The Table

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CHRISTOPHER JOHNSON

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

EDITORIAL

This year's Comparative Study concerned the recruitment and training of clerks, and amply demonstrated the interchange of knowledge and experience between legislatures around the Commonwealth. Regional gatherings of clerks are now a regular occurrence in Australia and New Zealand (organised by the Australia and New Zealand Association of Clerks-at-the-Table, ANZACATT), in North America (organised by the Association of Clerks-at-the-Table in Canada), and in the British Isles. Study visits and attachments often bring new clerks to Westminster, and also contribute to the development of shared wisdom in responding to the procedural and administrative challenges that face us. It is hoped that *The Table* continues, and will long continue, to play its part in drawing together the shared wisdom of Clerks-at-the-Table around the Commonwealth.

This issue is unusual in containing a contribution from a non-Commonwealth legislature, the Irish Oireachtas, in Mellissa English's article on 'Parliamentary Privilege and extra territorial publication: the Irish perspective'. On this occasion the editorial board decided, exceptionally, that although historical circumstances preclude Irish membership of the Commonwealth, the close links between the Irish legal and parliamentary traditions and those of the Commonwealth, as well as the article's relevance to issues of current concern, justified its inclusion.

Last year Neil Laurie, in an article on parliamentary publications and modern communications[1], reflected on recent case-law that appeared to raise the prospect of material published online being "considered published in multiple jurisdictions. Furthermore, it opened the possibility of multiple concurrent actions of defamation, or the strategic choice of jurisdiction based on the plaintiff's assessment of success in each jurisdiction." At the same time, he drew attention to recent defamation legislation enacted by states and territories across Australia that countered this threat to the

[1] Neil Laurie, 'Parliamentary publications and modern communications: a postscript', *The Table*, 75, pp 62-68.

principle of parliamentary privilege by, in effect, ensuring that the courts in each jurisdiction gave mutual recognition of the validity of proceedings in legislatures in other jurisdictions.

Ms English picks up this theme, drawing attention to the permissive stance adopted within the European Union by the European Court of Justice (ECJ). The ECJ has ruled that a plaintiff may bring a defamation claim in forums where his or her reputation was actually harmed, and also established a permissive rule that jurisdiction exists over a defamation claim wherever a publication was read. This has already, in effect, given rise to 'forum shopping'.

The majority of the judges of the ECJ represent legal traditions very different from those of Commonwealth jurisdictions, and the implications of the ECJ's rulings for parliamentary privilege outside Europe are unclear. Ms English tentatively concludes that "the risk of suit in another jurisdiction will always exist, but one would hope that a foreign court would recognise some form of defence or privilege."

But the risk is there. The Internet by its nature is not confined by national or jurisdictional boundaries, and while there is a general understanding, both technical and legal, that issues to do with content, the information carried over the Internet, are best dealt with at the edges of the network, where servers, service providers and users are located, rather than in the 'ether', this principle is not always easy to apply in practice. Not only can statements in the legislature can be instantly read, broadcast or reported anywhere in the world, but notions of 'publication' are less physically or geographically limited than ever before. Perhaps, as Ms English comments, Members' natural tendency to concentrate on domestic matters, on issues affecting their electorate, is the best practical defence against the prospect of long-term erosion of parliamentary privilege.

Elsewhere in this edition of *The Table*, Paul Bristow provides a considered review of the work of the House of Lords' Select Committee on the Merits of Statutory Instruments, four years after its appointment at the end of 2003. Richard Pye looks at developments in the consideration of legislation by Australian Senate committees, and Siân Wilkins reflects on the continuing process of Welsh devolution, focusing on the pivotal separation of the legislative and executive functions, and the granting of legislative competence to the Welsh Assembly, that has come about following the passing of the Government of Wales Act 2006.

This is my sixth and final volume as Editor of *The Table*. It has been an educational and very enjoyable experience, and I wish to thank contributors

not only to this edition, but to all those I have edited. A new Editor will take over the reins for the 2009 *Table*, but I hope to continue to play an active role, as contributor if not editor.

In token of this, the final article in this year's edition is my first authored contribution to the Journal. An abiding theme of recent editions of *The Table* has been the rewriting of rules of procedure around the Commonwealth, with a view to making the language used more modern, clear and user-friendly. Such modernisation is particularly difficult in the self-regulating House of Lords, which, in the absence of fully comprehensive written rules of procedure, maintains a strong reliance on convention and tradition. I have used one small example of modernisation, the removal in late 2007 of the dilatory 'this day six months' amendment from members' procedural armoury, to reflect on the historical development of the House's procedures, and the arguments for and against modernisation.

Christopher Johnson

MEMBERS OF THE SOCIETY

Australian Senate

Alan Ritchie Cumming Thom (1928–2007), former Clerk of the Australian Senate, died on 14 April 2007. He was born in Scotland and came to Australia as a child when his father was appointed Moderator of the Presbyterian Church in Australia. He attended the University of Sydney, graduating in law. He served as a legal officer in the Attorney-General's Department from 1951 to 1955, when he joined the Senate Department. He was Clerk of the Senate from 1982 to 1988. He spent many years as the officer in charge of the Senate committee secretariat, and was largely responsible for shaping the modern Senate committee system after the establishment of the new standing committees in 1970. In 1971 he was awarded a Churchill Fellowship and studied the committee systems in Canada, the United Kingdom and the United States.

Queensland Legislative Assembly

Ian Thompson (former Clerk Assistant and Sergeant-at-Arms) retired in June 2007 after 34 years service with the Queensland Parliament.

Leanne Clare, who formerly held the position of Research Director and Clerk Assistant was appointed First Clerk Assistant (Procedure). Ms Clare had been acting in this position since March 2007.

Kevin Jones, Manager of Attendant and Security Services took on the duties of Sergeant-at-Arms in March 2007.

Meg Hoban was appointed Senior Parliamentary Officer (Papers and Research) and **Josephine Mathers** was appointed Senior Parliamentary Officer (Bills and Research) in December 2007.

South Australia House of Assembly

David Bridges retired as Clerk, and was succeeded by **Malcolm Lehman**. **Rick Crump** was appointed Deputy Clerk.

Tasmania House of Assembly

The late **Paul Trevor McKay** AM (1940-2007) Clerk of the House of Assembly, Tasmania, died in Launceston on Wednesday, 19 December 2007. He was Clerk of the House of Assembly from 1982 until 1998. Peter Bennison, Deputy Clerk of the House, writes:

Paul McKay was born in 1940 and educated in Hobart. He commenced work as a Junior Clerk in the House of Assembly in February 1958 as the term of Premier Sir Robert Cosgrove MHA was drawing to its conclusion. Mr McKay went on to serve the Tasmanian Parliament under another ten Premiers and fourteen Speakers from Hon Kevin Lyons MHA to Hon Frank Madill MHA. In 1961 Paul McKay was promoted to Assistant Clerk of Papers and then in 1963 commenced his service at the Table of the House when he was made Third Clerk-at-the-Table. That year he was appointed Secretary of the Public Accounts Committee, a position he held until retirement in 1998.

Following the retirement of C K (Pat) Murphy CBE as Clerk of the House in 1969, Paul McKay was promoted to Clerk-Assistant and Sergeant-at-Arms. That year the Government changed for the first time in thirty-five years when the Liberal Party came to power. From 1975 until 1981 and during 1985 he was Honorary Secretary of the Commonwealth Parliamentary Association (Tasmania Branch). In 1981 Paul McKay became acting Clerk prior to the retirement of B G (Bruce) Murphy and succeeded as ninth Clerk of the House in October 1982.

His sixteen years as Clerk were marked by a period of great change. There were three minority governments (two of which had Want of Confidence motions carried against them). The advent of the Greens as a third force in politics altered the dynamics in the House. At the end of his career legislation to reduce the number of members of the House from 35 to 25 was passed. Coincidentally, Mr McKay had been a parliamentary officer when

the number of members of the Assembly had been increased from 30 to 35 in 1959. There were significant changes to the practices of the House during his time through the first use in Tasmania of sessional orders, establishment of the Budget Estimates Committees process, the first tentative steps towards 'family friendly' sitting hours and the introduction of computers in the House. He had an extensive knowledge of parliamentary procedure and practice, which was called upon frequently by Members from all sides of politics during his long career. In 1992 Paul McKay was recognized for his outstanding services to the Tasmanian Parliament when he was made a Member of the Order of Australia.

After forty years service to the House Paul McKay retired in August 1998 and moved to Launceston. On the occasion of his retirement the House passed unanimously a resolution of thanks for his services. At the time he was the longest serving Clerk-at-the-Table in any Australian Parliament. He was a person of a retiring disposition who had a great love of animals and enjoyed travel, surfing, reading. He was also a lifelong devotee of jazz and a fine jazz musician. In retirement he divided his time between Launceston and a family sea side cottage at Bridport in Northern Tasmania.

Mr McKay is survived by his widow, Alma, children Alison, David and Alanna and three grandchildren.

Tasmania Legislative Council

Mr **Richard John Scott McKenzie** retired as Clerk of the Council on 17 August 2007. Mr **David Thomas Pearce**, former Deputy Clerk was appointed Clerk of the Council from 20 August 2007. Mr **Nigel Robert Scott Pratt** was appointed Deputy Clerk from 22 October 2007.

Victoria Legislative Assembly

Gavin Bourke, Assistant Clerk Procedure and Serjeant-at-Arms, resigned in December 2007 to continue his career in the Australian Defence Force.

Western Australia Legislative Assembly

Mr **Nigel Lake**, formerly a Clerk Assistant (Procedure) in the Legislative Assembly, was appointed as Deputy Clerk of the Legislative Council.

Ms **Liz Kerr** was appointed in June 2007 as Sergeant-at-Arms in the Legislative Assembly.

CANADA

British Columbia Legislative Assembly

On 6 December 2007, **E George MacMinn**, OBC, QC, marked his 50th year as a Table Officer. Her Majesty Queen Elizabeth II recently recognized Mr MacMinn as the longest serving Table Officer in the Commonwealth in a letter presented in a ceremony at Government House in February 2008.

At the 2007 Conference of the Canadian Association of Parliamentary Counsel and Law Clerks, **Ian Izard**, QC, Clerk Assistant and Law Clerk, was elected President of the Parliamentary Counsel Association of Canada.

Québec National Assembly

Mr **Pierre Duchesne**, who was Secretary General of the National Assembly from 1984 to 2001 and a member of the Society of Clerks-at-the-Table during this period, was appointed Lieutenant-Governor of Québec on 18 May 2007 and took the oath of office and oath of allegiance on 7 June.

Saskatchewan Legislative Assembly

On 31 December 2006, **Gwenn Ronyk** retired as Clerk of the Assembly. Her departure was followed by the appointment of **Greg Putz** as Clerk and **Ken Ring**, Parliamentary Counsel and Law Clerk as a table officer and member of the Society of Clerks-at-the-Table.

Yukon Legislative Assembly

On 30 March 2007, **Patrick L Michael**, Clerk of the Assembly and Chief Electoral Officer, retired after nearly 30 years' service at the Yukon Legislative Assembly. See 'Miscellaneous Notes' for a fuller account of Mr Michael's career.

INDIA RAJYA SABHA

V K Agnihotri, who assumed charge as Secretary-General of Rajya Sabha on 29 October 2007, is a retired IAS officer of 1968 batch, Andhra Pradesh Cadre. Born in Varanasi on 25 August 1945, he did his schooling in Kanpur. He obtained his Masters degrees in English Literature and Political Science from the University of Allahabad. He has obtained his PhD in Public Policy Analysis and Design from the Indian Institute of Technology,

Delhi (IITD). He was a Visiting Fellow at the Queen Elizabeth House, University of Oxford, in 1991-92.

Among several responsible positions with the State and Central Governments, Dr Agnihotri has held the posts of Collector of Visakhapatnam District and Development Commissioner for Handlooms (Ministry of Textiles), Government of India. He was with the Lal Bahadur Shastri National Academy of Administration, Mussoorie as the Joint Director (1992-98), and Additional Secretary in the Department of Administrative Reforms and Public Grievances (1999-2002). He was Secretary to Government of India in the Ministry of Parliamentary Affairs (2003-05). He also briefly held full additional charge of the post of Secretary, Ministry of Panchayati Raj, when the Ministry was set up for the first time. Post-retirement, he was a Member (Administrative), Central Administrative Tribunal (Principal Bench), New Delhi until August 2007. His areas of specialisation are civil service administration, parliamentary systems and procedures, public policy, good governance, rural and cottage industries, and Panchayati Raj.

STATES OF JERSEY

Mr **Edward J M Potter** ISO, former Greffier of the States of Jersey and a member of the Society of Clerks-at-the-Table, died in June 2007 after a long period of illness. Mr Potter was Deputy Greffier of the States (Clerk Assistant) from 1963 to 1971 when he was appointed as Greffier (Clerk). He remained in that office for nearly 20 years and served with great distinction until his retirement at the end of 1990. After his retirement he was elected as a Jurat of the Royal Court of Jersey.

NEW ZEALAND HOUSE OF REPRESENTATIVES

David McGee CNZM QC, resigned as Clerk of the House of Representatives with effect at the close of 1 November 2007. He had been Clerk of the House since 1985. He has been appointed an Ombudsman for a term of 5 years commencing on 19 November 2007. David McGee was the author of *Parliamentary Practice in New Zealand* (3rd edition, 2005) and also, for the Commonwealth Parliamentary Association, wrote *The Overseers: Public Accounts Committees and Public Spending* (2002) and *The Budget Process: A Parliamentary Imperative* (2007).

Mary Harris, who had been Deputy Clerk, was appointed Clerk of the

House on 10 December 2007. She has previously served as Clerk-Assistant (Select Committees) and Clerk-Assistant (Hansard). Mary Harris's appointment as Clerk of the House is the first to be made under the Clerk of the House of Representatives Act 1988 and she is the first woman to be appointed Clerk in the House's 153-year history.

Fay Paterson was appointed Clerk-Assistant (House) on 17 December 2007. She was previously Senior Parliamentary Officer (Select Committees).

TURKS AND CAICOS HOUSE OF ASSEMBLY

Ms **Ruth Blackman** retired as Clerk to House of Assembly and was promoted to the Cabinet office. However an arrangement with the Public Service Commission her services as Consultant Advisor to the Speaker has been retained.

UNITED KINGDOM

House of Commons

Sir **Kenneth Bradshaw** KCB, former Clerk of the House of Commons, died on 31 October 2007.

House of Lords

Sir **Paul Hayter** KCB, LVO, retired as Clerk of the Parliaments on 4 November 2007 after a long and distinguished career dedicated to the House of Lords, its members and staff. Michael Pownall, his successor as Clerk of the Parliaments, writes:

The House and its administration, which Paul joined in 1964, have changed out of all recognition since that time, and he played a part in many of the major changes. In 1971 he was the Clerk of the Committee on Sport and Leisure—the first attempt after the unsuccessful Lords reform initiatives of the 1960s to give the Lords what is now a well-established role in investigative committee work. Later, from 1974 to 1977 Paul was private secretary to the Leader of the House and Government Chief Whip—a difficult time given the Labour Government's small majority in the Commons and minority in the Lords. Quite how he pressed the bulk of the Government's legislative programme through in the last few weeks of the 1975-76 session remains a mystery!

In 1980 Paul became clerk of the new Science and Technology Committee and did much to establish its reputation for authoritative and influential reports. From 1985 to 1990 he was the first Clerk of Committees with responsibility for a unified Committee Office, and in 1991, on his appointment to the Table as Reading Clerk, he became the first Principal Finance Officer. As PFO, Paul had the task of implementing in the Lords the recommendations of the Ibbs report on the management of the House of Commons. This he did with enthusiasm and, despite the initial doubts of some colleagues, we soon came to accept 'aims and objectives' and 'budget-holding' as essential elements in modern parliamentary administration.

Paul succeeded Sir Michael Davies as Clerk of the Parliaments in 2003 and proved a natural leader of the Administration. He had long seen the need for more structured governance arrangements and much of his time as Clerk was devoted to making the new arrangements, not least the Management Board which had been created the previous year, work effectively. Above all, he was determined to make the House a place in which the dedicated and increasingly professional staff were proud to work. There were many achievements in his four and a half years as Clerk, several of which have been reported in past editions of *The Table*, such as the creation of a unified parliamentary ICT service, PICT, the creation of a Lords' Table Office, and above all the consequences of the passing of the Constitutional Reform Act 2005, including the election of a Lord Speaker. Support for the new Lord Speaker was a key priority for Paul in his last year in office.

Paul was always an imposing figure in the Chamber, and it was appropriate that his last appearance was at the Prorogation ceremony at the end of the 2006-07 session, signifying the Royal Assent to bills in a flurry of Norman French. He also had more traditional clerkly skills in abundance; and, as I recall all too well, could spot a mistake in the daily procedural brief at ten paces.

Paul and his wife Deborah will now have more time to enjoy their large and beautiful garden in Northamptonshire together, without the need for him to commute weekly to London. He will be much missed by all his colleagues in Westminster.

THE HOUSE OF LORDS SELECT COMMITTEE ON THE MERITS OF STATUTORY INSTRUMENTS

PAUL BRISTOW
Merits Committee Adviser

Introduction

In the 2005 issue of *The Table*, Christine Salmon, then Clerk of Delegated Legislation, wrote about the scrutiny of delegated legislation in the House of Lords.[1] She referred to the relatively recent appointment (in December 2003) of the Lords Merits of Statutory Instruments Committee (the Merits Committee), and briefly described its work of scrutiny in the 2003-04 session.

The Merits Committee continues to scrutinise statutory instruments (SIs) and is now in its fifth session of work. A large number of SIs have been before the committee since its appointment—a total of some 4,200 to the end of the 2006-07 session. The committee has pursued a range of general concerns about secondary legislation in parallel with its consideration of individual SIs. It seems a good moment to reflect on the committee's experience, and on the way in which its work has been received in the House as a whole.

Creation, remit and membership of the Merits Committee

As Christine Salmon explained in her article, the Royal Commission on the Reform of the House of Lords, chaired by Lord Wakeham, published its report on *A House for the Future* in January 2000, and recommended that a 'sifting' mechanism be established to identify those SIs which were important and merited further debate or consideration. The House of Commons did not wish to contribute to a joint committee of both Houses, and so the committee appointed at the end of 2003 against the background of the Wakeham Commission's recommendation was a Lords-only committee.

The Merits Committee's terms of reference require it to consider any SI that is subject to Parliamentary proceedings, with a view to determining

[1] 'Scrutiny of Delegated Legislation in the House of Lords', by Christine Salmon, *The Table*, 73 (2005), pp. 46-53.

whether the special attention of the House should be drawn to it on any of the following grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
(c) that it may inappropriately implement European Union legislation;
(d) that it may imperfectly achieve its policy objectives.

It should perhaps be emphasised that the Merits Committee's powers do not go beyond drawing an SI to the special attention of the House. In other words, the committee has no 'scrutiny reserve', and the House is able to consider an SI even if the Merits Committee has not completed its own scrutiny of the instrument.

The committee has 11 members, all drawn from the House of Lords. Lord Hunt of Kings Heath chaired the Committee from its first appointment until the end of session 2004-05. Lord Filkin has chaired the Committee since the 2005-06 session. Both chairmen had ministerial experience before joining the committee, and other members have also had considerable knowledge of the workings of government as well as of other areas (such as the legal and educational sectors) which are relevant to secondary legislation.

SIs drawn to the attention of the House

By the end of the 2006-07 session, the Merits Committee had drawn a total of 312 SIs to the special attention of the House—around 1 in 14 of the total number considered by the committee. Because of the volume of secondary legislation, the committee meets on a weekly basis (with rare exceptions) when the House is sitting, and publishes a report each week within 48 hours of its meeting. Its reports are available in paper form and also on the committee's website. In addition, since 2005 the committee has emailed a summary of its weekly report to a list of email subscribers, which includes members of the House who have notified an interest in the committee's work. These arrangements are intended to ensure that the committee's reports gain a wide circulation and are available to the House at a timely point in the parliamentary stage of an SI's progress—that is, before an affirmative SI comes is tabled for approval by the House, and well before the end of the 40-day praying period for a negative SI.

In the case of more than 90 percent of the SIs reported, the committee has

used the first ground given in its terms of reference: that the instrument is politically or legally important or gives rise to issues of public policy likely to be of interest to the House.

The committee has never used the second ground: that an SI may be inappropriate in view of changed circumstances since the enactment of the parent act. While it is true that many of the SIs seen by the committee result from primary legislation that has been enacted relatively recently, secondary legislation continues to be made under older parent acts; but so far the gap between enabling act and implementing SI has not in itself been the factor that has prompted the committee to report an SI.

The third ground, that an SI may inappropriately implement European Union legislation, has been used, but infrequently. The claim is sometimes made that the UK Government extensively 'over-implements' European legislation, a practice also called 'gold-plating'. Such a claim has not been borne out by the committee's experience of secondary legislation, though it has made use of the ground in occasional instances. One example, in 2005-06, was an instrument laid by the Department for Environment, Food and Rural Affairs (Defra): the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005 (SI 2005/1605). The committee was concerned that Defra was imposing a major new burden of compliance, through the requirement for the provision of sales notes, on many small businesses that were buyers of direct sale fish, and it questioned whether the burden created by the obligations placed on buyers from smaller vessels was proportionate to the problem being addressed. But this was an exceptional example. Over half of the 100 or more SIs that Defra lay before Parliament each session serve to implement European legislation; the committee reports no more than one or two of these on the basis of the third ground.

Finally, the fourth ground, that an SI may imperfectly achieve its policy objectives, has been deployed more often than the third, but still in a very limited number of cases. An example from 2005-06 was the National Health Service (Dental Charges) Regulations 2005 (an affirmative instrument). These Regulations were laid by the Department of Health, and re-structured dental charges by replacing 400 individual item charges with a system of three priced bands. The committee referred to concern expressed by interested parties over whether the re-structuring would discourage the poorest in the community from seeing a dentist for preventive treatment. The committee's use of the fourth ground in relation to SIs which were the subject of oral evidence in 2006-07 is discussed below.

SIs on which oral evidence has been taken

From the start of its work of scrutiny, the committee's approach to considering SIs has usually taken the form of private deliberation, looking at the instrument itself, the accompanying explanatory material submitted by the Department responsible, and any additional information obtained from the Department to supplement that material. However, with the passage of time, the committee has developed its working practices to enhance the usefulness of the service which it provides to the House.

Thus, in 2006-07, the committee decided to take oral evidence on SIs in a limited number of cases, where it felt that this would significantly add to the information available to the House. It did so on four occasions in that session.

The first of these related to the Waste Electrical and Electronic Equipment Regulations 2006 (SI 2006/3289), laid by the Department of Trade and Industry (DTI). In implementing a European Directive, the Regulations were intended to make sure that waste electrical and electronic equipment (WEEE) was removed from the normal waste stream and treated in an environmentally responsible manner. They provided for full implementation in July 2007, almost two years later than the EU deadline. The committee took evidence from officials in DTI. In reporting on the Regulations, the committee used the ground of public policy interest; and concluded that, while the delay had been undesirable, the Government had made sustained efforts to ensure that a practical system for processing WEEE was in place from July 2007. The Regulations were subsequently debated in the House, and came into effect as envisaged by the Government.

On the second occasion, the committee took evidence on the draft Gambling (Geographical Distribution of Casino Premises Licences) Order 2007, laid by the Department for Culture, Media and Sport (DCMS). The Order proposed that the 17 local authorities named in it should be permitted to issue one premises licence each in the specific casino categories allocated to them (namely regional, popularly called 'super-casino'; large; or small). Most of the interest attracted by the Order related to the Department's proposal that the one 'super-casino' proposed within it should be allocated to Manchester—there had been widespread expectations that the successful local authority would be either Blackpool (in the northwest of England) or Greenwich (in Greater London).

The committee took evidence from the chairman of the Casino Advisory Panel which had advised DCMS on the selection of local authorities, and

also from the minister concerned. The committee drew the Order to the special attention of the House, using the ground that it might imperfectly achieve its policy objectives. The committee commented that the evidence received had demonstrated a difference in interpretation of the 'social impact' that casinos might have, with the Panel's interpretation giving greater prominence to economic factors and less to the minimisation of harm from gambling, an objective set by the relevant act (the Gambling Act 2005).

The draft Order was debated by both Houses on 28 March 2007. It was approved by the House of Commons, but the debate in the House of Lords produced a different outcome. The Government motion sought approval of the Order; Lord Clement-Jones, a Liberal Democrat (opposition) peer, tabled an amendment to the motion referring to the committee's report, declining to approve the Order, and proposing that a joint committee of both Houses should look again at the process by which a local authority was selected to issue a licence to a regional (or 'super') casino. The amendment was agreed to on division (123 votes to 120), and the Order was therefore defeated. This was only the third time that the House had rejected a SI in the last 60 years.

The committee's third evidence session in 2006-07 dealt with the Home Information Pack Regulations 2007 (SI 2007/0992), laid by the Department for Communities and Local Government (DCLG). The Housing Act 2004 had provided for the introduction of Home Information Packs (HIPs), to be made available by sellers when they put their homes on the market; the 2007 Regulations set out which documents should be included in HIPs and when they should be made available. Oral evidence was taken from officials in DCLG, and the committee also received written comments from a number of external organisations involved in the house-buying and selling process.

In bringing the Regulations to the House's attention, the committee cited the ground that they might imperfectly achieve their policy objective, not least because the comments received from interested parties showed considerable scepticism. A debate took place in the House of Lords on 22 May 2007, on a motion by Baroness Hanham, on the Conservative (opposition) front-bench, calling for the Regulations to be revoked. In the event, immediately before that debate was scheduled to start, the Government made a statement announcing that the introduction of HIPs would be delayed until later in the year, and that the Regulations would indeed be revoked and replaced by new provisions. The debate went ahead, but the motion was not put to a vote.

The fourth and last evidence session in 2006-07 related to the draft Children Act 2004 Information Database (England) Regulations 2007, laid by the Department for Children, Schools and Families (DCSF). The Regulations provided for the implementation of the 'ContactPoint' scheme, a national database of children intended to facilitate co-operation between professionals concerned with children's welfare. Oral evidence was taken from DCSF officials, and written evidence was also invited from a dozen or so organisations (such as children's charities) that had taken a close interest in the development of the scheme. The SI was brought to the House's attention on the ground of public policy interest. The House approved the Regulations on 18 July 2007.

Inquiry into the management of secondary legislation, 2005–06

In 2005-06, alongside its work of scrutiny, the committee carried out an inquiry into the management of secondary legislation, looking at issues relating to both the quantity and the quality of statutory instruments, and the accompanying explanatory material, which Government departments lay before Parliament. The committee took evidence from three Departments: DTI (as it then was), Defra and the Home Office. It heard from two Government-supported bodies concerned with issues of regulation, the Better Regulation Executive (BRE) and the Better Regulation Commission (BRC), as well as from representatives of outside groups affected by secondary legislation. It held a final evidence session with Mr Jim Murphy MP, a Cabinet Office minister.

The committee published its inquiry report in March 2006. While agreeing that ultimate responsibility must lie with each department for the SIs which it produced, the report made a number of recommendations to promote best practice. These included proposals that departments should plan their regulation programmes more rigorously and ensure a more even flow of SIs to Parliament; that they should engage their top management more closely in overseeing the process; and that they should ensure that consultation with those affected by new regulations was timely and more thorough.

A keynote of the Government response, which acknowledged the scope for improving the management of secondary legislation, was the emphasis that it placed on leaving action largely to the initiative of individual Departments. A debate on the report was held in the House on 29 November 2006. In May 2007, Baroness Ashton of Upholland, Parliamentary Under-Secretary of State at the Ministry of Justice, sent a

letter to update the committee on Departments' progress against three of the recommendations made in the inquiry report.

Follow-up to inquiry, 2007-08

At the start of the 2007-08 session, the committee returned to issues which it had raised in its original inquiry. It took evidence from two departments: DCSF and the Department for Work and Pensions (DWP). The committee also heard evidence from Mr Pat McFadden MP, Minister for Regulatory Reform at Department for Business, Enterprise and Regulatory Reform (DfBERR—the successor ministry to the DTI following a Government re-structuring in summer 2007)

In its follow-up report in March 2008, the committee noted that it had found limited improvement in practice since its original report. The evidence taken from DCSF and DWP had shown a serious engagement with the committee's concerns, but it seemed that it was the invitation to departments to give evidence that prompted them to pay adequate attention to such concerns. The committee also noted with regret that the Minister for Regulatory Reform seemed reluctant to acknowledge that good management of SIs was a part of his brief.

The committee urged Secretaries of State to ensure that their senior management systematically checked the quality of the secondary legislation produced by their departments. It commented that, if this were not done, "Ministers could find themselves increasingly challenged by Parliament: the Government's experience with casino licensing and with Home Information Packs shows that this House is not afraid to challenge poor policy and practice."

Conclusion

An important reason for the House's decision to appoint the Merits Committee in 2003 was its sense that over the years Government had greatly expanded its use of secondary legislation, and that parliamentary scrutiny of statutory instruments had not kept pace.

Over the past four years, the committee has developed its working practices to improve the flow of information to the House about secondary legislation. Where appropriate, it invites external interested parties to offer written comments on SIs which it publishes in its reports. It customarily offers succinct comments on SIs which, while not being formally drawn to the special attention of the House, none the less embody interesting aspects of policy implementation. It also emails a weekly summary of its

scrutiny of SIs to a list of subscribers who are mostly members of the House.

There is plenty of evidence that the House has come to see the activity of the Merits Committee as an invaluable support to the work of scrutiny. The committee's reports are frequently cited in debates on statutory instruments, and help members of the House to decide whether or not to initiate debates on or seek to annul negative instruments, which are not otherwise automatically debated. Members' votes also resulted in the Merits Committee being chosen as the *House* magazine's Select Committee of 2007.

Meanwhile, the flow of SIs coming before Parliament continues unabated, and seems likely to call for the continued work of the Merits Committee for the foreseeable future.

PARLIAMENTARY PRIVILEGE AND EXTRA TERRITORIAL PUBLICATION: THE IRISH PERSPECTIVE[1]

MELLISSA ENGLISH
Parliamentary Legal Adviser, Houses of the Oireachtas

Introduction

The immunities of parliamentarians have their roots in the Anglo-American systems of law. Parliamentary privilege was adopted by the French National Assembly by resolution of 1789, and thereafter adopted throughout Europe, in the Belgian Constitution of 1839, the Prussian Constitution of 1850, and the Constitution of the German Reich of 1871. It was subsequently adopted in the European constitutions which followed the First World War, including that of the German Republican (Weimar) Constitution of 1919 (Article 36), the Austrian Constitution of 1920 (Article 57), the Constitution of Greece of 1927, the Constitution of Ireland of 1922, the Constitution of Romania of 1923 (Article 54), the Constitution of Czechoslovakia of 1928 (Article 28) and the Constitution of Turkey of 1924 (Article 17).

The underlying justification for this near universal adoption of parliamentary privilege is not difficult to find. Virtually all modern democracies have found it necessary to establish a rule of absolute protection for speech in Parliament, at least from court or executive action.

The legitimacy of the objective

The objective of parliamentary privilege has best been described by the judiciary:

> No privilege of parliament is more essential than freedom of speech. Parliamentary Government has been described as 'government by talking' and certainly no assembly can become a power in the state unless its members may speak their minds within the walls of the Parliament building and be immune from punishment and molestation for whatever

[1] First delivered to the Irish, UK and Islands Clerks' Seminar, 19 October, 2007, Dublin. Reproduced with the permission of the Houses of the Oireachtas.

> remarks they may find it necessary to make there in pursuit of their governmental functions.[2]

As noted in *Young v Ireland*:

> The underlying aim of the immunity accorded to TDs[3] is clearly in furtherance of the public interest to allow TDs to engage in meaningful debate and represent their constituents on matters of public interest without having to restrict their observations or edit their opinions because of the danger of being amenable to a court or other such authority. [4]

Absolute and qualified privilege

Privilege is defined as a special right or immunity. In defamation actions, privilege is the immunity from liability conferred by law for statements made in certain circumstances. The privilege is either absolute or qualified. Absolute privilege, which is a complete defence to a defamation action, applies even where the words complained of are published with knowledge of their falsehood and with the intention of injuring another. In Ireland it applies to:

(a) judicial proceedings: *Macauley Co Ltd v Wyse Power* [1943] 77 ILTR 61;
(b) parliamentary proceedings,[5] which includes all official reports and publications of the Oireachtas and utterances made in either House wherever published: 1937 Constitution art.15(12); [6]
(c) discussions at meetings of the government: *AG v The Sole Member of the Beef Tribunal* [1993 SC] ILRM 81;[7]

[2] Wittke, *The History of English Parliamentary Privilege* (Ohio 1921) p 23, cited with approval in the leading US cases of *Gravel v U.S.* 408 US 606, *U.S. v Brewster* 408 US 50, *U.S. v Johnson* 386 US 169 and *Watkins v U.S.* 354 US 178.

[3] TD: Teachta Dála, a Member of the Lower House of the Oireachtas.

[4] Application No. 25646/94, Decisions and Reports, p. 122 at p127.

[5] Formerly based on section 1 of the Bill of Rights 1688.

[6] When a member of the Dáil or Seanad speaks in the other House he is also protected. Statements made by members outside the House while performing their political and constituency duties enjoy only a qualified privilege.

[7] Just as absolute privilege is conferred to a large extent on the judicial and legislative branches of government, so too a degree of absolute privilege is conferred on the executive branch of government. On analogy with common law precedents it would seem that communications between the government and the President, and between the members of the Government on business pertaining to their offices are absolutely privileged. There are precedents which indicate

(d) evidence before a committee of the Dáil where specifically provided for e.g. Select Committee (Privilege and Immunity) Act 1994;
(e) oral and/or documentary evidence given to a committee of the Oireachtas: Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunity of Witnesses) Act 1997 s.11; RSC O.131 inserted by SI No 381 of 1998.

Qualified privilege arises where a communication is made upon an occasion of qualified privilege and is fairly warranted by it; it is a good defence in the absence of malice. An occasion of qualified privilege arises where a person who makes a communication has a duty (legal, social or moral) or an interest to make it to the person to whom it is made, and the person to whom it is made has a corresponding duty to receive it.

The Irish Constitutional and Statutory provisions

Article 15 of the Constitution provides that:

15.12: All official reports and publications of the Oireachtas or of either House thereof and utterances made in either House wherever published shall be privileged.
15.13: The members of each House of the Oireachtas … shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself.

The word privileged does not have the same connotation as in the law of defamation; it means that an utterance made in either House cannot attract or be the subject of any form of legal proceedings wherever it may be published. The Defamation Act 1961 is silent as to the reporting (including broadcasting) of the proceedings of the Oireachtas or its committees, though it provides for qualified privilege for a fair and accurate report "of any proceedings in public of a house of any legislature. . . of any foreign sovereign State or any body which is part of such legislature."

The Committees of the Houses of the Oireachtas (Privilege and Procedure) Act 1976 (as amended) defined in section 1 "a committee" as a committee appointed by either Houses of the Oireachtas or jointly by both Houses. The Act provides in section 2 that:

that such absolute privilege also extends to a communication by a Minister to a subordinate official and by a military officer to his superior. The protection of absolute privilege may also extend to statements made by Secretaries of Government Departments, but communications by civil servants of lesser rank are probably accorded to the protection of qualified privilege only. See McMahon & Binchy, *Law of Torts*, 3rd edition, p 927.

(1) A member of either House of the Oireachtas shall not, in respect or any utterance in or before a committee, be amenable to any court or any authority other than the House or Houses of the Oireachtas by which the committee was appointed.
(2) (a) the documents of a committee and the documents of its members connected with the committee or its functions,
(b) all official reports and publications of a committee, and
(c) the utterances in a committee of the member, advisers, officials and agents of the committee,
wherever published shall be privileged.

Therefore, under Article 15.13 of the Constitution, TDs and Senators have absolute privilege in respect of utterances in either House and since 1976 this been extended by legislation to committee meetings.

The Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 in section 11 provides that:

(1) subject to sub-section (2) a person whose evidence has been, is being or is to be given before a committee or who produces or sends a document to a committee pursuant to a direction or who is directed to give evidence or produce a document or to attend before a committee and thereto give evidence or produce a document shall be entitled to the same privileges and immunities as if the person were a witness before the High Court.
(2) If a person who is giving evidence to a committee in relation to a particular matter is directed to cease giving such evidence, the person shall be entitled only to qualified privilege in relation to defamation in respect of any such evidence as aforesaid given after the giving of the direction unless and until the committee withdraws the direction.

As a general rule therefore statements made by witnesses giving evidence (subject to a direction) to a committee of the Oireachtas enjoy absolute privilege (unless wholly irrelevant to the business of the committee).

Media reports of proceedings/utterances

The fact that the utterances made to either Houses of the Oireachtas and to committees of the Oireachtas are absolutely privileged and the further fact that evidence of witnesses before such committees appear to enjoy a similar

privilege does not of itself imply that reports and broadcasts of such utterances and evidence enjoy the same or any level of privilege. This proposition can readily be illustrated by the fact that, while the statements made in the course of judicial proceedings are absolutely privileged, reports of such proceedings enjoy only the less than absolute privilege conferred by section 18 of the Defamation Act 1961. Section 18 provides that privilege is less than absolute in that it requires reports of court proceedings (a) to be fair and accurate[8] and (b) to be published or broadcast contemporaneously with such proceedings. A fair and accurate report of the proceedings of a committee of a foreign legislature is protected by qualified privilege by virtue of section 24 of the Defamation Act, 1961 and Part 1 of the First Schedule.

McDonald in *Irish Law of Defamation*[9] suggests that Article 15.12 extends an absolute privilege to media reports of utterances in either House of the Oireachtas:

> The privilege applies to all reports of utterances. Article 15.12 does not, it seems, allow any discretion to be made between the various media in which the reports are published. This interesting feature ignores the distinction which is usually made between official and unofficial reports, according to which the former are absolutely protected while the latter enjoy only a qualified privilege. The law, then, is different from that in other jurisdictions, and, so for as unofficial reports of parliamentary utterances are concerned, is a change from the pre-1922 law. All of the media are similarly protected. *So if and when the proceedings of the Houses of the Oireachtas are broadcast, all reports of utterances made therein will be absolutely privileged.* The distinction which the reform bodies seek to make between live sound broadcasts and recorded sound broadcasts—which the former would be absolutely protected while the latter would only enjoy a qualified protection—could not be applied here.

Similarly, in Forde, *Constitutional Law of Ireland*,[10] it is stated that:

> All published reports of what was said in either House and all publications that have been authorised by either House cannot be the subject of a libel action.

[8] What is a fair and accurate report is a question of fact for the jury. See Murphy v Dow Jones Publishing Co (Europe) Inc, High Court, 11 January 1995, Flood J.

[9] Second Edition, pp 123-124

[10] Second edition (1987), p 111.

The contrary view was expressed by some commentators, and Article 15.12 has been interpreted as applying to statements made by members of the Oireachtas in either House and to official reports and publications of either House, with only a qualified privilege extending to reports of parliamentary debates. This is, perhaps, a more cautious and better view of the law. The matter has never been definitively decided upon by the Irish courts but in the opinion of this writer the more cautious approach of bestowing merely a qualified privilege to reports of parliamentary debates is more in line with the qualified privilege which attaches to the reporting of proceedings in the courts of Ireland.

Broadcasting of Irish proceedings

Since around 1990 the proceedings of the Dáil and Seanad have been broadcast on television. These broadcasts take the form of live relays in certain instances, edited highlights both on news and current affairs programmes and specialist programmes such as *Oireachtas Report*.

The recording and relaying of proceedings in the Oireachtas is the responsibility of a broadcasting unit which sells unedited footage to broadcasters (who are responsible for editing it). Proceedings of the Oireachtas are also relayed live 'in-house'. There would be little prospect of bringing any proceedings against a broadcaster and/or the Houses of the Oireachtas in respect of a live broadcast but one could envisage an action being taken in relation to the manner in which footage was edited if, for example, edited footage merely portrayed one side of a debate. As the Houses of the Oireachtas supply the material to the broadcasters unedited, any such claim could not lie against the Houses themselves, but, rather, against the broadcaster.

Repetition outside Parliament—the scope of the protection

The protection afforded to repetition in whatever circumstances outside parliament of words spoken within parliament (and thus covered by privilege) differs from country to country. In most countries, it appears that a Member of Parliament cannot be held responsible for words or votes which are recorded in the official publication of parliament. Opinions are divided, however, on the question of whether a Member of Parliament can invoke privilege when he repeats, in the press or in writing, words he has previously spoken while in parliament. In certain countries, including most Commonwealth countries, the Member of Parliament cannot invoke privilege in such cases[11]. In other countries, protection applies without the

[11] This is the case in Australia, Belarus, Belgium, Canada, Egypt, Estonia, Gabon, India,

restriction. In Ireland, absolute privilege arises only in respect of 'any utterance made in either House' and so a member risks loosing this protection once he is not before a House or a committee thereof.

Protection against proceedings offered in various countries

The degree of protection offered by parliamentary privilege against proceedings also varies significantly from country to another. In some countries privilege is absolute in that all forms proceedings—criminal, civil or disciplinary—are excluded. This is the situation in Belgium, Canada, Denmark, Germany, Egypt, Hungary, France, Italy, Mongolia, Portugal, United Kingdom and Switzerland. The President, Speaker or other bodies of the assembly can, however, apply disciplinary sanctions against any disorder.

In other countries either proceedings for slander/libel and defamation remain possible (Estonia, Greece, Hungary and Mozambique). Elsewhere, privilege only offers protection against civil proceedings but not criminal (for example, in New Zealand and India), while in other countries the reverse is true (Guinea, Slovenia). In Spain parliamentary privilege was extended in 1988 to proceedings before civil courts. This law has, however, been annulled by the Constitutional Court on the grounds of unconstitutionality.

In some countries proceedings can only be entered upon after the preliminary authorisation of the assembly. This is particularly the case in Finland where a majority of 5/6 of the assembly is required to authorise proceedings against a member. In Norway, in contrast, parliamentary privilege does not prevent a member being brought before the Constitutional Court. This Court is composed of members of parliament and of judges from the Supreme Court. The Constitutional Court can convict members of parliament for what are criminal offences. To date the procedure has never been applied.

In South Africa there is a special legislative provision with regard to witnesses. If they have, for the assembly or committees, statements which, according to the Chair, are complete and truthful, they are provided on request with a certificate. This document obliges courts and tribunals to

Kenya, Malaysia, Namibia, New Zealand, Norway, Netherlands, Poland, Czech Republic, United Kingdom, Sri Lanka, and Thailand. Countries where protection applies without restriction include Austria, Croatia, Greece, Guinea, Hungry, Italy, Mali, Mozambique, Portugal, Romania, Slovenia and Uruguay. See 'The Immunities of Members of Parliament', report prepared by Mr Robert Myttenaere (Belgium) 1998.

suspend all civil or criminal proceedings taken against them on the basis of their evidence before the assembly or committee except in instance of perjury.

In most countries, privilege prevents any summons before a court or tribunal and any arrest. This is the case in Belgium, Canada, Chile, Philippines, Gabon, Guinea, India, Ireland, Italy, Kuwait, Republic of Korea, FYR of Macedonia, Malaysia, Namibia, Netherlands, Austria, Poland, Portugal, Slovenia, Spain, Thailand, United Kingdom, Zambia and South Africa.

The European Court on Human Rights upholds parliamentary privilege

As outlined by the Law Reform Commission Report on the Civil Law of Defamation,[12] Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that in civil matters everyone is entitled to a hearing by an independent and impartial tribunal. The question as to whether this right is infringed by parliamentary privilege has been settled in favour of the privilege by case law.

In *X v Austria*,[13] the concept of parliamentary privilege was upheld by the European Court of Human Rights and a challenge to the Austrian form of the privilege was declared inadmissible. A member of the Austrian National Assembly had made certain remarks about the Applicant in the course of parliamentary proceedings. The Applicant brought an action demanding that a withdrawal of the remarks be published in a newspaper, but the action was declared inadmissible on the ground that under Article 57 of the Austrian Constitution a civil action may not be brought against a member of the National Assembly in respect of remarks made by him in the course of proceedings. The Applicant complained to the Court, which said that it was a principle of public law generally recognised in States with parliamentary systems, particularly in States parties to the Convention, that no judicial proceedings be instituted against a Member of Parliament in connection with views expressed by him in fulfilment of his parliamentary functions. This principle had been embodied in Article 4 of the Statute of the Council of Europe in respect of members of the Consultative Assembly. It followed that Article 6(1), which provides that in civil matters everyone is entitled to a hearing by an independent and impartial tribunal, should be interpreted with due regard to parliamentary immunity. The Court upheld

[12] Law Reform Commission Report on the Civil Law of Defamation (1991), p 131.
[13] Application No. 3374/67 (1969) XII Ybk 246.

parliamentary privilege by saying that it was inconceivable that the States party to the Convention wished by means of Article 6 to derogate from the fundamental principle of the parliamentary system, embodied in the Constitutions of virtually all those States.

Parliamentary immunity was again upheld in the case of *Lingens and Leitgens v Austria*[14]. The central issue was the fact that the applicants were required under Austrian law to prove the truth of their allegation. To this end they wished to examine the prosecutor as witness, but they could not do so because of the witness's parliamentary immunity. The Court said:

> "The fact that certain crucial evidence thus remained outside the reach of the court due to the witness's parliamentary immunity cannot, however, be considered as an unfair element in the proceedings because it cannot be assumed that the States party to the Convention wished, in undertaking to recognise the right set forth in Article 6, to make any derogation from the fundamental principle of parliamentary immunity which is embodied in the Constitutions of most States with a parliamentary system".

In the case of *A v the United Kingdom*[15] the Court similarly held that there was no violation *inter alia* of Article 6. A was a United Kingdom national, born in 1971, who lived in Bristol. She was a young black woman with two children. During a parliamentary debate on municipal housing policy in July 1996, A's Member of Parliament named her, stated that her brother was in prison, gave her precise address and made derogatory remarks about the behaviour of both her and her children. He mentioned verbal abuse, truancy, vandalism and drug activity and called the family the 'neighbours from hell', a phrase which was subsequently quoted in local and national newspapers. A stated that none of the allegations referred to by her MP had ever been substantiated or upheld by the investigating authorities and that many of them came from neighbours motivated by racism and spite. Following the MP's speech and the ensuing adverse publicity, she received racist hate-mail.

The MP's statement was protected by absolute parliamentary privilege under Article 9 of the Bill of Rights 1689. The press reports, to the extent that they simply reported the parliamentary debate, were protected by qualified privilege. In other words, the reports were protected by privilege as

[14] ECHR Decisions and Reports, vol 26 at 171.

[15] Application no. 35373/97. See also Malcolm Jack, 'A v the UK in the European Court of Human Rights', *The Table*, 71 (2003), pp 35-40.

long as they were fair and accurate; the protection would be lost if they were published for improper motives or with 'reckless indifference' to the truth.

The Court observed that the parliamentary immunity enjoyed by the MP pursued the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary. It stated that a rule of parliamentary immunity, which was consistent with and reflected generally-recognised rules within Member States of the Council of Europe and the European Union, could not in principle be regarded as imposing a disproportionate restriction on the right of access to court as embodied in Article 6. Just as the right of access to court was an inherent part of the fair trial guarantee in that Article, so some restrictions on access had likewise to be regarded as inherent. The Court observed that victims of defamatory misstatement in Parliament were not entirely without means of redress. In particular, they could, where their own MP had made the offending remarks, petition the House through any other MP with a view to securing a retraction. In extreme cases, deliberately misleading statements might be punishable by Parliament as a contempt. General control was exercised over debates by the Speaker of each House. The Court considered all these factors to be of relevance to the question of proportionality of the immunity enjoyed by the MP in the present case.

It follows that the application of a rule of absolute Parliamentary immunity cannot not be said to exceed the margin of appreciation allowed to States in limiting an individual's right of access to court.

Parliamentary immunity is, therefore, protected by, rather than negated through, the European Convention on Human Rights. The implication of this is that the parliamentary immunity, encompassing defamatory statements, in Article 15.12 of the Irish Constitution, is in conformity with the European Convention.

Jurisdiction: where can one sue and can the judgement be enforced?

The rules for determining where one can sue are laid down, so far as European Union States are concerned, in Council Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters. The regulation replaced the 1968 Brussels Convention on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters, which contained broadly similar rules. The Brussels Convention is implemented in Ireland through the Jurisdiction of Courts and Enforcement of Judgements Act 1993 (as amended).

The general rule of jurisdiction is that persons domiciled in a Member State are to be sued in the courts of that State. There are a number of exceptions in the regulations allowing a plaintiff a choice of alternative State in which to bring an action. In matters relating to tort, a plaintiff can sue either in the State of the defendant's domicile or in the State where the harmful event occurred or may occur.

In *Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA*,[16] (hereinafter the *Bier* case) the European Court of Justice (ECJ) interpreted the Brussels Convention rule and held that the "place where the harmful event occurred" must be understood to "acknowledge that the plaintiff has an option to commence proceedings either at the place where the damage occurred or the place of the event giving rise to it." Thus even though European courts only permit a plaintiff to bring a defamation claim in forums where her reputation was actually harmed, under *Bier*'s permissive rule jurisdiction exists over a defamation claim wherever a publication was read.

The most important and emblematic European decision relating to the choice of law for defamation claims is *Fiona Shevill v Presse Alliance SA*,[17] in which the ECJ specifically applied the reasoning of *Bier* to a defamation context. In 1989 the French newspaper *France-Soir* printed an article accusing an English student of money laundering. Although the student was working in Paris at the time the alleged incident took place, she returned to her native England and brought a defamation suit in the British High Court of England and Wales. The French newspaper disputed whether the British court had jurisdiction because, within the meaning of the Brussels Convention, they argued that "the place where the harmful event occurred" was France and "no harmful event had occurred in England."

The matter was referred to the ECJ, which held that, when a person has been defamed in two or more European Union states, the Brussels Convention allowed the plaintiff to bring a claim wherever her reputation was harmed and the plaintiff was not required to prove damages before bringing suit in a given forum. This meant that, if the plaintiff sued in France, she could claim any and all damages caused to her reputation throughout the European Union. However, she could also elect to bring her claim in England, but would be limited to only damages caused within England.

[16] Case 21/76 [1978] QB 708.
[17] [1995] ECR 1-415.

Shevill, therefore, allows in effect for forum shopping. A number of cases illustrate this. In *Lewis v King*, the English Court of Appeal held that American boxing promoter Don King had permission to bring a defamation suit in England against another American defendant. Even though both parties were domiciled in the United States, the court held that jurisdiction in England was proper because the allegedly defamatory statement had been downloaded in England and the plaintiff claimed an interest in protecting his reputation in England.

More recently, the actor and Governor of California Arnold Schwarzenegger was sued by a British television presenter for making allegedly defamatory remarks in response to accusations about past infidelities. England was a proper forum to hear the plaintiff's claim, since "Internet publication takes place in any jurisdiction where the relevant words are read or downloaded," and the plaintiff had proved that she "has suffered at least some damage" within the forum.

Irish cases

In *Ewins v Carlton UK Television Ltd*[18] the plaintiff sued for libel arising out of two documentary programmes on Irish Republican Army (IRA) activities, made and published by Carlton and disseminated to the public through the British broadcasters ITN, Carlton and Ulster TV, in 1995. Each of the defendants was a British company and entered a conditional appearance challenging the jurisdiction of the Irish High Court.

The plaintiffs in this case argued that the 'harmful event' within the exemption occurred in Ireland and so they were entitled to sue in Ireland. The Court agreed. The programme was broadcast in Britain but was watched by various means within the Irish Republic by an estimated 111,000 viewers. Holding that there was no legal distinction between publication and distribution, in TV or radio programming, where both happened simultaneously, Barr J concluded that a libel was committed on every occasion and in every place where the words were published. Moreover, the original publisher was liable for the repetition and republication by another where such republication was the natural and probable cause of the original publication. Since it was a natural and probable cause, by Carlton's providing the programme to Ulster TV, that it would be seen by a significant number of viewers in Ireland, the judge went on to hold that the harm was done in the State.

[18] [1997] 2 ILRM 223.

The case therefore, established that the plaintiff was entitled to sue the publisher either in the place where the tort is committed or where the defendant was domiciled. Where the plaintiff chooses to proceed in the jurisdiction where the defendant is domiciled then the plaintiff will be able to recover for all damages which he or she has suffered within the jurisdiction of the signatory states of the Convention; if however, the plaintiff chooses to sue in Ireland then the damages will be limited to the damage which the publication caused in Ireland. Having a choice of jurisdictions, the plaintiffs were entitled to choose that which they perceived would be most advantageous for them.

In *Murray v Times Newspapers*[19], the High Court applied *Shevill*. An Irish plaintiff argued that it was entailed to special damages for harm caused to its reputation in the UK caused by an allegedly defamatory newspaper article, published in the UK by a UK domiciled defendant. The High Court (and subsequently the Supreme Court) held that Article 5(3) did not entitle the plaintiff to seek such damages in the Irish Courts. In other words the plaintiffs, having issued their proceedings in this jurisdiction, were limited to claiming for the damage done to their reputations in Ireland only.

A similar conclusion was reached by Kelly J in the cases of *Gerry Hunter v Gerald Duckworth & Co Ltd and Louis Blom Cooper* and *Hugh Callaghan v Gerald Duckworth & Co Ltd and Louis Blom Cooper*[20]. The plaintiffs were two of the 'Birmingham Six', six men sentenced to life imprisonment 1975 for bombings in Birmingham the previous year, whose convictions were subsequently overturned by the Court of Appeal as unsafe in 1991. They argued that statements in a booklet written by the second defendant and published by the first defendant had defamed them. The second defendant contested the jurisdiction of the Irish courts. He argued that he had not authorised publication of the booklet in Ireland and that for a person to be sued in a particular jurisdiction he must have responsibility for the alleged harmful event occurring in that jurisdiction. Kelly J rejected this argument. Given the proximity of the two countries and the high level of interest in the subject in Ireland it was almost inevitable that it would be republished there. The proceedings had been properly brought in Ireland and applying *Shevill* the plaintiffs could seek damages in respect of the alleged harm done to their reputations in Ireland.

[19] [1997] 3 IR 97.

[20] 10 December 1999, High Court (unreported).

Enforcement

The Brussels regulation presumes that a judgement in a civil or commercial matter given by the court of another Member State is to be enforced. Only in exceptional circumstances will a judgement debtor be able to challenge enforcement of a judgment under the regulation. Article 32 defines a 'judgment' as 'any judgment given by a court or tribunal of a Contracting State'. The court asked to recognise a foreign judgment is completely bound by the foreign court's findings of facts.

Article 36 provides that under no circumstances may a foreign judgment be reviewed as to its substance. It cannot be argued that a foreign court made a mistake of fact or law.

Article 39 provides that an initial application for enforcement is to be made to the courts in each Member State listed in Annex II. In Ireland this is the High Court.

It is worth noting that once the plaintiff has established jurisdiction under the Convention, the Court has no power to refuse jurisdiction on the ground of *forum non conveniens*[21], except in extreme cases and to prevent injustice (for example, where the plaintiff is engaging in abuse of process or is guilty of unconscionable conduct). The Court in such circumstances may exercise its inherent jurisdiction and refuse to hear the matter.

A defence to enforcement?

A defence to enforcement is where the judgement is manifestly contrary to the public policy of the enforcing State. There is no definition of public policy in the regulation. The ECJ has stated that this is a very narrow exception—in *Hoffman v Kreig*[22], the ECJ held that the refusal to recognise a judgment based on public policy should operate only in exceptional circumstances.

However, the ECJ has ruled that a judgment which breaches human rights may fall within the scope of the public policy defence: in the case of *Dieter*

[21] The common law doctrine whereby the court refuses to exercise its right of jurisdiction because, for the convenience of the parties and in the interest of justice, an action should be brought elsewhere. Where a dispute arises as to the appropriate forum for litigation and a party seeks a stay in the proceedings, the test to be applied is whether or not justice requires that the action be stayed: Doe v Armour Pharmaceutical Co Inc [1994 SC] 1 ILRM 416 and 3 IR 78. The court will only grant a stay on the ground of *forum non conveniens* where it is satisfied that there is some other available *forum*, having competent jurisdiction, which is the appropriate *forum* for the trial of the action: Jahwar v Betta (Murdoch's *Dictionary of Irish Law*,4th edition, p 477). Livestock 17 [2001 HC] 4 IR 42.

[22] [1998] ECR 645.

Kromback v Andre Bamberski[23] the court stated that to invoke Article 34(1) successfully, there must be a manifest breach of rule of law regarded as essential in the legal order of the enforcing State. The right to be defended (which right had not been afforded to the plaintiff in this case) is a fundamental right deriving from the constitutional traditions common to the Member States. The European Court of Human Rights had ruled that in criminal cases, the right of the accused to be defended by a lawyer is one of the fundamental rights in a fair trial and that a person does not forfeit the entitlement to such a right simply because he is not present at the hearing (which occurred in this case). Thus, an enforcing court is entitled to invoke Article 34 and hold that a refusal to hear the defence of an accused not present at a hearing is a manifest breach of a fundamental right.

Absolute privilege is not a human right, clearly, but it is a constitutional right in Ireland. An argument could clearly be advanced, therefore, that enforcing a judgement against a member of the Houses of the Oireachtas for an utterance which attracts an absolute privilege in the State and in respect of which the jurisdiction of the courts of the land are ousted would amount to a manifest breach of the rule of law of the State. To date, the matter has never been tested.

Conclusion

The question as to whether words spoken in the Oireachtas are absolutely privileged in a foreign jurisdiction is clouded in ambiguity. Putting the problem in perspective one would have to take account of the following real barriers to litigation abroad. First, it would only be possible to sue if a plaintiff could demonstrate damage to his or her reputation in the foreign jurisdiction. In order to do this, he/she must prove a genuinely substantial connection there (such as domicile or substantial financial connection), and therefore a reputation to protect there. This potential scenario must be rated as rare in the context of Oireachtas debates. Members of the Oireachtas (and indeed witnesses appearing before Oireachtas committees) naturally tend to confine any adverse comments to persons who, if they are not permanently living in Ireland, are participating in public life or at least have a substantial connection there. Thus, factually speaking, the probability of the scenario arising must be rated as low in the first instance.

Furthermore even if the problematic scenario were to arise, it would not automatically bring an increased risk of liability. The high cost of pursuing a claim against an overseas defendant would deter all but the most determined

[23] [2000] ECR I-1935.

and wealthy litigants. More fundamentally, a potential litigant would not tend to sue unless the defendant has assets in the foreign jurisdiction, as otherwise it would extremely difficult to enforce the judgement (if any was given).

Particular caution must be exercised in citing the case law of other jurisdictions as the boundary between Parliament's (the Oireachtas') internal proceedings and jurisdiction, and that of the courts, will depend on both the common law and the specific wording of any statue and, in particular the constitution of the relevant country. The risk of suit in another jurisdiction will always exist, but one would hope that a foreign court would recognise some form of defence or privilege.

CONSIDERATION OF LEGISLATION BY AUSTRALIAN SENATE COMMITTEES AND THE SELECTION OF BILLS COMMITTEE

RICHARD PYE
Clerk Assistant (Table), Australian Senate

Introduction

In 1988 the Senate Select Committee on Legislation Procedures reported:

> The reference of more bills to committees on a regular basis has been frequently discussed … It has been seen as a valuable addition to the parliamentary work of the Senate. It has also been regarded as the next step in the development of the committee system and of the system for the scrutiny of legislation.[1]

The committee recommended that 'more bills than at present be referred to committees', and proposed a Selection of Bills Committee 'to make recommendations to the Senate as to which bills should be referred.' The Senate adopted the recommendations of the select committee in 1989, for the first time establishing a routine, central role for committees of the Australian Parliament in the legislative process.

This article charts the development of procedures for the scrutiny of legislation by Senate committees, with a focus on how the recommendations of the Select Committee on Legislation Procedures have fared over the past 20 years.[2]

It concludes that changes of procedure and approach may be warranted to ensure the resources of the Senate and its committees are best marshalled to the effective scrutiny of legislation. Perhaps it is again time to review the legislative processes of the Australian Senate.

[1] Report, Senate Select Committee on Legislation Procedures, 1 December 1988, Parliamentary Paper 398/1988, p 2. Hereafter reference simply as 'Report'.

[2] In doing so, the article draws heavily on a paper by John Vander Wyk, a former Clerk Assistant of the Senate, with Angie Lilley, 'Reference of Bills to Australian Senate Committees, with particular reference to the role of the Selection of Bills Committee', *Papers on Parliament No. 43*, Department of the Senate, Parliament House, Canberra, June 2005.

The evolution of legislative committee processes

The Australian Senate has been nothing if not deliberate in its approach to establishing an effective system of committees and prescribing a role for those committees in scrutinising legislation.

In the early years of the Senate, the standing orders provided only one avenue for the consideration of bills by committees: the opportunity to move an amendment to the motion for the second reading of a bill to refer the bill to a select committee. That provision was said to suffer from the 'unfortunate context' of being placed in the standing orders between provisions calculated to delay or defeat legislative measures.[3] In any case, governments of the day tended to approach any proposed reference of legislation as hostile and no bill was referred under this provision in the Senate's first 30 years.

Almost 80 years ago a select committee—known as the Select Committee on a Standing Committee System—recommended that Senate standing orders be amended 'to facilitate the reference of Bills to a Select or Standing Committee'.[4] The same committee recommended, however, that the establishment of standing committees on bills be deferred until the Senate had more experience of the examination of bills by select committees. That experience amounted to only three bills in the following 40 years.[5]

Almost 40 years ago, in 1970, the Senate established the first incarnation of what has been dubbed the 'modern committee system', comprising 'legislative and general purpose' standing committees alongside committees considering estimates.[6] The then Deputy Clerk of the Senate, R.E. Bullock, traced the impetus for the change to a period of marked select committee activity in the late 1960s:

> This activity had engendered a growing public awareness of the important role played by Senate Committees. The public hearings and reports of these committees brought a realisation that in the sphere of

[3] Vander Wyk and Lilley, p 4.

[4] Report, p xiii; as recorded in Vander Wyk and Lilley, p 4.

[5] Vander Wyk and Lilley, p 5.

[6] Subsequent incarnations of this system are not considered here. The number and membership of these committees varied between 1970 and 1994, when a new structure was implemented: see Dr R. Laing, 'Overhaul of Australian Senate's Committee System', *The Table*, vol 63, 1995. That system was largely unwound in 2006 and replaced with a system of eight legislative and general purpose standing committees, comprising eight senators each and chaired by government senators. These committees consider legislation, estimates and the performance of government agencies, as well general references made by the Senate.

national inquiry, fact-finding and reporting, the Senate was specially equipped to exert a powerful influence for the public good.[7]

The standing committee system broadly followed an option put forward in a paper required by the Standing Orders Committee from the Clerk of the Senate. Among the reasons put forward for establishing the new system was 'the complexity of legislation, which cannot always be satisfactorily considered within narrow parliamentary time-tables'.[8]

Between 1970 and 1989, 29 bills were referred to legislative and general purpose standing committees, with a further 25 bills referred to select committees and one to a joint standing committee—a mere trickle compared with the flood of legislation, with more than 4,000 bills considered during the period, but enough to give the Senate some experience in the use of its committees.

The difficulty in ensuring sufficient chamber time to consider legislation adequately was a key factor in establishing the 1988 Select Committee on Legislation Procedures.

Recommendations of the 1988 committee

The Select Committee on Legislation Procedures was appointed in 1988 to inquire into:

(a) the referral of bills introduced into the Senate to committees for examination of the provisions of the bills;
(b) the allocation of one day each sitting week for meetings of committees to consider bills;
(c) the avoidance of an excessive concentration of bills to be dealt with towards the end of a session; and
(d) any changes to:
    (i) procedures of the Senate,
    (ii) the structure of committees of the Senate, and
    (iii) procedures of committees,

to facilitate the referral of bills to committees, the consideration of bills by committees and the expediting of Senate consideration of bills.

The select committee noted that the 'desire for more effective scrutiny and consideration of proposed legislation [had] not been universally

[7] R.E. Bullock, 'The Australian Senate and its newly-expanded committee system', *The Table*, 40 (1971), p 39
[8] *Ibid.*, p 39.

accepted',[9] but its terms of reference directed it toward considering procedures 'to facilitate the referral of bills' and 'expediting of Senate consideration of bills'. The committee considered it possible to balance these requirements, and put forward a range of recommendations which might achieve those ends.

The committee recommended that 'more bills than at present' be referred to committees, and that a committee—the Selection of Bills Committee—be established to recommend to the Senate which bills be referred, and the time for those committees to report. The committee specifically rejected a regime in which all bills would be automatically referred to committees at a specified stage, noting that a great many bills did not require committee consideration.

The committee recommended that the Selection of Bills Committee comprise the whips of the various parties and groupings in the Senate. This recommendation was varied by the Senate upon adoption, giving the government and opposition parties some choice in their membership beyond their whips (in effect paving the way for executive and shadow front-bench representation).

The recommendations of the Selection of Bills Committee were to be effective upon their adoption by the Senate, by means of limited debate on an amendable motion for adoption. Other methods of referring bills would remain in the standing orders, subject to some new limitations on the length of debate.

The committee recommended that bills be referred to the legislative and general purpose standing committees, as envisaged when those committees were established. The Senate already had in place an order allocating executive portfolios among the various standing committees, making it an easy matter to identify the relevant committee. Upon adoption, this recommendation was amended to allow references also to select committees.

The committee made no recommendations limiting the stage at which bills should be referred; the matters to be considered by committees; or the procedures committees should employ in their inquiries. The committee recommended flexibility in those matters, but made some comments about its expectations, in particular its expectation that bills would 'normally' be referred after their second reading in the Senate, and that committees should 'perform the task for which committees are best suited, the consideration of the details of the provisions of bills.'[10] The approval and amendment of bills

[9] Report, p 3.
[10] Report, p 12.

would remain the prerogative of the Senate, but committees would be competent to recommend amendments.

The committee also made a recommendation that Wednesday be set aside each sitting week for committees to meet to consider bills. The Senate soon substituted Fridays.

The Senate adopted these recommendations, with the variations noted, with effect from the first sitting day in 1990. The new process was immediately successful in dramatically increasing the reference of bills to committee. During the 1970s and 80s, between one and two percent of bills were referred to committees for consideration. Following the adoption of the selection of bills process this quickly rose above 20 per cent and hovered between 30 and 40 per cent in the late 1990s. In the first 12 years of its operations, 80 per cent of all bill references were initiated by way of the Selection of Bills Committee.[11] In 2006, 45 percent of bills were referred to committees, and over 95 percent of those references were generated via the committee.

Selection of Bills Committee—current procedure

The Selection of Bills process is now the main method for referring bills to Senate committees. It facilitates the effective use of the Senate's time by delegating the task of considering whether bills should be referred to committees. The committee considers all government bills and private senators' bills and recommends to the Senate whether each bill should be referred to a committee and, if so, which committee and when that committee should report. The adoption of those recommendations by the Senate triggers the references.

The committee is chaired by the Government Whip, and its membership comprises the (chief) whips of all parties and two additional senators each from the government party and the main opposition party. These usually include the Manager of Government Business (usually a minister, who advises particularly on the government's legislative timetable) and the Manager of Opposition Business (usually an opposition front-bench senator).

The committee generally meets each sitting Tuesday and considers all bills introduced in the previous sitting week or deferred from previous meetings. The committee may meet on other days. This is sometimes done to enable newly-introduced bills to be referred at the earliest opportunity,

[11] See Vander Wyk and Lilley, p 53.

especially in the lead up to lengthy non-sitting periods, to give committees maximum time for inquiries. A shortcoming of this approach is that members may have only limited time to consider bills before references are proposed, and little time to consult.

A table showing extant references to Senate committees and their reporting deadlines is also circulated. Advice on the workload of committees can assist the Selection of Bills Committee in determining the appropriate committee for a reference, or whether additional time might be needed to conduct an inquiry.

Proposals to refer bills are generally made on a standard form. Each proposal includes: the title of the bill to be referred, the proposed committee, a proposed reporting date, reasons for referring the bill (or particular areas of the bill for inquiry), and a list of possible witnesses. These details assist the committee to which a bill is referred, but do not constitute terms of reference.[12]

Any senator may put forward a proposal to refer a bill, although they are usually conveyed by party whips. It is not unusual for proposals to arrive right up to the time the committee is due to meet, and they are occasionally presented for the first time during a meeting.

Bills are typically referred to the standing committee with portfolio oversight for the department that would administer the bill, but may be referred to another committee if it is considered necessary or appropriate. The committee may also recommend that a bill not be referred, or may defer consideration of a bill to its next meeting.

The committee has a non-government majority, but operates in any case on a consensus basis; this has been part of the 'culture' of the committee in recent years, but is underlined by Senate standing order 33 which places restrictions on the private deliberations of committees meeting (as Selection of Bills invariably does) during the sittings of the Senate.

If the committee is unable to resolve any particular detail of a proposal to refer a bill, the committee reports accordingly. It then becomes a matter for the Senate to resolve at the time the report is tabled.

The chair of the committee tables the report, which is circulated to senators in the chamber, and the report, including the details of all proposals considered, is incorporated in Hansard. The chair then moves that the report be adopted by the Senate. Any senator may move an amendment to the adoption motion, including in relation to any matter left unresolved in the

[12] VanderWyk and Lilley, p 16.

committee's report. Typical amendments would seek to fix a disputed reporting date, or to refer a bill on which the committee had been unable to reach agreement.

Each senator may speak to the adoption motion for no more than five minutes and the total debate on the motion may not exceed 30 minutes.

Although the mechanics of the Selection of Bills system have changed little since its inception, it would be fair to say that committee consideration of legislation has not evolved as envisaged by the 1988 committee. While it is easy to point to the dramatic increase in the use of committees to scrutinise legislation, it is less certain that the system has led to greater efficiency in the processing of legislation, primarily because it is not obvious that committee processes have developed as a substitute for—rather than in addition to—chamber processes.

Types of committee inquiry

When discussing the scrutiny of legislation by Senate committees there are, in essence, two very different endeavours imagined.

The first consists of policy examination into a bill, often taking the form of a full length committee inquiry, involving submissions from interested parties and individuals; community consultation; examination of witnesses; and testing claims made by the government with the appearance of relevant officers.

The second consists of examination of the detail of the bill. This might take the form of a replacement 'committee of the whole' stage, though modelled on estimates hearings to permit questions to be asked of officers as well as ministers. The process might also involve senators debating specific legislative amendments and making recommendations in legislative form capable of adoption directly by the Senate.

An inquiry might combine aspects of both approaches.

Traditionally, however, these two endeavours have been conceptually tied to the stage at which a bill has been referred for examination. It should be remembered that the 1988 select committee expected that bills would normally be referred after their second reading. In keeping with those expectations, the early recommendations of the Selection of Bills Committees contemplated bills being referred at the conclusion of that stage. The second reading connotes agreement, in principle, with the policy of the bill and the subsequent referral suggests an examination of the detail—possibly a very technical examination into how the policy is implemented. Senators with long memories occasionally refer to the 'Friday committee system', which

would see such technical examination of a bill occur on the Friday after its second reading, with the report set down on the next sitting Monday.

In fact, the Selection of Bills Committee quickly moved to a situation of recommending the reference of bills at earlier stages—chiefly following introduction in the Senate (but before the second reading debate) or by referring the 'provisions' of bills still before the House of Representatives.[13] The Senate had made clear its preference for this approach by amending many Selection of Bills Committee recommendations to bring forward the commencement of committee inquiries. From 1995 the Committee invariably recommended reference of a bill 'immediately'—well in advance of the second reading of the bills in the Senate, and in most cases in the first sitting week following the introduction of the bill.

This shift had implications for the committee system. With bills being referred in advance of the opportunity for the Senate to consider their policy, the need for longer inquiries became something of a self-fulfilling prophecy. Of course it remains open to committees to hold any type of inquiry they deem appropriate, but it has become rare for legislative committees (given the time) to hold other than wide-ranging policy inquiries. It has become rarer still for committees to consider and recommend specific legislative amendments. The provisions in the standing orders expediting consideration of legislation by the adoption of a committee report in lieu of a committee of the whole stage are essentially inoperative.

The Senate has made clear its preference for the early reference of bills, and for policy-style inquiries.

Conclusion

The move towards legislative scrutiny by Senate committees began with the desire to involve senators more closely in the legislative process and to enable them more systematically to gather information about bills in order to make properly informed decisions about legislation in the Senate.

The utility of committee processes in improving legislation—in general—is now almost taken for granted, but the point is often contested in relation to particular bills. The spectre of 'unnecessary' delay is sometimes raised, and parties are often accused, when both proposing and curtailing committee inquiries, of acting 'politically'. Such debates tend to surround controversial

[13] The practice of referring 'provisions' of bills still before the House has its antecedents in estimates committee examination of 'particulars' of appropriations bills still before the House; see Vander Wyk and Lilley, p 24.

measures, or measures to which political colours have been nailed. This helps underline the fact that committees work best when their members are able to step away from partisan positions.

In order to assess the state of affairs in 2008 it is useful to have a look at what the 1988 select committee was charged with achieving. The terms of reference for that committee required it to consider procedures to facilitate the scrutiny of legislation by committees and expedite the consideration of legislation in the Senate. The select committee doubted that there was adequate time within the Senate's approximately 80 sitting days each year to deal with the 200 bills the Senate was then required to deal with annually.

The number of sitting days has now fallen far below that level, and oppositions and minor parties have complained about this inadequacy, although oppositions—even when in a position to require additional sitting days—have tended instead to accept the sitting pattern handed down by governments. The current position seems to be that additional days and hour will be found as needed, but it has to be doubted that this is conducive to the proper consideration of legislation.

The recommendations of the 1988 select committee led to a successful method of handling most proposals to refer matters to committees, and a shortened process for dealing with disagreements, with only a 30 minute procedural penalty to any government seeking to have its own way with proposed references and timeframes.

While the operation of the Selection of Bills Committee as a 'clearing-house' for committee proposals has proved a success[14] and bills are now generally subject to increased levels of scrutiny, it is suggested that amendments to the selection procedure might warrant investigation.

The inability to refer bills during non-sitting periods can pose difficulties. Where tight legislative timeframes are involved this can require the Selection of Bills Committee to consider legislation not yet (or only just) introduced.

A modest change might therefore include devising a scheme whereby agreed recommendations of the committee might be adopted (and references initiated) during non-sitting periods—avoiding both the need for the committee to make rushed decisions and the loss of extensive inquiry time while bills sit on the table unconsidered. Such a change would also allow better communication with the standing committees themselves as to the need for investigation into individual bills.

The question of the efficiency of the legislative process remains unresolved,

[14] See Vander Wyk and Lilley, pp 45–49 for further discussion.

however. It is difficult to see the Senate reverting to a system of shorter, technical inquiries into the details of legislation while bills are referred immediately upon their introduction, although the procedures remain in place to support that approach.

Nevertheless, there is a case for more considered decision-making about the need for inquiries into bills, the timing of such inquiries and the nature of inquiries. A number of options might be examined, including:

- increased public consultation on bills, perhaps in draft form, might reduce the need for lengthy policy inquiries after legislation is introduced;
- consideration by Senate committees of exposure drafts of legislation might ease tight legislative timeframes later, with the added benefit that senators may be less tied to partisan positions on the legislation;
- bills might generally sit on the table for a longer period before the Selection of Bills Committee makes its recommendation, perhaps with some bills again identified for referral after their second reading.

In addition, it may be that a pilot programme could be devised to assess whether there is scope to revive the standing orders which provide for committees to operate as a substitute for the committee of the whole stage, at least on relatively uncontentious bills.

A more radical solution might be to have all bills, upon introduction, automatically referred to relevant legislative and general purpose standing committee, whose first task would be to determine whether (and to what extent) the bill might require committee investigation. This approach would make explicit the role of each committee in tailoring its work to meet the requirements of particular inquiries. The (government) chair could liaise with the responsible minister about the government's legislative timetable. The Senate or a selection committee would retain overarching responsibility for settling disputes about references and reporting dates.

The committees certainly now have sufficient experience in the consideration of legislation to begin making such assessments and it would be another step in the maturity of the committee system.

DEVOLUTION IN WALES—'A PROCESS NOT AN EVENT'

SIÂN WILKINS
Clerk, Legislation Office, National Assembly for Wales

INTRODUCTION

The former Welsh Secretary the Rt Hon Ron Davies MP referred to devolution in Wales as a 'process not an event'. It has become a hackneyed phrase, but is no less valid or indeed accurate in relation to the Welsh constitutional position.

May 2007 provided the latest step in the 'process' with the enactment of the Government of Wales Act 2006 (hereafter 'the Act') which, among other things, provides a mechanism for legislative competence to be acquired by the National Assembly for Wales and for it to make its own legislation in the form of Assembly Measures.

While some readers may already be aware of the key developments in Welsh devolution, it is perhaps interesting to look back at how the 'process' of devolution took us to the current position.

The road to devolution: a potted history

Although there is no written constitution in the United Kingdom the position in Wales is often referred to as the constitutional 'settlement', and the Act in particular has been referred to as the Welsh 'constitution'. But if there is one thing that is clear it is that the position in Wales has not been and is not settled, not yet at least.

Although the pre-First World War Liberal Government created separate Welsh departments within the Ministries for Education, Agriculture and Health, beginning an incremental process of administrative devolution, the systematic transfer of power from Whitehall to Wales began properly in 1964 with the creation of the Welsh Office under the Secretary of State for Wales. From 1964 the Welsh Office gradually assumed responsibilities over areas in Education and Training, Health, Trade and Industry, the Environment, Transport and Agriculture. Then in 1979 a St David's Day referendum in Wales saw a clear vote against proposals to establish a Welsh Assembly.

In May 1997 a Labour Government was elected with a manifesto commitment of creating a devolved Assembly in Wales. A referendum in September of that year endorsed the proposals contained in the White Paper *A Voice for Wales*[1] for the creation of a Welsh Assembly. The Government of Wales Act 1998, followed, creating a National Assembly for Wales as a single corporate body, with 60 Assembly Members and secondary legislative powers. The elections for the first Assembly were held on 6 May 1999 and the Secretary of State for Wales transferred devolved powers and responsibilities to the Assembly on 1 July 1999.

Assembly Review of Procedure

In July 2000, when the Assembly had been in existence for little more than a year, the First Minister announced that an all-party group would review the Assembly's procedures. It would confine its work to matters that the Assembly could implement itself.

Over 40 recommendations were made in the group's report, many relating to the organisation of Assembly business, and resulting in changes to the Standing Orders. A number of recommendations referred to a need for clarity in the relationship and procedures between Westminster and the Assembly.

In the debate on the report on 14 February 2002 an amendment to the motion was agreed which called for as much separation between the executive and the legislature as was possible under existing legislation. So less than two years after its creation the Assembly began to push the boundaries of the 'settlement' and eschew the corporate structure that was at the heart of the1998 Act.

The Richard Commission

In 2002 the First Minister announced the creation of a Commission to consider the adequacy of the Assembly's powers and its electoral arrangements. Lord Richard was appointed to chair the Commission.

The Richard Commission reported in spring 2004[2] and considered that the *status quo* in terms of the Assembly's powers and relationship with Westminster was not a sustainable basis for future development. It recognised that there had been significant evolution in the Assembly's powers but it had "been an *ad hoc* piecemeal development, on a case by case basis, not

[1] Wales Office, *A Voice for Wales,* Cm 3718.

[2] Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, *Report of the Richard Commission*: National Assembly for Wales, Chapter 14.

founded upon any agreed general policy, or informed by any clear set of devolution principles."

The Commission recommended that the following changes should be made by 2011, or sooner if practicable:

- that there should be a legislative Assembly in Wales (along similar lines to the Scottish Parliament) with primary law-making powers except in reserved matters;
- in the meantime framework delegated powers should be used to expand the Assembly's legislative powers;
- to exercise primary law-making powers, an increase in the number of Assembly Members from 60 to 80;
- that the structure of the Assembly be reconstituted with a separate legislature and executive;
- a move to a Single Transferable Vote system for Assembly elections.

Following an Assembly debate on the Commission Report, a motion was passed which called on the First Minister to "urge the Secretary of State for Wales to amend the 1998 Act to effect a separation between the executive and legislative branches of the Assembly, to reform existing electoral arrangements (to eliminate anomalies) and to enhance the legislative powers of the Assembly".

Better Governance for Wales White Paper

The Labour Party manifesto for the 2005 general election included a commitment that devolution would be further developed to create a stronger Assembly with enhanced legislative powers and a reformed structure and electoral system. Proposals were then put forward in the *Better Governance for Wales* White Paper[3] published by the Secretary of State for Wales in June 2005.

The White Paper only went part of the way in delivering the recommendations made by the Richard Commission but did propose what had been agreed in the Assembly debate; a separation of the executive and legislative bodies, enhanced legislative powers and changes to the electoral system which prevented potential Assembly Members standing in both the constituency and on the regional list. It further proposed a transfer of primary legislative powers over all devolved fields direct to the Assembly at some undetermined point in the future. As this was seen as a fundamental change to the settlement it was considered that it would need a referendum.

[3] Wales Office, *Better Governance for Wales*, Cm 6582.

So the White Paper proposed that to avoid the need for a third Government of Wales Act the second Act would provide for this possibility. This was provided in Part 4 of the Government of Wales Act 2006.

The White Paper also pledged that until the proposals it contained passed into statute the Government would draft parliamentary bills in a way which gave the Assembly wider and more permissive powers to determine the detail of how policies were implemented in Wales. These were referred to as 'framework powers', and gave the Assembly powers to make subordinate legislation. It was envisaged that the use of framework powers would only last until the powers provided for in any new Government of Wales Act came into force.

The Government of Wales Act 2006

The Government of Wales Bill was introduced in December 2005 and received Royal Assent on 25 July 2006. It contained a number of elements.

Separation of the legislature and the executive

The Act created a legal separation between the National Assembly for Wales (the legislature) and the Welsh Assembly Government (the executive) and created a third body, the National Assembly for Wales Commission, to support the legislature. Thus officers of the Assembly Parliamentary Service who supported the legislature ceased to be civil servants and became employees of the Assembly Commission; most of the executive functions previously conferred on the Assembly as a corporate body transferred to Welsh Ministers. This marked a significant departure from the inclusive model of government set out in the 1998 Act and delivered one of the key recommendations of the Richard Commission.

Electoral reform

One of the more controversial issues dealt with by the Act related to electoral reform and addressed the so called, 'Clwyd West problem'. The Additional Member System used in Assembly elections had created a position in the Clwyd West constituency in North Wales where of five people standing only one was elected via the 'first past the post' vote, but the other four had all still become Assembly Members as they were also on the regional list. The Act abolished the system of dual candidacy, so preventing prospective Assembly Members from standing for election in both the constituency and on the regional list.

While many commentators agreed that the problem should be addressed, not everyone agreed with the solution that was adopted. The Richard Commission had recommended adopting a Single Transferable Vote system, arguing that it gave all Members equal status and the same relationship with their constituents, gave all the parties an interest in campaigning in every constituency and increased the possibility of minority interest representation.

Enhanced legislative powers

The Act provides for the Assembly to make its own laws known as Assembly Measures in areas where it has legislative competence. A Measure has similar effect to an Act of Parliament. The Act also makes provision for future 'primary' law-making powers in a wide range of domestic matters subject to a referendum, which in itself can only be triggered by a vote with two-thirds support in the Assembly and simple majorities in the House of Commons and House of Lords (Part 4 of the Act).

Before any move to Part 4 of the Act, the Act provides for the Assembly's legislative competence to be expanded by means of an Order in Council, known as a Legislative Competence Order (LCO). A LCO amends Schedule 5 to the Act by inserting one or more 'matters' (a specific defined policy area) into 'fields' (a broad subject area such as education and training, health and health services).

Despite the Assembly's powers to make Measures, United Kingdom Acts of Parliament will continue to be important vehicles for conferring new or amended executive powers on the Welsh Ministers and can also confer Measure-making powers on the Assembly by amending Schedule 5.

Legislative Competence Orders

The full process for approval of LCOs was not set out in the Act and was the subject of much debate when the Bill went through Parliament. The process is still in its infancy but what was envisaged was a process where the Member proposing the legislation would gain Whitehall clearance for the scope of the powers being transferred and then a 'proposed' LCO would be subject to scrutiny in both the Assembly and Westminster. In the House of Commons scrutiny was expected to be carried out by the Welsh Affairs Select Committee. Joint scrutiny between the Welsh Affairs Select Committee and an Assembly committee was also envisaged at this stage.

Following reports by the respective committees a draft (unamendable) LCO is laid for approval by the Assembly and sent to the Secretary of State

for Wales to be laid before both Houses of Parliament and, if approved, made by Her Majesty in Council. The Act allows the Secretary of State to refuse to lay the draft LCO before Parliament and this was another area which proved controversial during the passage of the Bill with many commentators referring to the Secretary of State's 'veto' over the transfer of powers.

Assembly Measures

The procedures for approving Assembly Measures in areas where the Assembly has legislative competence are set out in the Standing Orders. They follow a four-stage process:

- Stage 1: consideration and report by a specially established committee followed by a vote on the general principles in plenary (the committee part of this stage can be by-passed);
- Stage 2: detailed consideration by committee (by consideration of amendments). This would normally be the committee who carried out the Stage 1 scrutiny;
- Stage 3: detailed consideration by the Assembly (by consideration of amendments);
- Stage 4: approval of the proposed Measure in plenary.

Once approved by the Assembly the Clerk to the Assembly submits the Measure to Her Majesty in Council for approval.

Changes to Standing Orders

The new legislative powers and the separation of the corporate body meant that a complete revision of the Assembly's Standing Orders was necessary. An Assembly committee was set up to consider proposals for the new Standing Orders and using the existing Standing Orders as a base they recommended new Standing Orders which revised the majority of the previous set and made provision for the new legislative procedures.

Elections for the Third Assembly

The elections for the third Assembly took place on 3 May 2007. The results left no party with an overall majority. The Labour party, which had governed in a small minority at the end of the second Assembly, had lost seats and held only 26 of the 60 seats.

Under the provisions of the Act a First Minister has to be appointed by the Queen, on the nomination of the Assembly, within 28 days of the

election or a further election is called. The inter-party talks which followed produced no formal agreement for a coalition before the 28 days and agreement was reached to elect the former First Minister, Rhodri Morgan AM, as First Minister leading a minority administration while talks continued.

Political negotiations continued between all parties, though the numbers involved gave considerable control over the discussions to Plaid Cymru. A nationalist party, one of Plaid Cymru's objectives was to secure a move to Part 4 of the Act which provides for the Assembly to make 'primary legislation'. Only a Labour/Plaid Cymru coalition could promise delivery of the two-thirds majority needed to trigger a referendum and a move to Part 4 of the Act. So at the end of June the leaders of the Labour and Plaid Cymru groups sealed the deal with a handshake on the steps of the Assembly's new parliamentary building, the Senedd, and a nationalist party was in government in Wales.

Using the new powers

Volume of legislation

After the delay in agreement on a Government, the coalition was under pressure (albeit mostly from within and from the media) to use the new powers conferred by the Act. They already had the powers to make Assembly Measures in a small number of areas, gained from powers conferred by UK Acts, and so on 3 July 2007 the NHS Redress (Wales) Measure was introduced in the Assembly.

Two proposed LCOs were also introduced quite quickly. The proposed Education and Training LCO was the first to be introduced and sought to extend the legislative competence of the Assembly in the area of additional learning needs. This was quickly followed by the proposed Environmental Protection and Waste Management LCO. Committees were set up to scrutinise both of these LCOs but as neither had received informal Whitehall or UK Cabinet clearance the Secretary of State did not lay the LCO in Parliament and so the anticipated joint scrutiny between the Welsh Affairs Select Committee and the Assembly Committees could not take place.

To date a further five LCOs have been laid—two of them private Members' legislation, and three Assembly Measures, one of those a private Members' proposal (this private Members' legislation includes proposals from government party backbenchers) . There are also a further four pieces of private Members' legislation in preparation (following success in ballots)

plus one further Measure expected from the Government before they announce their 2008-09 legislative programme in June. So there are currently 15 pieces of legislation in the pipeline or being considered by the Assembly at some stage or other.

Only one LCO has been through the whole process. The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 received formal approval by Her Majesty in Council on 8 April 2008. The first Assembly Measure is expected to complete its passage through the Assembly in May 2008. Two further LCOs are expected to gain full approval before the summer recess.

The legislative process—LCOs

The process for passing legislative competence to the Assembly (by LCOs) has attracted most comment so far. As mentioned above there had been an expectation that the scope of powers to be transferred would have been discussed government to government before a proposed LCO was laid before the Assembly and Westminster. This would enable joint scrutiny between the Assembly and Westminster before a draft (unamendable) LCO was laid before both institutions, followed by a short debate and vote to approve.

To date, only one of the proposed LCOs received 'Whitehall clearance' before the process began, so facilitating joint scrutiny. The others have been introduced in the Assembly and Assembly committees have reported on the Orders, often before the process has even begun in Westminster. This has resulted in some criticism, particularly in the media, that the process is overly complicated and confusing.

Much of the debate in both the Assembly and Westminster has focused on the scope of the powers being transferred. This arises because of the particular settlement in relation to Wales. The definition of scope is also taking place in the abstract because the Welsh Assembly Government, in asking for the powers, does not set out specifically what Measures will be brought forward under the particular powers.

Many in the Assembly consider this to be the right way forward. The transfer of powers is not for one specific purpose, but to extend the legislative competence of the Assembly for all time. This view has not been shared by everyone and it is fair to say that this aspect has attracted much of the media attention.

Whilst there has been some criticism that the process is complicated, there is another view that this is the settlement Wales has and it is best to get on

with the job of extending the Assembly's powers; the political negotiation that is necessary is no different to negotiations that take place between legislatures and executives the world over.

The legislative process—Assembly Measures

In contrast the first Assembly Measure has attracted less interest. The NHS Redress (Wales) Measure 2008 has been through Stages 1 and 2 and is due to be approved by the Assembly in May. It has been subject to scrutiny by a Stage 1 committee and was also subject to scrutiny by the Assembly's newly formed Finance Committee and the Subordinate Legislation Committee.

It became clear from the work carried out by all three committees that the policy and costs behind the legislation were still being developed, and this made the scrutiny extremely difficult. Further difficulty arose because it was very much an enabling piece of legislation, providing wide regulation-making powers for Welsh Ministers to introduce redress arrangements in the NHS in Wales. Stakeholders and Assembly Members found it difficult to identify what the legislation was actually aiming to deliver. Constitutional commentators also criticised the fact that the first piece of legislation to be considered by the Assembly effectively just handed the Measure-making powers to Welsh Ministers.

Despite some criticism of the approach taken by Welsh Ministers the Assembly's new procedures for scrutiny of Measures have been tested on a largely uncontroversial piece of legislation and have been seen to work.

Conferring legislative competence by other means

When the Government of Wales Bill was being debated the LCO process was seen as the primary way in which legislative competence would be transferred to the Assembly and the use of framework powers was seen as an interim solution. Initially the framework powers were used to confer executive functions on Welsh Ministers, however, this process has further developed into powers within UK Acts to give the Assembly Measure-making powers. Matters have been added to Schedule 5 to the Act through a number of UK Acts[4], and another three bills introduced in the 2007-08 session propose further Measure-making powers.[5] The Wales Office website

[4] The Education and Inspection Act 2006, the NHS Redress Act 2006, the Further Education Act 2007 and the Local Government and the Public Involvement in Health Act 2007

[5] The Education and Skills Bill, the Local Transport Bill and the Planning Bill.

says that the UK Government remains committed to this process as a way of conferring enhanced legislative competence on the National Assembly for Wales, alongside the new Order in Council process.

This raises the issue of scrutiny. While many have referred to the complicated process for passing LCOs, it does enable scrutiny of the proposals for new powers by both the Assembly and both Houses in Westminster. Powers conferred via UK Acts of Parliament allow scrutiny by Westminster but there is no formal process for the Assembly to comment on the scope of the powers being devolved. It is also not clear how many of the powers being devolved are at the request of the executive or just at the behest of Whitehall departments. Whilst a mechanism for discussion on future powers conferred in this way may exist, it is government-to-government, and therefore not transparent. It also raises the question of where the drive is coming from for the development of Welsh devolution.

What next for the 'process'?

The 2006 Act has propelled the devolution process forward providing a mechanism for the transfer of further powers and the future provision for primary law-making powers. Part of the *One Wales* agreement signed by the coalition partners was to "proceed to a successful outcome of a referendum for full law-making powers under Part 4" of the Act. The coalition Government has set up an all-Wales Convention to prepare for a referendum giving full law-making powers to the Assembly, but it is not expected to report until late 2009, and a referendum before the next Assembly elections in 2011 is therefore unlikely. In the meantime, what are the issues for the third Assembly and beyond?

A two-track process for the transfer of powers has evolved, through the LCO process (at the Assembly's request) as well as through UK Bills, a situation which was not fully appreciated when the Government of Wales Bill was being debated. By which process are the majority of the Assembly's new powers likely to come?

How will the Assembly and the Assembly Government handle the change of perspective that has been created by the separation of the corporate body into a legislature and the executive—a move from a local government model in 1999 to a parliamentary model in 2007?

How will the legislature handle its new function of scrutinising legislation as well as holding the Government to account without the increase in Members recommended by the Richard Commission?

It is worth noting that a recent report by the Institute of Welsh Affairs, *Time to Deliver*[6], concluded that the main thrust of policy-making in the third term of the Assembly (2007-11) will be accomplished within the powers the Assembly already had before the 2006 Act was passed. Recommendations made by the Institute in respect of policy which should be implemented demonstrate "that in only a few cases do the proposals suggested require changes in the law".

But the public will be more demanding than commentators on constitutional matters and it will be deeds not words that will be the measure of the Assembly and the Assembly Government's success. Ultimately it will be the public who will decide when the Assembly is ready to take the next step in the 'process'.

[6] Institute of Welsh Affairs, *Time to Deliver: The Third Term and Beyond, Policy Options for Wales*. November 2006.

DILATORY AMENDMENTS IN THE HOUSE OF LORDS

CHRISTOPHER JOHNSON
Clerk of the Journals, House of Lords

Introduction

Many recent contributions to *The Table* have highlighted the progress made by parliaments around the Commonwealth both in reviewing procedures themselves, and at the same time rewriting rules of procedure and standing orders with a view to making the language used more modern, clear and user-friendly. In Westminster, particularly in the House of Lords, such modernisation is challenging, both because the procedures are in large part governed not by written rules but by conventions and practices in some cases dating back centuries, and also because within the self-regulating tradition of the House changes to procedure can only be agreed by consensus, often after long debate. The recent example of a change to the procedure for opposing bills on second reading typifies these challenges.

Until 2007, Members of the House of Lords wishing to oppose the second reading of a bill were able to choose from three alternative procedures set out in the *Companion to the Standing Orders*:

- an amendment to the motion 'that this bill be now read a second time', to leave out 'now' and at end insert 'this day six months';
- a 'reasoned amendment', i.e. an amendment setting out the reasons why the House declines to give the bill a second reading;
- negativing the motion 'That this bill be now read a second time'.

The change made in 2007 concerned the first of these options, the dilatory 'this day six months' amendment. Such dilatory, or 'hoist' amendments, used not only in the Lords, but in the House of Commons, and in other Commonwealth parliaments, appear ostensibly to be delaying tactics, but in reality their effect is always fatal. The *Companion* continues: 'The agreement of the house to any of the [three alternatives] means automatic rejection of the bill. The question as amended is not put, and the bill is removed from the list of bills in progress.'[1] The dilatory amendment was in fact for many years the

[1] See *Companion to the Standing Orders and Guide to Proceedings of the House of Lords*, 2007 edition, paragraphs 7.36-7.37 (referred to hereafter as *Companion*).

normal vehicle for giving notice on the order paper of opposition to a bill at second reading. Its origins can be traced back some 300 years.

History: the 18th and 19th centuries

The first House of Lords 'dilatory motion' on second reading that this author has identified occurred on 4 July 1713. The Journal record is as follows:

> "Whereas this Day was appointed, for the Second Reading of the Bill, intituled, 'An Act for the Ease of Sheriffs, in the Execution of their Offices, and in passing their Accompts:'
>
> It is Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That the said Bill be read a Second Time on this Day Fortnight."[2]

The effect of this Order can be judged by the fact that the Session was formally prorogued by Queen Anne on 16 July—the postponement of the second reading had the effect of preventing any further progress on the Sheriffs Bill that session. At the same time, it is impossible to reconstruct from the Journal record the form that the proceedings themselves took, whether there was debate, whether what would now be considered an amendment to the original motion that the Bill be read a second time was moved, and so on. The form of the final Order, appointing a day for second reading, was the same as that customarily used to appoint a time for a stage of the bill.

It is also impossible to know why a dilatory form of words was used at the second reading of this particular bill, instead of the simple rejection of second reading that was much more common in the early eighteenth century. One possible explanation is that the intention was to delay, and that the fatal effect of the postponement was accidental rather than deliberate.

An alternative explanation, perhaps more plausible, is that simply negativing the second reading motion would not have prevented the second reading being retabled the next day or shortly thereafter. The current convention, as set out in the *Companion*, is that "it is contrary to the practice of the House for a Question once decided to be put again in the same session".[3] However, the use of these words in the *Companion* dates back only to the 1980s, and it is unclear what the practice of the House was in earlier times. In fact one of the earliest editions of the *Companion* held in the Journal

[2] House of Lords Journal, 19, p 596, 4 July 1713.

[3] *Companion*, paragraph 5.43.

Office, dating from 1862, in describing the procedure at second reading, states that "If the Motion for Second Reading be objected to … and the Question be carried in the negative, The Effect is not to throw out the Bill but simply to postpone its Second Reading".[4] In other words, by specifying the period of delay, the indeterminate postponement achieved by negativing the original motion was turned into a delay that was decisively fatal.

However, the practice of the early eighteenth century is unclear. To take an extreme example, a bill "for securing the Freedom of Parliaments, by limiting the Number of Officers in the House of Commons" was passed by the Commons and sent to the Lords early in1709; on 9 February the Question was put, "whether this Bill shall be read a Second Time", it was resolved in the negative, and the bill was "rejected". The bill did not reappear that session, but in February 1710 a bill of the same title was received from the Commons, and again suffered straight rejection at second reading. Only in a third session, on 29 February 1711, did the bill gain a second reading, only for the question that the bill shall pass to be negatived. On 17 April 1714 a bill of the same title fell yet again at the final hurdle.[5] In other words, at each stage in this long-running dispute between the two Houses the negativing of a stage of the bill—whether second reading or passing—was clearly interpreted as meaning either that the motion could not be brought back in the same session or, possibly, that there was simply no point doing so. It was not until a new session, and the reintroduction and passing of the bill in the House of Commons, that the proceedings in the Lords resumed.

Whatever the original reason for the use of a dilatory amendment to the second reading motion, its fatal effect quickly became apparent. In the Journal index of the period, dilatory motions are listed under the heading 'proceedings upon bills put off, so as to drop them', and this paradoxical characteristic of dilatory motions—that while their ostensible effect was merely to delay the passage of legislation, their practical effect was fatal—became firmly established in House of Lords procedure as the century progressed.

At the same time, sessions of the period were shorter and less predictable in timing than today, and the amount of delay specified in dilatory motions varied accordingly. For instance, on 18 June 1773 the House ordered that a Bill for 'the better Preservation of the Game, by limiting the time for killing and destroying of Hares' should be 'read a second time this Day Two Months'. The two month interval on this occasion seems to have been

[4] *Companion to the Standing Orders of the House of Lords* (1862), p 103.

[5] House of Lords Journal, 19, pp 62, 211, 389, 661.

carefully calculated—Parliament was prorogued on 1 August, and the Bill did not reappear that session.

By the final decades of the eighteenth century, dilatory motions on second reading substantially out-numbered straight rejections. They were commonly adopted as a means to defeat controversial legislation. For example, on 2 May 1794 the House considered the Slave Trade Abolition Bill. The Journal reads:

> "The Order of the Day being read for the Second Reading of the Bill, intituled, 'An Act for abolishing the Trade carried on for supplying Foreign Territories with Slaves;' and for the Lords to be summoned:
>
> It was moved, 'That the said Bill be read a Second Time on this Day Three Months:'
>
> Which being objected to;
>
> After Debate,
>
> The Question was put thereupon?
>
> It was resolved in the Affirmative.
>
> ORDERED, that the said Bill be read be read a Second Time on this Day Three Months."

Parliament was prorogued on 11 July, and there were no further proceedings on the bill. On 3 July 1804 another attempt to abolish the slave trade was defeated by the same procedural device, a 'this day three months' dilatory motion at second reading. It was not until February 1807 that yet another bill to abolish the slave trade successfully completed its progress through the House of Lords, following debate and opposition at every stage of its progress. It finally became law as the Slave Trade Act on 25 March of that year.

As the eighteenth century progressed parliamentary sessions became longer and their timing more predictable. In 1737 the session was opened on 1 February, and continued until prorogued by King George II on 21 June—less than five months. Forty years later, the 1779-80 session was opened by King George III on 25 November 1779, and prorogued on 6 July the following year—more than seven months—while by the early nineteenth century a regular pattern was established of sessions typically lasting six months, from January to July. The 1829 session for instance, was opened on 29 January and prorogued on 28 July.

This is the background against which it became normal practice within the House of Lords for the delay specified in dilatory motions to be six months—in other words, precisely the interval that would, in a typical session, be guaranteed to ensure that no further progress could be made on a bill.

The first instance of a bill being ordered to be read a second time 'this day six months' seems to have occurred on 6 April 1810. The bill in question was a private bill 'for rendering valid a Marriage heretofore solemnized between *Thomas Hotchkins* Esquire and *Mary Ann O'Brien*'. The reasons for the bill's introduction, and for its rejection, are unknown, though private bills to enable or confirm marriages between individuals within the prohibited degrees of kinship were common at the period, and this may have lain behind Hotchkins' Bill. But following the bill's defeat, the six months interval became increasingly well established in House of Lords procedural convention, and within a few years dilatory amendments were being deployed in debates on the most controversial and important legislation of the period.

Thus on 16 April 1821, the Order of the Day was the second reading of a bill 'to provide for the Removal of certain Disqualifications under which His Majesty's Roman Catholic Subjects now labour' (the 'Roman Catholic Disabilities Removal Bill'). The motion that the bill be now read a second time being objected to, it was moved to 'leave out ("Now") and insert ("this Day Six Months")'. After 'long Debate', the House resolved to adjourn until the following day, when the dilatory amendment was agreed to.

In addition to the fact of the dilatory amendment, the proceedings on the Roman Catholic Disabilities Removal Bill illustrate other points of procedural interest. The first procedural curiosity (at least compared with contemporary practice) is that although the debate was on an amendment ('to leave out ("now") and insert ("this Day Six Months")'), the first question put, and resolved in the negative, was 'whether the Word ("now") shall stand Part of the Motion'. Only once this had been resolved in the negative was the amendment agreed to and the order that the bill be read 'this day six months' made.

The second point worth noting, which underlines the heat of the argument, is the fact that seven Members of the House registered a formal 'Dissent & Protest' against the amendment—a procedure permitted by a Standing Order dating from 1642, and still in force today, though not used since the 1950s:

> "60. Such Lords as shall make protestation, or enter their dissents to any votes of the House, as they have a right to do without asking leave of the House, either with or without their reasons, shall enter and sign their protestation or dissents in the Clerk's book not later than the next sitting day."

The protest of the seven Members was reprinted in full in the Journal, and contained a forceful argument in favour of Catholic emancipation.[6]

Catholic emancipation was the burning issue of the day, a long-drawn-out process that began in the 1770s and which culminated, despite periodic outbreaks of civil disorder such as the Gordon Riots of 1780 and Irish unrest in the 1820s, with the successful passage of the Catholic Relief Act of 1829. This bill, like its predecessor, was subject to a dilatory amendment, but this time, following a three-day debate, the original motion that the bill be now read a second time was agreed on 4 April 1829. Further protests, this time by opponents of emancipation, are recorded in the Journal. Although the Prime Minister, the Duke of Wellington, made a celebrated speech in the bill's defence—and had fought a duel against an opponent who had accused him of destroying the Protestant Constitution less than a fortnight earlier—his party was split by the measure, and the Tory government fell the following year.

Dilatory amendments were also an essential procedural tool in the process of reform that Lord Grey's Whig government initiated in the early 1830s. The first Reform Bill, abolishing many of the 'rotten boroughs' and reassigning seats in Parliament to the major urban centres that had sprung up in the wake of the industrial revolution, was introduced in 1831, but failed in the House of Commons. Parliament was dissolved and, following an overwhelming Whig victory in the General Election, a second Reform Bill ('an Act to amend the Representation of the People in *England* and *Wales*') was introduced, passing the Commons by a large majority.

This time trouble came in the Lords: a dilatory amendment was proposed at second reading, on 3 October 1831, and when the long debate finally ended on 7 October the dilatory amendment was agreed to by a majority of 41, with 75 peers, including the Prime Minister Lord Grey, registering dissent in the Journal. Riots followed across the country, and following a rapid prorogation and State Opening, another Reform Bill was introduced in December. Once it reached the Lords another dilatory amendment was proposed at second reading. This time the debate lasted from 9 April until 13 April, when the House finally resolved that 'the Word ("Now") shall stand Part of the Motion'. Formal protests were once again recorded in the Journal, this time with Wellington's name at the top of the list.

Although the procedural manoeuvres of the opponents of reform were not finished—amendments to the bill at Committee stage precipitated a

[6] House of Lords Journal, Volume 54, p. 355.

constitutional crisis and an imminent prospect of revolution in May—the King's threats to flood the House with new Whig peers finally overcame opposition, and the Reform Act was granted Royal Assent on 7 June 1832.

These various examples demonstrate the gradual increase in the delay expressed in dilatory motions, from the short two-week delay of the early eighteenth century, to six months by the time of the Reform Act 1832. From this point on, three or six-month intervals remained in common use. Admittedly in the mid-nineteenth century, when early editions of the *Companion* were prepared, six months seems to have been preferred, with the 1862 edition stating that the "usual Amendment moved" is "To leave out the Word (*now*) for the purpose of inserting (*this Day Six Months*)".[7] However, three months was also used on occasion, and later editions of the *Companion* give three and six months as alternatives[8], though over time six months increasingly became the normal interval, until in the final decades of the twentieth century reference to three months was finally dropped from the *Companion*.

Elsewhere, in the House of Commons, where dilatory amendments had evolved upon similar lines, three and six months also remained accepted alternatives, the former "usually employed in a normal session after Whitsuntide".[9] And in the Canadian House of Commons the effect of the "hoist amendment" is described by Robert Marleau and Camille Montpetit as being "to postpone the reading for three months or six months".[10] But whereas in the House of Commons in Westminster the dilatory amendment was only "tantamount to rejection of the bill, *if the session extends beyond the period of postponement*" (my emphasis), both in the House of Lords and in the Canadian House of Commons the effect seems to have been uniformly fatal, regardless of the time left in the session.

In summary, the consolidation of the dilatory amendment in House of Lords procedure in the eighteenth and nineteenth centuries was probably in part the natural consequence of longer and more predictable sitting patterns, itself just one aspect of the development of a more mature, organised system of government. This consolidation also reflected the

[7] *Companion to the Standing Orders of the House of Lords* (1862), pp 103.

[8] For instance, see the *Companion* (1972 edition), p 101.

[9] *Erskine May*, 19th edition (1976), p 498. In later editions of *Erskine May* the dilatory amendment has progressively been described as "unusual" and, in the most recent edition, where it is relegated to a footnote, "obsolete".

[10] Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice* (2000); *see* http://www.parl.gc.ca/marleaumontpetit/DocumentViewer.aspx?DocId=1001& Sec=Ch16&Seq=6&Lang=E#fnB188.

evolution from what may originally have been, if not a genuine delaying tactic, then at least a flexible, pragmatic alternative to straight opposition to the motion for second reading, varied according to the amount of time left in the session, into a conventional formula for expressing clear opposition to the principles underlying a particular bill.

Modern times

The parliamentary calendar remained relatively constant through the remainder of the nineteenth century, with the State Opening normally taking place in February and prorogation in August. In the early twentieth century it gradually became more common for the session to spill over into the autumn, though even as late as 1928 Parliament reverted to the traditional six-month cycle, with State Opening taking place on 7 February and prorogation on 3 August. However, following the 1929 general election, which resulted in the Labour party for the first time gaining the largest number of seats, the six-month cycle disappeared, and in the 1930s the modern parliamentary calendar, with an autumn State Opening (most commonly in November) following closely on the heels of Prorogation, became firmly established.

However, in the House of Lords, as in the Commons, the "this day six months" motion was by now so firmly established that it survived the changes in the parliamentary calendar, even though its ostensible effect—a six-month delay—was in many cases no longer adequate to prevent proceedings on a bill from resuming in the same session. To give an example, on 25 March 1969 the Earl of Cork and Orrery moved, as an amendment to the motion that the Voluntary Euthanasia Bill [HL] be read a second time, an amendment 'to leave out ("now") and insert ("this day six months")'. The amendment was agreed to and, in accordance with the rules set out in the *Companion* and quoted at the start of this article, the bill was immediately removed from the list of bills in progress—even though Session had a further seven months or so to run.

This example is typical. The Voluntary Euthanasia Bill [HL] was a private Member's bill, touching on a highly controversial ethical issue, and with the party whips not getting involved it was relatively easy for opponents to succeed in defeating it. Indeed, of the 38 instances of dilatory amendments at second reading which were voted on between 1967 and 2007, records of which are kept in Journal Office files, all but six affected private Members' bills. It was a private Member's bill on the same theme, euthanasia, that was the catalyst for change to this venerable procedure.

The Assisted Dying for the Terminally Ill Bill [HL]

The Assisted Dying for the Terminally Ill Bill [HL], described in its long title as 'A bill to enable a competent adult who is suffering unbearably as a result of a terminal illness to receive medical assistance to die at his own considered and persistent request; and to make provision for a person suffering from a terminal illness to receive pain relief medication', was first introduced by its sponsor, Lord Joffe, on 8 January 2004. The motion for second reading was debated on 10 March, and was agreed to on the understanding that instead of proceeding in the normal manner the bill would be committed to a Select Committee for detailed examination.

The Committee on the Assisted Dying for the Terminally Ill Bill conducted a detailed inquiry, in the process handling enormous quantities of correspondence and evidence, and published its report over a year later, on 4 April 2005[11]. The Report, while not coming down either for or against the principles underlying the Bill, made various recommendations concerning the contents of the Bill. A general election intervened, but the Report was ultimately debated on 10 October 2005, and shortly after this, on 9 November, the Bill was reintroduced.

When the second reading motion was finally tabled, on 12 May 2006, a Liberal Democrat Member, Lord Carlile of Berriew, duly put down a dilatory amendment. The debate took place on a Friday, not normally a busy day, but the level of interest was such that the normal sitting time, then 11 o'clock, was brought forward to 10 o'clock in the morning. After a heated seven-hour debate, the dilatory amendment was agreed to on division, by 148 votes to 100—an extraordinary turn-out for five o'clock on a Friday.

There was widespread confusion, both before and after the vote, as to the effect of the amendment. The House of Lords Information Office, which handles general enquiries, was asked not only by members of the public, but Members of the House, journalists and others, questions along the lines of 'what happens in six months', and 'does this mean that the bill becomes law in six months'? This confusion was also apparent in the debate itself: one former Lord Chancellor is on record in the Hansard report as stating that "the question is whether the Bill should be allowed to proceed or whether it should be postponed, as proposed by the amendment of the noble Lord, Lord Carlile."[12]

[11] Select Committee on the Assisted Dying for the Terminally Ill Bill, Report with Evidence (Session 2004-05, HL 86): see http://www.publications.parliament.uk/pa/ld/ldasdy.htm.

[12] HL Deb., 10 May 2006, col 1277.

The Procedure Committee

It was clear following these events that 'this day six months' had become a source of misunderstanding, and in October 2007 the Clerk of the Parliaments, Sir Paul Hayter, put a paper before the House of Lords Procedure Committee proposing that the formula be replaced by a less ambiguous form of words. His proposal was that in future Members wishing to oppose the motion for second reading should table an amendment to the second reading motion, to leave out 'that this Bill be read a second time' and insert 'that this House declines to give the bill a second reading'.

Discussions within the Procedure Committee showed that support for the change was far from unanimous. The main reason advanced in support of the Clerk of the Parliaments' paper was simply that the procedures of the House should, in the words of a well-known advertisement, 'do what they say on the tin'. A formula implying delay should only be used if delay was the desired the result; if on the other hand members wished to defeat a bill outright, the words used should be explicit and comprehensible. Essentially the argument, which will be familiar to colleagues around the Commonwealth, was that procedures should be expressed in plain, simple language.

The main argument advanced for the retention of 'this day six months' was that the indirectness of the words, the fact that they did not explicitly convey the rejection of a bill, presenting the House with a stark either/or choice, actually made it more likely that members would use the procedure. It was also argued that such indirectness was appropriate to the House of Lords, as the secondary, revising chamber. Finally, there was a more straightforwardly conservative view, that the procedure was still in regular use, and that no compelling argument had been presented for change.

Nevertheless, the majority of the Procedure Committee supported the proposal by the Clerk of the Parliaments, and the Committee reported its recommendation to the House accordingly.

The debate in the House

The Procedure Committee's report was debated on 26 November 2007. Alongside the motion to agree the report, an amendment was tabled to leave out the paragraphs of the report relating to 'this day six months'. The amendment was tabled by Lord Denham, one of the longest-serving Members, who first entered the House as a hereditary peer at the age of 21 in 1948, who served as Government Chief Whip from 1979-91, and who

was subsequently elected as a Conservative hereditary peer under section 2 of the House of Lords Act 1999.

Moving his amendment, Lord Denham made an eloquent and unashamedly conservative defence of the existing procedure, at the same time expressing his opposition to the trend to modernisation:

> "We have many procedures that a passion for modernisation and political correctness might react against instantly, without consideration of the fact that these are tried and tested ways of doing our job. I confess to great affection for, and loyalty to, them. Others may feel differently. I suggest that these procedures make your Lordships who and what we are, and often they gather meaning as time goes by.
>
> To revert to the 'this day six months' amendment, I believe that its apparent ambiguity, that people find perfectly easy to understand, represents something of the essence of how your Lordships continue to exercise your function as a revising Chamber against another place's habitual and sometimes slightly brusque determination to have its way. And if we let this one go, where and when will the modernisers strike next?"

He then described some of the many changes since he joined the House almost 60 years earlier, commenting that "all this happened without changing the essential atmosphere of the House, good will, good manners, good humour and good faith on all sides of the House". This continuity he attributed in part to the "mystique" of the House's procedures, the "respect for our procedural mysteries". He concluded, "we tamper with this at our peril".

In the debate that followed, Lord Denham's views gained little or no support. Most of the speakers were also members of the Procedure Committee, and supported its recommendation. At the conclusion of the debate, Lord Denham, in view of the lack of support expressed for his amendment, had no choice but to withdraw his amendment, and the report was duly agreed to.

Conclusion

The events described above amply illustrate the practical obstacles in the way of the modernisation of House of Lords procedures. But they also raise a more fundamental point. It could certainly be argued that the history of the 'this day six months' amendment, insofar as one can read motives into the bare bones of journal records, gives some qualified support to Lord

Denham's view that procedures may in some circumstances derive their utility not from the fact that they are clear, decisive or comprehensible, but from the fact that they are mysterious or confusing. It does appear to be the case that the peers of the eighteenth century found it more congenial to 'put off bills so as to drop them' rather than express direct opposition. Only over a period of years will it become clear whether Members of today's House of Lords, faced with the decision whether or not to oppose a bill by means of an overtly fatal amendment to the second reading motion, will be reluctant to present such a stark, yes-or-no choice to the House.

MISCELLANEOUS NOTES

AUSTRALIA

Senate

Effect of government majority

Items in previous issues of *The Table* referred to the Liberal/National Party Government gaining a majority of one seat in the Senate in the general election of 2004, with effect from 1 July 2005. This was the first occasion of a government party gaining a majority in the Senate for 24 years, and is a rare occurrence in modern times. Reference was made to the deleterious effect of the majority on the accountability of Government to Parliament[1].

In the general election of October 2007, the Liberal/National Party government lost office and also lost its majority in the Senate. From 1 July 2008 the new Labor Government will be in a minority in the Senate, and no party will have a majority, the 'normal' situation of the Senate in modern times.

The defeat of the Government was widely attributed in part to its majority in the Senate, in particular, to its use of that majority to pass radical industrial relations legislation which proved to be extremely unpopular. A minister in the former Government stated that the Senate majority was a 'poison chalice' which contributed to its defeat. This has given rise to a new axiom of political wisdom: a Senate majority is bad for a Government.

In expectation of the election result, a comprehensive study was undertaken of the effects of the government majority on the functioning of the Senate. The conclusions of the study were unsurprising, and may be summarised as follows.

The Government used its majority to pass legislation in the form it wanted, without having to compromise with other parties. Some Government amendments were made to bills in the Senate to overcome problems revealed by Senate committee inquiries, and a few amendments moved by non-government senators were accepted, but basically the Government controlled the legislative process.

[1] See *The Table*, 75 (2007), pp 89-93; 74 (2006), pp 69–74, 169; 73 (2005), pp 84–85.

Senate inquiries were restricted. The matters referred to Senate committees for inquiry were overwhelmingly on government-friendly subjects. Some non-government proposals for inquiries slipped through, and some inquiries led to not entirely government-friendly results, such as a review by the Finance and Public Administration Committee of the public finance system[2]. The Government also used its majorities on committees to determine the course of inquiries which committees were able to initiate themselves. The system for referring bills to committees was retained, but committees were frequently given unrealistically short times for such inquiries, and non-government bills were denied referral to committees. Motions for the return of documents were almost always rejected. The thrice-yearly estimates hearings, which are general inquisitions into all and any government activities, continued, but there was a noticeable increase in refusals by ministers and officers to answer particular questions. Often such refusals were made without raising any recognisable public interest grounds.

As with control of legislation, this control of Senate inquiries may well have rebounded on the Government and contributed to its defeat. Before the Government gained its majority, the Senate conducted an inquiry into a scheme called the regional partnerships program, which basically involved handing out parcels of money to local authorities and private organisations for regional development projects. After gaining its majority, the Government was able to ignore the committee's conclusion that there were serious accountability and governance problems with this program. This led to an inquiry by the Auditor-General. Unfortunately for the Government, this inquiry resulted in a report demonstrating that the problems with the program were even greater than the Senate committee had uncovered. Under a procedure whereby documents may be presented to the Senate when it is not sitting, the Auditor-General presented the report a week before polling day, to the great embarrassment, and, no doubt, electoral damage, of the Government. It would have been better for the Government if the revelations about the program had occurred earlier. The Auditor-General was criticised by outgoing ministers for releasing the report before the election, but he robustly defended the legality and propriety of his action at the following round of Senate estimates hearings.

The final conclusion of the study is that governments, in their own interests, should not avoid parliamentary accountability. The study may be found on the Internet at http://www.aph.gov.au/Senate/pubs/evans/15692/index.htm.

[2] See *The Table*, 75 (2007), pp 9-16.

Financial accountability

One likely result of the change of Government is that the new administration will pay more attention to the report of the Senate Finance and Public Administration Committee on the failings of the public finance system. The incoming Labor government committed itself when in opposition to greatly improving the transparency and accountability of public finance. As part of this policy, it has engaged a distinguished non-government senator, Senator Andrew Murray, of the Australian Democrats, to perform a review and prepare a report on the subject. As Senator Murray was a participant in the Finance and Public Administration Committee's inquiry, and has a long history of expertise and interest in public finance, hopes are high for genuine reform.

Scrutiny of bills before they appear

The Senate has long employed a procedure for allowing its committees to scrutinise bills before they have actually been received by the Senate, by referring the provisions of the bills to a committee. This formula also has the advantage that, if the Senate chooses to do so, it may proceed with the bill while a committee is still examining it, because the bill is not actually sent off to the committee.

To this procedure another, allowing even earlier scrutiny of bills, has been added. In several instances the Senate has given a committee the task of reviewing draft legislation or actual bills which appear in a particular subject area. So, for example, a reference to a committee may ask it to inquire into and report on "any bill or draft legislation published by a minister or by any senator relating to … or for the purpose of" and so on. When the draft legislation or bill appears, the committee is able to commence its inquiry immediately, and is also able to prepare for the inquiry in expectation of the appearance of the relevant document.

"Private inquiries"

The Australian Democrat senators held a 'private inquiry' on their bill relating to entitlements of same-sex partners after the Government refused to allow the reference of the bill to a Senate committee. A 'private inquiry' occurs when a group of Senators conduct their own inquiry into a matter, sitting in a committee room and hearing evidence from witnesses and compiling a report in the same manner as a Senate committee. The disadvantage of this type of inquiry is that it is not constituted as a Senate

committee, the proceedings do not have the full protection of parliamentary privilege, and facilities available to Senate committees, such as transcripts, are not available unless the senators provide them from their own resources. The Democrats conducted a similar inquiry in 1992 in relation to tariffs in the textile, clothing and footwear industries. On that occasion they also tabled their report in the Senate. The report arising from the recent inquiry was tabled by leave on 20 September 2007.

New South Wales Legislative Assembly

An independent Speaker and constitutional change

Section 31 of the Constitution Act 1902 (NSW) sets out a number of provisions regarding the Speaker and states that the Speaker, as Presiding Officer of the Legislative Assembly, "is recognised as its independent and impartial representative". However, it has been the longstanding practice that the majority party nominates one of its own Members to preside. Unlike the practice in the United Kingdom where the Speaker resigns from their political party upon election, the Speaker in the New South Wales Legislative Assembly is able to maintain political allegiances.

Given the longstanding practice in New South Wales, the announcement by the Premier that he had offered the Speakership to a non-aligned Independent Member was a surprise to many. The Government holds 52 of the 93 seats in the Legislative Assembly so did not require all of its members to vote on the floor of the House to maintain a majority. Rather, in making the appointment, the Premier said he wished to lift the perception of Parliament and improve the standards of Members in the House.

Mr Richard Torbay, who was first elected in 1999, was duly elected as Speaker of the Legislative Assembly, unopposed and unanimously, on 8 May 2007.

The election of an Independent Member as the Speaker raised a number of issues related to the representative nature of our democratic system. In particular Mr Torbay was of the view that he should be able personally to advocate the interests of his electorate in the House. Unlike a Speaker who is a member of a party, an Independent Member cannot ensure that party colleagues will raise issues on behalf of the Speaker's constituents. The problem was exacerbated by new Standing Orders that had dispensed with the Committee of the Whole procedure, where the Speaker could participate in debate and cast a deliberative vote while the Chairman of Committees was presiding.

While the Speaker could exercise a casting vote in the event of an equality of votes, advice received from the Crown Solicitor indicated that an amendment to the Constitution Act 1902 (NSW) was required to enable the Speaker to participate in debate and exercise a deliberative vote when not presiding in the Chair.

In contrast, since 1978 the Act has enabled the President of the Legislative Council, or other Member presiding, to participate in any debate or discussion, which may arise in the Legislative Council (section 22G(6)). The Legislative Council's Standing Orders also provide that "The President or Deputy President may take part in any debate, but they must speak from the floor of the House and address the House generally."

The absence of such a provision in the Act regarding the Speaker's participation in proceedings of the Legislative Assembly indicates that the legislature intentionally dealt with participation in debates by the President and the Speaker differently.

The arguments for an amendment to the Constitution Act 1902 (NSW) included:

- The Speaker is a Member of the Legislative Assembly elected by his or her constituents to represent them. If the Speaker is unable to participate in debate on the floor of the House the office holder is denied a right to represent these constituents.
- The Speaker has lost any ability to cast a deliberative vote in the House. Under the previous Standing Orders of the Legislative Assembly the Speaker could participate in the proceedings of the committee of the whole and could exercise a deliberative vote in any division held in committee when the Chairman of Committees was presiding in the Chair. Under the current Standing Orders, adopted by the House in November 2006 and approved by the Governor in February 2007, the Committee of the Whole has been dispensed with and all proceedings now occur in the House.
- The situation could not be resolved by adopting a standing order, as this would have been *ultra vires* with regard to the Constitution Act 1902.

In June 2007 both Houses accordingly passed the Constitution Amendment (Speaker) Act 2007. The legislation provides for the Speaker when not presiding to (a) take part on any debate or discussion, and (b) vote on any question arising in the Legislative Assembly (section 31(4) of the Constitution Act 1902).

The legislation also amended section 32 of the Act regarding the Speaker's casting vote and quorum of the House. The amendment clarified

that the Speaker could only exercise a deliberative vote or be counted towards a quorum on those occasions when a Member other than the Speaker was presiding. The provision sought to uphold the independency and impartiality of the role and function of the Member presiding.

The opposition supported the bill, recognising the unique situation of having a non-aligned member as the Speaker. However, the opposition did move an amendment, which was not carried, that would have limited the provisions enabling the Speaker to participate in debate and cast a deliberative vote to the current Parliament only.

Opposition speakers on the bill also sought assurances from the Government that, if the Speaker proposed to participate and vote on a bill, the chair would be taken by a Government member rather than one of the opposition temporary speakers. The Government did not make any assurances but on one occasion when the Speaker voted in a division on a bill an opposition member was presiding (see below).

Since the amendment was made to the Constitution Act 1902 (NSW) the Speaker has made seven private members' statements (one each week) and voted in two divisions. The Speaker voted against the Standard Time Amendment (Daylight Saving) Bill (a Government bill, and an opposition temporary speaker was presiding); and on another occasion, the Speaker voted with the ayes on the Rural Communities Impacts Bill (a private members' Bill, and a Government member was presiding).

Child conduct declarations by candidates seeking election to Parliament

In November 2006, prior to the 2007 general election, in response to the resignation of a Member, the Parliamentary Electorates and Elections Amendment (Child Sexual Offences Disclosures) Act 2006 (NSW) was passed. The minister when introducing the Bill in the Legislative Assembly stated that the:

> "legislation will ensure that politicians are transparent about their backgrounds so that the community has adequate information when it votes as to whether the candidate will meet community expectations in relation to the protection of our young people."[3]

Under s 79 & s 81B of the Parliamentary Electorates and Elections Act 1912 (NSW), candidates for election to either House are now required to submit a child-related conduct declaration to the Electoral Commissioner

[3] New South Wales Parliamentary Debates (Hansard), 15 November 2006, p 4065.

together with their nomination form. A candidate's nomination will not be valid without the declaration.

Section 81L provides that the declaration will cover whether or not the candidate has ever been convicted of the murder of a child, or a child sexual offence, or criminal proceedings for such an offence have ever been commenced against the candidate, regardless of whether the candidate was not convicted or any conviction was subsequently quashed on appeal, and if a relevant apprehended violence order has ever been made against the candidate. It is an offence for a candidate to make a declaration knowing it to be false, or not believing it to be true. The offence, punishable by five years' imprisonment, would result in any elected candidate being disqualified from their seat, pursuant to s 13A of the Constitution Act 1902.

Pursuant to s 81N, following an election, the Commission on Children and Young People will conduct an audit of the declarations. The Commission must then present a report on the result of the audit to the Presiding Officer of the respective House of the members concerned.

Therefore, in relation to child-related conduct, rather than leaving it to the House to adjudge whether certain conduct is unworthy of a Member of Parliament and then possibly expelling the member, both Houses have made it clear, in legislation, the expected standards expected required of candidates. Further the Houses have delegated to an outside body the function of conducting the audit of the declarations and checking the criminal records of the elected candidates.

Following the 2007 general election, the Commissioner reported under the provisions of the Act that the declarations of all elected Members were in order. However, subsequent mention was made of the difficulty and attendant delay in obtaining certain records of the elected candidates. Accordingly in late 2007 an amendment was passed to provide for a new provision, section 81NA, making it the duty of a prescribed person to provide the Commission on Child and Young People "with full and unrestricted access to records" for the purpose of the audit. Prescribed persons are defined as the Registrar or proper officer of a court, the Commissioner of Police, persons holding a statutory office prescribed by the subsequent regulations (which may include the clerks) and certain persons employed under the Public Sector Employment and Management Act 2002 (NSW).

Amendments to the legislation governing the disclosure of interests by members and the Code of Conduct for Members

In 2007 amendments were made to the legislation requiring members to disclose their pecuniary and other interests, and also to the Code of Conduct for Members regarding secondary employment.

Members of the New South Wales Parliament are required to disclose their pecuniary and other interests in accordance with the Constitution (Disclosure by Members) Regulation 1983 (NSW). The scheme has been a key mechanism to address any potential conflict of interest between a member's public and private interests. The pecuniary interests to be disclosed include:

- real property;
- sources of income;
- gifts;
- contributions to travel;
- interests and positions in corporations;
- positions in trade unions and professional or business associations;
- debts; and
- dispositions of property.

The scheme was amended in 2007 to broaden the categories of pecuniary interests to be disclosed by members. Members must now disclose information about any service they provide to a person or to that person's clients, that involves the use of the member's parliamentary position, if they are receiving payment for this service.

In addition to the new category of interests the scheme was amended to require members to submit disclosure forms twice a year instead of annually. The requirements are now as follows:

- new members are required to lodge a primary return setting out their pecuniary interests within three months of the date they take the pledge of loyalty in accordance with section 12 of the Constitution Act 1902 (NSW);
- a re-elected member is not required to make a primary return;
- all members are required to lodge an ordinary return for the prior financial year before 1 October each year, unless a primary return has been lodged after 30 April that year;
- all members are required to lodge a supplementary ordinary return by 31 March each year in relation to the period 1 July to 31 December for the

previous year or, in the case of new members, who have previously lodged only a primary return, the period from the date of the primary return to 31 December of the previous year.

The amendments introduced in 2007 also provide for members to make discretionary returns, when and if they consider it appropriate to do so. Discretionary returns may contain such disclosures as the member wishes to make concerning any or all of the matters that are required or permitted to be disclosed in an ordinary return.

The Code of Conduct for Members was also amended in 2007 to include provisions regarding secondary employment of Members of Parliament. When the Code of Conduct was adopted for the commencement of the 54th Parliament in May 2007 a new provision was included regarding secondary employment of members. This followed a number of concerns about the adequacy of the provisions of the Code regarding members' consultancies and work conducted whilst a member. The new provision provides that:

"Members must take all reasonable steps to disclose at the start of a parliamentary debate:
(a) the identity of any person by whom they are employed or engaged or by whom they were employed or engaged in the last two years (but not if it was before the Member was sworn in as a Member);
(b) the identity of any client of any such person or any former client who benefited from a Member's services within the previous two years (but not if it was before the Member was sworn in as a Member); and
(c) the nature of the interest held by the person, client or former client in the parliamentary debate.

This obligation only applies if the Member is aware, or ought to be aware, that the person, client or former client may have an interest in the parliamentary debate, which goes beyond the general interest of the public.

This disclosure obligation does not apply if a Member simply votes on a matter; it will only apply when he or she participates in a debate. If the Member has already disclosed the information in the Member's entry in the pecuniary interest register, he or she is not required to make a further disclosure during the parliamentary debate."

In addition the provision regarding bribery was also amended in June 2007. The provision in the Code of Conduct regarding bribery previously stated: "Members must not promote any matter, vote on any bill or

resolution, or ask any question in the Parliament or its Committees, in return for payment or any other personal financial benefit."[4]

In June 2007 both Houses amended the provision regarding bribery to include reference to a member's family and associates, and to more effectively link it to the Independent Commission Against Corruption Act 1988. The provision now provides:

> "(a) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which the member has received, is receiving or expects to receive.
> (b) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which any of the following persons has received, is receiving or expects to receive:
> (i) A member of the Member's family;
> (ii) A business associate of the Member; or
> (iii) Any other person or entity from whom the Member expects to receive a financial benefit.
> (c) A breach of the prohibition on bribery constitutes a substantial breach of this Code of Conduct."

The inclusion of clause (c) making bribery "a substantial breach" of the Code links it to the provisions of the Independent Commission Against Corruption Act 1988, section 9 of which provides that certain conduct by ministers or members only amounts to corrupt conduct if it constitutes "a substantial breach of an applicable code of conduct."

Queensland Legislative Assembly

Local government reforms

Some of the most controversial legislation considered in 2007 was in relation to local government reform. Over the course of the year local government

[4] This provision had been amended by the Legislative Assembly during 2006 to provide: "A member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for payment or any other personal financial benefit." This amendment was however not adopted by the Legislative Council.

reform had been the subject of much debate including legislation, litigation, petitions and motions.

The Local Government and Other Legislation Amendment Bill was introduced into the Queensland Parliament on 28 November 2006. The object of the Bill in its original form related primarily to the conduct of local government elections. However, during the debate on 18 and 19 April 2007, amendments were moved during consideration in detail to establish the Local Government Reform Commission (LGRC), whose role it was to consider future boundaries and possible amalgamation of local government areas. Speaker Reynolds allowed reference to these amendments during the second reading debate on the Bill on the basis that "the amendments are so significant that it would be unreasonable and almost impossible to not allow reference to the proposed amendments". These amendments followed the tabling on 19 April 2007 of the Auditor-General's report to Parliament regarding local government audits.

On 24 May, prior to the LGRC reporting, two opposition members and a number of opposition staff took part in a protest, during which placards and red bras were placed on the fence of the parliamentary precinct. Speaker Reynolds sought an explanation from the members, and on the next sitting day (5 June) Mr Speaker ruled that after consideration he would not refer the matter to the Members' Ethics and Parliamentary Privileges Committee.

The LGRC reported to the Queensland Government on 27 July 2007. The LGRC recommended that the number of local councils be reduced from 157 to 73, with effect from 15 March 2008, when the next local government elections will be held.

On 7 August 2007 the Local Government Reform Implementation Bill was introduced. This bill sought to implement the recommendations of the LGRC, including the reduction in the number of local authorities, the names of the new amalgamated councils and the number of councillors in each council. Prior to the bill's introduction a motion was moved to declare it urgent to allow it to pass through all its stages during that week's sitting. The motion was carried following a relatively short but emotionally charged debate.

Amendments moved during consideration in detail of the bill allowed for the minister to take action against councils which sought to conduct referendums regarding the local government reforms. Again there was highly emotional debate on the bill. By way of example, the opposition spokesperson moved an amendment seeking to replace the short title of the bill with the title 'Local Government Community Destruction Bill'. The

debate on the bill commenced at 11.44 am on 9 August and ended just after 4 am on 10 August. With the House finally rising at 4.39 am, this was the longest sitting day in over 20 years.

Following the passing of the bill, the Federal Government introduced the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill on 16 August to allow for polls regarding local government reforms to be conducted by the Australian Electoral Commission.

Legislation regarding local government reform in Queensland was not over yet, and on 22 August the Local Government Amendment Bill was introduced. This bill sought to remove certain provisions which prevented councils from conducting polls in relation to local government reform.

Before the debate on the Local Government Amendment Bill, the Local Government Amendment Regulation (No. 2) was notified in the Queensland Government Gazette. The regulation partly repealed a provision of the Local Government Act 1993 (Qld), which had been amended by the Local Government Reform Implementation Act 2007 (Qld). While different in its approach, the regulation, like the Local Government Amendment Bill, sought to repeal the provisions preventing local governments from conducting polls.

The Local Government Amendment Regulation (No. 2) was tabled in the Queensland Parliament on 4 September. Notice of Motion to disallow the statutory instrument was given the same day. The motion was debated on 5 September. The validity of amending an Act by regulation was debated during the disallowance motion, but the motion failed. The Scrutiny of Legislation Committee also considered this issue in its Report No. 33 tabled on 12 October, noting that:

> "In accordance with fundamental legislative principles, subordinate legislation should have sufficient regard to the institution of Parliament, be clear and precise in effect, and be made within the scope of the relevant power/s to make regulations."

The final sitting day of the year, 15 November 2007, saw the Local Government Amendment Bill debated as part of a cognate debate, which was declared urgent to enable the Bills to be passed that day. While the Bill was only a few pages long, 46 pages of amendments had been proposed by the opposition for the consideration of the bill in detail. However, a number of amendments were ruled out of order by Speaker Reynolds as they had already been moved and defeated during the consideration of earlier legislation.

Application for an injunction regarding the Local Government Reform Implementation Bill 2007

The Local Government Reform Implementation Bill 2007 (see above) was the subject of an application in the Supreme Court of Queensland on 9 August 2007. The application sought a declaration pursuant to s 78 of the Constitution of Queensland 2001 (the Constitution) that the Bill would have no effect as an Act if assented to in contravention of s 78 of the Constitution.

The bill was introduced into Parliament and the second reading commenced on 7 August 2007. The applicants in the proceedings (Queensland electors) were concerned that the other stages of the bill might be undertaken quite quickly and filed the application—which also sought an interim injunction preventing the Clerk of the Parliament from presenting the bill to the Governor for assent in contravention of s 78 of the Constitution—as an urgent matter.

Argument primarily focused on the construction of s 78. Section 78(1) specifies that s 78 applies for a bill for an act ending the system of local government in Queensland. Section 78(2) provides:

> "The Bill may be presented for assent only if a proposal that the system of local government should end has been approved by a majority vote of the electors voting on the proposal."

There had been no such vote regarding the proposals in the subject bill. Section 78(6) provides:

> "An elector may bring a proceeding in the Supreme Court for a declaration, injunction or other remedy to enforce this section either before or after the Bill is presented for assent."

It was argued on behalf of the Clerk of the Parliament that there was no purpose in granting an injunction (even on an interim basis) if the applicants could not show that the bill was a bill for an act ending the system of local government in Queensland.

Her Honour, Mullins J, noted that a consequence of the bill, if enacted, would be to reduce the number of local government areas (city, town and shire) from the 157 local government areas then existing to 73 local government areas. Thirty-seven existing local government areas would be unaffected by the bill. The bill established a new class of local government area (a 'region'). The argument of the applicants was that a 'region' was a distinctly different concept to the regime of cities, towns and shires.

Mullins J declined the application. In her judgment, she stated:

> "The Bill amends the Local Government Act 1993. It leaves the fundamental system of local government in place. It changes the detail of that system in the sense of enlarging a number of local government areas but the system of having a number of local governments in Queensland remains intact.
>
> I do not accept the argument of the applicants that changing the detail of the current system amounts to ending the system of local government in Queensland. That is why I would refuse the application for the interim injunction."[5]

Parliament of Queensland Amendment Bill 2007

On 7 February 2007, the (then) Premier and Minister for Trade introduced the Parliament of Queensland Amendment Bill 2007. The Bill provided that members who ceased being a member during a period for which allowances had been paid, would be required to repay the unserved portion of the allowances.

The issue arose during the 2006 State general election campaign when it became publicly known that members who had not recontested their seats, or who were not returned at an election, were not required to repay these allowances under the provisions of the *Members' Entitlements Handbook* (a document administered by the Government). The allowances represented a significant sum, as a number of allowances had been paid in advance in July for a six month period and the election was held in September (the election had been due around February 2007, but the Premier called it early).

Following the election, the Premier sought to amend the *Members' Entitlements Handbook* (the handbook) and directed the Clerk of the Parliament to write to Members seeking reimbursement for the unserved portion. Some members repaid the allowances voluntarily, while others maintained that the retrospective changes to the handbook should not apply in the circumstances. It was for this reason that the Premier sought, as part of an election commitment, to introduce the retrospective legislation in order to legally force members to repay the allowances.

The legislation, passed on 21 February 2007, provides that members are liable to repay the unserved portion of allowances paid, where the member

[5] The judgment, Berado & Anor v State of Queensland & Anor [2007] QSC 214, is published on the Internet at: http://archive.sclqld.org.au/qjudgment/2007/QSC07-214.pdf.

concerned ceases to be a member during the period. Interest is also payable on any amount outstanding after six months. Similar provisions retrospectively apply specifically to members not returned at the September 2006 election.

The handbook now includes the requirement for members to repay the unserved portion of allowances received where members cease holding their seat during the specified period. The handbook also requires that allowances paid to members in the twelve months preceding an election should be paid in quarterly rather than half-yearly or yearly instalments. In the past, the administrative practice had been to write to the Premier seeking advice regarding the payment of allowances in instalments in the twelve months preceding an election.

Unusual parliamentary event—Auslan sign language interpretation of question time

In support of National Week of Deaf People, the Queensland Parliament invited members of the deaf community to Parliament House to observe question time on 17 October 2007. For the duration of question time, interpreters from Deaf Services Queensland were in the public gallery providing an Auslan (Australian sign language) interpretation of the proceedings.

The Speaker welcomed members of the deaf community using Auslan, two members used Auslan to ask questions without notice and the Premier used Auslan in an answer to a question without notice.

Changes to procedure—acknowledgement of traditional owners

On 22 May 2007 (the anniversary of the first sitting of the Parliament of Queensland) the Speaker introduced to the proceedings an acknowledgement of the traditional owners of the land upon which the Parliament is assembled and the custodians of the sacred lands of the State of Queensland. The Speaker has adopted this practice each sitting day since then.

On the same day, the Speaker was joined by the President of the Brisbane Council of Elders and a representative of Torres Strait Islanders in hoisting the Aboriginal flag and the Torres Strait Islander flag at the front gates of Parliament House. The flags are now flown each day in front of Parliament House together with the Australian flag and the Queensland flag. All four flags are also positioned behind the Speaker on the Speaker's podium inside the Legislative Assembly Chamber.

Tasmania House of Assembly

Title of Members of Parliament

The Joint Select Committee on the Working Arrangements of Parliament considered the forms of address and titles given to Members of Parliament. It had been reported that there was some confusion in the community as to the forms of address particularly for members of the House of Assembly. Apparently the letters MHA (Member of the House of Assembly) were also used for various other designations including Master of Hospital Administration.

The Committee accordingly recommended that all Members of the House of Assembly be addressed as MP and that all Members of the Legislative Council retain their title of MLC (PP No. 22 of 2007).

The report noted that every State in Australia with the exception of Western Australia had moved to the use of the term MP, which is well understood. Federal Members of the House of Representatives also use the title MP. Over recent years the use of MP for lower house members has developed as a preference, rather than being a hard and fast determination, although MHA was generally used before the name of the Member. All upper houses in Australia have retained the traditional acronym.

On 22 November 2007 the following resolution was passed in the House of Assembly:

> "That the House implements the recommendations of the Joint Select Committee on the Working Arrangements of Parliament in Report 16, Titles of Members of Parliament, that all members of the House of Assembly be addressed as MP".

Thus 151 years of usage of the title MHA came to a conclusion.

Victoria Legislative Assembly

Application of the Charter of Human Rights and Responsibilities

The Parliament passed the Charter of Human Right and Responsibilities Act in 2006. The act seeks to promote and protect human rights in Victoria. In 2007 the provisions relating to new bills came into effect. All members introducing bills are required to prepare a statement of compatibility in relation to the bill stating that the bill is compatible with rights articulated in the Charter and, if it not, the extent and nature of the incompatibility. The member introducing the bill is required to table the

statement of compatibility at the time they deliver the second reading speech on the bill.

On a practical level, the statement is circulated in hard copy to members in the chamber and incorporated into the Hansard transcript. Over the course of the year, statements of compatibility became more detailed—in some cases longer than the second reading speeches—and proved a useful tool for members in interpreting the bill's purposes and effects.

The Scrutiny of Acts and Regulations Committee, in addition to scrutinising all bills introduced into Parliament to determine whether any rights and freedoms are unduly limited, administrative power unnecessarily delegated, or executive power insufficiently subjected to legislative scrutiny (see section 17 of the Parliamentary Committees Act 2003 for the Committee's functions) now also has an obligation under section 30 of the Charter. The committee is required to determine whether any bills introduced, or regulation made, is incompatible with human rights. Members of both Houses have found the committee's rigorous analysis and reports to the Houses on the Charter to be valuable. In August 2007 the committee issued a practice note to assist Government legislation officers in preparing statements of compatibility.[6]

Increase in committees and membership

As noted in the last edition of *The Table*, the 56th Parliament opened in 2006 a fortnight before Christmas. The first sitting week was largely ceremonial, with legislative and government business held over until the first sitting weeks in 2007. In March, members were appointed to the eleven joint investigatory committees that had existed in the 55th Parliament, and to the Electoral Matters Committee which, while established under statute in the previous Parliament, had not been set up. This was unanticipated as the decrease in Government members had created an expectation that committee numbers could be reduced in the 56th Parliament. Twelve joint investigatory committees—as well as growing numbers of select committees in the Legislative Council—is a high-water mark for the Parliament.

The Government introduced legislation to change the names of two committees more accurately to reflect their focus, which had changed over time, and to increase the membership of the Public Accounts and Estimates Committee from nine members to ten. Legislation was passed to increase the additional salary paid to the chairs of the Scrutiny of Acts and

[6] Available online at http://www.parliament.vic.gov.au/sarc/Practice_Notes/Practice_note_2.htm.

Regulations Committee, and the Public Accounts and Estimates Committee, and provided for the deputy chairs of those committees to receive an additional salary.

Move to 55 St Andrews Place

Like many Parliaments built in the eighteenth century, the Victorian parliamentary workforce outgrew its physical environment many years ago. Parliamentary committees, and many of the business units in the Department of Parliamentary Services, have been located in office buildings in Spring Street in the East Melbourne area. In 2006, the Department of Justice vacated a four-storey building across the road from the back gate of Parliament House, at 55 St Andrews Place. Funding was made available in the 2006–07 state budget to facilitate the refurbishment of the building, and the relocation of parliamentary officers not housed in the main building. The Department of Treasury and Finance, the agency with ultimate responsibility for the building, were keen that it be refurbished and fitted out for Parliament in keeping with sustainable design principles, and that efficient energy use be a feature of the building. In June 2007, after a significant amount of work, all parliamentary officers not accommodated in Parliament House moved in to 55 St Andrews Place.

The benefits of the building include its close proximity to Parliament House, the purpose-built committee meeting rooms on the ground floor, and bringing the previously-dispersed staff groups closer together.

Victoria Legislative Council

New Sessional Orders: general

As noted in previous volumes of *The Table*, the 55th Victorian Parliament (February 2003 to October 2006) saw the introduction into the Legislative Council of a large number of Sessional Orders (many of which were adopted as standing orders from the commencement of the 56th Parliament in December 2006) to regulate the length of debates and other proceedings. This occurred through several methods, including time limits; restrictions on the number of speakers; use of a Government Business Program; and somewhat tighter restrictions on the length of General Business. These procedural reforms represented a dramatic shift from the Council's previous practices.

With the 56th Parliament comprising a Legislative Council that the Government no longer controlled, much of the previous regulation was

overturned. These changes commenced on 28 February 2007 when the Leader of the Opposition in the Council moved a motion during General Business to adopt Sessional Orders which, amongst other things, altered the Council's order of business; provided for the extension of General Business on Wednesdays past the previous limit of three hours (if desired); removed all time limits with the exception of those applying to statements by members, statements on reports and papers, and procedural motions; and suspended all Standing Orders in relation to the government business program. In some cases, such as the abolition of time limits, the new Sessional Orders were initially introduced on a trial basis until 30 August 2007.

The new Sessional Orders also provided for sittings of the Council not to proceed after 8 pm on any evening that the Legislation Committee was meeting or on Thursday mornings if a Council select committee wished to meet (in the latter case, the House could determine otherwise). By the end of 2007, such suspensions of the Council's scheduled sittings had not been required.

The opposition's motion to change the Sessional Orders was accepted along with relatively minor amendments moved by the Government and the Greens. In the latter case, this included a Sessional Order establishing the right to ask questions without notice of Council ministers regarding the portfolios of Assembly ministers they were representing. This related to the frustration felt by the Greens in particular that they were restricted in the questions that they could ask. Of course, establishing the entitlement to ask such questions via the Sessional Order did not ensure that they would obtain an answer containing the type of response that they were seeking.

Further significant reforms to the Sessional Orders were agreed to on 21 November, following lengthy debate (which stretched over two sitting weeks). These changes encompassed the following:

- The establishment of a Sessional Order concerning responses to matters raised during the daily adjournment debate which was very similar to existing procedures for unanswered questions on notice. As a result, from the first sitting day in 2008, ministers would be required to either provide a response to the matter at the time it was raised or, if it needed to be referred to another minister, the response should be provided in writing within 30 calendar days. If this did not occur, and the minister did not provide a satisfactory explanation as to why, an explanation could be sought by the member in the House. At the conclusion of this explanation,

the member could move a take note motion or, if an explanation was not forthcoming, notice could be given of a motion (taking precedence) regarding this failure. In essence, although this procedure could not force a minister, who might in fact be an Assembly member, to provide a response to an adjournment matter, it did draw greater attention to this inaction.

- Commencing in 2008, question time would occur at midday rather than 2 pm on all sitting days other than Tuesdays. This would mean that it would be held at a separate time from Assembly question time (which remained at 2 pm), enabling greater attention to be focused on Council question time.
- Most significantly of all, the new Sessional Orders provided for a Standing Committee on Finance and Public Administration, which was required to have its first meeting no later than 7 April 2008.

New Sessional Orders: production of documents

On 14 March 2007, a Sessional Order in relation to orders for the production of documents was introduced into the House by the Leader of the Opposition. This outlined the procedures to be followed when the Council wished to obtain government documents. Broadly, the Sessional Order encompassed the following:

- the Clerk was to advise the Secretary of the Department of Premier and Cabinet of all orders for documents made by the Council, with the date by which the documents were required being specified;
- once the documents were received, they were to be tabled by the Clerk or, if the Council was not sitting, they could be published by authority of the Council;
- if executive privilege was claimed, a description of the document, as well as the reasons for claiming privilege, were required. Although this would prevent the document(s) from being published, it would still have to be delivered to the Clerk and the mover of the motion that required its production could still review the document;
- the mover also had the right to dispute the claim of executive privilege, in which case the matter would be evaluated and reported on by an independent legal arbiter appointed by the President and of the rank of Queen's Counsel, Senior Counsel or a retired Supreme Court judge.

Although the motion for this Sessional Order was agreed to by the House, with only Government members in opposition, the Leader of the Government in the Council, Mr John Lenders, had earlier that day

requested that the President obtain legal advice concerning the constitutional validity of the procedures outlined in the motion. The Government argued that this Sessional Order went beyond the scope of the Legislative Council's constitutional powers.

At the commencement of the next sitting week, the President advised the Council that he and the Clerk would be obtaining appropriate legal advice. On 6 June an opinion on the matter prepared by Mr Bret Walker SC[7], was tabled. Mr Walker's clear advice was that the new Sessional Order concerning the production of documents did not infringe or stray outside the Council's constitutional powers.

The first use of the Sessional Order was in September 2007 when the Council agreed to a motion proposed by the Leader of the Opposition, requiring certain documents relating to a Public Lotteries Licence tendering process to be tabled in the Council. The motion followed requests by the Select Committee on Gaming Licensing for the documents to be provided to the committee, which were refused by the Government. The resolution for the production of the documents was agreed to with the support of all 21 non-Government members, with the 19 Government members voting against the motion. In accordance with the Sessional Order, the Clerk communicated the request to the Secretary of the Department of Premier and Cabinet.

In response to the request, the Attorney-General wrote to the Clerk advising that the documents would not be produced, citing two main grounds.

- Firstly, the Attorney-General stated that it was the Government's view that the documents were protected by executive privilege. The Attorney-General argued that the Council's powers, which under the Constitution Act 1975 are based on those held by the House of Commons in 1855, do not extend to requiring the production of documents that fall within the scope of executive privilege and, therefore, it was not within the Council's competence to make the Sessional Order under which the documents were requested.
- Secondly, the Attorney-General stated that confidentiality provisions in the Gambling Regulation Act 2003 prevented the Government from providing the particular documents requested to the Council.

[7] Mr Walker had represented President Willis of the New South Wales Legislative Council in a matter involving similar issues. Proceedings were instituted by the Treasurer, Michael Egan, who eventually appealed unsuccessfully to the High Court of Australia (*Egan v Willis* (1998) HCA 71).

Although the Council had already obtained advice regarding the first of these issues, a further opinion was sought regarding the second issue and was included in the Select Committee's Second Interim Report. The advice received from Mr Bret Walker stated that the particular statutory provisions in the Gambling Regulation Act 2003 on which the Attorney-General relied did not prevent the Government from providing the documents requested.

Following the Attorney-General's letter, the Council passed two further resolutions affirming the power of the Council to make the Sessional Order and first requiring, and then demanding, the Leader of the Government in the Council, Mr John Lenders, to produce the documents. In response to both resolutions, the Leader of the Government wrote to the Clerk confirming the position of the Government and stating that the documents would not be produced.

A final resolution was passed by the Council on 21 November 2007 expressing its concern at the persistent refusal of the Government, and the Leader of the Government on behalf of the Government, to comply with the resolutions of the Council, and ordering the Leader to produce the documents by 4 pm on 22 November 2007. If the documents were not received by that time, the Leader of the Government would be suspended for the remainder of that sitting day provided that, if the documents were subsequently produced, the suspension would immediately end.

The Leader of the Government did not produce the documents by the required time and, as a result, was suspended from 4 pm until the end of the sitting at 10.48 pm that day. Mr Lenders was not in the Chamber at the time the suspension took effect, but the President did interrupt proceedings and announce the suspension.

By the end of 2007, the documents had not been produced. Further action was foreshadowed by the Leader of the Opposition and a notice of motion was listed on the Notice Paper that, if agreed to, would adjudge the Leader of the Government guilty of a contempt of the Council and suspend him from the service of the Council for an entire sitting week at the end of February 2008.

Committees

Legislation Committee. As noted earlier, new Standing Orders came into effect in the 56th Parliament, including provision for a Legislation Committee. A bill could now be referred to the Legislation Committee at any time after the second reading and before the third reading. The first bill to be referred in late 2007 was part way through Committee of the

whole when the remaining clauses were referred to the Legislation Committee.

Council select and standing committees. In the first half of 2007 the Council established two select committees:

- Gaming Licensing was established in February, with the establishing resolution requiring the chair to be a non-government member and the deputy chair to be Government member. All parties represented in the Council (Australian Labor Party, Liberal Party, The Nationals, Greens and the Democratic Labor Party) were represented on the Committee, resulting in a non-government majority.
- Public Land Development was established in May, with the establishing resolution placing the same requirements on the membership as above.

As noted previously, in the second half of the year the Council established a Standing Committee on Finance and Public Administration to come into operation in April 2008.

With the creation of the Legislation Committee, and then select and standing committees, a Council Committee Office was established in 2007. An application was made to the Treasurer for additional funding to properly resource the office, but the application was unsuccessful.

Committees' privilege issues

The two select committee inquiries were marked by several disagreements between the committees and the Executive over the powers of the committees and the role of public servants in providing evidence and documents.

In the case of the Gaming Committee, documents summonsed by the Committee were not produced by the Executive and this culminated in an order for documents by the House itself. These events ultimately led to the suspension of the Leader of the Government from the House (see earlier account of suspension).

The Public Land Development Select Committee was in dispute with the Executive and senior public servants on a different matter. The committee adopted a definition of public land, but the Government took a narrower view of what constituted public land and instructed its public servants accordingly. A number of witnesses, presumably on the advice of the Government, told the committee that they would co-operate in areas of disputed definition only when the Council had clarified the inquiry terms of reference. In December 2007, the Committee Chair presented its Interim

Report, which stated (at paragraph 90, p 25) that:

> "The Committee asserts its right to interpret its terms of reference within the establishment resolution as it sees fit. This right is supported by established parliamentary practice and advice from the Clerk of the Legislative Council."

The Report concluded (at paragraph 91, p 26) that:

> "The Committee believes the extraordinary attempt by the Attorney-General, on behalf of the Government, to define a Legislative Council select committee terms of reference represents a direct interference in the operations of the Committee and the role of the Legislative Council. It is the Committee's view that the Attorney-General's intervention is simply a device to obstruct the Committee's activities, frustrate its progress and to defy the will of the Legislative Council."

Standing Orders Committee: messages between the Houses

The activities of the Gaming Select Committee led, in a peculiar fashion, to a rare joint meeting of the Standing Orders Committees of both Houses to discuss the language used in communications between the Houses.

On 18 July, further to the Interim Report of the Gaming Select Committee, the Council resolved to request the Legislative Assembly to grant leave to various ministers to appear before the Legislative Council Select Committee on Gaming Licensing to give evidence and answer questions in relation to the Committee's terms of reference. A message was sent to the Assembly accordingly.

A message from the Assembly was received in response later the same day, informing the Council "That the Legislative Assembly has refused to consent to the request for ministers and a member to appear before the Legislative Council Select Committee on Gaming Licensing and notes that the request represents interference in the operation of the Legislative Assembly and its members and undermines the traditional Westminster principles that underpin our parliamentary democracy."

The saga continued to play out on 8 August when a member of the Opposition, Mr Rich-Phillips, moved that a message be sent to the Assembly informing them, amongst other things, that the Council regarded the intemperate language of the message as unacceptable and contrary to the long established principles of the Westminster system of responsible government. A Government party member then moved to amend the motion so that it

read "That this House requests the Legislative Assembly to agree to a joint meeting of the Standing Orders Committees to report on an agreed set of words to be contained in communications between the Houses."

The Nationals members voted with the Government so that the amended motion was agreed to by 21 votes to 19. The motion had succeeded in putting a stop to the transmission of messages back and forth on the matter, but, in turn, had referred an issue for the Standing Orders Committees of both Houses to consider, despite it appearing to have no way of being resolved.

A joint meeting of both Committees eventually took place in December at which it was generally agreed that the content of messages should simply convey the resolutions of each House, although it is not possible to impose an agreed set of words to be used on all occasions. As such, on 6 December, following agreement by both Committees, the President reported to the House, that "at a joint meeting of the Standing Orders Committees of both Houses on 5 December 2007, it was noted that the Legislative Council expressed its disappointment in the language of the resolution passed by the Legislative Assembly on 18 July 2007."

Western Australia Legislative Assembly

Renovation and expansion of chamber

The renovation of the Legislative Assembly chamber and galleries in preparation for the increase in numbers of members (from 57 to 59) following the next general election (expected to occur by February 2009) was completed in March 2007. The renovations occurred over the 2006-07 summer break in sittings, and included the installation of a number of monitors situated in both the Speaker's Gallery and the public gallery to enhance visitors' capacity to view proceedings of the House.

CANADA

House of Commons

General notes

The first session of Canada's 39th Parliament resumed on 29 January 2007, following a holiday adjournment. The minority Government faced many hurdles in trying to implement its legislative agenda, especially regarding the environment and amending the Criminal Code. Committees especially were

an obstacle for the Government in trying to bring forward its agenda. For example, Canada's Clean Air Act, Bill C-30, was substantially amended in committee before second reading to the point that the Government chose not to proceed with the bill following the legislative committee's report to the House. At the same time, a private members' bill, C-288, concerning the Kyoto Accord, a bill to which the Government was opposed, was adopted and received Royal Assent in June.

In keeping with its democratic reform agenda, the Government introduced several bills, most of them amending the Canada Elections Act, but few have received Royal Assent thus far. Most of these democratic reform bills, which died on the order paper at prorogation on 14 September, including one to increase the number of members in the House, were reinstated in the second session of the 39th Parliament.

The Government was, however, successful in having one if its major legislative measures, Bill C-2, An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability, adopted in December 2006, but only after heated deliberations and several amendments. Partly due to the implementation of Bill C-2, several amendments to the Conflict of Interest Code for Members of the House of Commons were adopted on 11 June 2007. The changes made dealt mainly with clarification of terms and provisions as well as modifications to the Conflict of Interest and Ethics Commissioner's mandate and of the mandate of inquiries.

Three new Officers of Parliament were appointed in 2007. In February, the House of Commons ratified the appointment of Mr Marc Mayrand as Chief Electoral Officer. In June, the House ratified the appointments of Ms Christiane Ouimet as Public Sector Integrity Commissioner, and of Ms Mary Elizabeth Dawson as Conflict of Interest and Ethics Commissioner, replacing the former position of Ethics Commissioner. The positions of Public Sector Integrity Commissioner and Conflict of Interest and Ethics Commissioner were created following the implementation of Bill C-2 (see above).

The Leader of the Government in the House of Commons and Minister for Democratic Reform rose on a point of order on 21 March 2007, to challenge the admissibility of an opposition motion proposing the adoption at all stages of four Government bills on justice matters. In a ruling on 29 March, in which he appealed to "the values inherent in the parliamentary conventions and procedures by which we govern our deliberations", the Speaker affirmed "the Government's unquestioned prerogative to

determine the agenda of business before the House". Noting that "Supply Days were never envisaged as an alternative to the legislative process" and that the motion in question would have the effect of imposing closure or time allocation on four bills simultaneously, he ruled it out of order.

On 14 September Parliament was prorogued and the second session of the 39th Parliament opened on October 16 with a Speech from the Throne. In order to prevent the fall of the Government and dissolution of Parliament, the members of the official opposition (Liberal Party) abstained from voting on the main motion to adopt the Address in Reply to the Speech from the Throne. For the same reason, they abstained again on several other votes held in the fall of 2007 and considered by the Government to be confidence votes.

On 11 December the House adopted a motion to sit beyond the ordinary hour of daily adjournment for the sole purpose of considering Bill C-38, An Act to permit the resumption and continuation of the operation of the National Research Universal Reactor at Chalk River. The motion also allowed for witnesses to appear before the Committee of the Whole, which was the first time since 1945 that individuals other than Members of Parliament were allowed to speak in the Chamber in that capacity.

Legislation

The Government's legislative agenda for the 39th Parliament was focused on amendments to the Criminal Code and democratic reform (see above). Out of the 69 bills that the Government introduced in the first session (20 in the 2007 calendar year), 40 received Royal Assent (26 in the 2007 calendar year). In the second session of the 39th Parliament, the Government introduced during the fall of 2007 a total of 38 bills (excluding the Administration of Oaths of Office Bill), several of which were bills reinstated from the first session. Seven of those received Royal Assent by year's end. Also, four private members' bills and one private bill received Royal Assent in 2007.

On 21 March 2007 a private members' bill, Bill C-257, An Act to amend the Canada Labour Code (replacement workers), was negatived at report stage and thus dropped from the order paper. It was the first time in the House of Commons' history that a bill was defeated at report stage. This bill also provoked an unusual occurrence, in that prior to the report stage debate certain inadmissible amendments adopted by the Committee were declared null and void and by order of the Speaker were withdrawn from the bill as reported to the House and the bill reprinted accordingly.

A few high-profile private members' bills were adopted by the House in a battle pertaining to public policy between the opposition parties, which hold the majority of the seats, and the minority government. As with Bill C-288 (see above), Bill C-292, An Act to implement the Kelowna Accord (an accord between the federal, provincial, territorial and First Nations governments), sponsored by former Prime Minister Paul Martin, was adopted by the House of Commons on March 21 notwithstanding the opposition of the Government. That bill was still under consideration by the Senate at the end of the year. As a result of the new rules concerning private members' business combined with the dynamics of a minority parliament, an increasing number of private members' bills have completed the legislative process and have received Royal Assent. Such occurrences were extremely rare in previous parliaments and have brought more attention to private members' business and the bills being proposed by individual members.

Several private members' bills were denied the order for third reading because they required a royal recommendation. The Standing Orders allow the legislative process for such bills to continue until it is time to vote on the third reading stage, at which time the Speaker orders that the order for third reading be discharged and the bill dropped from the Order Paper. Private members' bills very rarely obtain a royal recommendation which can be given only by a minister.

Committees

Several committees met challenges in completing their work in the spring of 2007. Some of the problems encountered included cancelled meetings, non-confidence motions, and elections of Chairs. There were also numerous debates, often directed against Government policies, on the concurrence in committee reports. In addition, as in preceding years, several of these committee reports were requests for 30-day extensions in respect of the consideration of Private Members Bills by standing committees.

The Procedure and House Affairs Committee tabled a report in the House on 1 March dealing with decorum in the House. Against the wishes of the New Democratic Party, the report did not recommend any changes to the Standing Orders that would give the Speaker additional powers to deal with the perceived increased lack of decorum. The House did not hold a vote to concur in the report.

The Chair of the Standing Committee on Industry, Science and Technology, rose on a point of order on 1 March, to request clarification

with regard to the right of Standing Committees to continue to meet while recorded divisions are conducted in the chamber. In a ruling delivered on 22 March, the Speaker confirmed that the Standing Orders clearly confer upon committees the power "to sit while the House is sitting" and "to sit during periods when the House stands adjourned" (SO 108(1)(*a*) and SO 113(5)). Acknowledging that provision in the rules for the temporary suspension of committee meetings to permit members to vote in the chamber might well be desirable, he referred to the absence of such provision as "a chronic and still unresolved ambiguity in the practice of the House." He recommended that the Standing Committee on Procedure and House Affairs consider the matter and report to the House with recommendations for appropriate directives or changes to the rules. He concluded by reminding members that there was no obstacle to the adoption by a committee of a routine motion setting out a protocol to be followed upon to the sounding of the division bells. Standing Order 115(5) was modified thereafter (for more detail see under Standing Orders).

On 27 November 2007 the House adopted a motion to concur in the first report of the Standing Committee on Access to Information, Privacy and Ethics, which recommended that the Speaker issue any necessary warrants for the appearance of a witness before the Committee. The witness was in jail at the time and was facing extradition a few days later. He appeared before the Committee on several occasions thereafter, was released on bail and his extradition was delayed due to the Committee hearings. It was the first time since 1913 that the House of Commons adopted such a motion to issue a Speaker's Warrant. Former Prime Minister Brian Mulroney also appeared before the Committee in relation to the same study, which was also a rare event that attracted much interest.

British Columbia Legislative Assembly

New Lieutenant Governor

On 4 September 2007, the Prime Minister Stephen Harper announced the appointment of Steven Point as British Columbia's 28th Lieutenant Governor. Hon. Steven Point is a former Chief of the Skowkale First Nation and served as a provincial court judge prior to being appointed chief commissioner of the BC Treaty Commission in 2005. He is British Columbia's first Lieutenant Governor of aboriginal descent.

Addresses from the Bar

In conjunction with the signing of treaties with the Tsawwassen First Nation and the five Maa-nulth First Nations, six elected or hereditary chiefs were invited to speak from the Bar of the House. These individuals included, on 15 October, Chief Kim Baird, Tsawwassen First Nation; and, on 21 November, Chief Councillor Charlie Cootes of the Uchucklesaht First Nation, Chief Councillor Violet Mundy of the Ucluelet First Nation, Chief Councillor Therese Smith of the Ka:'yu:'k't'h'/Che:k:tles7et'h' First Nation, Chief Councillor Robert Dennis Senior of the Huu-ay-aht First Nation, and Hereditary Chief Bert Mack of the Toquaht First Nation.

The Chiefs all spoke of the difficulties that have faced their peoples and the challenges associated with the treaty process. However, they also spoke of hope for a prosperous future based on the certainty arising from control over land and natural resources. The treaties now require the approval of Parliament of Canada.

Independent Commission to review MLA compensation

On 30 January Premier Gordon Campbell appointed a three-person commission to review MLA basic compensation, stipends for parliamentary and cabinet positions, and pension arrangements as well as to make recommendations on future process for re-evaluating these difficult issues.

On 30 April the Commission presented its report to the Speaker, Hon. Bill Barisoff. In total, the Commission made 18 recommendations on the various aspects of MLA remuneration. The highlights of the report include:

- an increase to the Members' base salary to CAN$98,000 per year (from $76,000), plus additional increases to the stipends payable for parliamentary and caucus officers positions;
- re-instatement of an MLA pension plan, with an entitlement to a vested pension benefit after the member has served in the legislature for six years;
- formalization of a transitional assistance programs for Members leaving elected service;
- implementation of a permanent long-term disability plan; and
- a new schedule for per diem expenses, capital city accommodation payments, and inter- and intra-constituency travel allowances.

The Commission also suggested that the issue of MLA compensation be addressed during the first session of every second parliament by a three-person independent panel. In addition, the Commission recommend that all

information concerning MLA compensation, including a plain-language summary listing all expenses reimbursed to each MLA, be tabled with the Speaker on an annual basis.

On 16 May Government House Leader Hon. Michael de Jong introduced the Legislative Assembly (Members' Remuneration and Pensions) Statutes Amendment Act 2007. The bill implemented the Commission's recommendations with respect to increases to the MLAs' base salaries, stipends, and pensions, with the remainder of the Commission's recommendations to be reviewed and put into practice under the direction of the Legislative Assembly Management Committee.

In a move reminiscent of the recent strategy used in Ontario, the bill also provided Members the ability to 'permanently and irrevocably' opt out of the pay and pension increases by providing written notice to the Speaker. However, despite opposition criticism of the proposed increase base salary, no Member declared their intention to permanently opt out of the increased pay and indemnity package.

Special Committee on Sustainable Aquaculture

On 16 May the Special Committee on Sustainable Aquaculture released its report and recommendations into the management of British Columbia's wild salmon, shellfish, and farmed fish resources. The all-party, parliamentary committee was chaired by opposition fisheries critic Robin Austin MLA, while its composition featured a majority of opposition members.

During its 18-month inquiry, the Sustainable Aquaculture Committee held public hearings in 21 communities, received 814 written submissions, received expert testimony from more than 80 witnesses, and commissioned an economic study of the wild and farmed salmon industries.

The Committee's primary recommendation was for all open-net finfish aquaculture sites to move immediately to ocean-based, closed containment facilities. The Committee recommended that the industry developed the necessary technology within three years, with all facilities utilizing this new technology within the subsequent two years.

Government members on the committee opposed the recommendations contained in the report. Deputy chair Ron Cantelon MLA opposed the report on the basis that the technology recommended by the Committee did not currently exist anywhere in the world.

Québec National Assembly

Consequences of general election

At the last general election, held on 26 March 2007, a minority government was elected. This has not occurred at the Assembly since 1878. The Québec Liberal Party forms the Government with 47 Members. The Action Démocratique du Québec, with 41 Members, forms the Official Opposition. The Parti Québécois constitutes the Second Opposition Group with 34 Members. There are currently three vacant seats in the Assembly. It is the first time since the current *Standing Orders of the National Assembly* came into force, in 1984, that there are three recognized parliamentary groups at the Assembly.

These significant changes in the composition of the Assembly have required numerous adjustments, mainly as concerns the conduct of oral questions and answers, the apportionment of certain means of parliamentary control (business standing in the name of Members in opposition and interpellations) and the allocation of speaking time for the various debates. The chair has thus rendered several directives regarding these matters, while taking into consideration a distribution that reflects the proportion held by each parliamentary group in the composition of the Assembly and the primacy of the official opposition among the parliamentary opposition groups.

Oral questions and answers

A directive rendered by the chair at the beginning of the legislature proposed a framework enabling each opposition group to significantly participate in question period, by taking into consideration its proportion within the opposition and the preponderant role of the official opposition. At each sitting, a 45-minute period is set aside for questions by members to ministers. By factoring in the distribution of Members among both opposition groups and the preponderant role held by the official opposition, the latter asks approximately 60 percent of the questions and the second opposition group, 40 percent. The first two questions of each period, as well as the fifth and sixth questions, are set aside for the official opposition. The second opposition group, for its part, asks the third and fourth questions. Subsequently, the principle of alternation between parliamentary groups applies. The first question gives rise to two supplementary questions. For main questions two to ten, one supplementary question is permitted. Beginning with the eleventh question, no supplementary questions are allowed. Members of the Government party may ask one question per three sittings.

Business standing in the name of Members in opposition and interpellations

The distribution of business standing in the name of Members in opposition and the allocation of interpellations was determined by using the same criteria as for oral questions and answers, namely by referring to the composition of the Assembly, the recognition of a party as being a parliamentary group and the primacy of the official opposition. The chair distributed opposition Members' business by cycles of ten and granted, during each cycle, six motions to the official opposition and four motions to the second opposition group. The first motion of each cycle is granted to the official opposition, as well as the first motion of each sessional period. For the remainder, there is alternation between both opposition groups according to the aforementioned criteria. The same framework applies to interpellations.

Speaking time during limited debates

The chair was called upon to determine the allocation of speaking time during certain debates having a limited duration, known as 'limited debates'. To do so, it applied the objective criterion of proportionality. Hence, each parliamentary group is granted a time envelope in proportion to the number of seats it holds in the Assembly.

Tabling of digitized documents

On 23 October 2007 the President rendered a directive in which he stated that henceforth, in addition to the paper version, a digitized copy of all annual reports and strategic plans of the ministries and agencies will be tabled in the Assembly. This will also apply to documents hailing from persons appointed by the Assembly. A large number of these documents will be accessible directly on the Internet site of the National Assembly. The President specified that only the paper version remains the official version of all documents tabled in the Assembly.

Replacement of the Table

The National Assembly replaced its Table, which was no longer adapted to the new technologies used by the clerks. The former Table, which dates back to the end of the 19th century, constitutes heritage property. It was therefore not possible to modify or alter it in any manner, whence the necessity to acquire another. The objective sought after was to design an operational Table while respecting the architecture and style of the former Table and of the National Assembly Chamber. In keeping with this purpose, the electrical

and technological components were integrated inside the Table, so as to provide an unencumbered surface. It also houses numerous storage spaces and includes pull-out shelves and display racks in which bills are placed. This Table is made of black walnut, which is the same type of wood as that of the furniture and woodwork of the National Assembly Chamber, with the exception of the table top, which is made of birdseye maple.

Wi-Fi wireless network

The National Assembly now provides wireless network technology using Wi-Fi technology in parliamentary proceeding rooms as well as in several meeting rooms. Via Internet, persons using wireless laptop computers may access the Assembly's extranet to log on to Outlook Web Access, Meridius, and the Portal and Clerks sites. For those with laptops equipped with an authentication token provided by the Assembly, they have access to all of the network services via a secure extranet.

Wi-Fi may also be of use to visitors: ministerial delegations, ministers, law clerks and other public servants; witnesses summoned to appear before parliamentary committees; delegates and other visitors.

Saskatchewan Legislative Assembly

A general election held on 7 November 2007 saw the defeat of the New Democratic Party government and its replacement with a comfortable majority government formed by the Saskatchewan Party. The success of the Saskatchewan Party campaign was noteworthy for several reasons. Premier designate Brad Wall's government will be the first formed by the Saskatchewan Party since the party's creation in August 1997. The seats gained by the party included three in Regina, long a bastion of NDP strength, three additional seats in Saskatoon and one each in Moose Jaw and Prince Albert. The inroads made by the Saskatchewan Party in the urban centres suggested that the split between urban and rural voting patterns that was so evident in the 1999 and 2003 elections was weakening.

Yukon Legislative Assembly

On 30 March 2007, Patrick L Michael retired after almost 30 years as a Table Officer in the Yukon Legislative Assembly. He was, at that time, the longest-serving Clerk of a Canadian assembly.

Mr Michael was born in Edmonton, Alberta and moved to Saskatchewan

at the age of five (due, surprisingly, to an oil boom that drew people from Alberta to Saskatchewan). He was raised in Saskatchewan and took all his public schooling there. He returned to Edmonton to attend university and, subsequently, to take up residence. During his time in Edmonton, he also worked at the Legislative Assembly of Alberta as a legislative intern and later, as the executive assistant to the leader of the official opposition.

In 1977 the Yukon Legislative Assembly was composed of 12 members, all elected as independents. However, party politics were on the horizon and when the Deputy Clerk's position became available members looked for someone with a background in the partisan system. Mr Michael applied for the position after realizing that although he had an interest in parliamentary institutions, he was not a committed partisan. He took up his position at the Yukon Table on 14 November 1977. One of his first tasks was to re-draft the Standing Orders to reflect the impending change to party politics.

He would become Clerk less than a year later. As Yukon's first partisan election approached, the Assembly decided to divide the position of Clerk of the Assembly and Secretary to Cabinet. The person who then occupied both positions had to choose which she would keep and which she would relinquish. She chose to keep the position of Secretary to Cabinet.

The search for a new Clerk commenced. As it turned out Mr Michael ranked second in the competition that ensued. However, the members were unable to come to terms with their first choice and Mr Michael was subsequently appointed Clerk on 30 October 1978.

Mr Michael's career as Clerk featured many challenges and highlights. When he moved to Yukon the powers of head of state and head of government were vested in a federally-appointed Commissioner. In October 1979 Yukon achieved responsible government in practice when the Government of Canada transformed the Commissioner's role into one that was largely ceremonial, akin to a provincial lieutenant-governor. These changes were incorporated into a new Yukon Act, which took effect in 2003.

In 1980 the Assembly dealt with a significant breach of privilege when it was discovered that the Royal Canadian Mounted Police had, as part of a criminal investigation, tapped the office phone of a member of the Assembly who was also a cabinet minister. This was one incident which contributed to a new RCMP policy regarding entry onto legislative precincts.

In 1985 the Yukon Legislative Assembly chose the first aboriginal Speaker in an assembly in Canada. During this Speaker's tenure (1985-1992) the Assembly became the first in Canada to keep track of timing in question period. It was also during this period that that Mr Michael developed

innovative procedures for determining how the Speaker would cast his vote on bills, motions, amendments, and so on. Due to the frequency with which the Speaker was called upon to use the casting vote, and the relative novelty of responsible government in Yukon, it was decided that the Speaker would vote with the Government on matters of confidence once all opportunities for debate had been exhausted. This approach was not without its sceptics in the ranks of parliamentary authorities, but it has served the Yukon Legislative Assembly well over the years and has proven to be of passing interest to Speakers in other jurisdictions when they face casting votes.

In 2001 Mr Michael, at the request of all three party leaders, took the lead in developing new Standing Orders that would provide for a finite number of sitting days per year. These new Standing Order would also contain a mechanism for bringing House business to an orderly end on the last sitting day of a spring or fall sitting. This unique form of closure is affectionately referred to by members as 'the guillotine.'[8]

In December 1983 Mr Michael also took on the position of chief electoral officer. He also had some interesting experiences in this position including judicial recounts and a legal challenge to residence requirements in the Elections Act (initially successful, it was overturned on appeal). Perhaps the most unusual event took place during the 1996 general election when the poll results in one electoral district revealed a tie between two candidates. A winner was chosen by a random draw and that person took his seat in the House and was elected Speaker. However, the second place candidate contested the result based on irregularities with the voters list. The challenge was successful and a by-election was required. The member who won the random draw also won the by-election (by a 16-vote landslide) and was subsequently re-elected Speaker.

At his retirement Mr Michael was the last person in Canada to hold the dual titles of clerk of the assembly and chief electoral officer. In the wake of his leaving, the Legislative Assembly divided these duties, in much the same way that it separated the combined offices of clerk and secretary to cabinet almost three decades earlier.

As is evident, Yukon politics and the legislative assembly changed greatly during Mr Michael's time at the Yukon Table. On 13 June 2007 the Legislative Assembly granted Mr. Michael the privilege of addressing the House in session. At that time, he thanked many of the persons he had worked with over the years and described some of the changes he experienced. He concluded his address with the following remarks:

[8] See *The Table*, 70 (2002) pp 161-163.

"It has been an enormous honour to come here, and I have been so fortunate as to the timing of when I came. I first arrived here when this was a house of independent members, when the Commissioner was the chief executive officer as well as the head of state. In a short couple of years, we went through enormous changes, concluding with … the granting of responsible government in this territory. I know at that time there were many federal officials, particularly in the civil service, who felt that this was guaranteed for failure, that this was not going to be a success and it would be a short time before we would be back in the hands of the Commissioner. Had they heard that we would be facing a minority government by 1985 and subsequently going through the 1990s with four changes in government in four elections, I'm sure they would have been totally surprised that it could have been made to work. It is to the credit of the members of this institution that it has.

I should say, upon reflection, that early on when responsible government was granted, members were very aware of how delicate the situation was and the potential for this to be a fragile institution and that they needed to take care of it.

We have seen such success with the institution that, on occasion—I need to be careful how I say this—I think there are times when we become casual about the respect for and care of this place. That is something that I would very much encourage members to understand—that we do not have a long history of having responsible self-government here in the territory. It is something that is to be greatly valued. We are very fortunate in this kind of democracy. If you think about the number of places in the world that could have gone through any kind of change of government, let alone four in four successive elections, without there having been firearms involved or some kind of upset, it is quite incredible.

Members here have behaved very responsibly in those terms during the changes in government. We have always seen a very civil, peaceful transition. That is to the credit of all parties and all members of those legislative assemblies.

That's essentially what I will leave you with—always keep in mind what a great place this is, what a great institution and what a marvel our democracy is. You are all people we should be proud of for having run, for having been here. I greatly value you, and I very much hope that feeling is shared by all the citizens of this territory.

Thank you for the experience, thank you for this day, thank you for this opportunity."

Despite his departure, Mr Michael has not completely lost contact with Yukon's parliamentary institution. Shortly after his retirement the Assembly's Members' Services Board selected him to act as an independent commissioner to review members' compensation and make appropriate recommendations. The Legislature incorporated his recommendations into the Legislative Assembly Act during its 2007 fall sitting. He has also provided advice regarding amendments to the Legislative Assembly Retirement Allowances Act and will participate in an upcoming review of the Legislative Assembly Act.

Mr Michael does not have set plans for his retirement, but may do some writing, perhaps even documenting the Legislative Assembly's history. Mr Michael has also revived his 'career' in the local old-timers hockey league and has indulged his penchant for travel, especially to exotic locations where golf courses and cold beverages are in abundance.

INDIA

Himachal Pradesh Vidhan Sabha

On 27 August 2007, at the start of the question hour, the leader of the BJP Legislature Group, along with 17 other Members, rose to raise discussion on a matter for which adjournment notices had been sent by them. The Speaker informed the Members that their notices were under consideration. At this, all the BJP Members trooped into the well of the House and starting raising slogans, causing grave disorder. Despite repeated requests from the chair they did not relent and disregarded the authority of the chair and abused the rules of the House by persistent and wilful obstruction of the business before the House. They were accordingly named by the chair and later suspended from the service of the House for the remainder of the session, on a motion moved by the Parliamentary Affairs Minister and adopted by the House. Even after this, when the Members concerned refused to leave the House, they had to be forcibly removed by the Watch and Ward staff.

However, on 28 August, on a motion moved by the Chief Minister, the House resolved that the suspension be revoked, and all the Members subsequently participated in the proceedings of the House.

JAMAICA PARLIAMENT

Since October 2007 all oversight committees have been chaired by a Member from the opposition. Prior to this only the Public Accounts

Committee was chaired by a Member from the opposition. It is expected that this provision will be incorporated in the Standing Orders in due course.

UNITED KINGDOM HOUSE OF COMMONS

Online forums

In recent years, committees in the UK Parliament have increasingly undertaken various forms of e-consultation, of which the most common is online forums (also known as web or web-based forums). This reflects a desire by committees to engage with people who would not normally submit formal evidence to parliamentary inquiries, and to ensure that the reports of committees' inquiries take into account the widest possible range of relevant views and experiences. It is also relevant in the context of the wider desire by Parliament to connect more with the public, underpinned by the third primary objective of the House service: "To promote public knowledge and understanding of the work and role of Parliament through the provision of information and access".

The commitment of the House of Commons to online forums is shown by the fact that, in May 2007, the House of Commons Web Centre took over responsibility for running them—previous forums had been set up and run on behalf of committees by the Hansard Society for Parliamentary Government (a non-partisan charity which promotes parliamentary democracy and greater public involvement in politics). Since then, five online forums have been run by committees.

Recent forums include one run by the Home Affairs Committee, on domestic violence. Although it has now closed, all the postings can still be viewed on the website: http://forums.parliament.uk/dvec. The Defence Committee has also run a recent forum, on recruitment to the armed forces, which can be viewed at http://forums.parliament.uk/defence-recruitment/index.php?index,1.

Experience so far has shown that online forums can be a very successful way of accessing information—the Home Affairs Committee forum on domestic violence attracted over 240 postings, which gave an insight into the personal experience of those affected by the issue which might not have been available through traditional evidence-gathering methods. But experience has also shown that setting up forums is very resource-intensive: staff have to put in a lot of work to set up forums, publicise them in order to attract a good range of postings, moderate postings as they come in, and

finally use the material received to inform the committee's report. As the Liaison Committee (which represents all House of Commons select committees) said in its recent report on the work of committees in 2007:

> "Online forums can be a means of accessing information from people who would be hard to reach through the routes traditionally used by committees, and have the potential to encourage the public to engage more fully with Parliament … However, online forums can be resource-intensive to set up and run, and so care should be taken that they are employed only when they can add specific value to an inquiry."[9]

E-petitions

In October 2007 the House of Commons endorsed the Government's response to the Procedure Committee's report on *Public Petitions and Early Day Motions* (Cm 7193). The Government's response had expressed support for e-petitioning and urged the Procedure Committee to suggest a worked-up scheme. The Procedure Committee published a report on e-Petitions in April 2008 (HC 136, Session 2007-08) proposing a scheme which could be implemented by early 2010. The Government's response to this report is expected before the summer recess and it is anticipated that the House will be asked to decide whether and how to proceed with the proposals.

The scheme proposed by the Procedure Committee retains the link between the petitioner and a Member of Parliament who would facilitate the presentation of an e-petition, in a similar way to the existing process for written petitions. The committee envisaged e-petitions being hosted on a parliamentary web-site where they would be open for signatures for a fixed period, after which there would be an opportunity for other MPs to indicate their support, and any MP with constituents signing the petition would be notified. E-petitions might be electronically presented (being printed in Hansard), but the committee recommended that the facilitating member should be able to present an e-petition formally on the floor of the House. Petitioners would be able to opt-in to communications about the progress of the petition, in particular relating to the Government response, or 'observations', on each petition, which would be expected within two months of presentation and would be printed in Hansard.[10]

[9] Liaison Committee, *The work of committees in 2007*, 3rd Report (HC 427, Session 2007-08), paragraph 91.

[10] A full copy of the Procedure Committee's Report is available at http://www.publications.parliament.uk/pa/cm200708/cmselect/cmproced/136/136.pdf.

COMPARATIVE STUDY: RECRUITMENT AND TRAINING OF CLERKS

AUSTRALIA

Senate

The Department of the Senate does not recruit staff specifically to perform clerk at the table duties. Clerks at the table are selected from amongst executive level members of staff. All senior executive level (SES) officers are required to act as clerks as a core duty. There are currently three non-SES staff who also perform clerk at the table duties.

There are no formal procedures for selecting clerks from within this pool of staff. From time to time all executive-level officers are invited to express an interest in performing clerk at the table duties. Final approval rests with the Clerk and Deputy Clerk.

Each clerk receives a set of briefing notes for clerks at the table that covers relevant topics including assisting the chair, and legislation procedures. The briefing notes are updated periodically.

All clerks at the table receive at least one training session before entering the chamber for the first time. The training is usually organised by the Deputy Clerk and consists of a one hour briefing session on the floor of the chamber on a non-sitting day. Follow-up training sessions are arranged from time to time to examine specific categories of business. These usually involve simulated exercises. The Deputy Clerk also conducts debriefing sessions to enable new clerks to clarify issues and seek further guidance.

New South Wales Legislative Assembly

How are clerks recruited to work in your Parliament?

Clerks are recruited in accordance with public sector guidelines, which generally means that positions are advertised both internally and externally and applicants are required to meet certain criteria to be considered for an interview. Merit selection applies, however there is an acknowledgment that the positions require specialist knowledge in a parliamentary environment.

What training is provided for new clerks, and to what extent do structured training programmes continue as they increase in seniority?

A number of different projects form part of our clerks training programme including:

- Training and working in the chamber as a Clerk-at-the-Table (on the job coaching);
- Work in the Procedure Office to learn in detail about the administration arrangements for a sitting such as the production of House papers;
- Procedural meetings to provide information on procedures and also mentoring;
- Opportunities to conduct further studies such as executive development programmes and management courses;
- Participation at seminars and conferences such as the Australia and New Zealand Association of Clerks-at-the-Table (ANZACATT) annual professional development seminar.

As clerks increase in seniority they are provided with opportunities to manage various corporate and strategic projects outside their core functions. For example the two Clerk-Assistants in turn work with the Deputy Clerk to attend Heads of Departments, reference group and other relevant meetings. In addition, the Clerk-Assistants take responsibility for corporate, strategic planning and other management or administrative tasks as allocated by the Deputy Clerk.

What changes have there been, in either recruitment or training, in the last ten years?

In February 2007, the Legislative Assembly adopted a Procedural Knowledge, Leadership and Management Development Policy. This policy forms the basis for the training noted above. The policy was introduced to assist with succession planning and providing all staff with an opportunity to learn more about the core functions of the Legislative Assembly, namely the operations and procedures of the House.

In addition to the above-mentioned policy, in 2004 the Australia and New Zealand Association of Clerks-at-the-Table have established a Parliamentary Law, Practice and Procedure course in conjunction with Queensland University of Technology. The course provides parliamentary staff from Australia and New Zealand with:

- an overview of the parliaments in the systems of government of Australia and New Zealand;
- a basis for understanding the fundamental principles of parliamentary law, practice and procedure; and
- examines major issues of parliamentary law, practice and procedure in Australia and New Zealand.

The course is an intensive course conducted over one week at the University and includes lectures from academics and senior parliamentary officers. Since 2006, the successful completion of the course can be credited towards a Graduate Certificate in Law at the Queensland University of Technology and by negotiation for other courses at different universities.

Northern Territory Legislative Assembly

ANZACATT

The Australian and New Zealand Clerks, in addition to their annual seminars for clerks and presiding officers to provide for training programmes for new clerks and ongoing development of senior clerks, saw the need to create another mechanism for professional development of parliamentary officers. To this end the Australia and New Zealand Association of Clerks-at-the-Table (ANZACATT) was formed in 2001 and now comprises 80 members from each House of Parliament in Australia, Norfolk Island and New Zealand.

The objects of the Association are to advance the professional development of its members and to enable its members and other staff of parliaments in Australia and New Zealand to expand their knowledge of the foundations and principles of parliamentary systems and parliamentary procedure in Australia and New Zealand as well as the administrative practices essential to the smooth operation of parliament.

The sharing of professional experiences and knowledge about the institution of Parliament and the development of links with similar organisations are also amongst the Association's aims. Any officer of a House of Parliament in Australia and New Zealand who is employed in the capacity of a Clerk-at-the-Table and is eligible to be a member of the Society of Clerks-at-the-Table is eligible to be nominated for membership. Former Clerks-at-the-Table may also be honorary members of the Association. The Association is administered by an executive which meets four times a year to determine policy and the directions of the Association.

A two day professional development seminar is held at the end of January each year which is open to both members of the Association and other parliamentary officers nominated by the Clerk of their House. The annual general meeting of the Association is held concurrently with the professional development seminar. Two committees have also been appointed by the executive. The Education Committee identifies to the executive opportunities for the Association to contribute to a better understanding of the institution of Parliament; and the Professional Development Committee makes the arrangements for the annual professional development seminar under the broad guidelines determined by the executive.

The principal publication of the Association is a half-yearly bulletin which contains reports from each House on matters of procedural and administrative significance as well as comments on relevant legal cases and short articles on topical matters. The bulletin is prepared as a regular means of exchanging information and alerting members to events that may be of interest. In addition, the executive produces a quarterly newsletter designed to keep members up-to-date with its activities.

Our Deputy Clerk, Mr David Horton, served on the Education Committee of the Association in the initial years of the organisation's development and was largely responsible for the postgraduate programme now being conducted under the auspices of the University of Queensland. A number of the lecturers in parliamentary practice and administration are senior Australian Clerks-at-the-Table.

In-house training

The clerks conduct pre-parliamentary sittings briefings on routine anticipated proceedings and processes for all staff. In the post-sittings briefings, the clerks outline the proceedings and any arising procedural points of interest, and explanatory material and references are disseminated.

A number of routine business papers are published on parliamentary processes and are available in hard copy at public points in the parliamentary precincts. Copies are also published on our web-site at http://www.nt.gov.au/lant/.

The training is also supported by the department's strategic partnerships with the Department of Employment, Education and Training in respect of parliamentary education and outreach programmes and the Charles Darwin University in supporting the work of our Statehood Steering Committee and the parliamentary internship programme.

Queensland Legislative Assembly

Historically, staff from the Table or Committee Offices have undertaken Clerk-at-the Table duties. Experienced committee staff have been selected following an expression of interest process, with assistant clerk duties performed in addition to committee office responsibilities.

In the last ten years, training has comprised a mixture of in-house training, on-the-job coaching, Table debrief meetings (to discuss both procedural and administrative issues) and attendance at ANZACATT's professional development seminars and the Parliamentary Law Practice and Procedure (PLLP) course.[1] The PLLP course was introduced in 2004 and all assistant clerks have completed the course.

An in-house training programme was run by the Clerk in 2002-03. This involved a series of tutorials and problem solving exercises over a six month period. Participants were required to investigate the procedural aspects of each problem and report back to the group. In addition, each participant was given responsibility for drafting chapters for a Table Procedures Manual.

Individual training and development plans are prepared for all staff as part of the annual performance management planning process. Managers and staff work together to identify training and development needs and ways in which these development needs can be met, including:

- what is needed to work more effectively in the current job or current level;
- what is needed to more effectively meet future job requirements at this level; and
- what is needed to develop the competencies required for future career development.

South Australia House of Assembly

The new Clerk of the House of Assembly, Mr Malcolm Lehman, was appointed during 2007. This position was advertised in the State Government 'Notice of Vacancies' publication and internal staff of the Parliament were also advised via email. An email was also sent to other

[1] This is a one-week residential course delivered through a Queensland university law faculty. The course covers fundamental principles of parliamentary law, practice and procedure in Australia and New Zealand. It comprises one week of lectures and tutorial discussion with formal academic assessment including written answers to tutorial questions and submission of a major research paper.

Australian parliaments advising of the vacancy and requesting potential candidates to contact the House of Assembly to register interest in the position.

The House of Assembly has a staff development policy that encourages all employees to seek out opportunities for further professional development.

Tasmania House of Assembly

How are clerks recruited to work in the Parliament?

Either by newspaper advertising or by direct selection when appropriate.

What training is provided for new clerks?

- On the job training.
- Attendance and participation in the course Parliamentary Law, Procedure and Practice developed by ANZACATT (Australian and New Zealand Clerks at the Table) held at the University of Technology, Queensland. The course is of 12 months duration, primarily by external course work but with compulsory attendance for one week during the course.

To what extent do structured programmes continue as clerks increase in seniority?

Attendance at the annual Professional Development Seminar conducted by ANZACATT continues, along with other professional conferences where appropriate.

What changes have occurred to recruitment or training in the last ten years?

The Parliamentary Law, Procedure and Practice Course at the University of Technology, Queensland was first offered in 2005.

Tasmania Legislative Council

Table Clerk positions in the Legislative Council over the past fifteen years or so have remained unchanged. In 2007 however the Clerk of the Legislative Council retired after serving as Clerk for 18 years.

Historically in the Tasmanian Legislative Council Clerks-at-the-Table have been appointed directly by the President of the Legislative Council on the recommendation of the Clerk. Table Officer positions historically have

not been advertised. In 2007 however with the retirement of the Clerk of the Council the position was advertised for the very first time both within Tasmania and nationally.

A selection process was undertaken with a panel formed which was chaired by the President. The panel consisted of two Clerks from two Australian Upper Houses and two Members of the Legislative Council. Following that process subsequent vacancies in the offices of Deputy Clerk and Clerk of Committees were openly advertised and a selection process undertaken.

Training in our House still remains very much 'on the job' with professional development seminars under the auspices of the Australian and New Zealand Association of Clerks-at-the-Table providing a valuable vehicle for sharing jurisdictional experiences and knowledge.

Victoria

Combined response from the Assembly and Council

The Parliament of Victoria has traditionally recruited its clerks and other senior parliamentary officers from within its own organisation. Primarily those staff have come from the two House departments and, to a lesser extent, parliamentary committees. Prospective clerks commonly commenced in relatively junior positions and, over a significant number of years, worked their way through the ranks in areas such as the Table Office, committees and the offices of Serjeant or Usher of the Black Rod. Along the way, they gained a wide range of on-the-job training and procedural knowledge, although structured training was quite limited.

Over the past decade the recruitment and training of staff have altered appreciably. Although these still occur through traditional processes, these have been supplemented by other options in response to various influences, both within and external to the Parliament.

There has been a growing recognition that the contemporary workforce is more likely to be tertiary educated and to alter career paths several times during their working lives, thus reducing the likelihood of parliamentary officers being recruited at a young age and devoting decades to absorbing the knowledge and experience required for work at the Table. In terms of recruitment, this has prompted changes such as:

- Advertising positions more widely than public service notices and major daily newspapers, to include various on-line job sites and, in the case of

more senior vacancies, distributing details amongst all of the other Australasian parliaments to attract as wide and strong a field as possible.
- Although the majority of middle ranking and higher Victorian parliamentary officer vacancies continue to be filled from amongst internal ranks, there is now a greater likelihood of some of those positions being filled by applicants without a background in parliamentary administration. Those individuals bring to these positions a desired skill-set (for example, legal or research experience) and are likely to be older than other new starters.

In terms of the implications for training, there have been two major effects:

- The development of external training courses specifically designed for parliamentary officers. These have included a one week residential course conducted by Queensland University of Technology in association with the Australian and New Zealand Association of Clerks-at-the-Table (ANZACATT) titled Parliamentary Law, Practice and Procedure. In addition, ANZACATT has conducted professional development seminars over several days each year since 2000 which have covered some of the common issues faced by parliamentary officers in the various jurisdictions. In both cases, the two Victorian Houses have sent several officers to this training each year.
- The Legislative Assembly and Legislative Council have initiated more structured internal training over the past decade. One of the features common to both Houses has been the introduction of procedural meetings following each sitting week. These are attended by the clerks and other administrative staff and provide the opportunity for detailed discussion of the week's most noteworthy events. In other respects, there have been certain differences in the focus of the respective Houses' training focus—these are dealt with separately.

Legislative Assembly

The Department of the Legislative Assembly develops its staff in a range of ways, with a view to creating procedural strength and depth across the Department. Approaches include:

- Participating every few years in the Victorian Public Service graduate scheme, which brings three public service graduates through the Department in a year. As well as recruiting staff to the Assembly, this

process exposes public servants to parliamentary processes and builds their knowledge.
- Holding knowledge development sessions on various aspects of parliamentary procedure with the parliamentary attendant group and, starting in 2008, the committee staff group.
- Running a procedural discussion group, convened by the Clerk, at the end of each sitting week to debrief on the week's activities.
- Documenting the Assembly's procedures and precedents in the Legislative Assembly Practice Manual (LAPRAC) to provide staff with an authoritative reference to parliamentary law and procedure, particularly relating to the Assembly.
- Involving senior non-Chamber staff in Chamber work on a rostered basis in sitting weeks. This gives those staff an opportunity to experience 'life at the Table' and also gives the four principal officers the opportunity to attend to some duties outside the Chamber.

Legislative Council

Although occasional training seminars have been held, much of the Council's focus has been on the researching, writing and production of detailed procedural documents and records. It is considered that these benefit those who prepare these documents by reviewing contemporary proceedings in detail and researching what has occurred over a lengthy period in the past. Those documents are subsequently used by other parliamentary staff and Members, as well as being distributed to other Australasian parliaments. These documents and records include:

- Since 1999, a bi-annual *Procedural Bulletin* which provides an account of the most significant procedural events and rulings from the chair during the relevant half year.
- An accumulated summary updated yearly and titled *Rulings from the Chair* which was first published in 2007 and provides a brief account of all significant rulings made since 1979. The Legislative Assembly produces a similar document covering an even lengthier period of time.
- The establishment of a procedural database which consists of a record of every significant procedural event in the Legislative Council from 1994 to the present, including extracts from Hansard and links to relevant examples from publications and websites of other jurisdictions.

Western Australia Legislative Assembly

The Western Australian Legislative Assembly looks to recruit from its existing staff for positions as Table Officers, but the relatively small size of the department means that we usually advertise widely, across Australian parliaments and externally.

In recent years the Legislative Assembly has developed a Table familiarisation process for Principal Research Officers (the writers and chief advisers to the Assembly's standing committees) which has been well received thus far. The process introduces these officers to all aspects of work at the Table, and aims to further their interest in and understanding of processes to which they may otherwise not be exposed.

Officers from across the Assembly also participate in more structured training, such as the Parliamentary Law, Practice and Procedure course, offered at the Queensland University of Technology. Officers also have the opportunity to attend conferences organised by the Australasian Study of Parliament Group, in addition to the annual ANZACATT professional development seminars.

CANADA

House of Commons

Due to the high number of procedural clerks who retired in the past five years and several more expected to retire in the next few years, recruitment of new clerks has been paramount since 2000. In each of the past seven years, clerks have been hired in groups, the largest being 14 clerks in 2000. Again in 2007, ten new clerks began their employment at the House of Commons at the end of the summer. As of November 2007, there was a total of 72 procedural clerks on staff, 42 of whom having been hired since 2000. This means that over half of the procedural clerks have seven years of experience at most.

With respect to recruitment methods, in the past few years, there has been an annual competition, usually held nationally. The process usually begins with a written exam that verifies general knowledge of the Canadian political system and tests analytical and writing skills. The candidates with the best results must then pass a language test to ensure that they meet the bilingualism (English-French) requirements of the position. The interview is the last step in the hiring process. Some effort has been made in the last two

years to promote recruitment of graduate students. This has been accomplished by participating in job fairs held on university campuses across the country.

All procedural clerks benefit from ongoing training sessions in the form of regular conferences and seminars held in the workplace. Clerks also have the opportunity of taking professional development courses during work hours offered by universities and other educational institutions in the National Capital Region. When a group of new clerks begins employment, they receive intensive training over a period of two to three weeks to familiarize themselves with the business of the House of Commons with a particular focus on parliamentary procedure.

Senate

Recruitment

Recruitment for entry level clerk positions is done by way of open competition. In the past ten years, these competitions have evolved from being often restricted to employees of Parliament to being open to the public and nationally advertised. As the Committees Directorate has the largest pool of clerks, most new clerks begin their careers there.

Training has become significantly more structured in the past ten years, moving from an exclusively 'learning by doing' approach to what is detailed below.

Orientation and mentoring

All new clerks participate in an orientation programme at the beginning of their employment. This consists of meeting with various Senate officials with whom they will interact once they are responsible for a committee. There is also a mentoring programme for new clerks. A senior clerk will be assigned to assist and guide a junior clerk for the first few months. Finally, since the Senate clerks are a fairly small group of professionals, internal consultation with other clerks is actively encouraged and is viewed as part of their ongoing training throughout their career.

Professional development

The Senate Human Resources Directorate organizes in-house professional development training courses on a variety of topics and clerks are encouraged to participate in courses of interest to them. In addition, seminars on parliamentary procedure are held several times a year in the Chamber.

Professional conferences and joint training sessions with clerks of the House of Commons and clerks of provincial legislatures are also regularly organized.

Knowledge sharing

Another more recent aspect of training involves the preparation of documents for the Committees Directorate's knowledge tree, a web-based tool that contains a series of procedural and administrative documents to guide clerks in their job. Participation at meetings where these documents are developed, presented and approved is an important part of internal training. Clerks in the Chamber and Procedure Office are responsible for preparing and updating procedure notes on a variety of topics and are currently in the process of drafting a procedural manual, tentatively called 'Senate Procedure in Practice'. These documents are intended both as procedural resources for day-to-day use and as a learning tool for staff succession.

Staff rotation

Clerks in the Senate are offered the opportunity to rotate into other directorates to enable them to broaden and fully develop their skills, to provide new challenges, and to create a professional cadre of employees capable of taking on managerial or other responsibilities. Currently there are three areas in which lateral moves are possible: the Committees Directorate, the Chamber and Procedure Office, and the International and Interparliamentary Affairs Directorate.

Alberta Legislative Assembly

Clerks are normally recruited through a competitive process and training is provided both on the job and through external programmes such as relevant university courses and secondments. No significant changes in approach have occurred over the past ten years.

British Columbia Legislative Assembly

The Legislative Assembly of British Columbia has been fortunate to enjoy a significant degree of continuity with respect to the retention of clerks. As a provincial legislature, the Office of the Clerk is a small organization currently comprised of a senior clerk and four clerk assistants. The clerk and

clerk assistants in British Columbia have an average of 25 years of procedural experience. Indeed, that last competition for a vacant position occurred in 1999 for a committee clerk position—a position which did not include table duties at that time. Historically, British Columbia has recruited clerks by both internal and external competitions.

Given the nature of the clerks' various duties, much of the practical knowledge of the roles and responsibilities of a parliamentary clerk is gleaned through hands-on experience. There is no specific course or single training authority to learn the soft skills of providing procedural advice, mediation of conflicting interests, or researching and applying complex parliamentary precedents. Rather, these inter-personal and management skills are developed over time through informal mentorship by senior clerks. In addition, clerks are encouraged to undertake educational opportunities outside the Assembly, when appropriate.

An important component in the on-going training of new clerks has been the Assembly's commitment to exchanges and attachments with other parliaments. Over the last decade, clerks in British Columbia have completed attachments with Westminster, Ottawa and regularly attend parliamentary conferences worldwide.

Manitoba Legislative Assembly

Clerks are appointed by an open competition process. Advertisements are placed in local newspapers inviting applicants to submit resumes and a covering letter. The resumés are screened by a panel of three, consisting of the Clerk, the Deputy Clerk and a representative from the Assembly Personnel Office. Candidates are selected for an interview on the basis of this screening and the interview panel consists of the Clerk, the Deputy Clerk and a representative from the Assembly Personnel Office.

New clerks have a period of orientation which includes meeting with key Assembly staff. In addition, new clerks are provided with a job manual and have a number of meetings with the immediate supervisor to discuss job duties and standards. In addition, the new clerk is given background materials concerning procedure to read as well as reviewing procedural precedent collections.

In the most recent orientation period, a new component of procedural training was added. Along with the immediate supervisor and a colleague, role playing was done with the new clerk being given the opportunity to practice giving advice during committee meetings.

During the first week a new clerk works at the Table, he/she works alongside a colleague, who demonstrates what duties need to be done. As the week progresses, the new clerk takes over doing the duties first-hand, so that by the end of the week, the new clerk can fly solo in performing his/her assigned Table duties.

Regrettably, structured training programmes do not continue as clerks increase in seniority. However, clerks do have the opportunity to go on a training attachment to another jurisdiction. In addition, clerks have the opportunity, on a rotational basis, to attend the annual Professional Development Seminar of the Association of Clerks-at-the-Table in Canada. Also, there is an opportunity to attend training courses offered by the Civil Service Commission and outside groups in order to improve knowledge of supervisory and management skills, learning French, report writing, time management and so forth.

The major change in training in the last ten years has been to include situational analysis and role-playing as a way to teach about parliamentary procedure and to have new clerks become more comfortable with being on the spot and having to give procedural advice.

Québec National Assembly

Clerks are recruited in the same way as are other public-service employees, in other words by open competition. Those who pass a written examination are placed in a bank of candidates. When jobs become available, the Assembly conducts interviews. An introductory programme for new clerks was put into place in 2002. Since then new clerks, upon assuming their duties, are given an opportunity to familiarize themselves with the institution and, more particularly, with the parliamentary affairs sector.

It is important to note that the clerks of the National Assembly of Québec are not necessarily managers. They are above all specialists in parliamentary law and procedure. The training that is given them is thus oriented mainly toward this field. Clerks thereafter work in close association with the employees in the group specializing in parliamentary procedure that is attached to the Office of the Secretary General Assistant for Parliamentary Affairs and Procedure. A number of documentary instruments have also been created to facilitate the clerks' daily business. Specific training is given with regard to each of these instruments so that clerks can master the rules of parliamentary debate. The instruments in question are:

- *The Parliamentary Procedure of Québec* (specialized volume on parliamentary doctrine and procedure written and published by the Assembly);
- *Selected Rulings on Parliamentary Procedure* (summaries of the main rulings from the chair of the Assembly and its committees during the past twenty years);
- Samuel Philips Database (specialized database containing more than 10,000 documents, in particular opinions by clerks, research notes, and draft rulings);
- Annotated Standing Orders (limited-circulation document containing opinions, precedents, abstracts of rulings from the chair, references to doctrine, etc., under each Standing Order of the Assembly in order to facilitate their interpretation and application);
- Parliamentary Affairs Documentation Centre (room placed at the disposal of the employees of the parliamentary affairs sector and containing doctrinal works, periodicals, specialized dictionaries, Hansard, the Votes and Proceedings, the volumes of statutes, background papers for parliamentary reform proposals, etc.).

In-depth training in parliamentary procedure, spread over several weeks, is also provided. This training, which is continuously updated, takes recent jurisprudential developments into account and gives concrete examples of the clerks' daily work. For example, video extracts are presented and analyzed in the light of the rules of parliamentary procedure. Likewise, practical exercises are carried out (for example determination of the receivability of amendments, simulation of a clause-by-clause consideration in committee of the whole and the consequent annotation of the text of the bill).

At the same time clerks are gradually integrated into the various activities of the more experienced clerks. They participate in the various meetings held to discuss parliamentary procedure and the organization of the proceedings of the Assembly. They also engage in research into the interpretation of the rules of procedure and the preparation of draft rulings from the chair. Experienced colleagues give them feedback on the work they have done on a regular basis so that they may assimilate the team's work philosophy and accustom themselves to the writing style that is appropriate in various circumstances.

After a few months, in order to acquire experience as advisors to the chair, new clerks may attend at the Table of the Assembly. Naturally, they are accompanied by a more experienced clerk. At the outset they are asked primarily to observe in order to develop a practical advisory approach fully

adapted to the context of the parliamentary proceedings. They are entrusted with the preparation of the draft of the Votes and Proceedings (scroll), then with the management of speaking times. Over time their role as advisors becomes more active. In general a total of eight clerks take turns attending at the Table. The authorities try not to exceed this number in order that clerks may work at the Table on a regular basis and thus maintain the reflexes necessary to that part of their duties.

In the parliamentary affairs sector a programme of ongoing training has been in place in recent years, and a committee is charged with ensuring that training activities are provided. In this context employees make presentations twice a year in order to keep colleagues informed of developments in the various branches. In addition, specialists in various related areas are invited to speak or to provide specific training. For example, in recent years clerks have had the benefit of training given by a specialist in oral and written communications.

The situation has evolved greatly over the past ten years. Previously there had really been neither a structured introductory programme nor ongoing training on a regular basis. Clerks grew into their tasks within their sector of the Assembly, which undertook to train them upon their arrival. They were thereafter simply encouraged to read in order to remain abreast of recent developments.

In addition, in November 2007 the National Assembly of Québec and Laval University officially launched the Research Chair of Democracy and Parliamentary Institutions. This chair, which pursues a number of objectives, including that of disseminating information on parliamentary institutions, is the fruit of an agreement between the Assembly and the university. Under this agreement a specialized course in parliamentary law and procedure is offered to bachelors students at the Faculty of Law and the Faculty of Social Sciences (political science). Of course, new clerks are encouraged to attend this course. The course also serves to interest university students in the workings of the parliamentary debates, and recent experience has shown that when it becomes necessary to recruit new clerks, some will apply for a job at the Assembly. They then have the advantage of having already received training in the field!

Saskatchewan Legislative Assembly

The manner in which clerks are recruited to work in the legislature has varied in accordance with the level of position open and the needs of the

Office of the Clerk. In the most recent instances, clerks have been recruited through competitions, which have ranged from internal competitions, restricted or targeted competitions (internal candidates and employees of other parliaments) or competitions open to the general public. In recent years, the assessment has broadened from an interview only format to one also including an assessment of the candidate's written, research and computer literacy abilities.

The training provided to new clerks has evolved from the approach taken in the mid-1990s. Initially the emphasis was 'on-the-job' training with little formal instruction conducted. This was in part a reflection in the limited resources available in the Clerk's Office to carry out a structured training plan. As the number of clerks has increased, there have been increased opportunities to conduct more formal briefings and mentoring for new employees and to develop orientation material for use with a broad range of audiences (clerks, Assembly staff, elected parliamentarians, political and departmental staff, the general public).

The Assembly does not provide a structured training programme or an internal professional development program for mid-level or senior staff. On occasion, staff may attend private sector seminars or programs. Additionally, the Clerk's Office does try to take advantage of attachments to other parliaments to supplement training for clerks. Most recently, a junior clerk was able to participate in the House of Commons Parliamentary Officers' Study Programme.

CYPRUS HOUSE OF REPRESENTATIVES

Clerks (i.e. Secretary-Generals) in the Cyprus House of Representatives have always been recruited based on a relative Scheme of Service, which is included in the Budget of the Republic of Cyprus. No formal training is provided to new clerks, nor is structured training in place for senior clerks, except seminars on parliamentary procedure, which they may attend in the context of conferences or seminars of regional/global parliamentary organizations. No changes have been noted in recruitment or training in the last ten years.

INDIA

Gujarat Legislative Assembly

In the Gujarat Legislative Assembly the Secretary is appointed according to the provisions laid out in Rule 8 of the Gujarat Legislature Secretarial Staff (Recruitment and Conditions of Service) Rules, 1974. No training mechanism is provided for the newly appointed Secretary, and no change has occurred in the last ten years so far as either recruitment or training are concerned.

Uttar Pradesh Legislative Assembly

The post of Clerk-at-the-Table is known in the Assembly as Principal Secretary. Recruitment is governed by the Uttar Pradesh Legislative Assembly Secretariat (Recruitment and Rules of Service) Rules, 1974, which provide for direct recruitment for the post. However, officers serving in the secretariat who fulfil the required qualifications and are otherwise eligible may also be appointed to the post subject to approval by the State Public Service Commission. There has been no change in recruitment procedure in the last ten years.

So far as training is concerned, they need no specific training since they are well versed in parliamentary and legislative procedure due to their long service in the secretariat.

JAMAICA PARLIAMENT

Clerks are recruited from within and outside of the parliament. The Clerk to the Houses of Parliament is required to have experience at the managerial level and a law degree or twenty years' experience in a related field. The Deputy Clerk should have at least four years' working experience at the managerial level and a law degree. The Assistant Clerk should have at least three years' working experience and a first degree.

Clerks who service the committees of Parliament are required to have first degrees. They are recruited from universities as well as the general public. This group is headed by a coordinator who should be the holder of a Masters degree and should have at least ten years' service within the public sector.

The clerks are required to have a keen interest in parliamentary practice and procedure, excellent writing and oral communication skills, excellent managerial, inter-personal, analytical and decision-making skills, knowledge

of the Jamaica Constitution and a working knowledge of basic computer systems and applications.

In-house training is provided for new clerks. Periodically the clerks engage in workshops where topics dealing with parliamentary procedure are presented and discussed. Matters that are pending which might pose problems are also discussed and information regarding is sourced from other parliaments within the Commonwealth. Since parliamentary work is dynamic a lot of knowledge is gained on the job. In addition to this, the Management Institute for National Development (MIND), a Government Agency, designs programmes which the staff of parliament engage in from time to time.

Senior clerks from Jamaica get the opportunity to visit parliaments within the CPA and engage in branch workshops and seminars. These branches include India, the United Kingdom and Canada. Senior clerks also benefit from workshops held in the region and at CPA conferences.

During the last ten years an emphasis has been placed on clerks having a minimum of a first degree to be recruited into the parliamentary service.

STATES OF JERSEY

In common with many parliaments around the Commonwealth the States of Jersey has very few formal structures in place for the training of clerks.

All staff recruited to the States Greffe (Clerk's Office) are selected in accordance with recruitment codes established by the Jersey Appointments Commission which oversees all appointments to the public sector in the Island. These codes set out best practice for matters such as the advertising of vacancies together with fair and transparent short-listing and selection processes. All appointments including the post of Greffier of the States (Clerk) are subject to open advertising. The appointment of the Greffier is nevertheless subject to approval by the States Assembly and, once that consent has been obtained, the Greffier is formally appointed by the Bailiff (Presiding Officer).

In recent years the majority of senior appointments in the States Greffe have been made through internal promotion and this has lessened the need for formal training as those appointed already have experience in the department. It has also been traditional for the Greffier and Deputy Greffier to spend a two-week period on attachment to the Overseas Office at the United Kingdom House of Commons after their appointment and this has proved to be an invaluable way to increase knowledge of parliamentary practice and

procedure. In addition the Greffier and Deputy Greffier attend regular meetings of the Society of Clerks and the British-Irish and Islands Clerks where experiences can be shared with colleagues.

Clerks recruited to the Scrutiny Section undergo an intensive programme of internal training working alongside experienced colleagues. They are also able to participate in generic public sector training courses covering matters such as report writing skills and project management. In addition scrutiny clerks are sent on short visits to parliaments and assemblies in the United Kingdom to gain experience from colleagues in these legislatures.

NAMIBIA NATIONAL ASSEMBLY

Generally, induction and orientation are conducted. This is essentially operational nature. Over and above this, staff members are sent for focused training and attachments.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Recruitment of all staff members is carried out in accordance with the Clerk of the House of Representatives Act 1988. Vacancies are required to be advertised; this is done internally and externally including on the Government Jobs Online website. Appointments are required to be on merit. Staff must be notified of permanent appointments and there is a procedure for review of appointments. Some recruitment is carried out with the assistance of firms engaged for the purpose but often the process is carried out by the Office. Psychometric testing has often been used. New staff undergo an induction process to familiarise them with the work environment. On-the-job training, with senior parliamentary officers (tier 3) coaching and supporting staff on a one-to-one basis, continues to be very important. Training for tier 4 managers extends to formal training on managing staff and conducting performance appraisals. At the senior management (tier 2) and tier 3 levels, opportunities are being made available to develop leadership and strategic skills.

In professional terms, in the Select Committee Office there is a clerks of committee forum to consider procedural issues. For Clerks at the Table House debriefing sessions, convened by the Clerk of the House, have been initiated, to better share information and exchange views on procedural matters. This is partly a reflection of the broadening of the pool of Clerks at the Table, as part of a succession planning strategy.

Staff have the opportunity to be nominated for the course in parliamentary law, practice and procedure conducted for the Australia and New Zealand Association of Clerks at the Table (ANZACATT) by the Queensland University of Technology. They may also put themselves forward to attend the ANZACATT professional development seminar held each year.

Broader context training sessions are arranged periodically to enable staff across the Office of the Clerk to hear from those who are engaged in constitutional or political processes. These sessions often take the form of a presentation by a guest speaker from a public sector agency (for instance, chief executive of the Electoral Commission, chairperson of the Legislation Advisory Committee, Chief Ombudsman).

The 'One Office' strategy aims to promote planned movements between roles in the same positions, giving a richer experience for staff, equipping them with a greater knowledge of procedures and the Office, and enhancing career prospects. This is complemented by the Leadership Development programme that is under way.

In the last ten years, there has been an appreciably greater focus on leadership development and more formalised training across the Office.

TURKS AND CAICOS HOUSE OF ASSEMBLY

Clerks are recruited to work in Parliament by the Public Service Commission and are public servants. Clerks and support staff are sent on training programme to the United Kingdom Royal Institute of Public Administration, and other regional or international staff training workshops or seminars.

PRIVILEGE

AUSTRALIA

Senate

Unco-operative witness

The Senate Privileges Committee reported on whether misleading evidence had been given to the Finance and Public Administration Committee and whether there had been an improper refusal to give information to that committee. The inquiry related to the evidence of one Mr Greg Maguire in the course of the committee's inquiry into regional grants. Mr Maguire claimed that he had donated money to the election campaign of Mr Tony Windsor, a member of the House of Representatives, and offered to provide evidence of this, but subsequently refused repeated requests by the committee for the evidence he claimed to have.

The Privileges Committee found that there was a refusal to provide information but, in view of the repeated refusal of Mr Maguire to provide the claimed evidence, was unable to find that false or misleading evidence was given. The committee refrained from exercising its power to compel Mr Maguire because, before making a finding of contempt against him, it would have had to grant him the full protection of the procedures laid down by the Senate in its Privilege Resolutions, including the right to examine Mr Windsor, who could not be examined in a formal hearing leading to a finding of contempt by virtue of the rule of comity between the Houses whereby one House does not allow such a formal examination of the conduct of a member of the other. The committee was highly critical of Mr Maguire, who, it said, emerged from the process with little credibility. The committee's findings were adopted by the Senate.

Privilege matters raised in committees

The Senate has adopted procedures whereby its committees are enjoined to conduct their own preliminary inquiries into privilege matters arising in those committees before deciding whether to recommend that the Senate refer those matters to the Privileges Committee. In particular, committees are required to conduct preliminary inquiries into any cases of unauthorised disclosure of unpublished committee information and of alleged

interferences with witnesses. Senate committees acted under these provisions on several occasions.

The Environment, Communications, Information Technology and the Arts Committee presented a report on two cases of suggested interference with witnesses. The committee investigated the matters itself, and came to the conclusion that the circumstances did not warrant the raising of a matter of privilege and a reference to the Privileges Committee, but indicated that it would remain 'vigilant' in protecting its witnesses.

The Legal and Constitutional Affairs Committee tabled correspondence relating to evidence given by departments and agencies about the government's knowledge of the 'rendition' to Egypt of a citizen of Egyptian origin and terrorism suspect. Some answers given in estimates hearings indicated knowledge that this person was in Egypt, while other answers did not concede that he had ever been there. The tabled correspondence from the departments and agencies concerned sought to explain the apparent inconsistencies. The committee did not wish to take any further action, but one senator was not satisfied with the explanations, raised a privilege matter and succeeded in having it referred to the Privileges Committee.

The Rural and Regional Affairs and Transport Committee reported on a case of unauthorised disclosure of the committee's report before its presentation. The committee, following the relevant rules of the Senate relating to unauthorised disclosures of committee material, decided to not raise the matter as a question of privilege. A member of the committee confessed to the unauthorised disclosure and the committee recorded its reprimand of him in its report.

New South Wales Legislative Assembly

Whilst there were no significant cases of breaches of privilege or contempt established in the Legislative Assembly of New South Wales in 2007, one privilege issue that was raised is worthy of note.

In May and June 2007 the Parliament debated the Human Cloning and Other Prohibited Practices Bill. The legislation was an amendment to the Human Cloning and Other Prohibited Practices Act 2003 and was introduced to ensure that the legislation in relation human reproductive cloning and research was consistent across Australia. The Bill, like its predecessor, was controversial and engendered a great deal of debate in the public at large.

The Catholic Archbishop of Sydney, Cardinal George Pell, made a number of public comments on the legislation including warning Catholic

Members of Parliament that there could be possible 'consequences' for those who supported the Bill.

The Leader of the Opposition asked the Speaker whether he had sought advice in relation to whether such comments were a breach of parliamentary privilege. The Speaker acknowledged that he had sought advice from the Clerk, which he read to the House:

> "High profile and eminent people often make comments on legislation before Parliament. That is the nature of a democratic society, which enables people of all persuasions to voice their views. However, Members of Parliament, as the representatives of the people, should be able to express their views and vote in any way they deem appropriate. In this regard Members should not feel threatened or intimidated by others.
>
> The House has a long history of dealing with privilege issues and one of the facets of a *prima facie* breach of privilege relates to the indignities offered to the character of proceedings of Parliament; assaults or insults upon Members; reflections upon Members' character or conduct in Parliament; or intimidation of Members.
>
> Public debate about legislation before the Parliament does not necessarily insult the House or its Members. Comments directed at Members could be construed as reflecting on the character or conduct of Members in Parliament. However, for such comments to be a breach of privilege they must have dire consequences for Members, such as impeding Members in their duties in the House.
>
> I consider in this case that the comments made about the legislation before the House have been made as part of the public debate on a controversial issue and have not affected the rights of Members to express their views and vote, as they deem appropriate. However, the intimidation of Members is a serious issue and people who attempt to intimidate Members to vote in a particular way in the House or to express a particular view are in contempt of the House."

The House accepted this advice and the matter was not raised again. In contrast the President of the Legislative Council referred the matter to the Legislative Council's Privileges Committee for inquiry and report. The Committee subsequently concluded that no contempt had been committed.

Queensland Legislative Assembly

Alleged deliberate misleading of the House by a Minister

This matter referred to the Members' Ethics and Parliamentary Privileges Committee (MEPPC) concerned the alleged deliberate misleading of the House by the Minister for Communities, Disability Services, Aboriginal and Torres Strait Islander Partnerships, and Seniors and Youth. Specifically, the matter concerned an allegation that statements made by the Minister in an answer to a Question Without Notice on 11 October 2006, concerning an approach for the Minister to appear on the Channel Nine program *A Current Affair*, were deliberately misleading.

In Report No. 81, tabled in March 2007, the MEPPC found no *prima facie* case of a breach of privilege or contempt in relation to the alleged deliberate misleading of the House by the Minister. The committee recommended that the House take no action in relation to the matter.

The MEPPC also made observations in relation to three issues. These were: the need for members to ensure the accuracy of information provided in support of complaints they raise about matters of privilege; the tabling by members of documents relating to matters of privilege; and public comment by members in relation to matters of privilege they raise with the Speaker or which are under investigation by the MEPPC.

Alleged intimidation of a member by a legal firm

This reference to the MEPPC concerned the alleged intimidation of the Member for Moggill (the then Leader of the Liberal Party). Specifically, the matter concerned an allegation (raised by the member) that a letter dated 26 March 2007 to him from a legal firm acting on behalf of their clients was an attempt to improperly interfere with the free performance by the member of his duties as a member.

Also referred to the committee were the wider issues of privilege associated with correspondence from legal firms, addressed to members of the Legislative Assembly, regarding members' activities in the House.

In Report No. 82, tabled on 5 September 2007, the MEPPC found no *prima facie* case of a breach of privilege or contempt in relation to the alleged intimidation of a member.

The MEPPC concluded that all members of the Legislative Assembly needed to be aware of the scope of parliamentary privilege applying to their performance of their duties as a member. The committee also concluded that legal practitioners needed to be aware of the relevant principles of law

relating to parliamentary privilege generally and the possible contempt that could apply to any interference in parliamentary proceedings or the free exercise by members of their duties as members.

The MEPPC recommended that the new members' induction programme include information about the scope of parliamentary privilege as it applies to a member's performance of their duties as a member. The information should include appropriate action to take if a member receives correspondence from a legal firm regarding their activities in the House.

The committee undertook to write to entities offering legal practice and Bar practice courses in Queensland, regarding the desirability of providing training for legal practitioners and law students about the principles of law relating to the powers, rights and immunities of the Parliament, its committees and members.

A notice appeared in the December 2007 issue of the Queensland legal professionals' Proctor Magazine on the topic of parliamentary privilege. In the March 2008 edition a more detailed article was published on parliamentary privilege and contempt of parliament. The article discussed MEPPC's Report No. 82 and its implications for the legal profession. In particular, the article cautioned legal professionals to "tread carefully when representing client interests to our members of parliament. Intimidation of members, whether accidental or otherwise, will not always be given the benefit of the doubt."

Alleged deliberate misleading of an Estimates Committee

This matter referred to the MEPPC on 11 October 2007 concerned an alleged deliberate misleading of an Estimates Committee by the Minister for Education, Training and the Arts. Specifically, the matter was concerned with the Minister's response to a question taken on notice during the hearing of Estimates Committee E.

In Report No. 87 the MEPPC found no *prima facie* case of a breach of privilege or contempt in relation to the alleged deliberate misleading of the Estimates Committee by the Minister. The committee accepted that the Minister's parliamentary statement was correct to his knowledge at the time he made the statement and that furthermore the Minister did not intend to mislead the Estimates Committee. The committee recommended that the House take no further action in relation to the matter.

All MEPPC reports are published on the Internet at: www.parliament.qld.gov.au/committees.

Western Australia Legislative Assembly

The Procedure and Privileges Committee (PPC) tabled a report on 20 June 2007 entitled *Inquiry into the Member for Murchison-Eyre's Unauthorised Release of Committee Documents and Related Matters*. The PPC found that Mr John Bowler MLA, a member of the Economics and Industry Standing Committee (EISC), without authorisation and notwithstanding clear written warnings, released the EISC Chair's confidential draft committee report to the Hon. Julian Grill, a lobbyist representing a client—Precious Metals Australia (PMA)—which had a direct commercial interest in the results of the EISC inquiry. The PPC further found that Mr Bowler was aware that Mr Grill was working for PMA and that proposed amendments to the confidential draft committee report subsequently received from Mr Grill were drafted by a Mr Roderick Smith on behalf on PMA.

The PPC found that Mr Bowler's actions could have the effect of diminishing the standing of the Legislative Assembly and its Committees, thereby reducing public confidence in the capacity of the Parliament to undertake its work in a fair and impartial manner and undermining public trust in individual members to properly represent the people of Western Australia. The PPC recommended that:

- the Legislative Assembly find Mr Bowler guilty of contempt of the Legislative Assembly;
- strongly censure Mr Bowler for his conduct;
- disqualify Mr Bowler from membership of any parliamentary committee for the remainder of the 37th Parliament;
- suspend Mr Bowler from the service of the House for a period of seven sitting weeks or twenty-one sitting days, whichever was the longer, and
- direct Mr Bowler not to enter the parliamentary precincts during his suspension.

On 21 June the Legislative Assembly supported all of the PPC recommendations. Mr Bowler, who had previously apologised to the House and resigned as a Minister and from the Australian Labor Party, was duly suspended from the House for the recommended period.

The PPC Report also found that the Hon. Julian Grill, an experienced former parliamentarian, had—in full knowledge of the ramifications of doing so and despite the warning in an email that unauthorised disclosure would be in breach of parliamentary privilege and could constitute a contempt of the Legislative Assembly—forwarded the EISC Chair's confidential draft

committee report to a client with a direct commercial interest in the outcome of the Committee's inquiry. The PPC recommended that the Hon. Julian Grill be found in contempt for his actions.

On 21 June 2007 the Legislative Assembly passed a motion that the Hon. Julian Grill be called to the Bar of the House to apologise for his contempt of the Legislative Assembly and that the House withdraw indefinitely, as from that date, Mr Grill's access to Parliament House and the benefits extended to him as a former member of Parliament. On 14 August 2007 Grill was conducted to the Bar of the Legislative Assembly by the Sergeant-at-Arms, whereupon he formally apologised to the House.

The PPC Report found that the Chairman of the EISC, Mr Tony McRae, failed to rescind an invitation made by the Hon. Julian Grill to Mr Roderick Smith to attend a fundraising dinner for Mr McRae's forthcoming election campaign, during the EISC inquiry, and that Mr McRae subsequently requested a campaign donation from Mr Smith. The PPC recommended that Mr McRae be given the opportunity to apologise to the House for potentially diminishing public trust in parliamentary institutions and processes through his failure as Chairman and member of the EISC to prevent Mr Smith attending a fundraising event in his electorate during committee deliberations.

CANADA

Senate

On 16 May 2007, Senator David Tkachuk complained about a meeting of the Energy, Environment and Natural Resources Committee, which took place when the Senate adjourned on May 15 and lasted only six minutes. He argued that his ability to discharge his duties in committee was impaired by the limited time available to go from the Senate Chamber to the committee room. The Speaker agreed and ruled on 29 May that the senator had established a *prime facie* case of privilege. Subsequently, Senator Tkachuk moved a motion referring this question of privilege to the Standing Committee on Rules, Procedures and the Rights of Parliament for investigation and report, but the session was prorogued before the motion was adopted.

Alberta Legislative Assembly

On 18 April 2007 Lyle Oberg (PC, Minister of Finance, Strathmore-Brooks) raised a purported question of privilege in response to statements

made by Brian Mason (ND, Edmonton-Highlands-Norwood) during Oral Question Period that day.

In the preamble to his first main question, Mr Mason alleged that the Minister of Finance "failed to disclose his campaign donations for his PC leadership bid and has broken his own deadlines by doing so." Mr Mason made another allegation against the Minister when he said "Worse, the Minister has continued to fund raise even while preparing tomorrow's province budget." He then asked the Premier "Why does the Premier think it is acceptable for a Finance Minister to be seeking financial donations from the very same corporations and individuals who may benefit from his budget?"

Speaker Kowalski ruled that there was no *prima facie* question of privilege, as the Member's comments did not impede the Member from performing his parliamentary duties, but in no way did he condone the comments that were the subject of the purported question of privilege.

On 5 November Laurie Blakeman (Lib, Official Opposition House Leader, Edmonton-Centre) raised a purported question of privilege regarding deliberately misleading statements delivered to the Assembly during Oral Question Period on 30 April 2007 by the Minister of Energy, Hon. Mel Knight. The statement that was the essence of the purported question of privilege related to a 2005-06 internal royalty review. When responding to a question, the Minister said "there is nothing in any of those documents that would indicated to anybody that we have not collected a fair share of royalties for Albertans."

The Official Opposition House Leader alleged that the Minister's statements intended to mislead the House and that this became evident following the release of the Auditor General's report on 2 October.

Speaker Kowalski ruled that there was no *prima facie* question of privilege as the Minister's statement was clearly subjective when he referred to "a fair share of royalties". In his ruling, the Speaker also noted that it was interesting that the Member raising the question of privilege referred to the Auditor General's report as the basis for the allegation. He commented that "while the Auditor General is an Officer of the Legislature and performs important work for Members, his views on policy do not supplant the views of those chosen by the people of Alberta to represent them".

Manitoba Legislative Assembly

On 5 April 2007 an independent Member raised an alleged matter of privilege regarding being served with a notice of potential lawsuit for

comments made outside of the Chamber. He asserted that such an action was an attempt to intimidate him and was a violation of parliamentary privileges. Ruling no *prima facie* case of privilege, Speaker George Hickes noted that Members are not protected by parliamentary privilege for comments that they make outside of the Legislative Chamber.

On 5 November 2007 an opposition Member rose on an alleged matter of privilege in response to the Attorney General's comments regarding the Ukrainian genocide of the 1930s and a former cabinet minister's book which featured images of a hammer and sickle on the front cover. The Speaker ruled that a *prima facie* case of privilege had not been established, noting that language spoken during a parliamentary proceeding that impugned the integrity of a member would be unparliamentary and a breach of order but not a breach of privilege. The Speaker also indicated that to constitute privilege there must be some improper obstruction to the Member in performing his or her parliamentary work in either a direct or constructive way, as opposed to mere expression of public opinion or criticism of the activities of the Member.

Québec National Assembly

In November 2007, a question of privilege was raised in which a Member accused a minister of having disclosed the content of a bill before its presentation in the Assembly and of having availed herself of legislative provisions that had not yet been adopted as though they had force of law. To support his request, the Member brought to the President's attention a press release issued by the minister as well as several newspaper articles which, in his opinion, stated measures contained in the bill. He further cited several excerpts from the press release that led to believe that the minister accepted as a matter of course the passage of the bill.

The Chair concluded that this did not constitute a *prima facie* case of contempt of Parliament. In his ruling, the President recalled that the Chair has always acknowledged the possibility for the Government to communicate with the citizens and inform them of the policies it develops. The current state of jurisprudence at the Assembly is such that only the communication of the text of a bill could constitute contempt of Parliament. After having ruled that there were no grounds, at the present time, for jurisprudential reversal, the President insisted, however, on reminding all Members to be prudent and asked them to keep in mind the role of the parliamentary institution and of its Members when comes time to release the content of a

bill they intend to present to the Assembly Members, the latter being the first who should be informed thereof.

As regards the allegation according to which the minister availed herself of legislative provisions that were not yet adopted, the Chair recalled that the communication of information regarding measures that must be examined by the Assembly does not constitute a *prima facie* case of contempt of Parliament, unless it implies that these measures immediately have force of law. According to the Chair, the press release issued by the minister did not lead one to arrive at this conclusion.

Saskatchewan Legislative Assembly

In the spring of 2007, a question of privilege was raised regarding the government's handling of an employee of the Department of the Environment following allegations of harassment and the subsequent out of court settlement of the employee's wrongful dismissal suit. It was the assertion of the Opposition House Leader, Rod Gantefoer, that the Carriere settlement impeded the ability of members to carry out their duties, in that opposition members were privy to neither the negotiations that led to the settlement agreement nor to its terms.

Speaker Myron Kowalsky ruled that a *prima facie* case of privilege had not been established. It was his opinion that the ability of members to speak, debate, or ask questions in the chamber or in committees was in no way impeded by virtue of the settlement agreement having been reached. Additionally, it is not uncommon for ministers to decline to divulge details of matters on the grounds of *sub judice*, commercial sensitivity or which are of a confidential nature, such as personnel matters

TURKS AND CAICOS HOUSE OF ASSEMBLY

Standing Orders 58 (15) and 58 (16) of the House of Assembly provide as follows:

> "15. The first meeting of a Committee shall be held at such time and place as the Speaker shall appoint. Subsequent meetings shall be held at such times and places as the Committee may determine, but if the Committee fails to do so, the Chairman shall, on consultation with the Clerk, appoint such times and places.
>
> 16. A Committee shall not meet outside the precincts of the Council's

meeting place unless power so to do has been given to that Committee by the Speaker."

The Hon. Leader of the Opposition convened a joint meeting of the Public Accounts Committees and the Administration Committee on 28 May 2007, which he advised was called for new members serving on both committees to become acquainted with their role. On a second occasion, on 10 July, the Public Accounts Committee met at the Beaches Resort Conference Room, Providenciales, to consider a special report of the Chief Auditor on the Medical Department.

On the first occasion the Hon. Leader of the Opposition inadvertently failed to obtain the permission of the Hon. Speaker for such a meeting to be held, even though the meeting was held in the West Committee Room of the House of Assembly. On the second instance the Hon. Leader of the Opposition again failed to obtain the permission of the Hon. Speaker to hold the meeting outside the precincts of the Council's meeting place.

At the fourth sitting of the House of Assembly on 23 July, with the Hon. Speaker's permission, a motion to move a matter of privilege was moved by one of the Government's nominated members. The Hon. Member in making the case expressed the view that the Hon. Leader of the Opposition had usurped the power and authority of the Speaker on both occasions, in breach of the Standing Orders, an infringement on the rights of the Hon. Members of the House which had the potential to bring the entire House into disrepute. He further claimed that for the Hon. Leader of the Opposition to coerce members to attend such an illegal meeting to conduct public business in the way Hon. Leader of the Opposition did was disgraceful and disrespectful of the members of the House and the rules of the House, and as such a breach of the privilege of the House and of members of the House, for which he ought to be reprimanded.

The Hon. Speaker allowed limited debate on the motion and referred the matters to Committee of Privilege. On 24 July the Committee of Privilege, chaired by the Hon. Speaker, met to consider the matter. The Committee found that there was in fact an infraction, but because the Hon. Leader of the Opposition had apologised and explained that he neither meant the Speaker nor the House any disrespect, the Committee recommended to the House that it take no further notice of the infraction by the Hon. Leader of the Opposition. The House agreed the Committee's recommendation.

STANDING ORDERS

AUSTRALIA

New South Wales Legislative Assembly

On Thursday 6 December 2007 the Legislative Assembly adopted a number of sessional orders, which will be effective from our first sitting day in 2008, 26 February. The bulk of these new sessional orders have been introduced to implement 'family friendly' sitting hours, which have in part been brought on due to budget constraints. The adoption of new sessional orders also provided an opportunity to make a number of changes associated with recent amendments to the Constitution Act 1902 in relation to the Speaker's participation in debate and divisions, and to clarify a number of procedures in the Standing Orders.

The sessional orders have been designed to ensure that the House is able to adjourn earlier each night but still provide the Government with roughly the same time to conduct its business without impacting on the opportunities available to private members to introduce legislation and move and debate general motions.

The major change has been to the routine of business. The House will continue to meet on Tuesday, Wednesday, Thursday and Friday each sitting week. However, the times will change so that the House does not sit late into the evening as follows:

- On Tuesday the House will commence sitting at 1.00 pm instead of at 2.15 pm and the House will automatically adjourn at 7.00 pm, with any interrupted business set down as an order of the day for tomorrow.
- On Wednesday, Thursday and Friday the House will commence at the usual time of 10.00 am and automatically adjourn at 7.00 pm on Wednesday, 6.00 pm on Thursday and at the conclusion of private members' statements on Friday (approximately 2.30 pm).

Notices of Motions for General Business (General Notices) will be given at the commencement of the sittings on Tuesday, Wednesday and Thursday. This is a significant change as they were previously given at 5.15 pm on Tuesday and Wednesday and at 4.15 pm on Thursday.

Private members' statements will be taken following the giving of General Business (General Notices) on Tuesday and Wednesday, at 4.15 pm on Thursday, and at 1.30 pm on Fridays. Previously private members' statements were taken at 5.15 pm on Tuesday and Wednesday and at the conclusion of Government Business on Fridays. The time for private members' statements remains unchanged for Thursday sittings.

At 4.30 pm on Tuesday and Wednesday business before the House will be interrupted for Government Business and any motions before the House will lapse. In accordance with the routine of business the motions that will be before the House at this time will be either a motion accorded priority or a matter of public importance.

There will be no motions accorded priority or matter of public importance on Thursday. On that day, Government Business will be conducted after Question Time until 4.15 pm when it will be interrupted for private members' statements. Any business interrupted will be set down as an order of the day for tomorrow.

The take note debate on tabled committee reports has been moved from 1.00 pm on Thursday to 1.00 pm on Friday. This move will hopefully change the practice that has developed over recent years where the House breaks for lunch rather than debating committee reports each Thursday. While the time for the debate is the same, the House does not break for lunch on a Friday as it adjourns at an earlier time than other sitting days.

One of the difficulties that the family friendly hours have raised is the timely production of House papers, particularly the Questions and Answers Paper which goes through a number of stages before it is produced. Under previous arrangements Members were able to submit written questions up until the end of Question Time (approximately 3.30 pm) each sitting Tuesday, Wednesday and Thursday and until 2.00 pm on Friday. Answers to written questions could be submitted up until 5.00 pm on the day they were due regardless of whether it was a sitting day or not. Approximately 50 written questions are submitted each sitting day and a large amount of work is associated with the production of the paper including deciphering, typing and proofing questions, putting the questions onto a database, allocating numbers and generating the paper. The amount of administrative work required often means that the paper is not generated until late each sitting night. To assist staff with the production of the paper under the new rules, all written questions must be submitted by 12.00 noon each sitting day. Members are encouraged to email the text of questions submitted but only a small proportion of Members do so, leaving the bulk to be typed by Procedure Office staff.

The new sessional order for written questions also provides that on sitting days answers must be submitted by 12.00 noon on the due date, in order to be published in the next sitting day's paper. Any answers lodged after this time will be published at a subsequent time. Answers must be signed and lodged in hard copy and also electronically. This sessional order has formalised the current practice employed by most Ministers in that they currently submit their answers both in signed hard copy form and electronically. While answers must be submitted electronically, questions do not as Members often wish to draft questions during the sittings of the House.

The cut-off time for the lodgement of answers on sitting days has been included in the sessional order to assist with the timely production of the Questions and Answers Paper. One concern is whether answers lodged after 12.00 noon and published at a subsequent time will present a backlog. However, the sessional order relating to the publication of House Papers has attempted to alleviate any backlogs that occur by providing that during any adjournment of the House for two weeks or more, a Questions and Answers Paper will be published from time to time containing answers received. Any answers submitted on sitting days and not already published could be included in these papers.

12.00 noon is an appropriate time for questions and answers to be submitted, as it has been the cut-off time for the lodgement of petitions for many years. For consistency, the sessional orders have also made 12.00 noon the latest time for advice to the Clerk for the General Business programme on Wednesday and the submission of a matter of public importance to the Speaker.

In relation to recent amendments to the Constitution Act 1902 the sessional orders amend the standing order related to the Speaker's casting vote to provide that the 'member presiding', as opposed to 'the Speaker', has a casting vote in the event that the votes are equal. The sessional orders have also amended the standing order related to the election of the Speaker by adding a clause in relation to the Speaker's participation in debate. It provides:

> "Following election the Speaker, when not presiding, in accordance with section 31 of the Constitution Act 1902, is not precluded from participating in debate or discussion or from voting on any question."

The standing order setting out the procedure for naming a member has also been amended by sessional order. Under the previous procedure, when the Speaker named a member, a minister was required to move the motion suspending the Member from the House. The sessional order now provides

that when a member is named the Speaker will propose the question on the suspension to the House.

The adoption of new sessional orders also provided the House with an opportunity to clarify a number of procedures including allowing a Temporary Speaker to take the Chair at the commencement of a sitting in the absence of the Speaker, Deputy Speaker or Assistant Speaker. Under the previous practice the House was required to elect an Acting Speaker in the absence of the Speaker, Deputy Speaker and Assistant Speaker. This seemed unnecessary given that there are four Temporary Speakers potentially available to take the Chair.

The sessional order related to interrupting business at 4.15 pm on Thursdays for the taking of private members' statement has been clarified to provide that if at the time of interruption a division is in progress the division shall be completed and any further questions put to conclude the matter and the result announced. This amendment was considered necessary as there had been a number of occasions during 2007 where the business was interrupted at 4.15 pm on a Thursday after a division on an amendment to the original motion had been conducted but the strict interpretation of the standing order meant that the question on the original motion could not be put and it therefore lapsed. Members expressed their concern about this process and, given that the business which will be before the House at 4.15 pm on Thursday will be Government Business, the new sessional order ensures that the business will either be concluded (if in the process of a division) or adjourned until the next sitting day.

The standing orders setting out the procedure for censure and no confidence motions have also been amended to make it clear that if the closure is moved on these questions it does not preclude the member the subject of the motion, or the Premier, in the case of a motion of no confidence in the Government, from replying to the debate.

Northern Territory Legislative Assembly

Modernising Standing Orders

The Standing Orders Committee is in the process of reviewing and modernising Standing Orders to

- use plain English language;
- eliminate use of gender-specific to gender neutral language; and
- eliminate obsolete language.

A gender-specific and plain language revision of Standing Orders was submitted to members in August 2007 for consideration and adoption. While these amendments have been generally agreed, a decision was taken formally to amend the Standing Orders at a later date, once further amendments had been made as a result of

- rationalising and stream lining of Standing Orders; and
- incorporating current practices into Standing Orders which are currently undertaken on resolution of the Assembly (in other words the Estimates Committee Process).

These amendments will not change the meaning or intent of the existing Standing Orders but will make them more readable, user-friendly and intelligible and to remove outmoded phraseology.

Broadcasting of parliamentary proceedings

In October 2007, the Assembly referred the following reference to the Standing Orders Committee:

> "To examine and report to the Assembly whether adjustments should be made to the Legislative Assembly Standing Orders to take into account—
> (a) the modern capabilities available to the Parliament;
> (b) the technological capacities of the infrastructure in the Territory Parliament; and
> (c) the efficient functioning of the Legislative Assembly.
> (d) appropriate guidelines in which the broadcast or rebroadcast of parliamentary proceedings is to operate;
> (e) the current and future capacity of the network to enable an expanded distribution of sound and vision broadcast to media outlets;
> (f) the financial and other arrangements required to facilitate any extended broadcast of proceedings of the Assembly; and
> (g) review of the current broadcast and rebroadcast of Assembly proceedings."

A briefing paper was submitted to the committee on 28 November 2007 which outlined options and current operations for broadcasting.

It was a timely reference in that Parliament House is currently undergoing a complete re-cabling upgrade which, when finished in October 2008, will provide an increase in quality and provide more options for any decision made with regard to how and when broadcasting may take place, as media quality digital streaming will be able to be provided if required.

Queensland Legislative Assembly

The Legislative Assembly made a number of amendments to the Standing Rules and Orders of the Legislative Assembly of Queensland (the Standing Orders) regarding the protection of whistleblowers, the absence and leave of members of the Assembly, and the administrative arrangements for the Register of Members' Interests and the Register of Related Persons' Interests.

Protection of whistleblowers

The Legislative Assembly adopted new Standing Order 233A (Protection of Whistleblowers) and new Schedule 5 to the Standing Orders (Guidelines for the Protection of Whistleblowers) in March 2007. Standing Order 233A and Schedule 5 provide guidelines for members about when and how public interest disclosures made to members under the Whistleblowers Protection Act should be revealed in a parliamentary proceeding.

On 17 April 2007, the Speaker made a statement in the House regarding the practical effect of the new Standing Order and Guidelines. The Speaker stressed that Standing Order 233A is cautionary only. Neither the Standing Order nor the Guidelines provide any mandatory prohibition and do not provide a basis for him, as Speaker, to prevent any matter from being raised or debated. The Guidelines themselves state that they are not mandatory.

The new provisions commenced on 1 May 2007.

Absence and leave of members

On 8 February 2007, the Legislative Assembly adopted two new standing orders. Standing Order 263A relates to the notification of the absence of member for more than 12 consecutive sitting days. Standing Order 263B relates to the leave of absence of members for more than 21 consecutive sitting days. The new Standing Orders arose from Members' Ethics and Parliamentary Privileges Committee (MEPPC) Report No. 77 tabled in June 2006.

Under Standing Order 263A, members are required to notify the Speaker in writing if they are absent, or intend to be absent, from the Legislative Assembly for more than 12 consecutive sitting days. The notification must state the length of absence. The Speaker on the next sitting day must report the member's absence, or intended absence, to the House.

Section 72 of the Parliament of Queensland Act 2001 provides for the automatic vacation of a member's seat if the member is absent from the Assembly without the Assembly's permission for more than 21 consecutive

sitting days, whether over one or more sessions. Standing Order 263B allows the House to grant members leave of absence from attending the Legislative Assembly for 21 consecutive sitting days or more. A leave of absence ceases if the member attends a sitting of the House or any committee before the expiry of the period of leave.

Registers of interests

Amendments to Schedule 2 to the Standing Orders, which the Legislative Assembly adopted in May 2007, provide a procedure for keeping and access to details of the interests of members and their related persons following the dissolution of a parliament, or where a member ceases to be a member during the course of a parliament. The amendments arose from MEPPC Report No. 80 tabled in February 2007.

Paragraph 9(4) of Schedule 2 provides that the Registrar of Members' Interests (the Clerk of the Parliament) must, as soon as practicable after a member resigns, dies or is removed from office during the course of a parliament, remove the details of the relevant member and their related persons from the registers.

On request, the Registrar must make details removed from the registers in accordance with paragraph 9(4) available to (a) the Speaker, (b) the Premier, (c) any other Leader in the Legislative Assembly of a political party; (d) the Chairperson and members of the MEPPC, (e) the Crime and Misconduct Commission and (f) the Auditor-General: Schedule 2, paragraph 13(3).

Under paragraph 13(4), the Registrar must advise the relevant member or former member, in writing, that details removed from the registers have been inspected in accordance with paragraph 13(3)(a) to (d) and 13(3)(f).

Tasmania House of Assembly

Dissenting statements

The House of Assembly in Tasmania agreed to a new Standing Order on 31 October 2007 as follows:

"1. New Standing Order to follow Standing Order 368—
368A "The Chair will sign the unanimous or majority report. A dissenting statement, confined to issues in dispute, may be added to the report but may not be presented separately to either House of Parliament."
2. Omitting part (4) of Standing Order 368."

Hitherto, there had been no provision for dissent in committee reports other than by calling divisions in the committee on relevant issues and having them recorded in appended committee minutes. There has been a long tradition in Tasmania of committees operating where possible on a consensual basis.

In addition to the abovementioned amendments, the resolution of the House also provided for the adoption of the following guidelines.

What do dissenting statements cover?

A dissenting statement must be confined to issues in dispute.

This means the issues to be addressed in a dissenting statement cannot range outside the bounds of the majority report and must be limited to matters where the majority has made a finding or a recommendation.

This approach means the dissent cannot introduce any committee evidence that does not relate to the terms of reference, and/or a finding, and/or a recommendation. A dissenting statement cannot be used to publish what the majority has decided should be suppressed or private committee documents.

Where there is a dispute relating to whether a dissenting statement complies with the guidelines, the Presiding Officer/s shall make a determination and endorse its attachment to the committee report.

Indication and preparation of dissenting statement

A member voting against a question when put before the committee must raise the likelihood of a dissenting statement. It should be recorded in the minutes as a division. This is to prevent last minute dissensions that can affect the programme of a committee's inquiry.

If the committee agrees, dissents can be noted in the body of the report at the point in dispute. This may be the simple inclusion of a dissenting paragraph in the text. If not, the member can provide a separate dissenting statement.

The dissenting member is responsible for the preparation of their statement.

It should be provided in a suitable electronic format to the committee secretary within two working days after the committee's report is adopted.

The member must sign it.

How are dissents included?

If there is a dissent, a committee will need to deliberate on how they wish to word the report. Committees may wish to define 'the committee' and 'the

majority of the committee' in an attempt to differentiate the parts of the report that are unanimous, and parts that only a majority has agreed to.

Other committees may state that "The majority of the Committee recommends that … Member A dissented from this Recommendation". This statement of dissent may be followed up with a dissenting statement or there may be no further explanation.

How are dissenting statements tabled?

The dissenting statement needs to be 'attached' to the committee report. Committees should give a clear indication of when they intend to table the report and the dissenting member must work to that timeline.

The amendments, which were the recommendation of Report 14 of the Joint Select Committee on the Working Arrangements of Parliament, came into force immediately.

Victoria Legislative Assembly

The Assembly's standing orders were not amended in 2007. A sessional order was agreed, however, to make arrangements for the first sitting day in 2008, when the Premier intends to deliver an annual statement of government legislative intentions. The sessional order provides for the Premier to make a statement of unlimited duration to start of the first sitting day of the year, and for members of the Legislative Council to attend the chamber to hear the speech. The sessional order makes further arrangements for the Leader of the Opposition and the Leader of the Nationals to respond, and for subsequent debate.

CANADA

House of Commons

In March 2007 the provisions of Standing Order 119.1(2) regarding guidelines governing the broadcasting of committee meetings were made permanent.

In May 2007, further to the question of privilege raised by the Chair of the Standing Committee on Industry, Science and Technology (see 'Miscellaneous Notes' above), Standing Order 115.(5) was amended in order that "the Chair of a standing, special, legislative or joint committee shall suspend the meeting when the bells are sounded to call in the members

to a recorded division, unless there is unanimous consent of the members of the committee to continue to sit."

Alberta Legislative Assembly

During the spring sitting the Legislative Assembly approved significant changes to its Standing Orders. The temporary amendments were approved by the Assembly on 12 March 2007, thereby giving effect to a House Leaders' Agreement reached on 7 March. Further amendments to the temporary Standing Orders were approved on 17 April. A guiding principle in the House Leaders' agreement was democratic reform, specifically, to create a better quality of life for MLAs by changing the sitting schedule in order to increase participation by women and parents with young families.

Notable amendments include:

- a set parliamentary calendar with a spring sitting to commence the first Monday of February and conclude the first Thursday in June and a fall sitting to commence the first Monday in November and conclude the first Thursday in December;
- the adjournment of the Assembly every fourth week during the spring sitting for a constituency week;
- revised sitting hours, whereby the Assembly now sits Monday through Thursday from 1.00 pm to 6.00 pm (the Assembly previously sat Monday through Thursday from 1.30 pm to 5.30 pm and Monday, Tuesday and Wednesday evenings from 8.00 pm until adjournment). The Assembly will meet in the evenings over two weeks for consideration of the main estimates during the 2007 spring sitting (from 7.00 pm to 10.15 pm). There also remains a provision in the Standing Orders to allow the Assembly to meet in the evenings upon passage of a Government motion to consider Government business;
- changes to the procedure for the consideration of the main estimates. The Committee of Supply will consider the main estimates for 75 hours, in five cycles of 15 hours to be considered in three hour blocks, with each of the latter allocated to a recognized party (with final hours open to all members). At the conclusion of the 75 hours of consideration (60 hours for the 2007 spring sitting), one vote is taken to approve the estimates unless additional votes are required on amendments or if a member has provided notice that they would like the estimates of a particular department voted on separately;

- the establishment of four Policy Field Committees each consisting of 11 members. The mandates of these four committees are based on the Government's Cabinet Policy Committees and encompass the following subject areas: Community Services; Government Services; Managing Growth Pressures; and Resources and Environment. The committees may review bills, regulations or prospective regulations. The annual reports of each Government department, provincial agency, Crown-controlled organization, board or commission are also permanently referred the Policy Field Committees and may inquire into matters within their jurisdiction;
- an expanded role for the Standing Committee on Public Accounts. The committee will now be able to meet when the Assembly is not in session. The Government must also respond to a report of the Committee within 150 days.

The amendments have effect until the dissolution of the 26th Legislature and are currently being reviewed by the Assembly's Standing Committee on Privileges, Elections, Standing Orders and Printing.

British Columbia Legislative Assembly

Legislative Assembly sitting hours

On 15 February 2007 Government House Leader Hon. Michael de Jong tabled a sessional order to alter the hours that the House sits for the duration of the third session of the 38th parliament. According to Standing Orders, the House would have been scheduled to begin sitting in the evenings on 5 March. The sessional amendment to the Standing Orders sees the Monday through Thursday afternoon debates extended by one hour. In exchange, the House will no longer sit until 9.00 pm on Mondays and Wednesdays.

On 22 February debate arose on the sessional motion to amend Standing Orders 2 (1) and 3 to allow afternoon sitting hours to begin at 1.30 pm and end at 6.30 pm Monday through Thursday. Minister de Jong noted that changes to House sitting hours have been made in the past, and emphasized that the elimination of night sittings would foster a healthier lifestyle for Members and their staff, be amenable to family and travel prerogatives, and could potentially lower the Legislative Assembly's operational costs.

The Opposition House Leader Michael Farnworth spoke against the motion voicing concern that the change would 'front-load' the debate surrounding the Throne Speech and the Budget, and take away from the

Opposition's ability to fully scrutinize the estimates and legislation. Mr Farnworth further pointed out that the House had sat for a record low number of days in 2006, and expressed concern that there would again be no fall session this year. Finally, he noted that there could be a decline in viewership from those people who wish to watch live debate on television between the hours of 7 pm and 9 pm.

After extensive debate, the sessional motion was approved on division on 26 February. The Government House Leader stated that while 40.5 hours of evening sitting time would be reduced through the amendment, the extra hour in the afternoon would assure that overall debate time was not lost. In fact, as the amendments were effective the next day, 39 hours of sitting time were recouped—a net loss of 1.5 hours.

Québec National Assembly

In early 2007 we published a new edition of our Standing Orders for the beginning of the 38th Legislature. We were required to publish a provisional edition, as temporary amendments were introduced on 24 May 2007 for the duration of the 38th Legislature

Saskatchewan Legislative Assembly

The Assembly has continued its efforts to modernize its traditional functions and practices, in the process building upon changes to the standing orders in 2003 that reorganized the committee system and strengthened the opportunities for private members to participate and contribute to the parliamentary agenda.

The first set of changes arose out of the seventh report of the House Services Committee, entitled *Modernization Framework: Proposal for a Parliamentary Calendar*, which was adopted and implemented by the Assembly over the fall 2006 and spring 2007 sessions. The most immediate implication for members was the adoption of a legislative calendar of 65 sitting days, divided between fall and spring sessions. The calendar also implemented a four-day sitting week, designed to enable members to balance their legislative duties with responsibilities in their constituencies.

The report also established a framework to ensure that the Assembly completed its consideration of bills and estimates prior to the designated completion day of the spring session. All Government bills introduced during the fall session and any further Government bills introduced in the

spring session that are necessary for implementing the budget must now be voted upon on the second last day of the spring session (if not previously voted upon). Similarly all estimates not previously disposed of will now be voted upon on the second last day of the spring session.

The rules now require that on the second last day of the session a number of conditions be met before these votes would be taken. In regards to the estimates, at least 75 hours of debate must have occurred, including at least two hours of debate on each department. The minimum hours of debates for bills is five hours for all bills necessary for the passage of the budget and twenty hours for bills introduced in the fall period. Finally, members on both sides of the House agreed to prohibit the use of closure by the Government and the three-day suspension rule by the opposition on specified bills.

Over the summer adjournment, the House Services Committee undertook a broader review of the rule book to address inconsistencies and out-dated procedures. The intervention of a provincial election and a change of administration did not scuttle the recommended procedural reforms. Instead they were revived and implemented when the Assembly convened in December 2007. These revisions were intended to simplify and streamline existing rules, codify current practices, eliminate out-dated or irrelevant rules and rebalance the competing interests of the government and the opposition. The more notable rule changes include the following:

- The Speaker was granted the authority to alter the application of the rules for persons with a disability.
- The practices regarding petitions were codified in the rules.
- The practices and traditions regarding decorum in the Assembly and in debate were codified in the rules.
- The procedure and penalty upon a Member being named were clarified and codified.
- A seconder is no longer required for motions, except for the Address in Reply to the speech from the Throne and the budget motion.
- Government bills from one session may be reinstated in the following session.
- Any bills regarding the Provincial Auditor are now referred to the Public Accounts Committee for review.

The rule changes adopted over the past eighteen months have been compiled and published in a new in-house printed edition of the Assembly's rule book. A bilingual version of the rule book will be published in due course.

JAMAICA HOUSE OF REPRESENTATIVES

The Standing Orders of the House of Representatives were amended to facilitate the use of technology during proceedings of the House or in Committee. Members felt that in the age of technology this was necessary. The amendment was done by a resolution which was approved by the House of Representatives.

Laptops or other devices serving similar functions can be used for the purpose of taking notes or for consulting reference materials, but not for external communication. They should be turned on the silent mode.

However laptops and other forms of technology as audio-visual aids to support presentations may only be undertaken at the discretion of the Speaker and must get his prior approval.

A major review of the Standing Orders of both Houses was started in October 2007 and is currently being undertaken.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Televising the House

On 28 June 2007 the House, by resolution, adopted new rules relating to television coverage of the House. This follows consideration of the matter by the Standing Orders Committee, which presented its report on the matter on 25 June (http://www.parliament.nz/en-NZ/SC/Reports). It is intended that the rules, for the time being embodied in a sessional order, will be incorporated into the Standing Orders once the Standing Orders Committee has completed a full review of the Standing Orders.

In 2003 the Standing Orders Committee recommended that an in-house facility for televising the House be developed and this facility is now operational. On 17 July 2007 remote-controlled television cameras began to film all proceedings of the House of Representatives. This amounts to approximately 17.5 hours in a sitting week. A function was hosted by the Speaker (Hon Margaret Wilson) to mark this new era of improved access to the House's proceedings.

SKY has been broadcasting the House's question time each sitting day, from footage provided by Television New Zealand (TVNZ). TVNZ and TV3 have been using their own cameras for question time and debates that they wish to cover for their stories; they will be able to continue to do so.

With the advent of the in-house facility, proceedings may be viewed on an internal television system and they are streamed live on the parliamentary

website (http://www.parliament.nz). In addition, a broadcast-quality live feed of the images has been made available to television broadcasters, who can decide whether they wish to use the material.

The opportunity has been taken to revisit the television broadcasting rules, which had been in operation since 1990 (when permission was first given for television broadcasters to film the House) and which were reiterated in September 2000. It was considered that some relaxation of the rules on coverage would be appropriate to enable a television director to present a fuller experience of Parliament for viewers, to sustain interest and to give a more accurate impression of how the House actually works.

The rules continue to require cameras to focus on the member who has the call until the member's speech is concluded but the television director may choose to vary the camera angle to add interest to the coverage, or use other spots to reflect the business transacted, such as, in this case, a wide angle shot of the chamber. In future some reaction shots will be allowed, such as of the countenance of a minister being asked a question or of a member listening to the reply to a question, or of an interjector if the member speaking engages with that interjector. The default shot is to continue to be on the Speaker or presiding officer, including the arrival of the Speaker's procession, and particularly in cases of disorder on the floor of the House or interruptions from the gallery.

The rules for taking still photographs from the public gallery are not being relaxed, partly to minimise the prospect of disturbance by photographers moving around the gallery but also because still photographs cannot themselves reflect the context of the proceedings to which they relate.

Broadcast or rebroadcast of coverage is to comply with normal broadcasting standards. Reports that use extracts of coverage must be fair and accurate. A breach of the conditions of use of coverage may result in the withdrawal of the privilege of filming proceedings, but it is also now provided that a breach may be treated as a contempt.

The proposed conditions on which coverage of the proceedings of the House are to be made available derive from terms and conditions identified in some other relevant parliaments.

UNITED KINGDOM

House of Commons

SO No 134 was amended to allow embargoed copies of select committee reports which had been laid to be supplied to government departments,

witnesses and press representatives 72 hours in advance of publication. The previous limit was 48 hours.

SO No 156 was amended to require public petitions presented in the House and observations on the petitions to be published in the Official Report.

A new procedure for the consideration of draft legislative reform orders was introduced (SO No 18).

House of Lords

In its 3rd report of the 2006-07 session, in May 2007, the Procedure Committee recommended that permanent arrangements be put in place to allow members of the House two opportunities, on the first Mondays in September and October respectively, to table questions for written answer in the long summer recess. As part of this change, the committee recommended a change to Standing Order 45, which had hitherto stated that "A Question to which an answer in writing is desired may be placed on the Order Paper under the heading 'For Written Answer'. The reply shall be printed in the Official Report; it may be given on any sitting day including that on which the Question is handed in." The limb of the Standing Order appeared to imply that QWAs could be tabled and answered only on sitting days. The words after "Official Report" were therefore deleted.

In its 5th report, in October, the committee recommended a change in Standing Order 51, following on from a proposal by the Leader of the House proposals for explanatory notes to be published on Commons amendments to Lords bills. This followed the decision of the House of Commons in November 2006 to start printing explanatory notes on Lords amendments to Commons bills, but required a change to the Standing Order in order to allow such explanatory notes to be printed if Commons amendments were received when the House was not sitting.

WALES ASSEMBLY

The new legislative powers and the separation of the corporate body meant that a complete revision of the Assembly's Standing Orders was necessary. An Assembly committee was set up to consider proposals for the new Standing Orders and using the existing Standing Orders as a base they recommended new Standing Orders which revised the majority of the previous set and made provision for the new legislative procedures. See the article in this volume, 'Devolution in Wales—'A Process Not an Event', for more detail.

SITTING TIMES

Lines in Roman show figures for 2007; 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
Ant & Barb HR	*1*	*0*	*2*	*1*	*1*	*1*	*1*	*1*	*1*	*1*	*3*	*3*	*16*
Ant & Barb Sen	*0*	*1*	*2*	*1*	*1*	*1*	*1*	*0*	*1*	*2*	*2*	*2*	*14*
Aus H Reps	*0*	*9*	*6*	*0*	*10*	*8*	*0*	*7*	*8*	*10*	*6*	*4*	*68*
Aus Sen*	0	6	9	0	3	8	0	7	8	0	0	0	41
Aus ACT	*0*	*3*	*6*	*3*	*4*	*6*	*1*	*7*	*3*	*3*	*6*	*3*	*45*
Aus N Terr	0	6	0	3	3	7	0	6	0	6	3	0	34
Aus NSW LA*	0	0	0	0	6	9	0	0	3	6	9	3	36
Aus NSW LC	*0*	*1*	*8*	*3*	*10*	*3*	*0*	*3*	*8*	*6*	*6*	*0*	*48*
Aus Queens LA	0	6	6	3	3	4	0	6	3	8	4	0	43
Aus S Aus HA	0	6	9	1	6	6	4	0	6	6	6	0	50
Aus S Aus LC	*0*	*8*	*7*	*1*	*9*	*6*	*5*	*0*	*7*	*8*	*8*	*4*	*63*
Aus Tasm HA	0	0	6	3	0	8	3	6	3	7	7	0	43
Aus Tasm LC	0	0	6	3	0	6	6	5	3	8	7	0	44
Aus Vict LA	0	5	4	3	6	3	6	6	3	5	4	3	48
Aus Vict LC	0	5	4	3	6	6	3	6	3	5	4	3	48
Aus W Aus LA	0	2	7	3	9	6	0	6	9	6	9	0	57
Aus W Aus LC	*0*	*0*	*6*	*6*	*11*	*9*	*0*	*6*	*9*	*7*	*8*	*3*	*65*
Bangladesh	*1*	*15*	*6*	*0*	*4*	*15*	*7*	*0*	*9*	*0*	*5*	*0*	*62*
Belize House	*2*	*1*	*1*	*0*	*0*	*1*	*0*	*1*	*1*	*0*	*1*	*2*	*10*
Belize Senate	*1*	*2*	*2*	*0*	*0*	*1*	*0*	*1*	*0*	*1*	*1*	*2*	*11*
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 HC	3	20	12	11	18	14	0	0	0	12	16	9	115
Canada Sen	3	12	8	6	12	11	0	0	0	8	10	7	77
Canada Alb	0	0	10	12	15	8	0	0	0	0	15	2	62
Canada BC	0	10	13	9	15	0	0	0	0	11	13	0	71
Canada Man	0	0	0	10	0	7	0	0	3	18	14	4	56
Canada N Bruns	*8*	*15*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*5*	*12*	*40*
Canada Newf	*0*	*0*	*8*	*12*	*16*	*6*	*0*	*0*	*0*	*0*	*7*	*9*	*58*
Canada NWT	*0*	*0*	*7*	*11*	*4*	*0*	*5*	*0*	*4*	*0*	*0*	*0*	*31*
Canada Ontario	*0*	*8*	*9*	*16*	*14*	*7*	*0*	*0*	*0*	*12*	*14*	*9*	*89*
Canada PEI	*0*	*0*	*2*	*14*	*14*	*2*	*0*	*0*	*0*	*0*	*9*	*9*	*50*
Canada Québec*	0	1	0	0	13	12	0	0	0	8	14	10	58
Canada Sask*	0	0	14	14	11	0	0	0	0	0	0	8	47
Canada Yukon	0	0	0	6	18	8	0	0	0	4	16	8	60
Cayman Island	*0*	*0*	*13*	*0*	*0*	*7*	*0*	*0*	*10*	*0*	*15*	*0*	*45*
Cook Islands													*78*
Cyprus*													38
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	*5*	*3*	*1*	*1*	*3*	*2*	*4*	*1*	*0*	*2*	*1*	*3*	*26*
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 LS	*0*	*10*	*9*	*12*	*6*	*0*	*9*	*12*	*0*	*0*	*0*	*16*	*74*
India RS	*0*	*9*	*16*	*0*	*10*	*0*	*6*	*16*	*0*	*0*	*7*	*13*	*77*

India Gujarat	0	5	23	0	0	0	0	0	2	0	0	0	30
India Haryana	*2*	*8*	*0*	*0*	*0*	*1*	*3*	*0*	*0*	*0*	*2*	*0*	*16*
India Him Pr	8	8	8	0	0	0	0	3	0	0	0	0	27
*India Kerala**	*0*	*1*	*12*	*0*	*2*	*0*	*12*	*0*	*19*	*0*	*7*	*0*	*53*
India Maharash													*33*
India Nagaland	*0*	*0*	*4*	*0*	*0*	*5*	*0*	*0*	*0*	*0*	*0*	*1*	*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 Sikkim													*9*
India Tamil Nadu	*5*	*0*	*7*	*16*	*6*	*0*	*0*	*0*	*0*	*0*	*5*	*0*	*39*
India Uttar P	6	4	0	0	0	3	12	0	0	2	2	3	32
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	2	2	4	3	4	3	6	0	9	3	5	2	43
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*	*4*	*0*	*0*	*0*	*1*	*0*	*0*	*0*	*6*	*11*
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*
Malaysia Melaka	*0*	*0*	*5*	*0*	*0*	*0*	*0*	*2*	*0*	*0*	*3*	*0*	*10*
Montserrat													*9*
Namibia													84
NZ H Reps	0	8	10	3	13	9	6	9	9	9	9	6	91
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	*6*	*2*	*9*	*4*	*1*	*0*	*4*	*1*	*1*	*2*	*1*	*0*	*31*
*S Africa NA**	*0*	*11*	*0*	*1*	*5*	*7*	*0*	*5*	*7*	*5*	*8*	*0*	*49*
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*
Swaziland	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*156*
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*
Turks & Caic LC	1	1	0	3	0	0	2	0	2	0	0	1	10
Uganda													*101*
UK Commons	17	14	20	11	15	18	16	0	0	15	15	10	151
UK Lords	16	13	18	10	15	17	17	0	0	15	16	11	148
Wales*	5	7	8	0	2	7	3	0	4	8	8	4	56
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

AUSTRALIA

New South Wales Legislative Assembly

I can see that you are not worried, George, about this concept of child pornography	10 May
What this mob opposite wants to do is politicize issues arising out of the fatalities that occurred on Sydney Harbour	31 May
She is an imposter	8 November
In debate on the Surveillance Devices Bill the member for Epping showed once again that the Opposition does not back the police and does not trust our police officers	14 November
He has a fast mouth, it is nowhere near as fast as the car he drives around his electorate	4 December

Northern Territory Legislative Assembly

If you cannot hear it, you have cloth ears	20 February
A media release from the Leader of the Opposition slagging the government	20 February
The empty vessel over there is not worth listening to anyway	21 February
Well, it is a shame, minister and Leader of Government Business, that you were less than forthcoming in relation to the outrageous conduct of one of your members; namely, the member for Sanderson not so long ago. You can say 'shame' all you like in relation to sexual harassment…	1 May
I know you are rude and I know you are a bully, but you have had your go	3 May
Far be it from me to suggest that many of you are gutless	3 May
John Wills told me "George, you should stand for Lord Mayor, you'll shit it in" … and I did	29 August
An abusive thug	30 August
The little girl who cried 'wolf'	11 October
He is not a back yard environmental scientist	11 October

Queensland Legislative Assembly

You filthy individual	6 February
To save the miserable hide	20 February
Queensland's chief clown has put on one of his best performances	22 February
Carry on like mad roosters	13 March
You sit on your brain most of the time	19 April
Robot man!	22 May
Power-drunk dictator	22 May
He sounded much like a fascist from the Nazi Party	9 August
Robert Mugabe would be right at home	9 August
They have not taken their ADD tablets	9 August
I have every right to be angry at the façade, spin and untruths that spill so readily from the lips of first Dictator Beattie and now Captain Bligh	17 October

Even though they are spectacularly mismanaged and criminally under resourced	17 October
You goose	31 October
This government was caught out at Bundaberg Base Hospital killing people for profit	14 November
Victoria Legislative Assembly	
This government has pissed money into the wind	28 February
A great pickup: Julian McGauran in drag!	24 May
Whacker	21 June
Member 1: " increasing incidence of violent anti-Semitic and racist behaviour…"	
Member 2: "Yeah, you shouldn't do it, Nick!"	
[Member 2 asked to withdraw]	21 August
Victoria Legislative Council	
I almost thought that it was with glee that he said people might die	1 May
The Minister … is under a cloud for corruptly intervening in a government tender process	22 May
Which rock did you crawl out from?	20 June
Bulldust	19 September
Just imagine the horrific circumstance where Mr Rich-Phillips…was not able to take up his responsibilities within that committee, and suddenly the position we are talking about was held by David Davis! We all have to think about these contingencies!	31 October
The annual financial report … shows that board members, of which the Minister for Industry and Trade is one, were paid in excess of $93,000 in fees, none of which has been declared in the Minister's register of interests	5 December
CANADA	
House of Commons	
Il Duce … fascism	2 March
Ankle-biter	28 November
Practising the politics of perjury	3 December
Steal	4 December
Alberta Legislative Assembly	
For God's sake	3 May
Is telling the truth simply a policy decision?	14 November
The Progressive Conservative Party is becoming partially communist	29 November
British Columbia Legislative Assembly	
What a crock	22 February
You know, he was really scraping the bottom of the barrel	1 March
British Columbia got screwed	26 March
What we would say are butt-covering exercises	19 April
His colleague at least had the honesty to explain	29 May
When I listened to this Premier's diatribes	23 October
I withdraw the word 'ignorant,' and I will substitute it with 'uneducated'	30 October

After 'Gracie's finger,' we're treated to 'Gordo's forearm'	7 November
Manitoba Legislative Assembly	
If he's honourable, or wants to be honourable some day	27 September
This Finance Minister constantly gets on his hind legs and fools Manitobans	16 October
Any one of his 33 seals are more than welcome to come and debate the issue	18 October
The remarkable thing about the Member opposite is he thinks being a smart aleck is a substitute for doing some very clear thinking	22 October
Doer's daffy detour	23 October
Smarmy Minister of Finance	25 October
Québec National Assembly	
Opportunisme politique [political opportunism]	1 June
Girouette nationale [national weather-vane]	16 October
Technocrate condescendant [condescending technocrat]	7 November
Ministre de l'insécurité publique [Minister of Public Insecurity]	8 November
Vire-capot [turncoat]	14 November
Pitreries [clowning around]	15 November
Pelleter du fumier [shovel manure]	14 December
Saskatchewan Legislative Assembly	
Leader of Opposition who wants his nose in the trough	8 March
You're supposed to tell the whole truth and nothing but the truth	20 March
When their leader was running around delivering free whisky to the guys who made that decision	9 May
Yukon Legislative Assembly	
Cadillac socialist	3 May
Member is well known for his inaccuracies	9 May
We're maturing. That's more than I can say for the member across the way	17 May
High and mighty pedestal	11 June
20-minute tirade	13 June
Blindsiding	25 October
Vendetta	30 October
Doesn't pay to cross the Yukon Party	30 October
Comedy routine	21 November
Spun out	5 December
Sweetheart deal	5 December
Grandstand	10 December

INDIA

Gujarat Legislative Assembly	
Here Hooliganism is prevailing	23 February
Nowadays these people have made woman education a business	6 March
Unreliable fellows	6 March
These Congress people who massage secretly the time of Election	22 March
Trivial Congressmen	20 July

NEW ZEALAND HOUSE OF REPRESENTATIVES

Did not have the spine	21 February
Very mixed morals	21 February
Always has these psychological problems	27 February
Did she get a cut?	28 March
Went out, celebrated, fell asleep at the wheel, and has not woken up since	10 May
Space cadet	10 May
Stabbing a fellow party member, a sitting MP, in the back	10 May
A little prissy	10 May
Old buggerlugs	22 May
Aiding and abetting this criminal activity	19 June
The Government is rorting the figures	21 June
Should get on her broom	26 June
Lackey party	26 June
Half-arsed attempt	26 June
A man who goes around the back, daks up, and then comes back to work	17 July
Bob the Builder	19 July
Even his wife must be ashamed of him	24 July
Her husband has been enmeshed in a scandal	24 July
Party of old men	16 August
Economic treason	21 August
No lightweight	5 September
Bitched	21 November

WALES ASSEMBLY

Japs	24 January
Grubby votes	20 June
Sneaky	23 October

BOOKS AND VIDEOS ON PARLIAMENT IN 2007

AUSTRALIA

Parliament in the Twenty-first century: Institutional Reform and Emerging Roles, by John Halligan, Robin Miller and John Power, Melbourne University Press, A$34.95, ISBN 9780522851861 (pbk.); 052285186X (pbk.); 9780522851878 (pdf); 0522851878 (pdf). Electronic version online at: http://www.mup.unimelb.edu.au.

Silencing Dissent: How the Australian government is controlling public opinion and stifling debate, ed. by Clive Hamilton and Sarah Maddison, Allen and Unwin, A$24.95, ISBN 9781741751017.

Dear Mr Rudd: Ideas for a better Australia, ed. by Robert Manne, Black Inc Agenda, A$29.95, ISBN 9780977594917 (pbk.).

Papers on Parliament. No. 47: National Parliament, National Symbols, Department of the Senate, Australia, free, ISSN 1031976X. Electronic version online at: http://www.aph.gov.au/senate/pubs/pops/index.htm.

Papers on Parliament. No. 48: the Senate and Accountability, Department of the Senate, Australia, free, ISSN 1031976X. Electronic version online at: http://www.aph.gov.au/senate/pubs/pops/index.htm.

New South Wales Legislative Assembly Practice, Procedure and Privilege, ed. by Russell D Grove PSM, Assistant Editors Mark Swinson and Stephanie Hesford,

NSW Parliament, Legislative Assembly, A$125 (hardcover), A$90 (pbk.), ISBN 9781921012563, available from The Federation Press,PO Box 45, Annandale NSW 2038, email info@federationpress.com.au.

Cabinet government in Australia, 1901-2006: practice, principles, performance

Author, by Patrick Weller, University of New South Wales Press, A$49.95, ISBN 9780868408743.

Election finance law: recent developments and proposals for reform

Author, by Gareth Griffith, NSW Parliamentary Library Research Service, ISBN 9780731318247.

2007 New South Wales Election: preliminary analysis, by Antony Green, NSW Parliamentary Library Research Service, ISBN 9780731318209.

Parliamentary privilege: major developments and current issues, by Gareth Griffith, NSW Parliamentary Library Research Service, ISBN 0731318021.

Women, parliament and the media, by Talina Drabsch, NSW Parliamentary Library Research Service, ISBN 9780731318193.

Parliament: Mirror of the People? Members of the Parliament of Western Australia 1890–2007, by Phillip Pendal, David Black and Harry Phillips, Parliament of Western Australia, A$60 (hardback), A$40 (pbk.), ISBN 9781921355172 (hardback); 9781921355165 (pbk.).

In 1867, as the Second Reform Act was passing through the Parliament at Westminster, a reformer with a good head for figures, Bernard Cracroft, profiled the existing membership of the House of Commons in an attempt to explode the anti-reform bogey that widening the franchise would see the lower orders swamp the body politic. Indeed, Cracroft outlined that notwithstanding the abolition of the property qualification for MPs in 1858, at the 1865 general election the 128,603 working-class borough electors (representing a sizeable 25 percent of the English and Welsh electorate) had only managed to elect two members who could be said to specifically represent their interests—out of 660 members! In fact, Cracroft demonstrated through his meticulous (and somewhat merciless) analysis that the Commons was chock-a-block with aristocratic landowners who formed 'one vast cousinhood' of shared interests: "They have a common freemasonry of blood, a common education, common pursuits, common ideas, a common dialect, a common religion". If there was any swamping going on, Cracroft argued, it was with this lot who got into and controlled Parliament—"by the power, in short, of their prodigious antecedent advantages, by their irredeemable start in the race for power".

One hundred and forty years later, Australian authors Phillip Pendal, David Black and Harry Phillips in *Parliament: Mirror of the People?* have similarly attempted to determine "who are the people past and present who have constituted our elected Parliament"—in this case, the Parliament of Western Australia from the inauguration of responsible government in 1890 up to the present—and whether such MPs have been "broadly representative of the people who elect[ed] them". Extending Cracroft's brief, *Parliament: Mirror of the People?* also examines issues such as MPs' post-parliamentary careers and whether standards of parliamentary conduct have declined over the years, as is so often claimed.

In answering their queries, the authors have trawled through a massive array of primary and secondary material, including oral history interview transcripts of former members, to provide a highly detailed portrait of the membership of the Western Australian legislature, which, they reveal,

includes a former Olympic athlete, British Prime Minister Harold Wilson's uncle, a slew of Rhodes scholars, and—answering their own declining standards question—a nineteenth-century Attorney General with (undisclosed) 'accidental death', public drunkenness and 'shooting affray' incidents to his name before entering Parliament!

Unlike the homogenous 'vast cousinhood' of the mid-Victorian House of Commons, pilloried by Cracroft, *Parliament: Mirror of the People?* establishes that the Western Australian legislature has always been more diverse—and certainly not freighted with aristocrats! But, as the authors point out, the Western Australian Parliament certainly didn't mirror the populace when first instituted, with women and Aboriginal members, for example, not taking up seats until the twentieth century. Of latter years, however, the authors are pleased to report that the composition of both Chambers of the Western Australian Parliament is "edging nearer to … mirroring the wider population", although, again, with the number of women and Aborigines falling significantly short of their proportion in the community.

Parliament: Mirror of the People? is written by Western Australia's three Parliamentary Fellows, two of whom are academics-cum-political commentators (Black and Phillips) and an historian and former member of both Houses of the Western Australian Parliament (Pendal)—all of whom are widely published. The result is an authoritative and insightful treatment of the subject with an enjoyable touch of Cracroft's wit and asperity.

CANADA

The Canadian founding: John Locke and parliament, by Janet Ajzenstat, McGill-Queen's University Press, CAN$75.00, ISBN 9780773531521.

The law of government ethics: federal, Ontario and British Columbia, by Gregory James Levine, Canada Law Book, CAN$79.00, ISBN 9780888044617.

The people's House of Commons: theories of democracy in contention, by David E Smith, University of Toronto Press, CAN$55.00, ISBN 9780802092551.

L'Hôtel du parlement, mémoire du Québec, by Gaston Deschênes, Saint-Lambert, Québec, Stromboli, CAN$57, ISBN 9782921800235.

Histoire de la Tribune de la presse: 1871-1959, by Jocelyn Saint-Pierre, Montréal, VLB Éditeur, CAN$27.95, ISBN 9782890059702.

NEW ZEALAND

Constitutional and Administrative Law in New Zealand, by Philip A Joseph (3rd edition), Thomson/Brookers, $NZ178.19, ISBN 978-0-86472-601-8.

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CONSOLIDATED INDEX TO VOLUMES 72 (2004) – 76 (2008)

This index is in three parts: a geographical index; an index of subjects; and finally lists, of members of the Society specially noted, of privilege cases, of the topics of the annual Questionnaire and of books reviewed.
The following regular features are not indexed: books (unless reviewed), sitting days, unparliamentary expressions. Miscellaneous notes and amendments to Standing Orders are not indexed in detail.

ABBREVIATIONS

ACT	Australian Capital Territory
Austr.	Australia
BC	British Columbia
HA	House of Assembly
HC	House of Commons
HL	House of Lords
LA	Legislative Assembly
LC	Legislative Council
LS	Lok Sabha
NA	National Assembly
NI	Northern Ireland
NSW	New South Wales
N. Terr.	Northern Territory
NZ	New Zealand
Reps	House of Representatives
RS	Rajya Sabha
SA	South Africa
Sask.	Saskatchewan
Sen.	Senate
T & C	Turks and Caicos
T & T	Trinidad and Tobago
Vict.	Victoria
WA	Western Australia.

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