of the proposed legislation; and
- states whether the proposed legislation will have financial implications for the state and, if so, whether those implications may be a determining factor when the proposed legislation is considered.

The Chairperson of the Council must refer the member's memorandum to the Committee on Members' Legislative Proposals, and the Committee is required to consult the select committee within whose authority the proposal falls. If the Committee after such consultation is of the view that the member's proposal warrants further investigation, but that it has financial implications for the state that may be significant enough to affect its desirability, the Committee must request the Chairperson of the Council to refer the member's memorandum to the appropriate select committee for a report on the financial implications of the proposal.

After considering the member's memorandum and the select committee's report, if there is such a report, the Committee must recommend that permission either be given to the member to proceed with the proposed legislation, or refused.

If the Committee recommends that the proposed legislation be proceeded with, it may—

- express itself on the desirability of the proposal;
- recommend that the Council approve the members' proposal in principle; or
- recommend that permission be given subject to conditions.

The members' memorandum and the recommendation of the Committee on Members' Legislative Proposals, including any views of a select committee on the financial and other implications of the proposal, must be sent to the Speaker of each provincial legislature to enable the legislature to develop its position with regard to the proposed legislation, and must be placed on the Order Paper for a decision. The Council may then

- give permission that the proposal be proceeded with;
- refer the proposal back to the Committee or Select Committee concerned for a further report; or
- refuse permission.

If the Council gives permission that the proposal be proceeded with, it may if it so chooses either express itself on the desirability of the proposal or subject its permission to conditions.

If the Council gives permission that the proposal be proceeded with, the member concerned must—

- prepare a draft Bill, and a memorandum setting out the objects of the Bill, in a form and style that complies with any prescribed requirements;
- consult the Joint Tagging Mechanism (JTM) for advice on the classification of the Bill. The JTM is composed of the Presiding Officers and Deputy Presiding Officers of both Houses. On the basis of advice received from the parliamentary law advisers it is responsible for tagging of Bills as being either section 74, 75, 76 or 77 Bills;
- comply with the requirements regarding the publication of the Bill in the Government Gazette. The notice in the Gazette must include an invitation to interested persons and institutions to submit written representations on the draft legislation to the Secretary (of the House) within a specified period.

The Secretary must reimburse a member for any reasonable expenses the members may have incurred in giving effect to the requirement of publication, provided that the Chairperson of the Council approved those expenses before they were incurred.

If the member decides not to proceed with introduction of a Bill, the member must without delay inform the Secretary in writing of the decision. The Secretary is the required to publish a notice in the Gazette stating that the proposed legislation has been withdrawn.

In 2003 a total of four Members' Legislative Proposals were received by

the Chairperson of the National Council of Provinces and referred to the Committee on Members' Legislative Proposals. These were:

- The Sectional Titles Amendment Bill
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Amendment Bill
- The Promotion of Multilingualism Bill
- The Pan South African Language Board Amendment Bill.

Of these, the Promotion of Multilingualism Bill and the Pan South African Language Board Amendment Bill were referred to the Select Committee on Education and Recreation for consideration of the financial implications of enacting the legislation. After discussion regarding the Sectional Titles Amendment, the relevant Member of Cabinet introduced legislation on the matter, which legislation was passed by Parliament. The Member's Legislative Proposal was subsequently withdrawn.

North West Provincial Legislature

One Private Members' Legislative Proposal, for a Language Act for North West Province, was tabled and stands referred to an Ad Hoc Committee for consideration.

The Legislature does not assist in the drafting of Private Members' legislation and the procedure of dealing with this legislation is covered in the rules of procedure. If the House adopt the report of the Ad Hoc Committee to proceed with the legislative proposal, the Bill will follow the normal procedure.

UNITED KINGDOM

House of Commons

In the 2002-03 Session 93 Private Members' Bills were introduced in the Commons and nine were brought from the House of Lords. Thirteen Private Members' Bills received Royal Assent. All of those Bills originated in the House of Commons.

The time set aside by the House for consideration of Private Members' legislation is limited to 13 Fridays. Priority in the use of this time is established by ballot held shortly after the beginning of each session. Twenty names are drawn in the ballot: other Private Members' bills may not be presented until the ballot bills have been introduced. The ten Members

placed highest in the ballot may claim up to £200 expenses towards drafting their bills.

Members may also seek leave to introduce a bill under the ten minute rule procedure (SO 23). This allows a brief speech in favour by the Member seeking to introduce the bill and a brief speech by a Member opposed to the Motion. In addition Members may formally present a bill under SO 57.

Like all public bills, Private Members' Bills have to pass through a committee stage. Most Private Members' Bills are referred to Standing Committee C, the standing (legislative) committee in which government bills do not have priority.

Private Members' Bill procedure is described in more detail in House of Commons Information Office Factsheet L2. The Procedure Committee's Fourth Report of Session 2003-03, *Procedures for Debates, Private Members' Bills and the Powers of the Speaker*, HC 333, and the Government's response contained in the *Second Special Report of the Procedure Committee*, Session 2003-04, HC 610, are also relevant. The documents are available on the parliamentary website www.parliament.uk .

House of Lords

In the calendar year 2003, 13 Private Members' Bills were introduced in the House of Lords, of which eight were passed by the House. None of these bills was passed by the House of Commons and so none became law. The House of Lords received 12 Private Members' bills from the House of Commons and passed all 12, all 12 thus becoming Acts of Parliament.

The Public Bill Office (PBO) can help members of the House of Lords to draft their bills, but the office does not employ professional draftsmen. A bill drafted with the help of the PBO is sufficient for the purpose of debate but, if the Government support the object of the bill, the Government are likely to redraft the bill through amendment or a bill in a later session. The Private Members' bills brought from the Commons which became law were all drafted by the Government: such a bill is described as a 'hand-out' bill because, although promoted by a Private Member, it was drafted by the Government and handed out to a sympathetic member.

No special procedure applies to the passage of such legislation save that, where a bill affects the Royal prerogative or interests, the Government, rather than the member who introduces the bill, obtain The Queen's consent to Parliament's consideration of the bill.

WALES NATIONAL ASSEMBLY

The National Assembly for Wales was established by the Government of Wales Act 1998 and among other things was granted powers to make legislation. Those powers are, however, confined to making secondary/subordinate legislation using powers enshrined in Acts made by the United Kingdom Parliament. The Assembly does not, unlike the Scottish Parliament, have any powers at present to make primary legislation—though this has been recommended in a recent report from an independent commission chaired by Lord Richard.

Generally speaking, secondary legislation is prepared and proposed by the cabinet of the Assembly. Nevertheless there are procedures under the Assembly's Standing Orders which enable Assembly Members to bring forward or promote such legislation:

- Standing Order 29 enables a Member, who has been successful in a ballot, to table a motion instructing a Minister to bring forward draft subordinate legislation.
- Standing Order 31.9 allows three Members to table a motion calling on the UK Government to bring forward a public Bill or amendments to an identified Bill currently before either House of Parliament.

The current position under SO 29 is not satisfactory since, unlike their Scottish or Westminster counterparts, Assembly Members have not found it easy under the established procedure to find a legislative vehicle for a policy idea. Since the beginning of 2000 11 motions have been tabled under SO 29, most of which have been defeated.

Moreover, many Members believe the procedures are not working well. There are only 12 ballot opportunities for each four-year Assembly. This is seen as too few. Also, Members have difficulty in meeting the timetable between winning the ballot and preparing their motions because of the complexity of matching policy ideas with legislative competence. Ministers in turn have difficulty in making the draft Orders which they are instructed to prepare because of difficulties with time and an absence of powers to follow the instructions. All this has resulted in a distinct lack of enthusiasm amongst Members to bring forward legislative proposals.

A motion using the provision in SO 31.9 has been used only once. On that occasion the Assembly called upon the UK Government to bring forward primary legislation prohibiting the smoking of tobacco in public places. Whilst the necessary motion was passed by the Assembly, the UK

Government have not yet taken the proposals on board. This inevitably caused frustration among Members and perhaps a view that it is not an effective procedure.

Dissatisfaction with the current arrangements was expressed in the Report of an all party review of the Assembly's procedures in February 2002. It indicated a desire for a more flexible procedure, together with more opportunities for Members. In particular, it recommended a system allowing each Member to have a 10 minute plenary slot in each four year session to produce a piece of subordinate legislation.

This recommendation has not yet been adopted but recently there has been discussion of proposals setting out a possible way forward. It is considered that the implementation of a new ballot system giving all Members an opportunity to bring forward legislation would not be difficult to achieve. But it has been suggested that the scope of SO 29 could be widened so that Members may either use it for its present purpose, or instead use it to call upon the UK Government to bring forward a Public Bill (i.e. a form of the current S0 31 procedure). This would mean that Members' legislative contributions would not need to be restricted, as they are under the current Standing Order, while Members would also acquire a mechanism to require a short debate and vote on primary legislative proposals. It remains to be seen whether this suggestion would be acceptable to the Assembly.

A team of lawyers has been established in the Assembly Parliamentary Service and these are available to assist Members in bringing forward legislative proposals.

ZAMBIA PARLIAMENT

The Zambian Parliament permits Private Members' Bills as long as members abide by the provisions of Article 81 of the Constitution, Cap 1 of the Laws of Zambia, and SO 76 of the National Assembly Standing Orders, which clearly provides that a bill or motion which, in the opinion of the Presiding Officer, makes provision for payment, issue or withdrawal of money from the general revenues of the Republic, or the alteration of taxation, requires a recommendation of the President signified by the Vice-President or a Minister. This requirement applies to both Private Members' and Government Bills.

One Private Member's Bill, the National Assembly Staff (Amendment) Bill 2003, was introduced on 12 November 2003, but the mover, in order to allow for broader consultation, sought leave of the House to defer consideration to a

later date. On 26 November the motion was again introduced in the House, but the mover, Mr Sakwiba Sikota MP, announced that, in view of further consultation with the Government Chief Whip, and in view of assurances given that the matter would be dealt with in due course in the report of the Committee on Parliamentary Reforms and Modernisation, he sought leave to withdraw the motion.

Neither Government nor Parliament provide help for Private Members in drafting their bills. However, the Committee on Parliamentary Reforms and Modernisation has recommended that he tabling of Private Members' Bills be encouraged, and to facilitate this the Parliamentary Legal Department will be strengthened by recruiting staff with the necessary knowledge of bill drafting.

No special procedures apply to the passage of Private Members' Bills.

PRIVILEGE CASES

AUSTRALIA

Senate

Execution of search warrants in senators' offices

The Senate Privileges Committee presented its report on the case of the execution of search warrants in the office of a senator (see *The Table*, 2003, p. 178). The committee reported that the independent assessor it had appointed to examine the documents, which were all the subject of a claim of parliamentary privilege by the senator, had determined that none of the documents seized were authorised for seizure by the terms of the search warrant, and the entire seizure was therefore unlawful. He therefore did not have to determine whether any of the documents were protected by parliamentary privilege. The documents were seized in electronic form but printed out for examination by the assessor. The printed documents were to be returned to the senator, but he agreed to have them destroyed under secure supervision. The printed version of the documents amounted to over 74,000 pages.

The committee reported that police executing search warrants appeared to have adopted the practice of sweeping up every piece of information in an office and then taking weeks, months or years to examine the material to determine whether it had any relevance to the matter under investigation. The committee suggested that the problem of examining vast numbers of documents stored on computers should be dealt with by a re-examination of the relevant law, in such a way as to avoid giving police arbitrary seizure powers and repeating the circumstances of this case.

The committee also repeated its recommendation that guidelines be developed for searches where parliamentary privilege may be claimed. Such guidelines were to have been drafted by the Attorney-General after the committee first made this recommendation in 1999.

Alleged interference with witness

The Privileges Committee presented a report on a case of possible interference with a witness. A conversation between two witnesses, in relation to the inquiry by the Rural and Regional Affairs and Transport Legislation Committee into Australian Wool Innovation Limited, could have been inter-

preted as intimidatory. The committee, while recommending that a contempt should not be found, issued a warning against confronting witnesses about their evidence instead of using the right-of-reply procedures of committees to respond to evidence given by witnesses. The report also urged committees to ensure adherence to those procedures. The report's findings were endorsed by the Senate.

New South Wales Legislative Assembly

Whilst there were no significant cases of breaches of privilege or contempt established in 2003, a number of privilege issues were raised and a couple are worthy of note.

On 3 July 2003 a Member raised a matter of privilege regarding the removal of a Member from the Chamber by the Deputy Serjeant at Arms, arguing that SO 288 requires the ejection to be carried out by the Serjeant at Arms, who was not in the Chamber at the time. The Member claimed that he was seeking advice for the House, following changes to the position and responsibilities of the Deputy Serjeant at Arms, on the legality of the Deputy, rather than the Serjeant at Arms escorting Members from the House. The Acting Speaker reminded Members that the Serjeant at Arms is also the Clerk-Assistant (Procedure), who has duties at the Table. The Acting Speaker also informed the House that the Deputy Serjeant at Arms acts under the delegation of the Serjeant at Arms and that accordingly he had requested the Deputy to escort the Member from the House.

On 14 October 2003 a Member rose on a matter of privilege, claiming that the conduct of a representative of the Department of Local Government prevented her from speaking at a public meeting in her electorate. The Speaker reserved his ruling. Later in the sitting a Minister, with concurrence, informed the House of the action taken by the Director-General of the Premier's Department concerning the incident.

On 16 October 2003 the Speaker made a ruling on the matter advising the House that he did not consider that a *prima facie* breach of privilege had occurred. He referred to a ruling given by Speaker Cooper in 1857, which is based on May's parliamentary practice and local precedent, and has been the guiding principle in the Assembly since that date having been upheld by subsequent Speakers. Speaker Cooper stated:

> "A question of privilege … could not be considered, inasmuch as it has no reference whatever to any proceedings in this House, or to the conduct or

> language of any person not being a Member of this House in connection with any proceedings in this House."

The Speaker noted that he had come to this conclusion on the basis that the actions complained of had not prevented the Member from exercising her freedom of speech in the House, had not prevented her from attending the service of the House and were not an impairment of the Member in relation to her duties in connection with the proceedings of the House. The Speaker did, however, note that the issues raised by the Member were serious and that such actions may even be considered a contempt of the House.

New Standing Committee on Parliamentary Privilege and Ethics

It should also be noted that on 4 December the House agreed a motion to establish a Standing Committee on Parliamentary Privilege and Ethics, to consider any matters relating to privilege which may be referred to it by the House. This resolution changes the way the House deals with privilege matters by referring them to the Committee rather than dealing with them on the floor of the House, except those matters of privilege relating to proceedings then before the House, which can be dealt with immediately.

New South Wales Legislative Council

ICAC Report in relation to the Hon Malcolm Jones MLC

On 10 July 2003 the Independent Commission Against Corruption (ICAC) tabled a report on an investigation into the conduct of the Hon Malcolm Jones MLC, Outdoor Recreation Party, a Member of the Council since 1999. The investigation focused on allegations that Mr Jones had used certain entitlements for purposes not connected with his parliamentary duties, in particular for membership drives for 11 'micro' political parties unconnected with the Outdoor Recreation Party. A further allegation concerned Mr Jones's ineligibility to claim the Sydney Allowance—an allowance for expenses incurred by Members who reside in country areas. The ICAC's investigation was to determine if Mr Jones's conduct in relation to these entitlements might amount to corrupt conduct within the meaning of the ICAC Act.

During the investigation the ICAC used its power under section 23 of the ICAC Act to enter and inspect the Parliament House office of Mr Jones. Search warrants were obtained to carry out searches of a home unit owned by Mr Jones as well as the headquarters of the Outdoor Recreation Party.

Private and public hearings were also held and evidence was taken from a number of witnesses including Mr Jones, present and former parliamentary staff and the Secretary of the Outdoor Recreation Party.

The ICAC report found that Mr Jones had knowingly misused entitlements provided under Part 3 of the Parliamentary Remuneration Act and that Mr Jones had engaged in conduct that was corrupt within the meaning of the ICAC Act. A recommendation was made that the Director of Public Prosecutions consider the prosecution of Mr Jones for breaches of sections 178BA or 178BB of the *Crimes Act 1900* (obtaining money by deception or false/misleading statements), the common law offence of breaching public trust, and a breach of section 87 of the ICAC Act (giving false evidence before the Commission). In addition, a recommendation was made that consideration be given to the expulsion of Mr Jones from the Legislative Council.

The ICAC report included three recommendations aimed at corruption prevention:

- implementation of the draft Sydney Allowance Guidelines developed by parliamentary officers for determining a Member's 'principal place of residence';
- inclusion of specific reference to rules and conditions established by the Parliamentary Remuneration Tribunal (concerning the restriction of the use of entitlements to matters connected with 'parliamentary duties') in documents of appointment for Members' staff; and
- further development of the Parliament's internal audit program, including pro-active, random fraud detection audits of the use of Members' auditable allowances.

The draft Sydney Allowance Guidelines were also forwarded to the Audit Office of New South Wales and the Parliamentary Remuneration Tribunal (PRT) for comment. The Audit Office expressed the view that the proposed guidelines would greatly assist Members to determine their principal place of residence. The PRT in its annual report and determination dated 30 June 2003 acknowledged the current difficulties associated with the Sydney allowance by indicating that "the Sydney Allowance is in need of a fundamental review" and that it would seek a special reference from the Premier to examine the allowance. The PRT has subsequently supported the introduction of the draft guidelines.

The report of the Independent Commission Against Corruption was subsequently tabled in the House on 2 September. The following day, on the

motion of the Hon Michael Egan, Leader of the Government in the Legislative Council, the House resolved that before it considered the report of the ICAC, Mr Jones be given an opportunity to address the House strictly in relation to the matters contained in the report, and that Mr Jones have leave to table any documents relating to matters contained in the report. On the invitation of the President, Mr Jones addressed the House and tabled certain documents.

On 16 September, prior to the House considering the matter further, the President informed the House that Mr Jones had tendered his resignation to the Governor as a Member of the Legislative Council. At the time of reporting, the Director of Public Prosecutions had not stated his intentions in regard to the possible prosecution of Mr Jones for breaches of the *Crimes Act 1900.*

Execution of search warrant in Member's office

In October 2003 a case arose in which officers of the ICAC executed a search warrant in the parliamentary office of a Member of the House, and seized documents and various items of computer equipment. The case led to a finding by the House's privileges committee that a breach of Article 9 of the *Bill of Rights 1689* had occurred, and to the adoption by the House of a procedure which would allow for the issues of privilege arising in relation to the seized material to be assessed and determined, without compromising the integrity of the external investigation concerned. In accordance with that procedure, the seized material was returned to the House (into the possession of the Clerk), and was examined by the Member, together with the Clerk, and a representative of the independent body. Subsequently, the Member made a claim of privilege over some of the seized items. Following a further inquiry by the privileges committee, that claim was upheld by the House. The case is described in more detail in the article entitled 'Seizure of a Member's documents under search warrant', in the present volume.

South Australia House of Assembly

The Speaker was granted the right to be heard as an intervener and make a submission in a matter before the courts in which counsel for a Member of the House had argued that the matter related to statements made by the Member in the House and actions taken by the Member in relation to his duties as a Member. Counsel had tendered the statement of the Speaker in relation to the action against the Member in which the Speaker and

subsequently the House had claimed the matter impinged upon the privileges of the Parliament. The Court, while rejecting the Speaker's contention that law in this area was settled nevertheless dismissed the application against the Member and confirmed the House's view in its judgment that, "[the Member] cannot be compelled to answer questions in court about 'proceedings in parliament'".

Victoria Legislative Assembly

Sessional orders have long provided for a citizen's right of reply, to provide people who have been damaged by comments made about them in the Legislative Assembly an opportunity to respond to those comments. The sessional orders adopted at the start of the 55th Parliament retained this option, which requires the Privileges Committee to consider any such replies and, where applicable, table a report, but no right of reply submissions were made to the Committee in 2003.

There were no findings of breach of privilege or contempt during the year, though some controversial incidents in the House provoked media scrutiny and required the Speaker's intervention.

In May, a potential privilege issue was played out in the press and in Members' public comments, rather than in the proper place of the Speaker's office and the Privileges Committee. In answering a question without notice about a contentious wind farm issue, the Minister for Planning, Ms Delahunty, made comments that the Leader of the Opposition, Mr Doyle, considered misled the House.

When a privilege issue is referred to the Speaker for consideration, it remains confidential. If the Speaker decides that there is a *prima facie* case to answer, the matter may be referred to the Privileges Committee for consideration. Until that reference is made, the process is confidential.

However, in this case Mr Doyle made a statement in the press that indicated he would refer the matter to the Speaker, and so it became known that the issue was being considered. This was followed by press speculation and attention. The Speaker authorised a statement to declare that she had received confidential correspondence, which she would consider. This did not reveal any more than had already been made clear by Mr Doyle's comments. After consideration, the Speaker indicated that she would not take the matter any further. Ms Delahunty issued a press release, vindicating herself on the basis of the Speaker's decision. The Opposition expressed some concerns that this breached due process, though accepted the

Speaker's decision. The process was damaged by a lack of confidentiality at several points throughout.

Similarly, in October an alleged incident of threatening behaviour involving two Members was largely reported in the media. Correspondence was sent to the Speaker's office for confidential consideration, but the process was damaged by various Members admitting in the press that they had written to the Speaker, and commenting on their version of events. The Speaker decided that a breach of privilege had not been committed, but requested the Member for Doncaster to apologise to the House, which he did. The Speaker then went on to make some general comments about the privilege process and Members' behaviour. She reminded Members of the confidentiality required in the privilege process:

> "When a written complaint is lodged with the Speaker for consideration the matter is confidential and the contents of the letter should not be commented upon, either inside or outside of the House."

CANADA

House of Commons

The Speaker found three *prima facie* cases of privilege in 2003. The first two were ruled on simultaneously and, for ease of reference, will be referred to as 'Exemption of Members from Attending Court'. The third case resulted in a former Officer of Parliament being found in contempt of the House and will be referred to as the 'Radwanski Question of Privilege'.

Exemption of Members from Attending Court

On 12 May 2003 the Leader of the Government in the House of Commons (Don Boudria) raised a question of privilege relating to a decision rendered by the British Columbia (provincial) Court of Appeal in the *Ainsworth* case. The Court questioned whether the Finance Minister (Paul Martin) could claim parliamentary privilege as a lawful reason for failing to attend an examination for discovery.

Mr Boudria stated that, while confirming the existence of parliamentary privilege and the right of Members to refuse to participate in legal proceedings when Parliament was in session, the Court had ruled that there was no legal support for extending this privilege for 40 days before and after a parliamentary session. (*Note*: This was the conventional limitation of the United Kingdom's House of Commons at the time of Confederation in

1867. The privileges, immunities and powers enjoyed and exercised by the Canadian House are defined in the *Constitution Act, 1867* and the *Parliament of Canada Act* as being those of the United Kingdom at the time of Confederation.)

Mr Boudria argued that the court's interpretation of parliamentary privilege called into question a privilege asserted by Parliament, its Members and Members of provincial legislatures as well as raising the question of whether it was the role of Parliament or the role of the courts to define what is parliamentary privilege.

On 16 May Mr Boudria raised a second question of privilege in relation to a decision of the Ontario (provincial) Superior Court in the Telezone case regarding the failure of the Minister of Industry John Manley to appear before the Court.

Mr Boudria explained that although the Court confirmed the parliamentary privilege of Members when Parliament is in session, it asserted that this privilege should be limited to the period that Parliament is actually sitting and for the 14 days immediately following adjournment. He stated that he considered this an attack on the privileges of Members of the House and asked the Chair to take the case into consideration in addition to the first question of privilege raised on 12 May.

In ruling both matters *prima facie* questions of privilege on 26 May the Speaker admonished the courts by stating:

> "We have parliamentary privileges to ensure that the other branches of government, the executive and the judicial, respect the independence of the legislative branch of government, which is this House and the other place. This independence cannot be sustained if either of the other branches is able to redefine or reduce these privileges … The privileges of the House and its Members are not unlimited but they are nonetheless well established as a matter of parliamentary law and practice in Canada today and must be respected by the courts."

Mr Boudria moved that the question of the immunity of Members of the House from being compelled to attend court during, immediately before and immediately after a Session of Parliament be referred to the Standing Committee on Procedure and House Affairs. The motion was agreed to.

When the session was prorogued on 12 November the Committee had not reported to the House. Meanwhile, the federal Justice department had appealed the Ontario Superior Court ruling that ordered Mr Manley to testify in the *Telezone* case. On 6 January 2004 the appeal was allowed and

the order of the motion judge set aside. In his ruling, J.C. MacPherson, Justice of the Court of Appeal for Ontario declared that:

> "In 1867 the parliamentary privilege relating to testimonial immunity continued for 40 days after a parliamentary session and recommenced 40 days before a new session. Moreover, I do not see any development in constitutional or statute law since 1867 that would displace this conclusion … Any change to the privilege must come through Parliament enacting a law pursuant to its power under s. 18 of the Constitution Act, 1867 and s. 4 of the Parliament of Canada Act."

Radwanski Question of Privilege

In June 2003 the Standing Committee on Government Operations and Estimates, having completed a review of the Supplementary Estimates B (2002-03) and the Main Estimates for 2003-04 relating to the Office of the Privacy Commissioner, called George Radwanski, the Privacy Commissioner, before the Committee to discuss a claim that a copy of a letter provided to the Committee had been 'falsified'. The Privacy Commissioner is an Officer of Parliament.

Following the meeting and some further investigation of the matter by the Office of the Law Clerk and Parliamentary Counsel, the Committee decided to hold a series of *in camera* meetings with the Commissioner and some of his employees.

On 13 June the Committee issued an interim report, calling upon the Auditor General and the President of the Public Service Commission to look into concerns relating to the improper use of expense accounts and the possibility of intimidation of some of the Commission's employees. On 23 June the Privacy Commissioner resigned his office.

On 27 June the Committee filed its main report (Fifth Report) with the Clerk of the House. The Report contained the following:

- a re-affirmation of the unanimous conclusion of the June 13 interim report that members of the Committee had lost confidence in the Privacy Commissioner;
- a re-assertion that the Commissioner had deliberately misled the Committee on several occasions;
- an indication that the Committee would have recommended the removal of George Radwanski from the position of Privacy Commissioner, had he not resigned;

- a recommendation that a standing or special committee be instructed to report on the role and functions of Officers of Parliament (and delineating some proposed items of study); and that until such a study was completed, no personal financial arrangements should be entered into between an Officer of Parliament and any government department or agency;
- an indication that, in the future, the Committee intends to: scrutinise any prospective candidate prior to the ratification in Parliament of the appointment of a permanent successor to Mr. Radwanski; pursue a review of the effectiveness of existing protection for whistleblowers; and pursue the issue of possible contempts of Parliament, as a result of deliberately misleading testimony given during the committee hearings into the matter.

In July the Prime Minister appointed Robert Marleau, a former Clerk of the House of Commons, as Interim Privacy Commissioner for a six-month period. Mr Marleau made several appearances before House committees in September.

The Auditor General reported to Parliament on the matter in mid-September, recommending that the Royal Canadian Mounted Police undertake a criminal investigation into questionable expense and holiday reimbursement claims filed by the former Privacy Commissioner and several senior staff of the organisation.

On 4 November Derek Lee (Liberal) presented the 9th Report of the Standing Committee on Government Operations and Estimates, entitled *Matters Related to the Review of the Office of the Privacy Commissioner*. Later that day, he raised a question of privilege, asking the Speaker to find *prima facie* evidence of contempt of the House. On 6 November the Speaker ruled that the matters set out in the 9th Report were sufficient to support a *prima facie* finding of a breach of the privileges of the House. He invited Mr Lee to move his motion. Following the Speaker's ruling Mr Alcock (Liberal), Chair of the Committee, read a letter from Mr Radwanski in which he apologised to the Committee and to Parliament for the mistakes that were made during his tenure as Privacy Commissioner.

Later the same day, Mr Lee informed the House that there had been consultations and was given unanimous consent to move, "That this House find George Radwanski to have been in contempt of this House, and acknowledge receipt of his letter of apology, tabled in and read to the House earlier today".

On 29 October the name of a proposed appointee for the office of Privacy Commissioner was deemed referred to the Standing Committee on Government Operations and Estimates. Jennifer Stoddart is a former Information and Privacy Commissioner of Québec. Following the Committee's deliberations, which included an appearance by Ms Stoddart, the Committee submitted two reports, with the following recommendations:

- That the House proceed with the appointment;
- That the Standing Orders be amended so that the names of proposed Officers of Parliament are referred to an appropriate standing committee 30 sitting days in advance of any prolonged parliamentary adjournment; and
- That the House instruct a standing or special committee to study and report on the role and functions of Officers of Parliament

On 6 November, following the adoption of resolutions by the Senate and the House of Commons, the Governor in Council appointed Ms Stoddart as Privacy Commissioner.

Senate

During 2003 three questions of privilege were raised in the Senate of Canada.

On 27 May the Speaker of the Senate considered a question of privilege stemming from an unauthorised disclosure of a confidential draft report of the Senate Standing Committee on Fisheries and Oceans. In his ruling on the matter, the Speaker found that the occurrence constituted a *prima facie* question of privilege. In accordance with the Rules of the Senate, the Fisheries and Oceans Committee were directed to conduct an investigation of the matter and bring a report back to the Senate. Such a report could then be debated and be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament for further consideration.

On 19 June the Speaker considered a question of privilege raised by a Senator regarding the House of Commons investigation into the conduct of the Privacy Commissioner of Canada (see above). The Senator explained that as a consequence of the accusations made against the Privacy Commissioner by a Committee of the House of Commons and the failure of the government to accept its responsibility and take timely parliamentary action to deal with this matter, the Privacy Commissioner, who is an Officer of Parliament, was placed in an untenable position. It was the

Senator's position that the matter could not be allowed to stand as it affected the dignity, rights and reputation of Parliament. As such, the Senator favoured the idea that the government ought to recall the House of Commons to resolve the situation of the Privacy Commissioner's status one way or the other. As an alternative, the Senator raised the possibility of the Senate inviting the Privacy Commissioner to appear before the Committee of the Whole. While acknowledging the seriousness of the matter, the Speaker ruled that there was no *prima facie* question of privilege that could be addressed under the appropriate rule (43). If the Senate wished to consider the issues in respect of the status of the Privacy Commissioner, there were other means readily available.

On 4 November the Speaker considered a question of privilege with respect to a meeting of the Senate Standing Committee on Rules, Procedures and the Rights of Parliament that took place while a point of order raised regarding an earlier meeting of the committee was still awaiting a ruling by the Speaker. The original point of order was raised because the Committee had met outside its usual time slot and that, as a consequence, none of the Opposition Members had be able to attend the entire meeting. Thus the Senator raising the point of order had asked for a finding that the meeting had been 'illegally constituted'. While the Speaker's ruling on the point of order was still pending, the Committee had another meeting at which they completed clause-by-clause consideration of a bill. The Senator raising the question of privilege argued that the second meeting constituted a contempt of Parliament.

In ruling that there was no *prima facie* question of privilege, the Speaker noted that the objection to the method followed by the Committee with respect to one meeting did not put into question the all operations of the Committee or its ability to call more meetings.

British Columbia Legislative Assembly

On 20 February 2003 the Speaker delivered his reserved decision on a matter of privilege raised by the Leader of the Opposition, concerning the alleged disclosure of the contents of a report by the Chair of the Special Committee to Review the Police Complaint Process to the *Vancouver Sun* on 28 May 2002. He concluded that the information the Chair disclosed to the media concerning the resignation of the Police Complaint Commissioner related only to matters that had been made public by the Chair when the committee was meeting in public forum. Furthermore, this information was

all in the public domain well before the Committee tabled its report to the House on 30 May 2002. Finding that there was no premature publication of confidential or *in camera* committee material, the Speaker ruled that the concern raised by the Leader of the Opposition did not constitute a *prima facie* matter of privilege.

On 12 March, during first reading of an emergency bill to deal with a labour dispute at the province's largest university, the Speaker was asked by the Leader of the Opposition to rule on whether under Standing Order 81 an urgent or extraordinary occasion existed wherein Bill 21 might be advanced through more than one stage in one day. In their arguments both House Leaders cited Speaker Barnes' ruling of 26 April 1996, that Standing Order 81 would not be applied where a Bill was too broad in scope. In response, the Speaker concluded that the limitation of the scope and duration of the Bill at hand distinguished it from the Bill considered by Speaker Barnes, and that the actions with which Bill 21 was concerned would have an immediate and detrimental effect on the academic year of a large number of students. Accordingly, he ruled that the case had been made for the application of Standing Order 81, enabling Bill 21 to advance through all stages in one day.

On 31 March, at committee stage of Bill 28, the Speaker was asked to rule on a matter of privilege raised by the Leader of the Opposition, alleging that the Minister of Forests had, by sponsoring, defending in debate and voting in favour of Bill 28, sought to derive a financial benefit, and was thereby in contempt of the House. In his ruling, the Speaker cited parliamentary authorities that have on numerous occasions stated that where a matter of general or public policy is at the heart of a measure, personal and pecuniary interest is overridden. He concluded that the Minister, in presenting, debating and voting on Bill 28 was not in breach of any rule of the House or the precedents referred to and that no *prima facie* case of breach of privilege or contempt had been made out.

Manitoba Legislative Assembly

Release of a report

On 30 April 2003, the Member for Russell rose on a matter of privilege regarding the release of a report by the Auditor General. He indicated that he was unable to obtain a copy of the report that had been tabled in the House, and that copies were not being provided to Members but were being provided to the media. He moved, "That this matter, because of its seriousness, be moved to the Standing Committee on Legislative Affairs, and then

be reported to the House so that this matter can be cleared once and for all."

On 8 September Speaker Hickes ruled that there was no *prima facie* case of privilege. He indicated that he had investigated the situation and written to the Independent Officers of the House requesting that when reports were tabled in the House, the Independent Officers were to provide nine copies of the report for tabling. He had also stressed the importance of providing copies to the Legislative Assembly Journals Office in a timely manner, to ensure that copies were available for Members and for the caucuses.

Seating Arrangements in the House

On 23 June the Member for River Heights rose on a matter of privilege to discuss the seating arrangement of the House, particularly the allocation of seats provided to the him and to the Member for Inkster. He moved, "That this House recess to allow for representatives from MLAs in all three seating blocks to get together with the Speaker to see if the concerns in relation to seating in the Legislature can be resolved."

On 8 September Speaker Hickes ruled that there was no *prima facie* case of privilege. The Speaker advised that in accordance with The Legislative Assembly Act, when the position of Speaker is vacant, the Clerk of the Legislative Assembly has the duty to exercise the administrative authority of the Office of Speaker regarding matters such as allocation of block seating for the seating plan. In this instance, a temporary seating plan was devised by the Clerk based on past practices of the House. The Speaker also quoted from a ruling by Speaker Parent of the House of Commons who stated, "there is no such thing as a bad seat in the House of Commons. We have all been elected in the same manner to sit here as Honourable Members."

Parliamentary work of Members

On 3 December the Member for River Heights rose on a matter of privilege stating that the holding of an event to commemorate the proclamation of Child and Family Services Authorities legislation for the Aboriginal Community on the same afternoon when the Leader of the Official Opposition spoke in the Throne Speech debate was a breach of privilege. At the conclusion of his comments, he moved, "That this matter of privilege I have raised be referred to the Standing Committee on Legislative Affairs." In providing advice to the Speaker on whether or not there was in fact a *prima facie* case of privilege, the Premier offered to write to those persons in attendance at the commemoration to explain that the reason for the absence of the Leader of the Opposition was due to his participation in the Chamber for the

Throne Speech debate.

On 3 December Speaker Hickes ruled that there was no *prima facie* case of privilege because breaches of privilege must involve a proceeding of the House. Similarly, claims that privilege have been violated due to activities performed as the Leader of a Party are not the basis for a *prima facie* case of privilege. The Speaker referred to comments made by Speaker Parent of the House of Commons in ruling on a case of privilege. Speaker Parent had stated, "the Chair is mindful of the multiple responsibilities, duties and constituency related activities of all Members and of the importance they play in the work of every Member of Parliament. However, my role as your Speaker is to consider only those matters that affect the parliamentary work of Members."

Ontario Legislative Assembly

> "If the House is not in session, is there anything in the Standing Orders that prohibits the Minister of Finance from releasing her Budget by simply tabling it with the Clerk of the House under Standing Order 39(a)?"

This relatively simple and straightforward question led to one of the more controversial series of events in modern Ontario political history.

The Ontario Provincial Budget has in the modern era typically been presented in April or May (pre-1970 it tended to be presented in February, or possibly March). With notice, the Budget motion, "That this House approves in general the budgetary policy of the government", is moved by the Minister of Finance and usually seconded by the Premier (one of only 3 motions in the Ontario Legislative Assembly that still requires a seconder). Four Sessional days (the day of its presentation and 3 more) are allotted to debate on the Budget motion.

In recent years, there has been considerable and growing pressure placed upon the government by the so-called 'MUSH' sector (municipalities, universities, schools and hospitals) to present its Budget much earlier, and in any event before the beginning of the next ensuing fiscal year. Organisations in these sectors derive a large part or all of their operating and/or capital funding from the provincial government. Operating on an April-March fiscal year, such organisations have found it difficult to prepare realistic budgets when the provincial Budget, which will reveal the funding appropriations planned for them, may only come out in May, two months into the fiscal year.

This systemic complaint has also been voiced by the Legislature's Standing Committee on Finance and Economic Affairs, and in response then-Premier Ernie Eves, a former Minister of Finance, vowed in 2002 that provincial Budgets would henceforth be delivered in advance of the fiscal year to which they applied, and specifically promised that the 2003 Budget would be presented before 31 March 2003.

This commitment became logistically problematic in March 2003. Under the Parliamentary Calendar set out in the Standing Orders, the 3rd Session of the 37th Parliament, adjourned on 12 December 2002, was set to resume on 17 March 2003. However, on 12 March the Lieutenant Governor issued a Proclamation proroguing the Session. This suspends the Parliamentary Calendar and leaves the date for the House to resume to begin a new session entirely up to the Premier (he announced the date of 30 April).

On the day the Session was prorogued, the Minister of Finance issued a press release announcing that the Budget would be released on 27 March, consistent with the Premier's promise, and that "the Eves government will change the way budgets are presented in Ontario. This year, the Budget will be presented directly to the people of Ontario via a live, interactive satellite and Internet broadcast featuring community meetings in several cities across the province."

This decision to present a Budget outside of the Legislature was immensely controversial. Media reaction was extensive and largely critical; legal opinions on the constitutionality of this process were sought and publicly released.

Over the next few days, the logistics of the Budget event were announced by the government: as would be the case on any Budget day, a media lock-up would be held; the Budget presentation itself would commence at 4.00 p.m., after stock and financial markets had closed for the day; all MPP's would receive invitations to attend the Budget presentation, which would be broadcast via satellite to a number of locations throughout the province attended by an invited public audience. A number of private cable television operators later agreed to broadcast the Budget presentation, which it was announced would take place at a private facility north of Toronto owned by automobile parts company Magna.

Throughout this period leading up to the Budget presentation on 27 March the government asserted that all of the normal steps in the Budget process would still occur in the Legislature once it resumed on April 30—that is, the Budget would be presented to the House in the normal way; the four-day Budget debate would occur; the Estimates would be tabled and

dealt with by the House and the Estimates Committee; any legislation arising from the Budget would be introduced and find its way through the Legislature, and so on.

Standing Order 39(a) states:

> "Reports, returns and other documents required to be laid before the House by any Act of the Assembly or under any Standing Order or Resolution of the House, or that any minister wishes to present to the House, may be deposited with the Clerk of the House, whether or not on a Sessional day, and such report, return or other document shall be deemed for all purposes to have been presented to or laid before the House. A record of any such document shall be entered in the Votes and Proceedings on the day it is filed except that where it is filed on a day that is not a Sessional day, it shall be entered in the Votes and Proceedings of the next Sessional day."

On 27 March Ministry of Finance staff attended at the Journals Clerk's office, just before 4.00 p.m., with copies of the Budget and Budget papers (under an armed guard of Ontario Provincial Police officers) ready for tabling under Standing Order 39(a) once the minister began her presentation. The documents were duly received, numbered and entered as Sessional Papers.

Reaction in the House

As previously announced by the Premier, the Legislature was recalled to commence a new Session on 30 April and the Speech from the Throne was read that day. The next day, Sean Conway, MPP (Renfrew-Nipissing-Pembroke), rose on a point of privilege in the House relating to the presentation of the Budget speech outside the Legislature. Peter Kormos, MPP (Niagara Centre), contributed to the point of privilege in support of it, and Government House Leader Chris Stockwell rebutted the points on the Government's behalf.

Speaker's Ruling

The Speaker reserved his ruling and later delivered it on 8 May. Having cited a range of authorities, he concluded as follows:

> "Having reflected on these authorities, I will apply them to the case before me now. It is hard to recall a time in recent memory when a matter of parliamentary process has so incensed people inside and outside this

province. Many Ontarians from all walks of life have complained in an overwhelmingly negative way—to my office, to Members directly, through various media, and to the government itself—that the government's approach to communicating the 2003 Budget to Ontarians has undermined parliamentary institutions and processes.

"As I have already indicated, there have been occasions in the past when a Minister of Finance or a Treasurer has neither personally presented the Budget in the House nor read the Budget speech in the House. In the case at hand, however, the government indicated that the events of March 27 were motivated by a desire (in the words of a March 12 press release issued by the Ministry of Finance) to have 'a direct conversation with the people of Ontario.'

"To the extent that they imply that parliamentary institutions and processes in Ontario tend to interfere with the government's message to the public, such statements tend to reflect adversely on those institutions and processes. If the government has a problem with those institutions and processes, or if it wants to improve them, why did it not ask the House sometime during the last session to reflect on the problem and to consider appropriate changes? Traditional ways to do just that would be to introduce a bill, table a notice of motion, enter into discussions at the level of the House Leaders, or ask the Standing Committee on the Legislative Assembly to study and report on the problem. Given the public's reaction to the government's decision to stage a Budget presentation outside the House, I think Ontarians are rather fond of their traditional parliamentary institutions and parliamentary processes, and they want greater deference to be shown towards the traditional parliamentary forum in which public policies are proposed, debated and voted on.

"When the government or a member claims that a Budget presentation is needed outside the House well before it happens inside the House in order to communicate directly to the people or because of a perceived flaw in the parliamentary institution, there is a danger that the representative role of each and every member of this House is undermined, that respect for the institution is diminished, and that Parliament is rendered irrelevant. Parliamentary democracy is not vindicated by the government conducting a generally one-sided public relations event on the Budget well in advance of members having an opportunity to hold the government to account for the Budget in this Chamber.

"I can well appreciate that parliamentary proceedings can be animated and often emotional, and they can be cumbersome. It may not be the most

efficient of political systems, but it is a process that reflects the reality that members, like the people of Ontario, may not be of one mind on matters of public policy. A mature parliamentary democracy is not a docile, esoteric or one-way communications vehicle; it is a dynamic, interactive and representative institution that allows the government of the day to propose and defend its policies—financial and otherwise. It also allows the opposition to scrutinize and hold the government to account for those policies. It is an open, working and relevant system of scrutiny and accountability. If any members of this House have a problem with the concept of parliamentary democracy, then they have some serious explaining to do.

"I have a lingering unease about the road we are going down, and my sense is that the House and the general public have the same unease. Let me summarize it by posing the following questions:

"First, what does the planned presentation of a Budget speech outside the House suggest about the relevancy and primacy of Parliament? It is one thing not to make the traditional Budget presentation in the House because the government is backed into such a decision by an ongoing House process or a Budget leak; it is quite another for the government to have a deliberate plan not to do so.

"Second, if left unchallenged, will this incident not embolden future governments to create parallel, extra-parliamentary processes for other kinds of events that traditionally occur in the House?

"Third, why is an extra-parliamentary process needed if there is already a process in the House? If the answer is that it enables direct communication with the public, to what extent does such an answer undermine the representative, scrutiny and accountability functions of Parliament?

"From where I stand, the 2003 Budget process has raised too many questions for the House not to reflect on them. In order to facilitate that exercise, I am finding that a *prima facie* case of contempt has been established. I want to reiterate that while I have found sufficient evidence to make such a finding, it is now up to the House to decide what to do. As I have said, only the House, not the Speaker, can make a finding that there has been a contempt of the House.

"Before turning to the member for Renfrew-Nipissing-Pembroke to move the appropriate motion, I want to thank him, the member for Niagara Centre, and the Government House Leader for speaking to these matters last Thursday."

Having found a *prima facie* case of contempt of the Legislature, the Speaker

invited Mr. Conway to move the motion of which he had given notice when he raised the point of privilege, "That this House declares that it is the undoubted right of the Legislative Assembly, in Parliament assembled, to be the first recipient of the Budget of Ontario."

Debate on this motion superseded all other business and was debated in the Legislature for 6 consecutive days. The motion was defeated on May 21 on a vote of 42-53.

INDIA

Lok Sabha

On 24 April 2003 when Shri Ram Vilas Paswan sought to raise a question of privilege in the House, the Speaker gave the following ruling:

> "I have received your notices of question of privilege dated 7 and 24 April, 2003 against the Home Minister, Government of Gujarat for his alleged misleading statement against you in the Press. As you are aware, the Home Minister of Gujarat, against whom the notice of question of privilege is directed, is a Member of Gujarat Legislative Assembly. It is well established that one House cannot exercise any authority over a Member of the other House. According to Kaul & Shakdher, where a contempt or breach of privilege has been committed by a Member of Parliament against a State Legislature or by a Member of State Legislature against Parliament or the Legislature of any State, the convention is being developed to the effect that if a question of privilege is raised in any Legislature in which the Member of another Legislature is involved, the Presiding Officer refers the case to the Presiding Officer of the Legislature to which that Member belongs, and the latter deals with the matter in the same way as if it were a breach of privilege of that House.
>
> "I have accordingly referred the matter to the Hon'ble Speaker, Gujarat Legislative Assembly for appropriate action in the matter under intimation to me."

On 24 June 2003 a communication was received from the In-charge Secretary, Gujarat Legislative Assembly, intimating that after examination of the matter, the Speaker of the Gujarat Legislative Assembly had held that the matter did not involve any privilege issue. Accordingly, the Speaker had treated the matter as closed.

In another case of similar nature the Speaker gave the following ruling on 13 August, 2003:

"I have received notices of question of privilege given by Shri G.M. Banatwalla and Shri Priya Ranjan Dasmunsi against Shri Arun Jaitely, Minister of Law and Justice, for allegedly suppressing facts and misleading the House regarding dilution of charges by CBI against the accused in the Babri Masjid demolition case.

"The Committees of Privileges of Lok Sabha and Rajya Sabha in the Report of their joint sitting in 1954 had laid down the procedure to be followed in case where a Member of one House is alleged to have committed a breach of privilege of the other House. In terms of that procedure, when a question of breach of privilege is raised in one House in which a Member of the other House is involved, the Presiding Officer of the House in which question of privilege is raised, has to refer the case to the Presiding Officer of the other House for appropriate action.

"Upon the case being so referred, the Presiding Officer of the other House shall deal with the matter in the same way as if it were a case of breach of privilege of that House …

"There are also instances where question of privilege raised against Members of State Legislatures were referred to Presiding Officers of respective State Legislatures …

"As Shri Arun Jaitely is a Member of Rajya Sabha, I felt that it would be appropriate, if the matter is considered by the Hon'ble Chairman, Rajya Sabha. I have, therefore, referred this matter to the Hon'ble Chairman, Rajya Sabha on 1 August, 2003 for appropriate action."

On 5 March 2004 a communication was received from the Secretary-General, Rajya Sabha, stating that the matter had been placed before the Chairman, Rajya Sabha, and he, after consideration of the facts and circumstances of the case, had withheld his consent to raise a question involving breach of privilege.

Gujarat Legislative Assembly

On 28 March 2003 a Member of the Gujarat Legislative Assembly raised a question of breach of privilege in the House, against a Gujarati daily newspaper, *Gujarat Samachar*, for publishing a column derogatory to the prestige and dignity of the House as well as of its Members. The Member alleged that the newspaper had published an imaginary episode on 17 March, under the caption "Whether MLAs have gone to see the Match or Mandira" (Mandira is a TV artist). It was asserted that the episode was based on a hypothetical debate in the House on a question related to water, and that in publishing it

the newspaper had tried to establish that Members were more interested in watching the TV artist, under the live telecast of a cricket match, rather than the debate in the House. It was contended that the column had used abusive and satirical language to make derogatory remarks on the behaviour and attitude of Members, and so lowered the dignity of the House.

The Member submitted therefore that the newspaper had committed a breach of privilege of the House. In support of this submission the Member quoted several passages from Erskine May. He sought the permission of the House to raise the question of breach of privilege.

The Honourable Speaker put the question before the House and obtained the consent of the House for raising it under the rules of procedure. Thereafter the Speaker referred the question to the Committee of Privileges under Rule 253 of the Rules of Procedure.

SOUTH AFRICA

North West Provincial Legislature

There is one pending case against a Member of Executive Council for allegedly misleading the House. The case involve alleged contrasting statements and statistics made by the Member of Executive Council in the House and in the Media. The Speaker will pronounce on the verdict.

TRINIDAD AND TOBAGO PARLIAMENT

Premature publication of reports

On 24 January 2003 the Member for Siparia was given leave by the Deputy Speaker under Standing Order 27(2) to draw the attention of the House to an alleged breach of privilege committed by the Prime Minister under Standing Order 81 of the House of Representatives on the issue of premature publication of evidence.

The Member for Siparia referred to a newspaper article in which the Prime Minister was reported to have commented about documentary evidence that was still before the Joint Select Committee on the Police Reform Bills. The Member for Siparia also contended that the Prime Minister's statement to the media that Opposition Members on the Committee would not act impartially raised an issue of contempt.

Mr Deputy Speaker required some time to consider whether the matter should be referred to the privileges committee.

The Speaker subsequently gave his ruling on 7 February. The Speaker ruled that a *prima facie* case had been made out although it did not imply a conclusion that a breach of privilege or contempt has occurred. The Speaker decided that the matter was to be decided after examination by the Committee of Privileges. The matter was therefore referred to the Committee of Privileges. The Speaker also ruled that the comment made by the Prime Minister about the impartiality of Members of the Opposition did not fall into the category of contempt. The Committee of Privileges has not yet completed its deliberations on this matter.

On 28 March the Member for Diego Martin Central was given leave by the Speaker to raise a matter that he considered to be in contempt of the House of Representatives. The Member for Diego Martin Central brought to the attention of the House a newspaper article in which the Member for Couva South referred to the Speaker of the House and other Members as 'fools'. The article also linked these disparaging remarks to a decision of the Chair on 7 March not to grant the Member for Couva South permission to raise a matter of definite urgent public importance.

The Speaker ruled on 11 April that a *prima facie* case for breach of privilege had been made. The Speaker referred the matter to the Committee of Privileges. The prorogation of Parliament left the investigation of this matter incomplete. The Committee asked that the matter be referred to the succeeding Committee of Privileges.

On 26 November Senator Eastlyn McKenzie rose on a point of order under SO 74, with regard to the premature publication of a joint Select Committee Report in the Media before Senators had seen it. The Attorney General apologised and admitted that there was a breach of privilege and that the contents of the Report were leaked to the Press. The Vice-President of the Senate neither commented nor ruled on the matter.

UNITED KINGDOM HOUSE OF COMMONS

The Lord Chancellor 'guilty' of contempt—but not sent down

The Standards and Privileges Committee of the House of Commons reverted to a 'pure' privilege role for its first major case for many years in December 2003, when the House referred to it a complaint by another committee (the Constitutional Affairs Select Committee) that a member of the board of a public body appeared to have been threatened with dismissal as a result of her giving unsolicited evidence to a parliamentary inquiry into its affairs.

The case was interesting partly because it was only the fourth occasion in modern times (since 1892) that an allegation of this kind had been referred to a privileges committee as a *prima facie* contempt (in some jurisdictions, such as Australia, such cases appear to arise with some regularity).

But the 'Weleminsky' case was of additional interest, both procedural and political, since government Ministers, as well as senior officials, were said to have been involved; that the Minister most implicated was a member of the upper House; and that, as Lord Chancellor, he was not only one of the most senior members of the Cabinet, but also Speaker of the House of Lords and head of the judiciary—a triple role, regarded as constitutionally outrageous by some political theorists, which will disappear if the Constitutional Reform Bill reaches the statute book this autumn.

There was, therefore, the tantalising (if distant) possibility that the Standards and Privileges Committee might recommend some form of sanction against those involved. Not only was there no example in modern times (similarly defined) of a complaint of contempt against a government official being proved; it was also quite clear that constitutional propriety prevents one House from punishing a member of the other: indeed, the House of Lords has a standing order dating back to 1674 which specifically prevents any Lord from answering any accusation in the Commons.

Rather than regarding the privilege inquiry as an 'accusation' by the Commons, the Lord Chancellor (Lord Falconer of Thoroton) seems to have chosen to rely on a rather more recent standing order giving permission to a member of the House of Lords to attend as a witness before a Commons committee "if his Lordship thinks fit". He was of course invited, rather than summoned, to give evidence; and he did so.

After a painstakingly thorough examination of the facts, the Standards and Privileges Committee concluded that the decision to dismiss Ms Weleminsky had not, in fact, been taken as a result of her giving evidence to the Committee. However, it did find that the decision could have been interpreted as punishment for her evidence, and that therefore some actions of the civil servants involved and of the Lord Chancellor constituted contempts of the Commons. Apologies having been made all round, the Committee recommended that no action should be taken, reflecting the resolution of the House in 1978 that its penal jurisdiction should be used "as sparingly as possible".

The Committee nonetheless made the appropriate noises by calling for an overhaul of the guidance on Parliamentary privilege issued by the Government both to departments and to other public bodies, in order to

prevent similar cases in the future. Media interest in the matter was short-lived, no doubt since there was no blood to be seen on the Government's carpet.

The Committee's Report (*Privilege: Protection of a Witness*, 5th Report, 2003-04, HC 447) can be accessed on the parliamentary web-site (www.parliament.uk).

ZAMBIA NATIONAL ASSEMBLY

On 5 August 2003 the Deputy Minister for the Ministry of Mines and Minerals Development raised a point of order regarding an article which had appeared in the *Zambia Daily Mail*, in which the Member for Kasenengwa, Mr T. K. Nyirenda, was reported to have said that "Parliament is useless and cannot achieve anything in its current form".

On 15 August Mr Speaker reminded the House that in his immediate remarks he had stated that he would study the facts in more detail. He had received the following response from the Member for Kasenengwa:

> "On 1 August 2003, in reply to [a] request that we Member of Parliament must go back to the House and use Private Members' Motions to fight our battles, I did mention in reference to Private Members' Motions that Parliament is useless because even where motions are passed the Executive may choose not to act on them … The Daily Mail decided to quote only the words they had written thereby misinterpreting my intentions."

Mr Speaker informed the House that he had studied the point of order and the responses from the Member for Kasenengwa and the editor of the newspaper, and had established a *prima facie* case of breach of parliamentary privilege. He had, therefore, referred the matter to the Committee on Parliamentary Privileges, Absences and Support Services.

On 25 November Mr Speaker announced to the House the reprimand. Before reprimanding the Member, Mr Speaker ordered Mr Timothy Nyirenda to stand in his seat. He then informed him that the House, through the Committee on Privileges, Absences and Support Services, had directed that he be reprimanded for having uttered words which were prejudicial to and cast aspersions on the privileges, rights, dignity and authority of the House.

Mr Speaker told Mr Nyirenda that he was unable to find a reason why he

chose to insult the House with utterances which were an affront to its authority and dignity. He said that it was regrettable that any level-headed Member of the House should intentionally speak disrespectfully of the House. He asked Mr Nyirenda what message he was sending to the people in Kasenengwa and to the electorate at large.

Mr Speaker noted that in addition to his highly disrespectful utterances, the Hon Member had not immediately admitted he was wrong. Instead he had denied the utterances to the extent that the matter had to be referred to the Committee on Privileges, Absences and Support Services. The Committee had sat and were in the process of calling relevant witnesses when he finally admitted that he had uttered the words in question.

The Hon Member was told that as a result of his action, damage had already been caused to the institution not only in terms of time and resources, but also its reputation in the perception of the witnesses they had summoned. In addition, his actions constituted a criminal offence under s. 16 of the National Assembly (Powers and Privileges) Act Cap 12 of the laws of Zambia, which states, "Any person who before the Assembly or any authorised Committee intentionally gives a false answer to any question … which may be put to him … shall be guilty of an offence".

Mr Speaker went further and informed the Hon Member that he had wilfully betrayed the confidence that the House had put in him. His behaviour constituted contempt of the House and was a breach of trust.

Finally, Mr Speaker informed Mr Nyirenda that in the name and on the authority of the House it was his unpleasant duty to reprimand and admonish him for insulting the House and giving a false answer to its Committee, and that the reprimand would be recorded in the Votes and Proceedings of the House.

Mr Speaker took the opportunity to warn the Hon Member that any repetition of disrespectful conduct on his part would lead to a severe punishment. In response, the Hon Member for Kisenengwa unreservedly apologised to the House for the unfortunate remarks made on 31 July 2003.

AMENDMENTS TO STANDING ORDERS

AUSTRALIA

House of Representatives

New sessional order 84A (Interventions in the Main Committee) was readopted on 13 May 2003 until the end of the session. The sessional order provides that:

"During consideration of any order of the day in the Main Committee a Member may rise and, if given the call, ask the Chair whether the Member speaking is willing to give way. The Member speaking will either indicate his or her:
(a) refusal and continue speaking, or
(b) acceptance and allow the other Member to ask a short question immediately relevant to the Member's speech—
Provided that, if, in the opinion of the Chair, it is an abuse of the orders or forms of the House, the intervention may be denied or curtailed."

Standing Orders 40 (days and hours of meeting), 45 (want of quorum), 48A (adjournment), 103 (new business) and 193 (when divisions may be taken) were amended on 6 February 2003, with effect from 10 February, to provide for, and as a consequence of, changes to House sitting hours to provide for earlier rising (at 9.30 p.m. instead of 11 p.m. on Mondays and Tuesdays, at 8 p.m. on Wednesdays (no change) and 5 p.m. instead of 6 p.m. on Thursdays.

The lost hours were made up by a half-hour earlier start on Wednesdays and Thursdays (now 9 a.m.) and sitting through the traditional evening meal break suspension (6.30 to 8 p.m.) on Mondays and Tuesdays.

Special provisions were inserted to prevent divisions and quorum counts between 6.30 and 8 p.m. on Mondays and Tuesdays. Divisions are postponed until 8 p.m. and if a Member calls a quorum, the count is postponed until 8 p.m., if the Member making the call still desires one.

Standing Order 344 (admission of visitors) was amended on 5 February for the remainder of the session to remove the ability of a single committee member to cause the removal of visitors from a committee meeting. The existing Standing Order provided for visitors to withdraw if requested by the chair or if any Member asked the Chair to request their withdrawal. The amended rule provides that visitors shall withdraw if requested by the chair

or if the committee (or subcommittee) so resolves. The change followed what appears to have been the first recorded occasion of an individual committee member invoking the Standing Order to obtain the removal of visitors (edia representatives) from a public hearing.

Revised Standing Orders recommended for the House of Representatives

In October 1999, in its report *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees,* the House of Representatives Standing Committee on Procedure recommended that the Standing Orders be "restructured and rewritten to make them more logical, intelligible and readable", and that the Clerk of the House prepare a draft for the committee's consideration. This recommendation initiated a considerable amount of work, firstly for the Clerk and staff of his department, and later for the Procedure Committee itself. The committee tabled the Clerk's draft as a discussion paper at the end of 2002. Over the following year the Procedure Committee undertook a painstaking review of the Clerk's draft and in November 2003 presented its recommendations in its report *Revised Standing Orders.*

The goal of the exercise was to rewrite and restructure the Standing Orders to make them 'user friendly', but not to make changes of substance. An attempt was made to achieve plain English while retaining a degree of formality. Some archaic terms, such as 'obeisance' have been replaced and, for example, strangers have become visitors. To assist users there is a new definitions and application section. There are extensive cross references, a more detailed table of contents and an expanded index. Layout and presentation have been improved. Some obsolete rules (for example, remnants deriving from the former committee of the whole) have been dropped but no new ones inserted. Many related Standing Orders have been combined and some divided, so there is not a one to one correspondence with existing Standing Orders. There are 266 revised Standing Orders, compared to the existing numbering system which extends to 402 (although many of these are blank following deletions over the years).

In presenting the committee's report to the House on 24 November the Chair, Mrs Margaret May MP, expressed the hope that the recommended revised Standing Orders could be adopted by the House in time for them to come into effect in the next Parliament. However, there is ample precedent for delay in such matters. Mrs May also referred in her speech to the first report of the Standing Orders Committee in 1902 which recommended that

the House adopt a permanent set of Standing Orders—this did not occur until 1950.

Copies of the recommended new Standing Orders, and the discussion paper referred to above may be obtained from the Procedure Committee secretariat, and are also available online at http://www.aph.gov.au/house/committee/proc/reports.htm.

Senate

The Senate adopted various changes to procedures recommended by its Procedure Committee, as follows:

- the procedure for the presentation of the annual budget in the Senate was changed so as to dispense with the reading of the budget speech, and simply to have the budget documents tabled and the relevant documents referred to the legislation committees for the estimates hearings;
- the restrictions on committee meetings during the sittings of the Senate were modified to allow committees to meet freely after the adjournment is proposed in the Senate;
- the deadline for receipt of bills from the House of Representatives was altered so that the restrictions do not apply to bills received for a second time;
- the rule against persons other than senators or officers attending the Senate entering the chamber during the sittings was altered so as not to apply to a senator breastfeeding an infant;
- the publication of the answers to questions on notice was authorised so that such publication will be protected by parliamentary privilege as soon as answers are provided to the questioner, rather than when they appear in the Senate Debates, which may be much later;
- a bill will be considered in committee of the whole only if any senator circulates amendments to it or requires that a committee stage occur;
- the requirement for senators to declare interests during debate was abolished where the interests are already registered.

New South Wales Legislative Council

The current standing rules and orders of the Legislative Council were adopted over a century ago in 1895. Although minor amendments have been made since then, there has not been an overall revision. In revising the

Standing Orders during 2003, the Standing Orders Committee focused on adopting plain English and gender-neutral language as well as updating some procedures. In addition, the proposed Standing Orders were to incorporate certain sessional orders which have been adopted over consecutive Parliaments, such as the sessional order relating to the conduct of Private Members' business and the sessional order relating to rules for questions.

The proposed new Standing Orders were adopted as sessional orders on 14 October 2003, allowing a trial period before forwarding them to Her Excellency the Governor for approval.

All pre-existing Standing Orders and sessional orders incorporated into the proposed new Standing Orders were suspended on that day for the remainder of the sittings of the House during 2003. The House resolved on 24 February 2004 that the resolution of the House of 14 October 2003 should apply until the adjournment of the House for the winter recess, unless the new Standing Orders were adopted sooner.

New rules and practices contained in the proposed Standing Orders include:

Chapter 1. Repeal and operation of Standing Orders

Previously the Standing Orders required that in cases not provided for, the matter would be determined by reference to the latest edition of Erskine May. This has been broadened to allow the Chair to base decisions on parliamentary customs and practices in general. There is also provision for the President to issue practice notes in relation to the Standing Orders, these practice notes being subject to disallowance by the House.

Chapter 3. Office of the President

Amendments in 1991 to section 22G of the Constitution Act 1902 required that the President of the Council be elected according to the procedures for the election of the President in the Senate until such time as the Council adopted its own procedures. Once these Standing Orders have been adopted and approved by the Governor, the Council will have adopted its own procedures and section 22G will no longer apply.

Chapter 6. Sitting, quorum and adjournment of House

Standing Order 28 on prayers allows the President to nominate another Member or the Clerk to read the prayers. Since the adoption of the Standing Order, each sitting day the President has called on the Clerk to read the prayers.

Chapter 7. Times of sitting and routine of business

The Standing Order will provide a mechanism to allow for a recall by a majority of Members. Standing Order 37 allows a Minister to rearrange government business at any time without having to give notice. Standing Order 45 provides an opportunity at the conclusion of formal business for Members to postpone an item of business of which they have carriage without waiting for the matter to be called on.

Chapter 9. Tabling of documents

The Standing Order relating to orders for the production of papers has been amended to include procedures for the handling of privileged documents and the adjudication of disputes by an independent arbiter. This will mean that future orders for papers will no longer require this detail, unless there is a variation to the normal procedure. Under new Standing Order 55, where under any Act a report or document is required to be tabled in the House by a Minister and the House is not sitting, the document may be lodged with the Clerk and is deemed to have been published. Standing Order 56 allows any Member to move a motion without notice at the conclusion of a Minister's speech that the Minister table a document from which the Minister has been quoting. The Minister may refuse to table the document if it is of a confidential nature or if it should more properly be obtained by order. Under Standing Order 59 on the first sitting day of each month, a Minister tables a list of all papers tabled in the previous month and not ordered to be printed. On tabling, a motion may be moved without previous notice that certain papers on the list be printed. This provision negates the need for a Printing Committee.

Chapter 11. Questions seeking information

Under Standing Orders 66 and 67 answers to questions can now be received by the Clerk when the House is not sitting and when received are deemed to be a document published by order or under the authority of the House. This new provision gives Members access to answers when they are received rather than waiting until the publication of the Questions and Answers Paper on the next sitting day.

Chapter 16. Rules of debate

The motion that a Member be no longer heard has been rarely used in the Council. However, the Standing Order has been amended to provide that if it

is used, before putting the question the Chair is to advise the House to consider whether the Member has had sufficient opportunity to debate the matter, the Member is abusing the Standing Orders or conventions of the House or obstructing business, or if carried, the rights of the minority would be taken away. This also applies in relation to closure of debate.

Chapter 19. Divisions

If only one Member calls for a division, Standing Order 112 now allows the Member to request that their vote be recorded in the Minutes. This provision has already been used by a Member during debate on the Legal Profession Legislation Amendment (Advertising) Bill (3 December 2003, 1st Session, Minutes No. 37, item 23).

Chapter 25. Public bills

Standing Order 137 provides that the first reading and printing of a bill introduced in the Council will be taken as one motion, and determined without amendment or debate. Standing Order 141 now allows for a bill to be referred to a committee following the second reading, on motion without notice. Previously this could only be moved as an amendment to the motion for second reading. As well as recommitting bills by way of amendment to the motions for adoption of a report from the committee or on the motion for third reading, under Standing Order 146 on the motion that the Chair report the bill an amendment may now be moved that the committee reconsider any of the clauses of the Bill.

Chapter 30. Conduct of Members and strangers

Under Standing Order 191 when a Member is suspended from the House they may no longer serve on or attend any proceedings of a committee during the period of suspension. When a Member is called to order three times for repeated breach of the Standing Orders, under Standing Order 192 the President or Chair may determine the period of suspension, provided it is not beyond the termination of the sitting. Previously the suspension was for the remainder of the sitting.

Chapter 32. Effect and suspension of Standing Orders

Standing Order 198 now provides for a time limit on debate on the motion for the suspension of Standing Orders.

Chapter 33. Matters of public importance and motions of urgency

Standing Order 201 allows the proposer of a motion that the House adjourn to discuss a matter of urgency, and a Minister, to make a statement for not more than ten minutes each before the question is put. Rather than having to seek leave for the motion for adjournment to be withdrawn at the conclusion of the debate as previously required, under the new Standing Order the motion simply lapses with no question being put.

Chapter 35. Committees

While the Standing Orders have always provided for the appointment of sessional, standing and select committees, the revised orders have standardised the provisions relating to them. Previously the resolution appointing each committee set out the composition and function of each committee. Under the Standing Order, this resolution appointing each committee will only indicate the composition and functions of each committee unless there is a requirement to amend the powers provided by the Standing Orders.

Queensland Legislative Assembly

Disclosure of pecuniary interests

On 27 November 2003 the Legislative Assembly adopted a new Standing Order 158B ('Disclosure in representations or communications of pecuniary interest') relating to the disclosure of Members' pecuniary interests during representations or communications which a Member may have with other Members or with ministers or public servants.

Any pecuniary interest (that is, not limited to a direct pecuniary interest) of which the Member is aware that the Member or a related person has in the matter of the representation or communication must be disclosed.

The Standing Order arose from a recommendation of the Members' Ethics and Parliamentary Privileges Committee of the 49th Parliament in its *Report on a Code of Ethical Standards for Members of the Queensland Legislative Standards* (September 2000, Report No. 44).

The new Standing Order is as follows––

> "In any representation or communication which a Member may have with other Members or with Ministers or servants of the Crown, a Member shall disclose any pecuniary interest (of which the Member is aware) that the Member or a related person (as defined by the resolution for Members' Register of Interest) has in the subject matter of the representa-

tion or communication, if such pecuniary interest is significantly greater than the interest held in common with subjects of the Crown or Members of the House generally."

South Australia House of Assembly

Sessional Orders providing for an additional sitting day (Monday) each sitting week were reinstated in the current session.

Victoria Legislative Assembly

The Legislative Assembly has been operating under Standing Orders largely unchanged since 1857. The Standing Orders Committee of the 55th Parliament undertook a review of the Standing Orders, with the aim of proposing to the House modernised Standing Orders for consideration.

The Committee, comprised of the Speaker, the Deputy Speaker and representatives from all parties, met regularly during 2003. The Committee drew on a report of the Committee of the 51st and 54th Parliaments, which had done similar research. In November 2003, the Committee tabled in the House a report, which included proposed new Standing Orders. The key features of the proposed Standing Orders were the use of plain English and gender-neutral language; the removal of obsolete Standing Orders; the incorporation of sessional orders, rules of practice and resolutions; and the arrangement into a more logical order.

The Committee also took the opportunity to recommend to the House a change in interpretation of the meaning of 'appropriation'. The Committee felt that the traditional approach was confusing and inconsistently applied. After an analysis of other Australian and New Zealand parliaments, the Committee recommended that appropriation be interpreted as money coming out of the Consolidated Fund, but not a reduction in revenue flowing to the Fund.

Some of the issues facing the Committee were considered to be beyond the scope of the current exercise in 'modernisation'. Issues such as question time and e-petitions were recognised as legitimate areas for future review, but the motivation behind the modernisation exercise was to deliver to the House a set of clear and usable Standing Orders by the end of the year, so that the House could consider the recommendations in early 2004.

Victoria Legislative Council

See the article by Dr Stephen Redenbach in this issue.

CANADA

House of Commons

Following a lengthy process, the Standing Orders governing Private Members' Business (Chapter XI, Standing Orders 86-99) were replaced by provisional Standing Orders, which will remain in effect until 23 June 2004. For a detailed description of the provisional Standing Orders governing Private Members' business see the Comparative Study on Private Members' business in this issue.

Following the adoption of the Fourth Report of the Special Committee on the Modernization of the Procedures of the House of Commons on 18 September 2003, the following amendments were made to the Standing Orders:

Time limits in debate (SO 74)

- 20-minute speeches on second and third reading of bills (reduced from 40 minutes) if speaking on behalf of a recognized party in the first round or within the next five hours of debate, followed by a 10-minute question-and-comment period.

Petitions (SO 36)

- Petitions may be addressed to the Government of Canada, a Cabinet Minister or a Member of Parliament;
- Petitions can call for the expenditure of public funds;
- Petitions may be certified even though the text of the prayer does not request a specific action;
- Petitioners may sign the petition, even if they have no fixed address;
- (For a one-year trial period) if a petition is not responded to in forty-five days the matter will be referred to the appropriate standing committee.

Adjournment Debate (SO 38)

- If a Member does not appear for a scheduled Adjournment Debate, the notice will be deemed withdrawn.

Consideration of estimates in Committee of the Whole (SO 81(4))

- Ten-minute speeches during consideration of Main Estimates in Committee of the Whole (reduced from 20 minutes), followed by five minutes of questions and comments (Note: the Member, having indicated his/her intention to do so, may also use the entire 15 minutes for questions and answers);
- The total time for the examination of these Estimates was reduced from five to four hours.

Notice of opposition motion (SO 81(14)(a)(i))

- Written notice of an opposition motion to be filed with the Clerk when an allotted day is designated for the first or second sitting day following an adjournment.

Pursuant to the adoption of the 53rd Report of the Standing Committee on Procedure and House Affairs on 5 November 2003, respecting the Standing Orders applying to delegated legislation, Standing Orders 123 to 128 and 54, were amended to conform to the provisions of Bill C-205, *An Act to amend the Statutory Instruments Act (disallowance procedure for regulations)* which was given Royal Assent on 19 June. The Report recommended that the Standing Orders be amended to reflect the provisions of the bill so that the Speaker to is able to deal with questions of order relating to these proceedings.

Review of procedure pending

The Second Session of the 37th Parliament was prorogued on 12 November 2003. On 12 December Prime Minister Jean Chrétien resigned, and the new Prime Minister, Paul Martin, and his cabinet were sworn in. This government has indicated it will include measures to address what it has called the 'Democratic Deficit' in its Throne Speech on 2 February 2004.

Senate

On 3 June 2003 the Senate of Canada adopted a report of the Standing Committee on Rules, Procedures and the Rights of Parliament that recommended an amendment of the *Rules of the Senate* so as to allow the Senate to request that the Government provide a complete and detailed response to a report of a select Committee adopted by the Senate. Such a request can be included in the report or the motion adopting the report, or by a separate motion subsequent to the adoption of the report.

When the Senate adopts a report or motion containing such a request, the Clerk will communicate the request to the Government Leader, who then has 150 calendar days after the adoption of the report or motion, either to table the Government's response or to give an explanation for not doing so in the Senate.

Lastly, the response or lack of a response from the Government will be referred to the select committee at the expiration of 150 days.

Manitoba Legislative Assembly

For the changes to Standing Orders that took effect on 1 January 2003 see the 2003 *Table*, vol 71, pp, 203-212.

Québec National Assembly

A series of provisional Standing Orders reported on in last year's issue of *The Table*, which remained in effect until the dissolution of the Thirty-Sixth Legislature on 12 March 2003, have not been renewed in the Thirty-Seventh Legislature, which opened on 4 June.

They concern the election of the Speaker by secret ballot; an earlier deadline for introducing bills for passage during the same sessional period; certain rules governing extraordinary sittings; the relaxation of the criteria for the receivability of petitions and a new obligation upon the government to reply to all petitions; and the replacement of the motion to suspend certain rules of procedure by both a motion to introduce an exceptional procedure and an exceptional legislative procedure.

Saskatchewan Legislative Assembly

A new revised edition of the *Rules and Procedures of the Legislative Assembly of Saskatchewan* was published in 2003. The bilingual revision includes the additions and amendments made to the Rules over the previous legislature.

The changes arose out of three reports of the Special Committee on Rules and Procedures. The Third (and final) Report was presented to the Assembly on 3 April 2003. Subsequently, on 13 June, the Assembly adopted a resolution *nemine contradicente* that the practices and rules recommended in the report be implemented and brought into force effective the first sitting day of the next session. The adoption of the report resulted in significant changes to Private Members business, the consideration of bills and the

structure of the committee system. These took effect on 18 March 2004, when the first session of the 25th Legislature opened.

The most apparent change to Private Members' Day is its move from Tuesdays to Fridays. The timed 75-minute debate will now take place every week, as opposed to every other week. New rules will permit the designation of items of Private Members' business for priority consideration and limit to three the number of times any item may be adjourned before it must be voted upon. The intent of these changes was to increase the opportunity for items sponsored by Private Members to be voted upon by the Assembly.

New procedures for the consideration of public bills will be closely tied to the new committee structure, which will provide the framework within which bills will be considered and passed into law. The sponsor of a bill may move that the bill be referred to a policy field committee for consideration after first or second reading. Committee consideration after first reading is restricted to the subject matter of the bill but may be broadened to include any matter relevant to the subject and public hearings. This early referral will permit ideas to be floated before committing the sponsor to a definite course of action.

If a referral is not made, the bill will proceed directly to second reading. Upon receiving second reading, the sponsor of the bill has the option of referring the bill to either a policy field committee or, by default, to the Committee of the Whole. Consideration in a policy field committee is restricted to the content of the bill and may include public hearings before clause by clause consideration takes place. Public hearings are not permitted at this stage if the bill was already the subject of hearings after first reading.

The new Rules still provide for consideration of all bills in the Committee of the Whole, regardless whether they were considered by a standing committee. Only the unanimous consent of the Assembly will permit this stage to be waived. This procedure will protect the rights of Members who were not on the standing committee, particularly Independent Members, to participate in clause by clause deliberations and to propose amendments. The new Rules do set out restrictions on the length of time a bill may be considered in the Committee of the Whole if it had previously been considered by a standing committee. At the expiration of these time limits, all questions must be put and the bill reported out.

The most sweeping and dynamic of the Rules changes are the reforms of the committee structure. The old system of standing, special and select committees will be replaced by three new categories of committees: house committees, scrutiny committees and policy field committees. The house

committees will, as the name implies, deal primarily with the House or house keeping issues. They will include the Standing Committees on Privileges, on Private Bills and on House Services. The House Services Committee will absorb the work of several existing committees and be mandated with:

- determining the membership of committees;
- determining the division of subject areas responsibilities for the new policy field committees;
- assuming an oversight role in determining committee spending;
- examining the Rules, procedures, practices and powers of the Assembly;
- reviewing the operation, organization, facilities and services provided to the Assembly, committees and Members;
- reviewing the Estimates of the Assembly; and
- reviewing the operations of Assembly Officers, such as the Ombudsman, Children's Advocate, etc.

The Public Accounts Committee will continue to exist as a scrutiny committee with a mandate largely unchanged but with a smaller membership. The policy field committees will also play a role in holding the government accountable but will have more extensive responsibilities. Each will be responsible for a sector of public policy, which in turn will comprise government departments, Crown corporations and agencies that relate to that particular policy field. These committees will be tasked with considering legislation, reviewing departmental estimates, annual reports, regulations and by-laws. They will also be permitted to initiate and conduct public inquiries on matters within their sector.

The implementation of the committee reforms will impact the proceedings of the House. Less time will now be spent in the House dealing with bills and estimates. Previously, the majority of bills and estimates were considered in Committees of the Whole. The Rules will now permit the House to adjourn or recess anytime during Government Orders so that the committees can attend to their work. As a result, committees will be able to add afternoon and evening meetings to their existing morning time slots. The new procedures will facilitate greater public participation through the review of Bills and inquiries as well as a greater role for Members in daily proceedings. The committees will also gain greater visibility through the broadcasting of committee proceedings on the Legislative Network and on the Internet.

In moving to implement the provisions of the Rules Committee Report, the Assembly directed several committees to present a final report to the

Assembly. The Special Committee on Regulations complied with this directive on 4 June, after an existence of forty years. The work of the committee will now be carried out by the policy field committees. The mandate of the Standing Committee on Crown Corporations will now be carried out by the Standing Committee on Crown and Central Agencies.

STATES OF JERSEY

A major review of Standing Orders is being undertaken in Jersey as a result of a decision to move from a Committee system of government to ministerial government alongside a system of scrutiny Panels. The opportunity is being taken to rewrite the Standing Orders reflecting modern practice in matters such as gender neutrality. It is expected that the new Standing Orders will be debated and approved in late 2004.

MALAWI NATIONAL ASSEMBLY

During May 2003 the House adopted new Standing Orders. Among the major changes is provision for a 21-day Budget debate. The arrival of Mr Speaker will be announced henceforth by the Serjeant at Arms following the beating of a drum three times. In the past, the Serjeant at Arms would hit the door at the entrance to the Chamber prior to announcing Mr Speaker's arrival. Also, the Office of Leader of Opposition is now provided for, whereas the previous rules were silent on this.

NEW ZEALAND HOUSE OF REPRESENTATIVES

On 16 December 2003 the House of Representatives by resolution adopted amendments to its Standing Orders. These came into effect when the House resumed on 10 February 2004.

The report of the Standing Orders Committee was presented to the House on 11 December 2003. It may be accessed at http://www.clerk.parliament.govt.nz/Publications/CommitteeReport. This concluded a review of Standing Orders that had begun in 2001, in the previous (46th) Parliament.

Although the review was wide-ranging, the outcome in terms of changes was less far-reaching as the Standing Orders Committee operated on the basis of consensus. The amendments were therefore refinements, rather than major procedural alterations.

Incorporation of sessional orders

A number of the changes incorporated in the Standing Orders make permanent rules that had been adopted as sessional orders. These included provisions relating to the electronic lodgement and publication of questions for written answer and arrangements for the availability of printed copies of bills. Provision for an affirmative resolution procedure supersedes a sessional order relating to Misuse of Drugs Act classification orders.

Extension of sitting hours

One of the issues considered by the Committee was a reconsideration of sitting times to provide more time for business, including consideration of select committee reports. The arguments put to the committee were—

- A trend to fewer sitting hours has imposed constraints on the Government's legislative programme. Minority governments elected under the mixed member proportional (MMP) system have had difficulty is securing the agreement of other parties for extended hours (urgency).
- There are now more members, but they have fewer opportunities to contribute to debate.

The proposals to increase the sitting hours included extending Thursday sittings into the evening, sitting on Friday mornings, sitting through the dinner breaks, and establishing a parallel chamber similar to the Main Committee of the Australian House of Representatives for the conduct of non-contentious business.

Although no agreement was reached on these proposals, it was agreed that if the Government advised the Business Committee of its intention to move urgency on a Thursday sitting day, then instead of the sitting being suspended at 6 p.m. it would continue at 7.30 p.m. until 10 p.m.

Select committee orders of the day

At present, because of their placement on the Order Paper, there are few opportunities for reports of select committees (other than reports on bills, departmental estimates of expenditure or reviews of expenditure) to be debated. Although the committee considered a proposal to establish a new item of business, select committee orders of the day, had merit, it was contingent on an increase in sitting hours and was therefore not agreed to.

Broadcasting of proceedings

At present broadcasters are permitted by the Speaker to film the proceedings of the House and use the material as they see fit, subject to certain standards. The committee regarded this system as outdated and the presence of multiple sets of camera equipment in the galleries as intrusive, and recommended establishment of an in-house television service, modelled on the current radio broadcasting service. Other broadcasters would have free access to the feed, to use as they see fit.

The Government response, presented on 17 February 2004, to the Standing Orders Committee's report saw merit in funding an in-house facility for televising the House and it is to be considered as part of the 2004 Budget round.

Reinstatement of business in a new session of Parliament

The Constitution Act 1986 provides that the business before the House and its committees at the end of a session of Parliament may be carried forward to the new session by motion of the House. The committee considered the advantage that this provides, especially where there has been detailed input into items of business before select committees. However, it also allows an outgoing Parliament to set the agenda for its successor.

The committee therefore recommended an amendment to the Constitution Act 1986 to provide for reinstatement of business at the beginning of a new Parliament or session of Parliament, so it is the new Parliament that determines what business should be revived. Reinstated business would be resumed at the stage it had reached in the previous session. The Government's response has been favourable to the proposal.

Committee of the whole House procedures

The committee recommended several changes to the committee of the whole House procedures on bills.

The first of these arose from an increasing tendency to draft bills in parts, sometimes containing several sub-parts, and then instruct the committee of the whole House to debate the bill part by part rather than clause by clause. This has considerably curtailed the amount of time available for debate.

Where a bill has been to a select committee, debate in committee of the whole House on the title of a bill is limited strictly to the elements of the title. However, members have consistently sought to widen the scope of this debate to examine the overall policy behind the bill. The Standing Orders Committee considered it more appropriate to start the debate with the substantive provisions of the bill—in other words, if a part by part instruc-

tion has been agreed to, Part 1 of the bill. Consideration of any preliminary provisions (the title clause and the commencement provision) now take place after the substantive provisions have been dealt with. In this way the Standing Orders Committee hoped that it would be easier for members to confine their contributions to whether the title properly reflects the provisions of the bill, and to whether the commencement is appropriate, particularly given any amendments that have been made.

Debate on the schedules will now occur in the context of the clauses or parts to which they relate. However, they will be voted on separately without further debate after the preliminary provisions have been disposed of. This will make the debate on the schedules more relevant, as generally schedules are not related to each other, but set out the implementation details of the substantive provisions.

In addition, the committee recommended clarification of Standing Orders to reflect a practice that had developed over time in dealing with the amendments of the member in charge of a bill. Where a bill is being considered part by part and the member in charge has proposed amendments that range over the entire part, the member has always had the option of having all the amendments taken as one question. Generally, this has occurred once other members' proposed amendments have been disposed of. If Standing Orders were to be interpreted strictly and the amendments of the member in charge were taken as one question in the first place where an amendment occurs, amendments in the name of other members would often be ruled out of order and no question put on them. The committee recommended that, while still preserving the right of the member in charge to have discretion about where and how his or her amendments are taken, the default position will be that they will be taken after other members' proposed amendments have been dealt with.

Select committees

The Standing Orders Committee made a number of recommendations to enhance the functioning of select committees. These include:

- Establishment of select committees at the commencement of each Parliament without requiring the House to formalise their establishment. The Standing Orders Committee is one of these 'permanent' committees, instead of being specially established.
- The size of each committee to be determined by the Business Committee, instead of being a standard eight members (which had, in fact, often been varied by the House).

- Appointment of non-voting members of select committees and ending of such appointments by the Business Committee without the intervention of the House. The appointment of non-voting members has proved to be a useful practice where small parties are unable because of lack of numbers, to have permanent representation on committees. Non-voting members are usually appointed for a particular item of business, and are privy to all the proceedings, but are unable to vote on any matter.
- Widening the scope of several select committees to include the subject areas of women's affairs (Government Administration Committee), human rights (Justice and Electoral Committee), and criminal law (Law and Order Committee).
- Clarification that a summons by the Speaker may require a person to attend a select committee and be examined and give evidence, or produce papers and records in a person's possession, custody or control, or do both.
- Provision for a chairperson to have the option to invite the committee to authorise the deputy chairperson to chair meetings while a particular item of business is being considered. This would allow the chairperson to leave the chair, but remain and participate in proceedings.
- Clarification that notices of meeting may be sent electronically.
- Waiver of a day's notice of a meeting in certain circumstances.
- Provision for the quorum of a committee to be half its membership (rounded upwards if necessary), but not to include non-voting members. The quorum of a committee has hitherto been four, regardless of the size of the committee.
- Encouragement for Ministers to be invited to attend select committee meetings to explain policy in relation to bills. The committee felt that this would enhance the legislative process.
- Provision for strangers, with the unanimous agreement of the committee, to attend a meeting that is not open to the public, to observe proceedings. Previously this was restricted to 'assisting the committee with its inquiry'.
- Clarification that a person making a submission to a select committee is not prevented from releasing that submission; and authorising the release of proceedings that do not relate to any business or decision before the committee, or if they are matters of process and procedure (provided they would not reflect or divulge the contents of a draft report).
- Enhancement of the natural justice procedures where a committee has

made adverse findings about a person, and restating the confidential nature of committee findings prior to the presentation of the committee's report.

Other matters

Among other matters that the Standing Orders Committee addressed were:

- Refinement of the provisions relating to proxy votes, including allowing proxy votes to be cast on behalf of a party consisting of three or fewer members without a member of that party attending the House at the time of a party vote, so long as at least one member is present within the parliamentary precincts.
- Clarification of the omnibus bill rule to allow a bill to be introduced that amends more than one Act if the amendments implement a single, broad policy, even though the Acts to be amended do not.
- Amalgamation and streamlining of the preliminary procedures for private bills and local bills.
- Abolition of the ability to introduce a private bill or a local bill during an adjournment.
- Recommended amendment of the Constitution Act 1986 so that the recommendation of the Crown is no longer needed for bills that involve the appropriation of public money. In the meantime, it is proposed that it be expressly recognised that a Member's bill, as well as a private bill or a local bill, that affects the rights and prerogatives of the Crown requires a message from the Crown to proceed.
- Adjustment of some of the financial review procedures, including for both the financial review debate, on the performance and current operations of departments and Offices of Parliament, and the debate on Crown entities, State enterprises and public organisations to take place in the committee of the whole House.
- Clarification of the functions of the committee reviewing delegated legislation, the Regulations Review Committee.
- Provision for matters of privilege that relate to select committee proceedings to be raised first at the next meeting of the committee.
- Provision for subject area select committees to examine international treaties that fall within their areas of interest, and for their examination to be by the Foreign Affairs, Defence and Trade Committee only if they are within that committee's terms of reference.

SOUTH AFRICA

National Assembly

Allocation of speaking time

Speaking time in debates is allocated to parties in accordance with their numerical strength in the National Assembly. As a result of the floor crossing process, the numerical strength of the parties in the Assembly changed and the Chief Whips' Forum (a consultative forum of senior whips of the National Assembly which is established under the Rules) discussed the reallocation of speaking time. The Forum decided on 28 May that speaking time would be allocated to parties in the various categories of debates in proportion to the number of Members per party represented in the National Assembly. The African National Congress (majority party) would continue to donate some of its time to smaller parties, and smaller parties would also be allowed to donate time amongst one another. This arrangement would be guided by the following principles:

- Firstly, parties must be encouraged to participate in debates. Secondly, the system that is currently in place is informed by proportionality in accordance with the electorate's mandate. No agreement on time allocation should distort the system;
- When a member of the Executive is participating in a debate in his/her executive capacity, the time is deducted from the total allocated for the debate and party times are recalculated on the balance;
- The donation of time is a one-on-one arrangement. It should not involve more than two parties and the time donated should not exceed two minutes;
- Any negotiations concerning speaking time should be done in advance of a sitting and Whips should be informed of the outcome;
- The process of advising parties on a weekly basis of the actual time allocated per debate will continue.

Members' statements and notices of motion

Members' statements were formally introduced as a new procedure in the National Assembly on 25 February 2003 for a trial run until the end of the first session (April 2003). This enabled notices of motion, which had over time effectively become a mechanism for Members to make statements, to be restored to their original purpose of enabling Members to initiate business for consideration or decision by the House where that was the express intention.

Members raised concerns as to whether a Deputy Minister or Minister from the same cluster should be given an opportunity to respond to statements if a specific Minister is absent. National Assembly Rule 105 states that—

> "A Cabinet member present must be given an opportunity to respond … to any statement directed to that Cabinet member or made in respect of that Cabinet member's portfolio."

Consensus was reached that the Deputy Minister of the affected portfolio (even though not a Cabinet member) and Ministers from the same Cabinet cluster should be given an opportunity to respond on behalf of an absent Minister, in a set order of preference (see below).

On 16 April the House adopted the amended Rule. The amendments entailed the following:

- Total time allocated for Members' statements including responses by Ministers is 31 minutes;
- Time allocated for a Member to make a statement is one and a half minutes;
- Members are allowed to make 14 statements per day;
- A maximum of five Ministers are given an opportunity to respond to Members' statements, a response not to exceed two minutes;
- Ministerial responses are taken in the following order of preference: Minister whose portfolio a statement is directed at, the relevant Deputy Minister, or a Minister from the same Cabinet cluster responding on behalf of the absent Minister;
- Statements are taken on Tuesdays and Thursdays, and Fridays when the Assembly sits on a Friday, unless the Programme Committee determines otherwise.

National Council of Provinces

During 2003 the Rules of the National Council of Provinces were amended in order to bring them into conformity with the Constitution. The amendments were of a technical nature, and did not necessarily change the substance of the Rules or alter procedure in the House. Some of the amendments included amendment of references to the 'President' of the Constitutional Court to refer to the 'Chief Justice'; and amendment of the word 'table' to refer to 'submit'.

North West Provincial Legislature

The amended Draft Rules of Procedure are awaiting the adoption of the House. The amendments to the rules were mainly intended—

- To accommodate the composition of the committee on Gender;
- To change the composition and membership of some committees to be relevant to the legislature environment;
- to change the language to be user-friendly for easy interpretation and application;
- To change the days and time of Sitting days.

TRINIDAD AND TOBAGO PARLIAMENT

The Standing Orders Committee of the House of Representatives took the decision to review the Standing Orders, which were written in 1961 and were grossly outdated. The Committee in particular identified conflicts between the provisions of the Orders and the current practice of the House of Representatives. A comparative document on provisions in the Standing Orders of other Commonwealth Parliaments was prepared, and the Committee reached agreement on proposals for the revision of Standing Orders Nos. 1 to 11. Further review of the Standing Orders is to be continued by the Standing Orders Committee appointed for the next session.

WALES NATIONAL ASSEMBLY

Amendments to Standing Orders were agreed in Plenary on four occasions during 2003:

- On 12 February, amendments to Standing Order 6.9 were agreed to clarify the procedure for 'emergency debates';
- On 19 March, a temporary Standing Order was agreed to govern the first meetings of the Second Assembly;
- On 15 July, amendments to Annex A of Standing Order 35 were agreed—this was to provide for the membership of Planning Decision Committees to reflect the new Party balance in the Assembly;
- On 19 November, numerous changes to Standing Orders were agreed in one motion, including: amendments to Standing Orders 14 and 15 to permit substitutions for the Equality of Opportunity Committee and

the European and External Affairs Committee respectively; a new Standing Order to clarify the arrangements for laying documents before the Assembly; and amendments to Standing Order 19 to allow for more than one Local Government Finance Report in any year.

ZAMBIA NATIONAL ASSEMBLY

No Standing Orders were amended in 2003. However, a review of the Standing Orders with regard to the establishment of the Parliamentary Management Board is pending. The review was set out in the report of the Parliamentary Reforms and Modernisation Committee (appointed on 29 January 2003), which was tabled on 26 November and adopted on 27 November.

The Committee recommended to the House that Parliament should establish a 'Real Parliament for Zambia'—a Parliament that is

- Representative and responsive;
- Efficient and effective;
- Accountable and accessible; and
- Legitimate and Linked.

The objective for the 'Real' Parliament is "to increase the independence and effectiveness of the National Assembly as a representative agent of oversight, change and reform in the democratic governance system of Zambia".

The recommendations include a review by the Standing Orders Committee *vis-à-vis* the establishment the Parliamentary Management Board. This will assist in increasing and developing 'in-reach and out-reach'. That is to say, Parliament must open up to the public and other interest groups and build up regular dialogue and discussion with interest groups.

SITTING TIMES

(see pages 210 and 211)

Lines in Roman show figures for 2003; lines in Italic show a previous year. An asterisk indicates that sittings have been interrupted by an election in the course of the year.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Aus ACT	0	3	3	3	6	6	0	6	3	0	6	3	39
Aus N Terr	0	6	0	3	3	7	0	6	0	6	3	0	34
Aus NSW LA*	0	0	0	2	12	8	3	0	8	8	7	4	52
Aus NSW LC*	0	0	0	2	9	3	3	0	6	6	6	3	38
Aus Queens LA	0	3	6	5	7	4	0	3	3	9	6	0	46
Aus H Reps	0	7	11	0	7	12	0	8	8	13	8	4	78
Aus S Aus HA	0	4	5	6	9	12	8	0	8	8	8	4	72
Aus S Aus LC	0	4	6	6	9	5	8	0	8	7	8	4	65
Aus Sen	0	8	11	0	8	12	0	8	8	13	10	4	82
Aus Tasm HA	0	0	5	6	5	9	0	6	4	6	3	3	47
Aus Tasm LC	0	0	4	4	6	12	0	4	5	3	5	3	46
Aus Vict LA	0	3	6	5	7	4	0	4	4	10	8	0	51
Aus Vict LC	0	3	7	5	8	5	0	0	3	8	8	3	50
Aus W Aus LA	0	3	9	6	9	10	0	6	9	6	9	3	70
Aus W Aus LC	0	0	0	0	9	9	1	11	6	3	9	10	58
Bangladesh	1	15	8	0	4	16	9	0	6	0	4	0	63
Berm House	0	4	7	1	2	5	4	2	0	1	4	2	32
Berm Sen	0	1	7	0	1	2	4	4	0	1	2	2	24
Botswana	0	16	23	0	0	9	18	0	0	0	17	13	96
Canada Alb	0	3	12	14	8	0	0	0	0	0	7	3	47
Canada Br Col	0	11	12	10	13	0	0	0	0	12	12	3	73
Canada HC	5	20	11	11	16	10	0	0	12	18	5	0	108
Canada Man	0	0	0	7	1	1	0	0	16	1	7	4	37
Canada N Bruns	8	15	0	0	0	0	0	0	0	0	5	12	40
Canada Newf	0	0	10	8	14	0	0	0	0	0	9	8	49
Canada NWT	0	0	7	11	4	0	5	0	4	0	0	0	31
Canada Ontario*	0	0	0	1	16	16	0	0	0	0	6	12	51
Canada Pr Ed I	0	0	0	12	14	0	0	0	0	0	9	9	44
Canada Québec*	0	0	1	0	0	12	1	0	0	6	13	13	46
Canada Sask	0	0	10	19	19	20	0	0	0	0	0	0	68
Canada Sen	0	9	6	5	10	12	0	0	7	13	5	0	67
Canada Yukon	0	1	17	17	1	1	0	0	0	1	14	9	61
Cayman Islands	0	0	13	0	0	7	0	0	10	0	15	0	45
Cook Islands													78
Cyprus	5	1	4	3	4	5	2	1	0	5	4	3	37
Dominica	0	0	0	3	1	3	4	0	1	0	3	2	17
Falklands	1	0	1	0	5	0	1	0	1	1	1	0	11
Ghana	13	16	13	0	13	18	16	4	0	18	18	11	140
Gibraltar*	1	0	2	2	0	5	1	0	0	0	0	1	12
Grenada Reps	4	4	1	0	2	1	1	1	2	0	1	1	18
Grenada Sen	1	1	0	1	1	2	1	0	0	1	1	1	10
Guernsey	2	1	1	2	2	1	4	2	2	2	2	4	25
India Gujarat	0	4	26	0	0	0	0	0	3	0	0	0	33
India Haryana	2	8	0	0	0	1	3	0	0	0	2	0	16

India Him Pr	*0*	*6*	*15*	*0*	*0*	*0*	*3*	*0*	*0*	*0*	*0*	*0*	*24*
*India Kerala**	*0*	*1*	*12*	*0*	*2*	*0*	*12*	*0*	*19*	*0*	*7*	*0*	*53*
India LS	0	10	9	12	6	0	9	12	0	0	0	16	74
India Maharash													*33*
India Nagaland	0	0	4	0	0	0	6	0	0	0	0	0	10
India Orissa	*0*	*0*	*12*	*0*	*0*	*0*	*12*	*3*	*0*	*0*	*0*	*7*	*34*
India Punjab	*0*	*0*	*13*	*0*	*0*	*0*	*0*	*0*	*2*	*0*	*0*	*0*	*15*
India Rajasthan	*0*	*5*	*19*	*6*	*0*	*0*	*0*	*0*	*10*	*0*	*0*	*0*	*40*
India RS	0	10	9	12	6	0	9	12	0	0	0	16	74
India Sikkim	0	5	1	0	0	0	2	0	0	0	0	0	8
India Tamil Nadu	5	0	7	16	6	0	0	0	0	0	5	0	39
India Uttar P	0	1	3	0	0	0	0	0	4	0	2	5	15
IoM Keys	*1*	*3*	*4*	*1*	*3*	*2*	*0*	*0*	*0*	*1*	*5*	*1*	*21*
IoM LC	*1*	*3*	*4*	*1*	*1*	*2*	*0*	*0*	*0*	*1*	*5*	*1*	*19*
IoM Tynwald	*1*	*3*	*1*	*2*	*1*	*1*	*3*	*0*	*0*	*2*	*1*	*1*	*16*
Jersey	1	2	2	2	2	2	7	0	6	2	5	5	36
Kenya	0	0	6	12	5	12	13	7	0	13	13	5	86
Lesotho	0	0	16	0	1	18	3	1	16	17	9	0	81
Malawi													
Malaysia Reps	*0*	*0*	*12*	*6*	*0*	*8*	*0*	*0*	*14*	*19*	*5*	*0*	*64*
Malaysia Sab	*0*	*0*	*0*	*0*	*2*	*0*	*0*	*0*	*0*	*7*	*0*	*0*	*9*
Malaysia Sara	*0*	*0*	*0*	*7*	*0*	*0*	*0*	*0*	*0*	*0*	*1*	*6*	*14*
Malaysia Sen	*0*	*0*	*0*	*11*	*0*	*0*	*6*	*0*	*0*	*0*	*12*	*0*	*29*
Montserrat	*0*	*0*	*0*	*2*	*0*	*0*	*1*	*0*	*1*	*1*	*1*	*1*	*7*
Namibia	0	12	16	16	0	16	8	0	8	16	16	0	108
NZ H Reps	0	9	9	8	10	9	10	9	9	9	9	7	98
Nigeria Borno	*20*	*19*	*24*	*10*	*10*	*20*	*25*	*18*	*28*	*20*	*6*	*2*	*202*
Pak MWFP	*0*	*5*	*0*	*0*	*0*	*25*	*3*	*0*	*10*	*0*	*0*	*0*	*43*
Pak Pun	*15*	*0*	*0*	*11*	*0*	*12*	*0*	*11*	*10*	*0*	*0*	*0*	*59*
St Lucia	*0*	*1*	*1*	*3*	*1*	*0*	*1*	*1*	*1*	*0*	*1*	*1*	*11*
St V & G	*1*	*0*	*0*	*1*	*1*	*1*	*0*	*2*	*0*	*0*	*0*	*4*	*10*
Samoa	*10*	*0*	*0*	*4*	*1*	*12*	*0*	*0*	*0*	*1*	*0*	*2*	*30*
Scotland	*8*	*6*	*8*	*5*	*9*	*6*	*0*	*0*	*8*	*6*	*8*	*6*	*70*
*Singapore**	*0*	*0*	*1*	*5*	*12*	*0*	*5*	*2*	*0*	*3*	*3*	*1*	*32*
S Africa NA	1	5	9	9	11	15	0	0	13	0	9	0	72
S Africa NCOP	0	3	9	3	6	10	0	2	7	2	7	0	49
S Africa NW PL	0	3	3	5	1	2	0	4	5	0	2	4	29
*Sri Lanka**	*1*	*8*	*1*	*5*	*3*	*6*	*8*	*8*	*8*	*8*	*4*	*2*	*62*
T&T HR	4	2	4	2	4	3	4	0	4	7	2	2	38
T&T Sen	2	4	3	5	4	4	4	0	3	4	4	3	40
UK Commons	16	14	21	13	13	18	13	0	8	11	14	12	153
UK Lords	15	17	19	11	14	21	14	0	9	18	16	12	166
Wales*	6	6	8	2	4	8	6	0	3	7	8	4	62
W Samoa	*0*	*0*	*4*	*0*	*1*	*13*	*14*	*0*	*0*	*1*	*15*	*2*	*50*
Zambia	9	16	14	0	0	0	3	11	0	0	16	0	69

UNPARLIAMENTARY EXPRESSIONS IN 2003

Straightforward accusations of dishonesty or falsehood have been omitted, as they are universally unacceptable, as have simple expletives or terms of abuse. The editor has also omitted expressions whose offensive implications depend wholly upon context. Expressions in languages other than English have been given with translation, but the editor regrets that where expressions have been submitted without translation it has not been possible to include them.

AUSTRALIA

NSW Legislative Assembly

"Blood on his hands"	7 May
[The Minister would] "sell his mother for a chance to remain on the Government front bench"	24 June

NSW Legislative Council

"Fish wife"	2 July
"Unpatriotic"	20 November

Queensland Legislative Assembly

"One thing the member for Nicklin would not do is be a dill like the member for Warrego"	29 April
"You are a bloody disgrace, the way you are running around the electorate"	27 May
"Old Dozey"	4 June
"You grub"	14 October

Victoria Legislative Assembly

"You dill"	26 February
"Get away with murder"	26 March
"The most appalling, dishonest and embarrassing speech"	26 March
"You buggers sold off the farm"	7 May
"The ratbag independents"	7 May
"I do not feel like being oppressed by you, Acting Speaker"	20 May
"The Liberal Party … has got it arse about"	22 May
"The member for Burwood is setting up a system that allows for corruption"	6 November
"He is in la-la land"	18 November
"The old jackboots approach"	20 November
"A bunch of bully boys and thugs"	20 November
"The good old days when the brown paper bag determined their policies"	26 November
"Speaks with a forked tongue"	27 November

Victoria Legislative Council

"The previous Opposition Leader—he did not lie to us"	27 February
"Did the Minister mislead the House last week"	6 May
"If it is from the Liberal Party then that would be a lie"	20 May

Expression	Date
"It does describe Mr Theophanous as an alleged branch stacker"	20 May
"This State is in trouble because of the antics of these people, like the punch-up at the brawl at the State Council. You do not need me to tell you that Mr Theophanous, along with some of his colleagues, was in it up to his eyebrows"	20 May
"I am almost tempted to say that this Member talking about corruption to me is a bit much"	4 June
"The Honourable Member … has $42,000 invested against wind [farms] in this State"	17 September
"Sticking his bib in"	19 November

CANADA

House of Commons

Expression	Date
"The dictator over there"	27 January

British Columbia Legislative Assembly

Expression	Date
"The Minister is not the sharpest knife in the drawer"	26 February
"Were they blackmailed?"	28 May
"How the hell"	5 November
"Fabricating"	18 November

Manitoba Legislative Assembly

Expression	Date
"Suck and blow"	28 November

Québec National Assembly

Expression	Date
"Cacher la réalité" (Conceal reality)	11 June
"Mascarade" (Masquerade)	16 June
"Poser un geste aussi cynique" (Commit such a cynical act)	20 June
"Arrogant"	22 October
"Geste antidémocratique" (Antidemocratic act)	30 October
"Patronage"	18 November
"Vol des surplus" (Theft of the surpluses)	25 November
"Matamores" (Bullies)	3 December
"Trahi" (Betrayed (of promises))	10 December
"Cacher son bilan" (Conceal his own balance sheet)	18 December
"Se moquer des Québécois" (To mock Quebeckers)	18 December

Yukon Legislative Assembly

Expression	Date
"His disdain for his colleagues in this Legislature knows no bounds"	25 March
"[Government action] involved breaking the law by every Cabinet minister"	3 April
"One has to assume the motives are less than pure on the other side"	30 October
"When the election happens … they can go out and spend like drunken sailors to purchase votes"	20 November
"The only methane in this building is coming from the members opposite"	20 November
"The minister … sounds like a great ambassador for the company but not for the Yukon taxpayer"	25 November
"There are inaccurate answers from the ministers—done on purpose, I believe"	4 December
"Put up or shut up"	10 December

INDIA

Lok Sabha

"Adhyaksha Mahodaya, ye log gulami kar rahe hain" (Mr Speaker Sir they are doing slavery)	24 February
"He is a symbol of communalism … They are not yogis but they are bhogis"	25 February
"Ye log pop ke talwe chatne jate hain" (These people go to pop for licking his shoes)	25 February
"Aap aukat mein rahen, aap faltu bat na karein" (You be in your limits. Don't talk superfluously)	25 February
"Ye Babar ki aulad hain kya?" (Are they descendants of Babar?)	25 February
"Perfidy"	27 February
"Mayodaya, yeh sampoorna sadan bhrashtachar ko, Commission khane walon ko sanrakshan de raha hai" (Sir, this whole House is giving protection to the corruption as well as to the commission takers)	12 March
"Opportunist"	23 April
"Besharm" (Shameless)	23 April
"Nyaypalika ki sajis se" (With the connivance of Judiciary)	28 April
"Mental case hain" (They are mental cases)	23 July
"Unhein sharm aani chahiye" (They should feel ashamed)	23 July
"Jootha chatney ke liye udher chale gaye" (He has changed side to lick the left-overs)	25 July
"Tamasha" (Jugglery)	31 July
"Socialism ken am par kalank ho" (You are a blot on the name of Socialism)	14 August
"House ke bahar chalein, Hum aapko dekh lenge" (You come out of the House, I will see you)	18 August
"Unko Hitler, Mussoline aur Idi Amin Kah Kar pukara hai" (He was called Hitler, Mussoline and Idi Amin)	18 August
"Ali Baba Chalis Chor" (Ali Baba forty thieves)	19 August
"Unhim ke chamche ban kar bol rahe ho" (You are speaking like their flatterer)	19 August
"Ki pattal chatne ka bhatta milta hai" (You get an allowance for licking left-overs)	17 December

Rajya Sabha

"Deceive the Nation"	23 April
"House of Employers"	16 Dember

Gujarat Legislature

"We won't appoint any Italian person as V.C"	26 February
"It seems the Bill has been copied from a Bill previously passed somewhere else and I also metaphorize it as 'copying by a dull student'"	26 February
"There should be a limit to bragging"	4 March
"Some Government employees and officers have become vainglorious"	6 March
"You are handing out false promised to the public"	11 March
"The Government has made a drama of taking action against the Oil-Kings"	11 March
"The Government's preaching is different from precept"	12 March
"Gujarat is not a widow's unguarded field"	13 March
"As if the Government's intention is malicious"	21 March

"This is a conspiracy of Congress"	21 March
"We don't want to graze cattle, they also don't want to graze cattle, because they themselves can graze many things"	10 September
Sikkim Legislative Assembly	
"Make mess"	26 February
"That dodo should be asked"	27 February

NEW ZEALAND HOUSE OF REPRESENTATIVES

"Keep your shirt on Billy Boy"	26 February
"Piss-up"	19 March
"Booze-up"	26 March
"Gutter politics of racial division"	26 March
"Nancy"	26 March
"Porkies"	26 March
"Populist crap"	1 April
"Fishwife"	6 May
"Culture of dishonesty"	14 May
"Scamster and crook"	21 May
"Inflammatory allegations"	18 June
"Ex-poodle"	26 June
"Village idiot"	12 July
"Queer cow"	23 July
"Rort party"	23 July
"Doormat party"	24 July
"Snivelling load of crap"	6 August
"Bankrupt bozos"	6 August
"Best-paid beneficiaries"	6 August
"Femin-nazis"	15 October
"Smart-arse"	11 November
"Dr Mogadon Brash"	11 November
"Deputy Dawg"	18 November
"Miserable git"	9 December
"Shyster"	9 December
"Disgusting member who bonks boys"	11 December

WALES NATIONAL ASSEMBLY

"Evasive"	–
"Parasite" (of the Queen)	–
"He is to culture what Robert Mugabe is to free elections"	–

ZAMBIA NATIONAL ASSEMBLY

"Bones and dogs"	22 January
"They will beat him to death"	24 January
"Bewitch"	4 February
"Hybrids"	11 February
"Daddy"	11 February

"Making his seat a bed"	12 February
"Shallow minded"	6 March
"Useless Minister"	20 March
"In a House led by a Stranger"	13 August
"Misallocations"	21 November

BOOKS AND VIDEOS ON PARLIAMENT 2003

AUSTRALIA

Australian political institutions, by Gwynneth Singleton, Pearson Education, $A54.95, ISBN 1740910117

It's your Constitution: governing Australia today, by Cheryl Saunders, Federation Press, ISBN 1862874689

Parliamentary privilege, by Enid Campbell, Federation Press, ISBN 1862874786

Platypus and parliament: the Australian Senate in theory and practice, by Stanley Bach, Department of the Senate, $A29.95 (paperback), $A49.00 (hardback), ISBN 064271293X

Expulsion of Members of the New South Wales Parliament, by Gareth Griffith, Sydney, NSW Parliamentary Library Research Service (Briefing Paper 17/03), no price, ISBN 0 7313 17467

History of the Public Accounts Committee: 1902–2002, NSW Public Accounts Committee (Chair: Matt Brown), Report No. 144, no price, ISBN 0 7347 66254

New South Wales Election 2003, by Scott Bennett, Canberra, Department of the Parliamentary Library (Research Note: 33/2003), no price, ISBN 1328 8016

Women in Parliament: the current situation, by Talina Drabsch, Sydney, NSW Parliamentary Library Research Service (Briefing Paper: 9/03), no price, ISBN 0 7313 17351

Parliament of New South Wales: the video, Crows Nest, Cornerstone Media, no price.

CANADA

Breaking the Bargain: Public Servants, Ministers, and Parliament, by Donald J. Savoie, Toronto: University of Toronto Press, $27.95 CDN, ISBN 0-8020-8810-4

The Canadian Senate in Bicameral Perspective, by David E. Smith, University of Toronto Press, $50.00 CDN, ISBN 0802087884

Protecting Canadian Democracy: the Senate You Never Knew, by Hon. Serge Joyal, PC, QC, McGill-Queen's University Press, Hardcover price $80.00

CDN (ISBN 0773525939), Paperback price $32.95 CDN (ISBN 0773526196)

Colloque: Le parlementarisme au XXIe siècle, Québec 9 au 12 octobre 2002, Québec, Assemblée nationale, Amicale des Anciens parlementaires, ISBN 2-550-40943-4 (see http://www.assnat.qc.ca/fra/amicale/colloque.htm#2)

Règlement annoté de l'Assemblée nationale, by Pierre Duchesne, Québec, Assemblée nationale, ISBN 2550413369.

La participation citoyenne au cœur des institutions démocratiques québécoises: rapport, États généraux sur la réforme des institutions démocratiques (2002-2003), Québec, Secrétariat à la réforme des institutions démocratiques, ISBN 2550406044

Écrire l'histoire de demain: l'Assemblée nationale du Québec, Québec (Province) Assemblée nationale (CD-ROM), $7.00 CDN

La procédure parlementaire du Québec, 2nd edition, Québec (Province) Assemblée nationale, $90.00 CDN, ISBN 2551217679 (see http://www.assnat.qc.ca/fra/assemblee/propar.pdf)

Recueil de décisions concernant la procédure parlementaire (electronic edition), Québec (Province), Assemblée nationale. This resource may be consulted at: http://assnat.qc.ca/fra/Assemblee/recdecAssa.pdf.

INDIA

Anti-defection law and parliamentary privileges, by Subhash C. Kashyap, Universal Law Publishing, Delhi, Rs.695/-, ISBN 81-7534-340-0

Changing profile of Lok Sabha: a socio economic study of members (1950-2002), Lok Sabha Secretariat, New Delhi

The citizen and judicial reforms under Indian polity, edited by Subhash C. Kashyap, Universal Law Publishing, Delhi, Rs.350/-, ISBN81-7534-311-x

Combating terrorism, Lok Sabha Secretariat, New Delhi

Computerisation in Rajya Sabha: an overview, Rajya Sabha Secretariat, New Delhi

The Constitution and language politics of India, edited by B.V.R. Rao, B. R. Publishing Corporation, Delhi, Rs.600/-, ISBN 81-7646-347-7

Constitutional amendments in India, by M. V. Paylee, Universal Law Publishing, Delhi, Rs.850/-, ISBN 81-7534-243-5

Constitutional issues in freedom of information: international and national perspectives, by Faizan Mustafa, Kanishka Publishers, New Delhi, Rs.595/, ISBN 81-7391-574-1

Constitutional safeguards for scheduled castes and scheduled tribes, by B.

Gowsami, Rawat Publications, Jaipur, Rs.595/-, ISBN 81-7033-763-1

Discipline and decorum in Parliament and State legislatures, edited by G. C. Malhotra, Lok Sabha Secretariat, New Delhi, Rs.300/-

Discipline, decorum and dignity of Parliament, Rajya Sabha Secretariat, New Delhi

Ethics Committee of Rajya Sabha, Rajya Sabha Secretariat, New Delhi

Fifty years of Lok Sabha, Lok Sabha Secretariat, New Delhi

Fifty years of Rajya Sabha, Rajya Sabha Secretariat, New Delhi

Fundamental human rights: the right to life and personal liberty, by Sunil Deshta and Kiran Deshta, Deep & Deep Publications, New Delhi, Rs.480/-, ISBN 81-7629-399-7

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The following regular features are not indexed: books (unless reviewed), lists of members of the Society (other than those specially noted), sitting days, unparliamentary expressions. Miscellaneous notes and amendments to Standing Orders are not indexed in detail.

ABBREVIATIONS

ACT	Australian Capital Territory	NSW	New South Wales
Austr.	Australia	N. Terr.	Northern Territory
BC	British Columbia	NZ	New Zealand
HA	House of Assembly	Reps	House of Representatives
HC	House of Commons	RS	Rajya Sabha
HL	House of Lords	SA	South Africa
LA	Legislative Assembly	Sask.	Saskatchewan
LC	Legislative Council	Sen.	Senate
LS	Lok Sabha	WA	Western Australia.
NI	Northern Ireland		

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