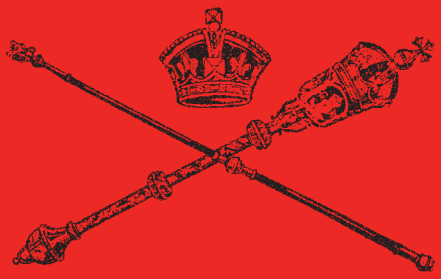

The Table

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CONTENTS

EDITORIAL

This year's edition of *The Table* sees the conclusion of Colin Lee's exploration of the evolution of the closure motion through the experiences of Archibald Milman. This significant procedural development, and its contribution in moving procedure in the UK House of Commons from a reliance on precedent and shared understanding to a dependence on codified rules set out in standing orders is worth the time of all of us who are involved in the development of new procedure in legislatures in the 21st century.

The next article is from Alexander Horne on the scrutiny of treaties in the UK Parliament. As a former legal adviser to committees in both Houses of Parliament in Westminster, and most recently the House of Lords International Agreements Committee, Horne offers a unique insight from someone who has been at the forefront of the most recent attempts to better a long-running deficiency.

A final article has been provided by Colin Lee, this time working with Peter J Aschenbrenner, which takes a refreshing look at the politics of the UK House of Commons in the late 18th century through the correspondence of John Hatsell, Clerk of the House of Commons and John Ley, the Clerk Assistant. Both clerks had lengthy careers in the House (of over 40 years each) and, as such had a significant impact on shaping the approach to procedure and practice in Westminster. Lee and Aschenbrenner's analysis considers the relationship between Hatsell and Ley as they shared a front row view of the politics of the day, and wrestled with their own views and the responsibilities of their roles.

This edition also includes the usual interesting updates from jurisdictions and the comparative study on the changes made to procedure in the light of the COVID-19 pandemic is a clear demonstration of the innovative abilities of colleagues across the Commonwealth, and the strain the pandemic has placed on legislatures. As such, I am exceptionally grateful that so many colleagues took the time to provide such detailed responses to this year's study and to reflect on their experiences.

As ever, I thank all those who have contributed articles, updates and reviews from the Commonwealth and hope it is as of much interest to you as it has been to me.

MEMBERS OF THE SOCIETY

Australia

House of Representatives

Jerome Brown (Clerk Assistant (Procedure)), **Richard Selth (**Director (Programming), Table Office) and **Stuart Woodley (**Clerk Assistant (Committees)) left the administration. **Catherine Cornish** (Deputy Clerk) announced her retirement.

Senate

Former Deputy Clerk of the Senate, **Maureen Weeks**, commenced leave in late January 2020 prior to her formal retirement in August. **Jackie Morris**, formerly Clerk Assistant (Procedure), was appointed as her replacement. **Toni Matulick**, formerly Director, Procedure and Research, was promoted to Clerk Assistant (Committees) in May 2020.

New South Wales Legislative Council

Under the Department's rotation opportunity policy, **Jenelle Moore** was commissioned as Usher of the Black Rod on 28 January 2020, replacing **Susan Want**, who has rotated into the position of Director—Procedure.

Tasmania House of Assembly

Todd Buttsworth resigned as Second-Clerk Assistant on 30 October 2020.

Victoria Legislative Assembly

On 1 July 2020, the two Assistant Clerks of the Victorian Legislative Assembly rotated roles. **Dr Vaughn Koops is** now the Assistant Clerk Committees and **Paul Groenewegen** is now the Assistant Clerk Procedure & Serjeant-at-Arms.

Victoria Legislative Council

In September 2020, the two Assistant Clerks of the Victorian Legislative Council rotated roles. Consequently, **Richard Willis** is now the Assistant Clerk Committees and **Keir Delaney** is now the Assistant Clerk Procedure.

Canada

House of Commons

Colette Labrecque-Riel (Clerk Assistant and Director General, International and Interparliamentary Affairs) retired on 31 May 2020.

Beverly Isles (Clerk Assistant, House Proceedings) retired on 30 June 2020. **Pierre Rodrigue** was appointed Clerk Assistant, House Proceedings on 8 July 2020.

Jeremy LeBlanc was assigned, on an interim basis, to the International and Interparliamentary Affairs Directorate as Clerk Assistant and Director General.

Senate

Richard Denis, Interim Clerk of the Senate and Clerk of the Parliaments, and Chief Legislative Services Officer, retired on 31 December 2020. **Gérald Lafrenière**, formerly Director, Governance and Strategic Planning, was appointed Interim Clerk of the Senate and Clerk of the Parliaments, and Chief Legislative Services Officer in his place.

Catherine Piccinin, Clerk Assistant (Chamber Operations and Procedure Office), retired on 9 December 2020. **Till Heyde**, formerly Acting Principal Clerk, Table Research, was appointed in her place.

British Columbia Legislative Assembly

Kate Ryan-Lloyd was appointed Clerk of the Legislative Assembly on 2 March 2020 following the unanimous recommendation of an all-party special committee. Ms. Ryan-Lloyd has served the Legislative Assembly for nearly 30 years in various roles. She is the 13th Clerk of the Legislative Assembly and the first woman to hold the position in British Columbia.

On 30 April 2020, **S. Suzie Seo** was confirmed in the position of Law Clerk and Parliamentary Counsel. Ms. Seo was seconded from the Ministry of Attorney General in February 2019 to the Legislative Assembly as Parliamentary Counsel, and previously served as Assistant Law Clerk and Parliamentary Counsel and as a Table Officer at the Senate of Canada.

Artour Sogomonian assumed the position of **15 May.** He joined the Legislative Assembly in 2016, serving in the Offices of the Sergeant-at-Arms, the Clerk and the Speaker as well as the Parliamentary Committees Office, after working at the Senate of Canada from 2009 to 2016.

Jennifer Arril was appointed Clerk of Committees on 5 October 2020. Jennifer joined the Legislative Assembly in November 2015 and has assumed progressively more senior roles within the Parliamentary Committees Office since that time.

Manitoba Legislative Assembly

Claude Michaud, Clerk Assistant and Journals Clerk, retired on 30 June 2020.

Andrea Signorelli, Clerk Assistant and Clerk of Committees, resigned on 29 May 2020 to pursue a career in law.

Québec National Assembly

François Arsenault, Director General of Parliamentary Affairs, was appointed Associate Secretary General on 8 December 2020. This appointment was made

pursuant to sections 26 and 121 of the Act respecting the National Assembly, on a motion by the Premier after consultation with the opposition parties and the independent Members.

United Kingdom

House of Commons

Mark Hutton, Clerk of the Journals and previously Secretary of SOCATT, retired in September 2020.

ARCHIBALD MILMAN AND THE EVOLUTION OF THE CLOSURE—PART 2: 1882–1885

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

Introduction

In November 1882, the United Kingdom House of Commons introduced for the first time a permanent closure rule, allowing debates to be curtailed in certain circumstances with the agreement of a sufficient majority. Although the closure had been used once in 1881 on the initiative of the Speaker and had been allowed for during that same year in emergencies,[1] the creation of a permanent arrangement for closure was a crucial moment in procedural development. As Archibald Milman, second clerk assistant at the time of the change, was later to note, it was "vehemently contested by the Opposition, who denounced it as an unprecedented interference with the liberty of debate", and it was agreed to "after a discussion extending over nineteen sittings".[2] The intellectual and oratorical triumph of Gladstone in piloting through the measure has dominated much consideration of the closure, with less attention to the fact, noted by Milman, that "Mr Gladstone's closure rule verified neither the hopes of its supporter s nor the fears of its opponents".[3]

Most accounts of the introduction of the closure have been concerned principally to identify the driving forces which explain why the House agreed to such a significant change in its procedures. Some early scholars such as the Belgian MP and former parliamentary official Auguste Reynaert and the French law student Henri Masson saw the change as a response to the "contagion" of systematic obstruction by the Irish Home Rule party.[4] More recently, Michael Koß has provided a thorough analysis of the debates leading to the 1882 rule change which emphasises the discontinuity of the procedural changes initiated in that year, and contends that this discontinuity was only made possible by the

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

2 *The New Volumes of the Encyclopædia Britannica constituting in combination with the existing volumes of the Ninth Edition the Tenth Edition … Volume 31* (London, 1902) (hereafter *Encyclopædia Britannica)*, entry for Parliament written by Milman, pp 477–483, at p 478.

3 *Encyclopædia Britannica*, p 478.

4 A Reynaert, *Histoire de la Discipline Parlementaire: Tome Second* (Paris, 1884), p 348; H Masson, *De l'Obstruction Parlementaire: Étude de Droit Public et d'Histoire Politique: Thèse pour le Doctorat* (Montauban, 1902), pp 269, 274, 278–299, 343, 347.

"anti-system obstruction" of the Irish Home Rule party. He also characterises the introduction of the closure as the start of a path towards the centralisation of agenda control, a path which, he contends, might not have been followed but for Irish obstruction.[5]

Others have argued that there were broader drivers of the change made in 1882. Josef Redlich viewed the procedural transformation of which the closure rule of 1882 formed an integral part as "the inevitable consequence of the completion in the nineteenth century of the system of parliamentary government". For him, Irish obstruction had the effect of accelerating the speed of change, but "was not its true cause".[6] The first study which drew on a significant range of manuscript sources, by Edward Hughes in 1956, highlighted Gladstone's dual concerns to counter obstruction and facilitate the passage of legislation more generally.[7] A broader analysis by Peter Fraser in 1960 also saw the closure rule of 1882 as a response, albeit ineffective, to the growing emphasis within the House on the primacy of the legislative role.[8] The fullest consideration of the closure rule of 1882 is in the work of Ryan Vieira. He focuses on the themes of the debate and preparatory private and public discussions, and particularly on the deployment of the language of reform and the advocacy of historical discontinuity by supporters of the change, emboldened by the experiences of 1881. For him, the significance of the changes made in 1882 lies not in their immediate impact, but because they represented "the forging of a new linguistic code" to justify procedural change.[9]

Consideration of the preparation, passage and impact of the 1882 closure rule also throws light on Gladstone's role as leader of the House of Commons. Many biographers of Gladstone have followed the lead of his official biographer John Morley, who decided to avoid any account of Gladstone's involvement in the closure, believing that "the subject is in the highest degree technical, and only intelligible to those who, as Mr. Gladstone said, 'pass their lives within the

5 M Koß, *Parliaments in Time: The Evolution of Legislative Democracy in Western Europe, 1866–2015* (Oxford, 2018), pp 114–124, 127–129. See also M Koß, "The Origins of Parliamentary Agenda Control: A Comparative Process Tracing Analysis", *Western European Politics* (2015), pp 1062–1085, at pp 1070–1075.

6 J Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form* (London, 1908, 3 vols), I.207.

7 E Hughes, "The Changes in Parliamentary Procedure, 1880-1882", in R Pares and A J P Taylor, eds, *Essays presented to Sir Lewis Namier* (London, 1956), pp 290–319.

8 P Fraser, "The Growth of Ministerial Control in the Nineteenth-Century House of Commons", *English Historical Review* (1960), pp 444–63, at pp 458–460.

9 R Vieira, "The Time of Politics and the Politics of Time: Exploring the role of temporality in British Constitutional Development during the long nineteenth century", McMaster University PhD thesis (2011), pp 175–202, 258–261. See also R Vieira, *Time and Politics: Parliament and the Culture of Modernity in Britain and the British World* (Oxford, 2015).

walls of parliament'—perhaps not by any means to all even of them".[10] Other biographers have also followed Morley in distancing Gladstone from his role in the creation of the closure by emphasising the unGladstonian consequences of the procedural changes which he put in train, which, "if Gladstone could have foreseen them he would hardly have approved".[11]

The article, drawing upon the same range of sources as the previous part,[12] considers not only the debates on the closure rule, but also the different options for the form of the rule that were considered before measures were placed before the House of Commons. It highlights the choices that were made about the shape of the proposal, and suggests that consideration of those choices enables a broader understanding of the purposes of the rule change. It also examines the progress of the debate between February 1882 and November 1882, drawing attention to how an opportunity for compromise was missed and how the government's approach hardened over time. It then shows how the decisions taken by Gladstone and his cabinet in 1882 were instrumental in creating a rule that was almost wholly ineffective. A subsequent article will examine how the closure was finally transformed into an effective tool for the transaction of parliamentary business.

"Incapacity for the due transaction of business": early consideration of a closure rule

Henry Brand, the Speaker of the House of Commons, had been the main progenitor of the temporary closure rule during a state of urgency that was introduced in 1881.[13] He was conscious that he was creating "a precedent for closing a Debate wilfully protracted for the purpose of obstructing and defying the will of the House".[14] His hope when he first framed the urgency rules was that many of them may "be found to work well, & will be permanently adopted".[15] In May 1881, there was a short debate on a backbench motion to introduce a closure rule by standing order. The marquess of Hartington, speaking for the government, left little doubt of his personal sympathy for such a proposal—"my own opinion on this question, I have held for some time very strongly that the arguments in favour of some such power are, on the whole, convincing and conclusive"—while also indicating that the government had no

[10] J Morley, *Life of Gladstone* (London, 1903, 3 vols), II.123–124.

[11] E J Feuchtwanger, *Gladstone* (London, 1989 edn), p 208. See also H C G Matthew, *Gladstone 1875–1898* (Oxford, 1995), p 172.

[12] "Part 1", pp 7–8.

[13] "Part 1", pp 52–53.

[14] The Parliamentary Archives (hereafter TPA), BRA/3/4, transcript of Brand diary, undated entry at end of 1881 Session.

[15] TPA, BRA/1/4/49, Brand to Sir George Grey, 16 Feb. 1881.

wish to bring forward such a controversial measure in the present session.[16]

The impetus for reform came not simply from a precedent having been created during the specific circumstances when Irish coercive legislation was in play, but from the wider sense that the administration was faced with profound difficulties in pursuing a substantive legislative agenda at all. The methods of systematic obstruction, begun by Parnellites in the previous Parliament, were adopted increasingly within official Opposition ranks, most notably by the so-called "Fourth Party" on the Conservative benches.[17] Delay, particularly under the guise of subjecting government expenditure to scrutiny in Committee of Supply, appealed to Home Rulers, Conservatives and some on the radical wing of the governing party alike.[18] The Gladstonian editor of the *Fortnightly Review*, John Morley, referred in August 1881 to that year's session as

> "characterised by barrenness without parallel. The Parliamentary collapse is almost painfully complete. Measures of pressing urgency affecting the vital interests of the United Kingdom are blocked. Nothing can be done. The Parliamentary machine has broken down, and the paralysis of the legislature is at last being recognised as a grave public evil."[19]

In July, Gladstone's private secretary Edward Hamilton wrote in his diary that "The reform of Parliamentary procedure must no doubt be soon taken in hand" and thought that "resort will have to be had to some form of the cloture".[20] Gladstone himself started discussion on renewed procedural reform in August by sending Brand and the Clerk of the House, Sir Thomas Erskine May, his paper of November 1880, but also encouraging them to consider the matter "*ab initio*".[21] Gladstone remained cautious about the prospects for progress, not least due to what he perceived as the weakness of the Conservative leader in the Commons, Sir Stafford Northcote. At the start of September, Gladstone wrote that "It is I fear too probable that the question of internal reform which with a Leader of the Opposition such as Peel could easily have been kept out of

16 *Parliamentary Debates: Third Series* (hereafter HC Deb), 17 May 1881, cols 695–709. Online versions have been cited where available, but the online version has large gaps for 1882.

17 "Part 1", pp 19–20.

18 T P O'Connor, *Gladstone's House of Commons* (London, 1885), pp 164–166.

19 "Part 1", pp 53–54.

20 D W R Bahlman, *The Diary of Sir Edward Walter Hamilton 1880–1885* (Oxford, 1972; 2 vols), p 153. There is continuous pagination across the two volumes and subsequent references take the form HD.page.

21 H C G Matthew, ed, *The Gladstone Diaries with Cabinet Minutes and Prime-Ministerial Correspondence* (Oxford), x.113. References hereafter are to *Volume X: January 1881–June 1883* (1990) and *Volume XI: July 1883–December 1886* (1990) in the form GD.vol.page. See also BL, Add Ms 44625, fos. 4–9v, copy of Obstruction and Devolution as printed for Cabinet 12 November 1880 marked 'with Mr Gladstone's notes made on 23 August 1881 for the Speaker and Sir T E May'.

the vortex of party, will by the weakness of Northcote be let slip into it".[22] Early in October, Gladstone told the Queen that "the state of incapacity for the due transaction of business to which the House of Commons has been reduced" weighed much on his mind.[23]

"The necessity … exists": Brand, May and the case for the closure

While Gladstone remained sceptical about the case for the closure, Brand and May set about considering the matter with vigour, addressing a number of the technical issues that would be faced in the design of the rule and providing ammunition for the supporters of the proposal within the cabinet. May visited Brand at his country house in late October and the two agreed an approach which May was then to distil into written form.[24] May completed his memorandum on 2 November.[25] He began by setting out how essential it was for the House to change its approach to procedural matters:

> "A majority of the House, irrespective of party, have hitherto proved themselves strongly conservative in matters affecting the procedure of the House. They have clung to old forms and traditions, which have ceased to be applicable to the present time."[26]

He admitted that "the most important and controverted rule affecting debates is the *Clôture*." He had no doubt that "The experience of last Session has demonstrated the necessity of the House assuming the power of closing a debate, factiously prolonged by a minority".[27] He went on:

> "It is certain that any proposal of this kind will be strenuously resisted as an attempt to stifle the voice of minorities. Opposition to it may be anticipated from all sides of the House; and in whatever form it may be proposed, concessions will probably have to be made to meet objections raised in debate."[28]

May noted that the closure under the urgency rules has vested the initiative in the Speaker. He invited consideration of whether this "invidious discretion" might be passed to an individual Member, or to forty Members rising in their places, or by some other means, but concluded that "probably the selection of the Speaker, as interpreter of the general sense of the House, will prove more

22 GD.x.118. See also HD.165.

23 P Guedalla, *The Queen and Mr Gladstone, 1880–1898* (London, 1933), p 170.

24 BL, Add Ms 44195, fos. 62–63v, Brand to Gladstone, 30 Oct. 1881.

25 BL, Add Ms 44154, fos. 79–85, Memorandum on the Rules of Procedure of the House of Commons by Erskine May, 2 Nov. 1881, also available at TNA, CAB 37/6/29 (hereafter May Memorandum).

26 May Memorandum, p 2.

27 May Memorandum, p 4.

28 May Memorandum, p 4.

acceptable than any other proposal".[29]

Turning to the majority required for closure, May noted that the 3:1 ratio was in conformity with the general resolution on urgency agreed by the House in 1881, but he thought that "it cannot be accepted as a permanent Rule". He suggested that "A simple majority would be more consistent with the uniform practice of Parliament". He thought that a majority of "one-fourth" might need to be conceded—presumably meaning that the total numbers voting in the majority would need to be at least 25 per cent larger than the total in the minority. But he stressed that "Even this concession … would seriously affect the operation of the Rule; and any further concession would render it nugatory, except in cases of obstruction by a very small minority".[30]

On 5 November, Brand wrote to Gladstone enclosing and endorsing May's memorandum which was "in fact the result of much consideration & mutual conference between May and me". The Speaker suggested that it was not their role to consider how far the proposals would be accepted by the House, but acknowledged that "you will meet with strenuous resistance … from many quarters", including some within the Liberal party.[31] Brand was to remain the foremost advocate for the closure, meeting Gladstone on 9 November to press the case,[32] and hosting him at his country house in early December. Brand was, according to Hamilton, "confident that the necessity for the clôture exists, distasteful though it may be to English ideas".[33]

"Also the Main Question": initial cabinet consideration and the emergence of the major closure

Gladstone distributed May's memorandum and Brand's letter to his cabinet colleagues, starting a period of sustained consideration. A striking aspect of this process was that Brand and May remained heavily involved, with both of them attending a series of cabinet meetings in early January, and May taking direct responsibility for producing new drafts arising from those deliberations.[34]

Gladstone remained sceptical about the case for closure at this stage, disputing its value as a solution to the problems of obstruction. In early November, he told May that "the knot of the business evidently lies in delegation

29 May Memorandum, p 5.

30 May Memorandum, p 5.

31 BL, Add Ms 44195, fos. 65–67v, Brand to Gladstone, 5 Nov. 1881. Also published in May Memorandum, pp 14–15.

32 GD.x.159; HD.184

33 HD.196.

34 GD.x.190–191; HD.211; D Holland and D Menhennet, eds, *Erskine May's Private Journal, 1857–1882: Diary of a Great Parliamentarian* (London, 1972) (hereafter *Private Journal*), p 55.

or devolution".[35] Later that month, he wrote to the same correspondent that "I have a strong impression that cloture, when obtained, would not do the work we want done." As well as anticipating "insufficient benefits" from the introduction of the closure, Gladstone also believed that others underestimated the "immense difficulty in passing it", bearing in mind that "To put an end to a debate by clôture requires a very strong case."[36] During the process of cabinet consideration, he told Hamilton that "nobody has approached the introduction of the closure principle with greater reluctance than he has, and that it is only the bare necessity of the case which has forced him to countenance it".[37] Late in 1882 , he was to recollect to Brand: "I was personally of opinion at the outset that it would cost us more than it was worth, but I gave way to my colleagues".[38] At the end of the year, Brand noted in his diary: "Mr Gladstone was more tender towards Minorities than any Member of the Cabinet. I leant in favour of majorities, having had bitter experience of domination of the House by Minorities".[39]

Gladstone's scepticism was in part because he thought that advocates of the closure misunderstood the nature of the obstruction to which it was the supposed response, which he thought arose "very much more through the multiplication of questions, than through the undue prolongation of particular debates". For this reason, a closure was only likely to be effective if it was in a form that enabled the closure, once claimed, to require the formal moving and then putting without further debate of related amendments and motions—"a form which on a Resolution or a Clause in a Bill, should render it possible at any time to move that all remaining amendments, or other motions, on such Resolution or Clause should be put without discussion". Gladstone asked May as early as November to consider whether a closure in this form "would be feasible".[40]

The need for a broad form of closure was also highlighted by the only politician outside the cabinet other than Brand who was consulted at this stage—the Chairman of Ways and Means, Lyon Playfair. He emphasised that a closure, in order to be effective, had to apply in Committees of the whole House and had to reflect the fact that "'Under present Rules, a single Clause (such as that in the Coercion Bill), or a single Vote (as the Constabulary Vote, Ireland),

35 TPA, ERM 1/31–33, Gladstone to May, 7 Nov. 1881. See also HD.181.
36 TPA, ERM 1/34–35, Gladstone to May, 22 Nov. 1881.
37 HD.213.
38 TPA, BRA/1/5/53, Gladstone to Brand, 10 Oct. 1882.
39 TPA, BRA/3/5, remarks at end of 1882 Session.
40 TPA, ERM 1/34–35, Gladstone to May, 22 Nov. 1881.

may be the cause of many days' weary obstruction".[41]

At its meetings between 6 and 9 January, the cabinet considered the closure rule in two forms, what Gladstone termed a "minor" closure which was a simple closure on the question before the House or Committee and a "*major*" closure which followed the practice of the US House of Representatives in respect of the what was there termed "the previous question", which had been analysed by John George Dodson, president of the Local Government Board and a former Chairman of Ways and Means. The "major closure" agreed by the cabinet allowed the closure to encompass the question before the House, other amendments to any proposition before the House or in Committee other than clauses of bills, and the main question. The preferred draft was one prepared by Hugh Childers, the Secretary of State for War, although May was empowered to make drafting changes to it. The key passage of the proposed rule read as follows:

> "And if the latter Question be so decided [i.e., that the main question be put] the amendment under discussion, and any subsequent amendments upon the Notice Paper, and also the Main Question, shall be forthwith put from the Chair."[42]

"Evident sense": textual safeguards on the closure

The proposed rule that was agreed in principle by the cabinet on 9 January, and on which May undertook some further drafting work in the subsequent days, represented in many ways the high watermark for the breadth and ease of use of the closure. In the second half of January, further discussion within the cabinet, and with Brand, led the rule to be weakened in several respects, through the introduction of additional safeguards, both textual and numerical, and through the abandonment of the major closure.

This changes partly arose from concern about press reaction. Newspapers, which were broadly sympathetic to the idea of the closure in January 1881,[43] were very sceptical in January 1882. Thus, the conservative *Morning Post* suggested that any gains from its introduction would be "far outweighed by the hurtfulness of the innovation".[44] Hamilton recorded on 18 January that "the country (judging from public opinion reflected by the London and provincial press) does not take kindly to the idea of the cloture".[45] Lord Richard

41 BL, Add Ms 44280, fos, 178–181, printed memorandum by Playfair on May's procedural proposals, 21 Dec. 1881.

42 GD.x.190–191; BL, Add Ms 44626, fos. 56–56v, draft Closure rule, initialled by Gladstone; BL, Add Ms 44154, fos. 118–119, draft Closure rule, May's annotated copy.

43 "Part 1", pp 28–29.

44 *Morning Post*, 9 Jan. 1882, p 4.

45 HD.211–212.

Grosvenor, the Government Chief Whip, apparently told Gladstone that 30 Liberal MPs would oppose the closure. Chamberlain was very sceptical about this assessment, pointing out that Grosvenor had named Dillwyn among the likely opponents, when Dillwyn had actually proposed the introduction of a permanent closure rule in May 1881. Chamberlain assured Gladstone that only one advanced radical would oppose the closure.[46] Concerns about parliamentary and public opinion were nevertheless sufficient to drive significant changes to the draft rule.

When Brand had first proposed a draft closure rule to Gladstone and Hartington on 19 January 1881, he had envisaged that a closure motion would be moved by a Member of the House, with the Speaker or Chairman adjudicating whether it was appropriate to grant the closure.[47] Various limitations to prevent abuse of the right to move closure were considered, including a proposal from Northcote to restrict the right to ministers.[48] However, during discussions to find cross-party agreement on a closure rule, the initiative had been transferred to the Speaker, a proposal previously embodied in a draft prepared by Dodson.[49] The temporary closure rule introduced in 1881 gave the initiative to the Speaker.[50]

The 1881 temporary closure power was never made available to the Chairman of Ways and Means, because urgency was not applied to the Committee of Supply and the timetabling of urgent legislation by way of guillotine motion rendered a closure in Committee of whole House on legislation superfluous.[51] However, when Playfair was consulted about the draft closure rule, as prepared by Brand and May in November 1881, he was very sceptical about whether the Speaker initiative could be transferred to Committee: "No Chairman should be obliged to bring the Cloture into operation by his mere interpretation of the impatience or will of the Committee".[52] He thought that "if Cloture is to work in Committee, the initial application should come from it". To prevent abuse of the rule, he suggested that a certain number of Members—20, 30 or 40—should have to rise in their places to support the motion, and also mooted the idea that such support might have to be on a cross-party basis, with at least 10 Members from the side of the House opposite to that to which the Member

46 BL, Add Ms 44125, fos. 118–119v, Chamberlain to Gladstone, 26 Jan. 1882 (Hughes, p 314)
47 "Part 1", pp 29–30.
48 "Part 1", p 34.
49 "Part 1", pp 33–35, 27
50 "Part 1", pp 47–48.
51 "Part 1", pp 47–49.
52 BL, Add Ms 44280, fos, 178–181, printed memorandum by Playfair on May's procedural proposals, 21 Dec. 1881.

moving the closure belonged.[53]

Despite the earlier consideration in January 1881, and Playfair's doubts, the draft which emerged from the cabinet in early January 1882 left the initiative with the Speaker or Chairman.[54] The 1881 rule had embodied an additional safeguard or limitation on the Speaker's exercise of the power to placate Conservative doubts, namely that the closure would only be proposed "when it shall appear to Mr. Speaker … to be the general sense of the House, that the question be now put".[55] In the course of January, the requirement for the Speaker to sense the mood of the House was inserted in the new draft rule,[56] with a subsequent modification to qualify this further by replacing "general" with "evident" before "sense".[57]

The cabinet also supported a further limitation relating to the purpose of the closure to secure broader public support. At the suggestion of Chamberlain, the draft was modified so that the Speaker was only to propose closure when "Debate is being protracted for the purpose of obstruction". Dodson supported the change: "The words 'For the purpose of obstruction' somewhat weaken the rule but they make it so incomparably more difficult for the Opposition to resist before the House and the country that it is safe to retain them".[58] Chamberlain also said he had believed that the reference to obstruction in the rule would "strengthen our position in the House and the Country and would be an unanswerable proof of our intention not to interfere with legitimate discussion".[59] Gladstone indicated to the Speaker that this limitation "would have a soothing effect".[60]

Brand opposed this last change, arguing that the use of this term would mean that the Speaker would then "stigmatise with obstruction the Member or Members rising when he does, they to continue debate, & he to close it".[61] Hartington, Sir William Harcourt and Lord Spencer all agreed that the Speaker's power should not be confined to cases of obstruction, which Hartington felt

53 BL, Add Ms 44280, fos, 178–181, printed memorandum by Playfair on May's procedural proposals, 21 Dec. 1881.

54 GD.x.191; BL, Add Ms 44626, fos. 56–56v, draft Closure rule, initialled by Gladstone; BL, Add Ms 44154, fos. 118–119, draft Closure rule, May's annotated copy.

55 "Part 1", p 48.

56 GD.x.203; BL, Add Ms 44154, fos.125–134, Procedure Rules, as amended, 30 Jan. 1882.

57 GD.x.205.

58 BL, Add Ms 44252, fos. 151–152v, memorandum by Dodson, 19 Jan. 1882 (Hughes, p 313); BL, Add Ms 44154, fos. 103–105v, May to Gladstone, 12 Jan. 1882; BL, Add Ms 44252, fos. 190–192, Dodson to Gladstone, 14 Oct 1882.

59 BL, Add Ms 44125, fos. 115–115v, Chamberlain to Gladstone, 21 Jan. 1882 (Hughes, p 313).

60 BL, Add Ms 44195, fos. 82–83, copy of Gladstone to Brand, 18 Jan 1882 (GD.x.197).

61 BL, Add Ms 44195, fos. 77–80v, Brand to Gladstone, 18 Jan. 1882.

"deprives it of all force".[62] Chamberlain, having first proposed the additional words, accepted the Speaker's case: "The arguments of the Speaker, however, seem to me very strong and I now think the balance is against the insertion of this qualification".[63] The removal of the additional qualifying words was agreed by the cabinet at meetings on 30 and 31 January.[64]

"The arithmetical puzzle": numerical safeguards and the abandonment of the major closure

Although the Speaker prevented the textual restrictions being even greater, he was unable to prevent the introduction of numerical safeguards. Even more importantly, he advocated the most significant change to the closure rule, which robbed it of most of its potential benefits, namely the abandonment of the major closure.

In agreeing the major as well as minor form of the closure in early January, the cabinet had also decided that it should insert a numerical safeguard, whereby the major closure (but not at this stage the minor closure) would only be agreed to if one of two conditions were met: the first was that fewer than 40 Members voted against its application; the second was that, where the first condition was not met, at least 200 Members voted in favour of its application. Brand later blamed the Prime Minister for the introduction of these safeguards: "the arithmetical puzzle, by which it was fettered, was, I believe, the invention of Mr Gladstone".[65] Gladstone's preference for this numerical safeguard could probably be explained by two factors. The first was his concern to protect minorities, particularly the Official Opposition, which had been apparent in discussions in 1881.[66] The second was his desire to avoid the use of the proportional majority which he had been forced by Northcote to agree as a condition for urgency that year. Hamilton understood that "Mr G. holds very strongly that the cloture on the 2/3 principle will make it useless and that to be serviceable it must be on the principle of a simple majority".[67]

On 18 January 1882, Brand wrote to Gladstone indicating that he supported

62 BL, Add Ms 44145, fos. 180–180v, Note by Hartington, 19 Jan 1882.

63 BL, Add Ms 44125, fos. 115–115v, Chamberlain to Gladstone, 21 Jan. 1882 (Hughes, p 313).

64 GD.x.203, 205; BL, Add Ms 44154, fos.125–134, Procedure Rules, as amended, 30 Jan. 1882.

65 TPA, BRA/3/5, remarks at end of 1882 Session. In using this term, Brand was echoing a term first used by John Bright on 30 March 1882, when he denied that the closure provisions represented "a great arithmetical puzzle": HC Deb, 30 Mar. 1882, col 318.

66 "Part 1", p 34.

67 HD.211. For discussion on a 2 to 1 majority in January 1881, subsequently adapted to 3 to 1 for urgency, see "Part 1", po 35–36, 47.

the cabinet's proposals "with one important exception". He considered that the proposed major closure was "very strong: too strong in my opinion for acceptance by the House, and not required, at present, to enable the House to proceed with its business".[68] The Speaker believed that a better course would be to secure the minor closure first, and then the major closure subsequently. If the government pursued both together, because the major closure was such "a very startling proposition", he felt that "if you put it forward you run the risk of losing" the minor closure as well, because the "Opposition will hold up" the major closure, and "so scare the House & the Country with your proposals as a whole".[69]

Gladstone in reply accepted that "no doubt the provision for stopping debate on pending amendments will help to excite opposition".[70] But he also pointed out that the contraction of scope proposed by Brand significantly blunted the effectiveness of the weapon:

> "Of the obstruction offered to Government proposals I should say that enormously the larger part takes effect not by the outrageous prolongation of some particular debate—which alone the Speaker could touch by closure—but by the multiplication of questions".[71]

May wrote to Gladstone the same day, making an attempt to salvage the major closure. He acknowledged that "the Speaker is strongly opposed to the second part of the Rule for closing a debate".[72] He noted that "while it was under discussion by the Cabinet, observations were made that notice should be given of so vigorous a form of closing, or that there should be a previous declaration of urgency".[73] He therefore proposed that a major closure should be retained, and even extended to legislation, under conditions of urgency: "In view of these opinions, I have drawn an Urgency Rule to embrace the latter part of the Rule for closing a debate, as well as clauses & amendments to Bills."[74] Dodson favoured retaining the major closure, in part for tactical reasons:

> "The power of moving that 'the main question be now put', is so valuable, especially for Supply, that, unless Supply can be decidedly facilitated in some other way, I am unwilling to abandon it. Moreover, asking for the major power, if we drop the proposal in the House, will make it easier to obtain the minor power."[75]

68 BL, Add Ms 44195, fos. 77–80v, Brand to Gladstone, 18 Jan. 1882.
69 BL, Add Ms 44195, fos. 77–80v, Brand to Gladstone, 18 Jan. 1882.
70 BL, Add Ms 44195, fos. 82–83, copy of Gladstone to Brand, 18 Jan 1882 (GD.x.197).
71 BL, Add Ms 44195, fos. 82–83, copy of Gladstone to Brand, 18 Jan 1882 (GD.x.197).
72 BL, Add Ms 44154, fos. 107–108v, May to Gladstone, 18 Jan. 1882.
73 BL, Add Ms 44154, fos. 107–108v, May to Gladstone, 18 Jan. 1882.
74 BL, Add Ms 44154, fos. 107–108v, May to Gladstone, 18 Jan. 1882.
75 BL, Add Ms 44252, fos. 151–152v, Dodson memorandum, 19 Jan 1882.

At this crucial juncture, an important intervention was made by Hartington. He had made clear his personal support for the closure on several occasions, including the debate in May 1881 cited earlier and during a speech to his constituents in December 1881.[76] However, he backed Brand by suggested that the cabinet should drop the major closure "for the present".[77] There seemed to a growing view within cabinet, contrary to Dodson's position, that the best chance for the closure was in watered down form. Hamilton noted that "As long as the cloture proposals are drawn very mild, there is fair hope of carrying them."[78] Gladstone wrote to the Speaker again on 27 January giving the Speaker a chance to relent in his objections to the major closure: "You adhere I presume to the objections you feel to anything like the 'American' Previous Question".[79] In the absence of any change of position from the Speaker, the cabinet agreed to abandon the major closure on 30 January.[80]

At the same time that the cabinet made the fateful decision to omit the major closure altogether, it also decided to apply the numerical restrictions originally envisaged in the specific circumstances of the major closure to the remaining minor closure. The compromise of retaining the numerical safeguard even in relation to the minor closure had been suggested by May, who felt that it might "partially satisfy doubting and reluctant minds".[81] Dodson had previously noted that "in nearly all the Continental Assemblies … a majority of the entire Chamber is necessary to a decision",[82] and he echoed May's idea of applying the numerical conditions to the minor closure: "Looking to the speeches that have been made in the country, it would be prudent to propose that the condition of not less than 200 members in support, or less than 40 in opposition, should apply to the minor as well as the major closure".[83] Gladstone himself saw the application of the numerical safeguards as linked to complying with Brand's objection to the textual safeguards relating to obstruction:

> "You adhere I presume to the objections you feel to … limiting the intervention of the Speaker to cases of obstruction. If that limit is removed, we of course adopt in principle the restriction of debate on the ground of quantity apart from quality."[84]

The application of the numerical safeguard to the minor closure was then

76 *Morning Post*, 19 Dec. 1881, p 3; HC Deb, 20 Mar. 1882, col 1311.
77 BL, Add Ms 44145, fos. 180–180v, Note by Hartington, 19 Jan 1882.
78 HD.213.
79 BL, Add Ms 44195, fo. 84, copy of Gladstone to Brand, 27 Jan. 1882.
80 GD.x.203.
81 BL, Add Ms 44154, fos. 107–108v, May to Gladstone, 18 Jan. 1882.
82 TNA, CAB 37/6/38, p 20.
83 BL, Add Ms 44252, fos. 151–152v, Dodson memorandum, 19 Jan 1882.
84 BL, Add Ms 44195, fo. 84, copy of Gladstone to Brand, 27 Jan. 1882.

endorsed by the cabinet, leading to what Hamilton characterised as a "very mild" closure.[85] The text proposed by the cabinet read as follows:

> "That when it shall appear to Mr Speaker, or to the Chairman of a Committee of the whole House, during any Debate, to be the evident sense of the House, or of the Committee, that the Question be now put, he may so inform the House; and if a motion be made 'That the Question be now put', the Speaker, or the Chairman, shall forthwith put such Question; and if the same be decided in the affirmative, the Question under discussion shall be put forthwith; Provided that the Question shall not be decided in the affirmative, if a Division be taken, unless it shall appear to have been supported by more than two hundred Members, or to have been opposed by less than forty Members."[86]

"There will be a sharp divergence": political and public reception

Gladstone send the draft rule, as part of a set of wider procedural changes relating to disciplinary powers, dilatory motions and legislative procedure, to Sir Stafford Northcote on 3 February 1882. Gladstone characterised the proposals as "moderate", and held out the prospect of confidential consultation to enable final proposals to emerge which reflected "a concurrence among leading members of both parties in a subject of deep common interest".[87]

Any hopes that the mildness of the closure as it had emerged from cabinet deliberations might gain the government credit with the Official Opposition and make for an easier passage were soon dashed. Northcote replied the next day. He began by indicating that he was open to an approach along the lines that Gladstone had proposed for many of the proposals: "My first impression is that there will be no insuperable difficulty in coming to an agreement upon the great majority of the resolutions in the spirit in which they are proposed."[88] But he went on that "there will be a sharp divergence between us & you upon" the closure rule, and also made clear that the issue could not be resolved except on the floor of the House.[89] Hamilton doubted whether even the offer of Opposition support on measures other than the closure would hold: "their object is to stifle legislation, and the longer the rules of the House are debated, the shorter will be the time for consideration of measures."[90]

In preparing to make their proposals public, the government were well aware

85 GD.x.203; HD.217; BL, Add Ms 44154, fos.125–134, Procedure Rules, as amended, 30 Jan. 1882; HD.216.

86 BL, Add MS 50014, fos 242–252, Draft Resolutions relating to Procedure, 3 Feb. 1882.

87 BL, Add MS 50014, fos 240–241v, Gladstone to Northcote, 3 Feb. 1882 (GD.x.206–207).

88 BL, Add Ms 44217, fos. 191–192, Northcote to Gladstone, 4 Feb. 1882.

89 BL, Add Ms 44217, fos. 191–192, Northcote to Gladstone, 4 Feb. 1882.

90 HD.219.

that they faced added difficulty due to the terminology employed for their measure to terminate debate. Many shared the reaction of the *Liverpool Courier* which characterised it as an "un-English project" which was "abhorrent to the national genius and prejudices": its advocates were "forcing a French tyranny on the English Parliament in reckless disregard of the sentiments of the people".[91] The French origins of the term had long been felt to be problematic. As one Member put it in February 1880, "it was an un-English word; but if we called the thing 'shut up', or something of that kind, we should take to it better".[92] Playfair had observed in December 1881 that "Cloture" was "a French name which causes suspicion. If it were called 'Rule regarding the undue protraction of debate,' or some such name, it would have a better chance."[93] Brand had suggested the adoption of the word "close", as in "close of debate" instead of "Clôture which is French & of closure which is frenchified".[94] Gladstone indicated that he preferred "closing" to "close", because the latter was "passive", whereas "closing is susceptible of an active sense which seems to suit the measure".[95] This distinction proved too much even for Brand, who said both terms were alright.[96] Dodson for one was happy with closure, which he defended as an "English word" which "could be found in Johnson's dictionary".[97] In the end, the formal terminology used had little impact. The term "Clôture" became the preferred terminology for all opponents of the measure, not least because of the chance it offered to link the measure with the idea of foreign importation.

The Speaker tried to prepare the way for the public reception by giving a speech in his constituency rejecting the idea that a closing power was incompatible with freedom of speech:

> "if freedom of speech were put in peril I should be no party to proceeding on that ground, but I am persuaded that the House of Commons, in its wisdom, may find a way of safely guarding the liberty of speech and combining order, with freedom of speech. (Cheers.)"[98]

Hamilton thought that what Brand had said "plainly in favor of some form of cloture should be helpful to the Government", and Brand's speech was to be alluded to by Gladstone in introducing the proposal.[99]

91 *St James's Gazette*, 9 Jan. 1882, p 13.
92 HC Deb, 27 Feb. 1880, col 1604.
93 BL, Add Ms 44280, fos, 178–181, printed memorandum by Playfair on May's procedural proposals, 21 Dec. 1881.
94 BL, Add Ms 44195, fos. 89–90, Brand to Gladstone, 7 Feb 1882.
95 TPA, BRA/1/5/21, Gladstone to Brand, 20 [recte 7] Feb. 1882.
96 BL, Add Ms 44195, fos. 91–91v, Brand to Gladstone, 7 Feb. 1882.
97 HC Deb, 27 Mar. 1882, cols 48–49.
98 *London Daily News*, 1 Feb. 1882, p 3.
99 HD.217; HC Deb, 20 Feb. 1882, col 1127.

The proposals themselves were published on the evening of 7 February. The closure was just one among a range of measures, but the cabinet had reaffirmed the decision to place the closure rule first,[100] and this was seen as denying all opportunity for compromise. As one newspaper put it, "He burns his boats not because he feels certain that he will not want them, but to ensure that he may not be tempted to re-embark in them".[101]

The Times noted the contrast between the 3:1 majority needed for the previous year's urgency measures and the bare majority required for the closure this time, and dwelt upon the complexities of the numerical safeguards. The *Standard*, which a year earlier had called upon the government to take "some prompt and decisive action", now thought the proposals "too preposterous to be seriously entertained". *The Daily Telegraph* regretted the absence of any sign of conference or conciliation and was angry that "the foreign *clôture* is to be forced upon the British Commons". *The Morning Post* suggested that "the would-be dictator of England is only using the cry of Irish obstruction as a pretence under cover of which he seeks to trample upon the most essential rights of Parliament and the most indispensable privileges of the constitutional opposition". The *Daily News* was supportive of the closure—and consistent with its position a year before—but questioned the need for the numerical limitations. *The Manchester Guardian*, *The Birmingham Daily Post* and *The Scotsman* were supportive of the closure, but the provincial press largely divided on party lines, with many unaffiliated newspapers critical. *The Freeman's Journal* was revealing on the Irish approach: the cloture was objectionable: "The Irish members will do well to leave the fight to the Conservatives as far as talking is concerned, and thus they will most effectively be able to resist the revolutionary propositions of the Prime Minister and probably be able to assist in their defeat."[102] Hamilton noted that "The cloture rule is received very unfavourably by the London press, but that does not count for much".[103] He predicted that "The Tories intend to oppose the resolution 'tooth and nail', and some of the Liberals will no doubt wince under it".[104] He predicted that the main battle would be over proportionality: "The Government may accept certain qualifications, but they must stand or fall by the principle of a bare majority. Any attempt to introduce a proportion such as two-thirds would, according to the Speaker and May, render the resolution

100 GD.x.208.

101 *St James's Gazette*, 8 Feb. 1882, p 3.

102 All accounts taken from press summary in *Pall Mall Gazette*, 9 Feb. 1882, pp 11–12. That paper itself saw the numerical proviso as "somewhat obscurely worded", but was supportive overall: *Pall Mall Gazette*, 8 Feb. 1882, p 1. For attitudes in 1881, see "Part 1", p 28.

103 HD.220.

104 HD.221.

nugatory."[105]

When the cabinet considered prospects for the debate on 11 February, it decided not to accept any amendments at that stage.[106] Grosvenor was increasingly confident that almost all the wavering Liberals could be brought into line, particularly if the determination of the government was made clear. It was decided not to make the reforms a matter of confidence, but adopt an approach "savouring of a hint that the result will be regarded as a vote of confidence".[107] By 14 February, Hamilton was increasingly confident, thinking that it would be "one of those questions which, (as so often happens) when they are received very badly at the outset, improve and are found to 'wash' easily after the first criticism has subsided".[108]

"A sustaining power seemed to come down upon me": the start of the debate

Gladstone began his great speech on 20 February 1882 moving the closure motion by announcing a further concession which the cabinet had agreed at its meeting two days earlier. The motion as moved envisaged that a vote on closure could theoretically be won by 40 votes to 39. He indicated that the government would insert an additional provision whereby even if the minority was below 40, more than 100 would need to vote with the majority.[109] May, writing to Gladstone on the morning of the debate, approved of the change, believing that it would "satisfy the doubting members of your own party, who have expressed fears that small minorities would be unduly coerced".[110] Hamilton was less sure: "it has a disagreeable smack of surrender to the Tories".[111]

Gladstone acknowledged the House's reluctance to contemplate far-reaching procedural reform and that change always needed "some strong propelling power".[112] He argued that that lay in both the long-term increase in legislative demands placed on the House and in the exceptional demands placed on the House in 1881. He noted that the House had sat in that year for 238 hours after midnight, those hours "which are the most grievous". Significantly, he referred to the excessive time spent on the Land Bill, which had principally been subject to Conservative delaying tactics, as well as the coercive legislation

105 HD.221.
106 GD.x.209.
107 HD.222; GD.x.209.
108 HD.224.
109 GD.211; HD.227; HC Deb, 20 Feb. 1882, cols 1128, 1149.
110 BL, Add Ms 44154, fos. 141–142v, May to Gladstone, 20 Feb. 1882.
111 HD.227.
112 HC Deb, 20 Feb. 1882, col 1125.

which required urgency provisions.[113] This reflected his long-standing view that the House had to address the twin problems of obstruction and the arrears of legislation.

He contended that the informal closing power which previously existed, whereby Members respected the evident sense of the House that a vote was needed, was now gone. The essence of obstruction lay in defiance of the will of the House. The limits of the House's patience with abuse of freedom of speech had now been reached.[114] He was nevertheless at pains to downplay the novelty of the proposal, drawing attention to the recommendation of Speaker Shaw-Lefevre in 1848 and the examples of foreign and colonial legislatures, and the exceptional power employed by the current Speaker the previous year, whose support for the current measure he hinted at.[115] He defended the principle that "the majority of the House should prevail", pointing to decisive majorities of 5 or less which had brought down governments in the past.[116]

Gladstone then sought to offset the power of a simple majority by drawing attention to the proposed safeguards and how they would protect large minorities and the position of the main opposition party. His lines of argument had been foreshadowed in the letter May had sent to him earlier that day referring to the concession to be granted to minorities of less than 40. The Clerk had stressed that a large minority did not need numerical safeguards, in part because "its members, and debating power, and the support of public opinion, insure it against coercion" and also because

> "The initiative of the Speaker will afford protection to minorities, whether great or small, but more especially to the former, as with a minority approaching 200, it will scarcely be possible for the Speaker to assert that it is the evident sense of the House that the debate should be closed."[117]

Gladstone argued similarly in his speech that the role for the Speaker and the requirement for a desire for closure to be the evident sense of the House meant it was "morally impossible" for closure to be allowed when desired by 200 against 199 or 201 against 200. The threshold of "evident sense" would not be met if a normal majority was clamouring for a vote and a normal minority opposed it. If the Speaker interpreted the rule in this way he would soon forfeit the confidence of the House.[118] In the light of these safeguards, the requirement for 200 Members to vote in the majority against a minority of 40 or more

113 HC Deb, 20 Feb. 1882, cols 1131–32.

114 HC Deb, 20 Feb. 1882, cols 1138–40.

115 HC Deb, 20 Feb. 1882, cols 1136–38, 1127. On colonial legislatures, see also HC Deb, 21 Feb. 1882, col 1232. On the 1848 proposal, see "Part 1", pp 11–12.

116 HC Deb, 20 Feb. 1882, cols 1145–46.

117 BL, Add Ms 44154, fos. 141–142v, May to Gladstone, 20 Feb. 1882.

118 HC Deb, 20 Feb. 1882, cols 1147–48.

was quite sufficient, without the need to use the temporary expedient of a proportional majority that had been used in 1881:

> "God forbid that we should see so vast an innovation introduced into the practice of this House, applicable to our ordinary procedure, as would be a Rule of the House under which the voice of the majority was not to prevail over that of the minority".[119]

Gladstone then wound up his speech with a peroration which even a critical newspaper conceded was "as admirably conceived as it was felicitously expressed",[120] conveying the hope that his speech had instilled in the House:

> "a firm determination to grasp the case resolutely, to continue to hold it firmly, and to carry it through until we have made adequate provision against the difficulties which beset it, against the oblique evils by which it is assailed and impeded in its work, and have placed it in a condition to enable it adequately to discharge the great and noble duty which this nation has entrusted it to perform."[121]

The power of Gladstone's speech was unmistakeable. Hamilton thought Gladstone was "pretty well at this best".[122] The Speaker termed it "a very fine speech" and Milman remembered it as an "eloquent" one.[123] Gladstone, who has been exhausted in the days leading up to the speech, recorded in his diary that "A sustaining power seemed to come down upon me".[124]

However, as *The Daily Telegraph* observed, "Fortunately words, however apt and eloquent, do not alter facts".[125] Northcote's response could not begin to match Gladstone's power and command of the House, but did begin to delineate the extent of and rationale for the Conservative's adamant opposition to the principle of the proposal. He said that almost regardless of the amendments to be considered,

> "I shall be prepared to vote against it as a whole, unless it is materially altered, on the ground that I object to the principle upon which it is based. That principle is that the majority of the House shall have the power, at the suggestion, or on the invitation, of the Speaker, of summarily closing the debate."[126]

Although he could conceive of the possibility of the clôture "being presented to us in the light of a necessary evil", he contended that "if it is to destroy freedom

119 HC Deb, 20 Feb. 1882, cols 1146–1149.
120 *The Daily Telegraph & Courier*, 21 Feb. 1882, p 4.
121 HC Deb, 20 Feb. 1882, col 1151.
122 HD.227.
123 TPA, BRA/3/5, 20 Feb. 1882; *Encyclopædia Britannica*, p 478.
124 GD.x.212.
125 *The Daily Telegraph & Courier*, 21 Feb. 1882, p 4.
126 HC Deb, 20 Feb. 1882, col 1152.

of discussion … we shall be doing a great evil, and we shall gain comparatively little good". He argued that the safeguards were ineffective and that the closure would be much more effective than its advocates acknowledged.[127] A future Speaker might be more willing to allow the closure to be used in support of a government majority, and the Speakership itself viewed in a more partisan light.[128] He expressed particular concern about the possible use of the power by the Chairman in Committees of the whole House.[129]

"A minion of the Ministry of the day": the role of the Chair

After these opening salvoes on 20 February, the debate on the closure entered a period of uneasy suspense. The government had been clear, after some apparent confusion, that it would not give priority to debate on closure over other business, including Supply, and it was repeatedly crowded out by other business, including four nights lost in a dispute with the Lords.[130] Hamilton thought it was ominous that during this time "There has been no occasion on which the power which the Government propose of closing debate could have been exercised".[131] The closure was then debated on 20, 23, 27 and 30 March. After a further delay, the debate was resumed on 1 May, but that transpired to be the last occasion when the measure was to be debated before the summer. These five days of debate and the surrounding political discussions are most easily analysed in relation to two distinct themes—the first relating to the role of the Chair and the second relating to the numerical safeguards and the purpose of the measure.

Northcote argued that, if the closure were used frequently, "the position of the Speaker will become intolerable". The Speaker would be attacked for his use of the closure, and for not using it: "he may be as impartial as an Archangel; but he will always be charged with partiality by those who feel disappointment at the course he has adopted".[132] On 1 May, another Conservative frontbencher summoned up the image of the Speaker "stumping the country in defence" of his decisions on the closure.[133] Conservatives also suggested that the Speaker's discretion would be undermined over time.[134] While Brand's integrity and impartiality were unquestioned, Northcote suggested that a new Speaker might

127 HC Deb, 20 Feb. 1882, cols 1152–54.
128 HC Deb, 20 Feb. 1882, cols 1156–57, 1160–61.
129 HC Deb, 20 Feb. 1882, cols 1155, 1158–59.
130 HC Deb, 20 Feb. 1882, col 1115; HC Deb, 23 Feb. 1882, col 1375; HC Deb, 24 Feb. 1882, col 1539; HC Deb, 27 Feb. 1882, cols 1714–17; HC Deb, 13 Mar. 1882, cols 754–55; HD.236.
131 HD.236.
132 HC Deb, 30 Mar. 1882, col 401.
133 HC Deb, 1 May 1882, col 1850.
134 HC Deb, 30 Mar. 1882, col 333.

be chosen in sympathy with the new rules.[135] There was also particular concern about the position of the Chairman of Committees, who was more exposed to pressure from Ministers than the Speaker and thus even more likely to become a "partisan".[136] Northcote pointed out that most obstruction took place in Committee of the whole House, so that the Chairman of Ways and Means would be in a harder position than the Speaker.[137]

Unease about the Speaker's position went well beyond Conservative ranks and focused on whether the Speaker should initiate the closure. The Irish Home Ruler Frank O'Donnell moved an amendment on 1 May to provide that the Speaker could only grant the closure in response to an appeal by a Minister. O'Donnell pointed out that a Speaker could not be held to account in the same way as a Minister, with the only recourse being the extreme one of a motion of no confidence. Giving the initiative to a Minister was the best way to prevent the Speaker becoming "a minion of the Ministry of the day".[138]

It was also notable that some advocates of the closure on the government backbenches were sceptical about the proposed Speaker's initiative. James Bryce contended that the government "should not have the power of shielding themselves under the authority of the Chair". Drawing on his study of how the speakership of the US House of Representatives had become "a partisan Office", he argued that the Speaker's initiative was "an infringement of the perfectly impartial character of the Speaker's Office".[139] He feared that a closure "which proceeded from the Speaker alone would be too rarely used".[140] The radical Henry Labouchere was another Liberal to support the O'Donnell amendment believing that it would lead to a stronger closure.[141]

As already noted, early proposals for the closure in January 1881 envisaged the Speaker acting as adjudicator on a closure claimed by another Member, but the proposals considered by the cabinet in January 1882 almost all embodied the Speaker's initiative. This seemingly flowed from a strong preference shared by Brand and Gladstone. Of the particular proposal contained in O'Donnell's amendment, Brand wrote in his diary: "There are objections either way, but on the whole the objections in leaving the initiative with the Minister of the Crown outweigh those applying to the Speaker as the origin of the action."[142] Gladstone himself was even more forthright in seeing the initiative of the

135 HC Deb, 30 Mar. 1882, col 402.
136 HC Deb, 27 Mar. 1882, col 104.
137 HC Deb, 30 Mar. 1882, cols 402–403.
138 HC Deb, 1 May 1882, cols 1843–1846.
139 HC Deb, 20 Mar. 1882, cols 1382–83.
140 HC Deb, 1 May 1882, col 1861.
141 HC Deb, 1 May 1882, cols 1894–95.
142 TPA, BRA/3/5, 1 May 1882.

Speaker as integral to the proposals. He argued that a Speaker would not act tyrannically because he relied on the confidence of the House to perform the role.[143] Because of his sense of the elevated position of the Chair, he thought that the Speaker initiative provided "the very best security" against possible abuse.[144] However, he side-stepped or ignored the argument that the Speaker's best role was in adjudicating on a claim for the closure from a Minister by seeking to create a false dichotomy between his own proposal and a closure that would be automatically granted:

> "There are … two systems—the one system that of giving the power of the initiative to the Government apart from the Chair, and leaving to the Chair no duty except that of putting the Question; and the other system is to take the Resolution as it stands and say that upon the Speaker shall be the responsibility of making the appeal to the House."[145]

The government's position was supported during the division on O'Donnell's amendment, which was defeated by 164 votes to 220.[146] The question of who initiated the closure was ultimately a technical one, and of secondary importance in these debates, reflected in the relatively low turnout in that division, although this design feature of the rule was to have profound consequences in the coming years.

"An end to legitimate opposition": the numerical safeguards and the purpose of the measure

The heart of the Conservative case against the closure proposals was advanced by Sir Michael Hicks Beach in what Brand described as "the best speech made throughout the Debate on that side of the question" on 23 March.[147] According to Hicks Beach:

> "There is a feeling amounting to a dread that what it is intended to do is, not to stop Obstruction, but to put an end to legitimate opposition. There is a feeling that a minority in this House, however large, is to be debarred from its Constitutional right of full criticism of the measures of the Government, from delaying those measures, if it should appear to be necessary, for their fuller consideration by the country."[148]

This was coupled with a belief—hardly borne out by the private discussions in cabinet considered earlier in this article—that the closure was especially

143 HC Deb, 30 Mar. 1882, col 410.
144 HC Deb, 1 May 1882, col 1856.
145 HC Deb, 1 May 1882, col 1856.
146 HC Deb, 1 May 1882, col 1899.
147 TPA, BRA/3/5, 23 Mar. 1882. This was also Gladstone's view: see HD.242.
148 HC Deb, 23 Mar. 1882, col 1737.

promoted by the radical wing of the Liberal party. One Liberal opponent of the closure, William Marriott, moving an amendment which effectively rejected any closing power based on a simple majority, attributed the closure to the Birmingham Caucus and to the "dangerous man" Chamberlain in particular, and argued that the aim of the measure was to stifle opposition rather than put down obstruction.[149] When the debate was resumed in March, Cecil Raikes took up this claim from the Conservative frontbench, suggesting that the delay of a month prior to the resumption of debate had been to allow for the "manufacture of public opinion" in its favour, alluding particularly to the efforts of the Radical Birmingham Caucus to promote shows of support for the closure rule.[150] Another Conservative suggested that Chamberlain "has been the introducer not only of the Caucus, but of this proposal of the *clôture*".[151] Much of the Conservative criticism centred on the inadequacy of the numerical provisions, which were criticised for their mathematical complexity,[152] and more fundamentally for their reliance on a bare majority. Many pointed to the inconsistency with the effective requirement for Opposition support in the urgency rules in 1881.[153]

In defence of the safeguards, Ministers first of all denied their complexity, Bright claiming that the provisions were "not a great arithmetical puzzle".[154] Bright also rejected the suggestion that the closure might be used when 199 Members wanted a debate to continue and 201 did not, because in such cases the demand for an end to debate would not represent the "evident sense" of the House.[155] Another Minister, Henry Fowler, described the use of the closure against the Official Opposition in a close vote as a "transparent absurdity".[156] Dodson maintained that, if the Speaker initiated a closure which was then opposed by a substantial minority he would look "foolish", so that he would only call for one when there would be "a preponderating majority".[157]

The Conservative sense that they were the target of the measure was probably accentuated by the partial and limited opposition to the proposal among the Irish Home Rule party. Members from that party did not participate in first three

149 CJ (1882) 55; HC Deb, 20 Feb. 1882, cols 1172–81; William Thackeray Marriott, online Oxford Dictionary of National Biography (hereafter *ODNB*).

150 HC Deb, 20 Mar. 1882, cols 1302, 1312–13. See also the similar criticism by Cross: HC Deb, 20 Mar. 1882, cols 1365–66.

151 HC Deb, 30 Mar. 1882, col 347

152 HC Deb, 20 Mar. 1882, cols 1316–17.

153 See, for example, HC Deb, 20 Mar. 1881, col 1308; HC Deb, 27 Mar. 1882, col 68.

154 HC Deb, 30 Mar. 1882, col 318.

155 HC Deb, 30 Mar. 1882, col 319.

156 HC Deb, 20 Mar. 1882, col 1361.

157 HC Deb, 27 Mar. 1882, cols 47–48.

nights of debate and at times disclaimed interest in the matter under debate.[158] When Justin McCarthy spoke on 27 March, he emphasised that the Home Rule party opposed the closure rule on different grounds to the Conservatives. They would never be a party of government and would never be direct beneficiaries of the rule, but they opposed the rule because of their opposition to coercive legislation specifically.[159] While some Parnellites such as Thomas Sexton had fears that his party would be the ultimate losers from the closure,[160] some moderate Home Rulers such as Richard O'Shaughnessy argued that a closure in some form was inevitable, that he would not welcome one explicitly directed against small minorities, but that "he unhesitatingly preferred a measure aimed at minorities consisting of the great Parties".[161] During the vote on Marriott's amendment, 16 moderate Home Rulers voted with the government, and only 37 against.[162]

Some Ministers sought to appeal for Conservative support for the closure by suggesting that Irish obstruction was the intended target. Thus, John Bright, whose speech was seen by Hamilton as "conciliatory and unprovocative",[163] suggested that the proposal was a response to the "great difficulties" with regard to the management of business that the government faced, and expressed surprise that the Conservative opposition did not support a measure which would aid them to transact their own business when in power.[164] Bright specifically used his peroration to attack the Home Rule party for seeking "to make it impossible for this Imperial Parliament to transact the Business which it has to do". He appealed to the patriotism of Conservatives by inviting them to join in an endeavour to prevent a situation in which "this House of Commons, with its centuries of renown and its centuries of service, is to be made prostrate, powerless, and useless, at the bidding and by the action of a handful of men, who tell you that they despise you, and who by their conduct would degrade you".[165]

However, Bright's endeavours to attract Conservative support by claiming the measure as targeted on Irish obstructionism were fatally undermined by the larger group of Ministers who used their speeches effectively to embrace the suggestion that the closure was designed to empower the governing party at the expense of all opposition parties. The most forthright argument for this

158 HC Deb, 23 Mar. 1882, col 1765; HC Deb, 30 Mar. 1882, col 419.
159 HC Deb, 27 Mar. 1882, cols 86–92.
160 HC Deb, 30 Mar. 1882, col 371.
161 HC Deb, 30 Mar 1882, cols 338–339.
162 GD.x.228.
163 HD.244.
164 HC Deb, 30 Mar. 1882, col 315.
165 HC Deb, 30 Mar. 1882, col. 326.

position was advanced by Hartington in a speech on 20 March. He had earlier been criticised by the Conservative frontbench for a speech in his constituency in December which was seen as advocating the principle that the government should have the primary role in controlling the business of the House in order to deliver on its electoral programme.[166] Hartington reaffirmed that position, and went further. Once elected, Hartington claimed, it was right for "the great Parties of the State to bring forward measures for great legislative changes". The outcome of those proposals should be determined by votes and decisions, not defeated by obstruction.[167] It followed that the right to control the length of debate and the progress of measures belonged to the government:

> "The Government are responsible to the House and to the country for the conduct of Business. They come before you to tell you that under the existing Rules of Procedure in this House they cannot undertake [that] responsibility. If they cannot conduct the Business of the country, they are not fit to remain in Office … So long as we are responsible for the conduct of the necessary Business of the country, we must appeal to the House to give us those powers by which alone, as we think, our work can be effectually performed."[168]

The significance of Hartington's speech was two-fold: first, it connected more clearly than any other ministerial contribution the proposal for the closure with a wider claim for the pre-eminence of government in the control and conduct of the business of the House generally; second, it was widely interpreted, not least by subsequent Conservative frontbenchers, as making the question of closure a matter of confidence.[169] His position was subsequently supported by the Home Secretary, Sir William Harcourt, who portrayed what he termed "scientific obstruction" as a barrier to the government's legislative programme.[170]

Even more significantly, this justification was embraced by Gladstone on 30 March when he characterised the closure as a solution to the problem of obstruction—"the present deplorable condition" where the House of Commons was "in danger of being reduced to impotence"—and said that "You cannot possibly do otherwise than increase the power of the majority to perform its work".[171] In short, the problems of systematic obstruction and the difficulties of passing government legislation were to be treated together, and subject to the common solution of a closure determined by the majority. The urgency options requiring broader support from the official Opposition to proceed against Irish

166 HC Deb, 20 Mar. 1882, cols 1310–11.
167 HC Deb, 20 Mar. 1882, cols 1324–25.
168 HC Deb, 20 Mar. 1882, col 1337.
169 HC Deb, 20 Mar. 1882, col 1366; HC Deb, 23 Mar. 1882, col 1737; HC Deb, 27 Mar. 1882, cols 77, 100, 105–107.
170 HC Deb, 23 Mar. 1882, col 1754.
171 HC Deb, 30 Mar. 1882, col 408.

systematic obstruuction seen in 1881 were no longer the preferred option. The framing of the government case for the closure thus reinforced the Conservative critique and strengthened the determination of their opposition.

The advocates from the government benches of the majoritarian argument for the closure were fiercely resistant to the suggestion that the closure should require a two-thirds majority. Thus, Harcourt viewed it as ridiculous that "after you have installed a Government by a small majority … you must have a majority of two-thirds to carry out the measures of that Government".[172] Others made explicit that a two-thirds requirement would make the leader of the opposition the determining voice in the use of the closure, as had been the case with the previous year's urgency rule.[173]

However, there were some Liberal Members, such as Sir John Lubbock and John Walter—who was also the proprietor of *The Times*—who indicated that they could support the closure with the requirement for a two-thirds majority.[174] Brand sensed that a two-thirds amendment tabled by Lubbock might gain majority support. While he continued to prefer the government's proposal, he had concluded by the end of March "that the progress of the business of the House would be greatly improved by the adoption of Lubbock's amendment".[175] The opportunity for progress arose in part from another significant amendment with the same effect as Lubbock's in the name of Edward Gibson, a leading Conservative frontbencher and Irish Member who had long been sympathetic to the closure as a weapon against Irish obstruction.[176]

The cabinet considered its approach towards the two-thirds amendments at a meeting on 31 March and decided to hold to its current opposition.[177] Gladstone told Brand the next day that the idea was "detestable". The cabinet thought that "a large part of our friends are vehemently opposed to it".[178] Gladstone also admitted that they had not decided whether such a closure was worth having at all: "At the same time we have not—at the moment—arrived at any positive resolution as to our course if we fight & the House rides over us."[179] Brand replied that day questioning Gladstone's language—"I should be disposed to speak of the 2/3 plan by a milder epithet than 'detestable'"—but nevertheless hoped that the government would prevail.[180] Hamilton thought

172 HC Deb, 23 Mar. 1882, col 1759.
173 HC Deb, 27 Mar. 1882, cols 81–82.
174 HC Deb, 20 Mar. 1882, cols 1390–98; HC Deb. 23 Mar. 1882, col 1717.
175 TPA, BRA/3/5, 30 Mar. 1882.
176 "Part 1", p 31.
177 GD.x.228.
178 TPA, BRA/1/5/34, Gladstone to Brand, 1 Apr. 1882 (GD.x.229).
179 TPA, BRA/1/5/34, Gladstone to Brand, 1 Apr. 1882 (GD.x.229).
180 BL, Add Ms 44195, fos. 101–102v, Brand to Gladstone, 1 Apr. 1882.

that the two-thirds majority proposal "would no doubt make the closing power more acceptable to many" and "I expect that some concession will have to be made".[181] He considered that a possible concession might be to confine the simple majority closure to cases where notice was given, with a two-thirds majority required for the closure without notice: "The Government would then be adhering to their bare majority; would secure a more effectual weapon; and would be making the closure more palatable to many Liberals and less distasteful to many Conservatives."[182]

"The moment is golden": Irish politics and the closure

From the outset, consideration of the closure had been bound up with Irish policy and its impact on the business of the House of Commons. The controversy over the two-thirds majority requirement in particular mattered because it went to the heart of the question as to whether closure was to be a weapon against extreme forms of Irish obstruction arising from coercive legislation or a more general tool to facilitate the passage of domestic legislation. This interaction was never more evident than in April and early May 1882, when Gladstone offered a significant concession on the closure resolution, a concession whose significance has been neglected, not least because it was almost immediately overwhelmed by one of the most dramatic instances of political violence in the Victorian era.

The coercion legislation whose passage had given rise to the need for the Speaker's closure and the urgency measures of 1881 was due to lapse on 30 September 1882.[183] The Land Act passed in the same year had failed to satisfy the Irish Land League. Although Charles Stewart Parnell and some other leaders were now in prison, the intensity of the land war in Ireland had not abated. The Irish Viceroy, Lord Cowper, and the Chief Secretary to Ireland, W E Forster, were convinced that it would be necessary to commit very soon to the renewal of coercive legislation, and Forster wanted it to go further than the 1881 measures. In early April, Gladstone was undecided as to whether to support these proposals. He seemed optimistic that he could pass his procedural reforms by early June and was willing to throw overboard all other government measures to fight on the new coercive measures "until the bitter end".[184]

The context was transformed when it became evident that Parnell was willing to compromise, effectively offering to end the land war in return for concessions to leaseholders. More importantly, Parnell offered to ally his party

181 HD.244.
182 HD.244–245.
183 Protection of Person and Property (Ireland) Act 1881, c 4, s 3.
184 P Bew, *Enigma: A New Life of Charles Stewart Parnell* (Dublin, 2011), pp 91–92; HD.250.

quite explicitly with the Liberal party's reform programme. As part of the discussions, Captain William O'Shea—the back channel for the negotiations with Parnell still in prison—indicated to Chamberlain that "the passage of your resolutions on Procedure might henceforth not be virulently or persistently opposed".[185] On 26 April, Cowper was dismissed and on 1 May the debate on the closure was resumed with Forster's resignation imminent and the release of Parnell and two other Irish MPs in prison almost agreed.[186] On 2 May, Gladstone was able to confirm the release of Parnell and others, Forster's resignation, and the government's intention not to renew the coercive legislation, but instead to focus on Irish reform legislation and procedural reform, with all other legislation from Queen's speech being abandoned.[187]

Gladstone believed that he had removed the main barrier to political progress and done so without direct negotiation with Parnell and without making major concessions. As he wrote in his diary: "The moment is golden".[188] The benefits would also be personal. He replaced Forster with Lord Frederick Cavendish, who had been Gladstone's private secretary and was a member of his close family circle. Cavendish was now financial secretary to the Treasury and Gladstone's deputy in that department, and Gladstone also planned to appoint Hartington, Cavendish's brother, as Chancellor of the Exchequer, thus finally relieving himself of the triple burden of the premiership, leadership of the House and the chancellorship.[189]

The need to secure passage of the procedural reform package including the closure represented a potential brake on reaching the new political vistas that were opening up for Gladstone and his cabinet. Those reforms also seemed somewhat less necessary in some ways, if the Home Rule party was to be aligned with the government's reform agenda. The cabinet met at lunchtime on Saturday 6 May and agreed to seek to make a "conciliatory offer" to the Conservatives designed to enable swift passage of the procedural reforms. The government indicated that it would accept Gibson's amendment to require a two-thirds majority for the closure "on probation", provided that the Conservative leadership would, as Gladstone wrote to Northcote, "on that

185 Bew, *Enigma*, pp 92–93; C H D Howard, ed, *A Political Memoir 1880–1892 by Joseph Chamberlain* (London, 1953), p 32.

186 GD.x.247.

187 HC Deb, 2 May 1882, cols 1965–1970.

188 GD.x.247.

189 GD.x.cxx–cxxii, 252–253; TPA, BRA/3/5, 2 May 1882. Hartington was offered the chancellorship on Friday 5 May: H C G Matthew, *Gladstone 1875–1898* (Oxford, 1995), p 115.

basis, use exertions to expedite the action of the House on Procedure".[190]

Northcote received the offer that evening, and was starting to compose a reply when he heard the news which would transform the political scene completely.[191] Cavendish had arrived in Dublin to take up his new post on Friday 5 May. The next afternoon, at about 5.30 pm, he walked across Phoenix Park to join Thomas Burke, the permanent secretary at the Irish Office, in the walk to the Viceregal Lodge, newly occupied by Earl Spencer. Cavendish thus fell victim, along with Burke, to the planned assassination of the latter by two members of the Irish National Invincibles, a radical splinter group of the Irish Republican Brotherhood. When the news reached London that evening, all the political plans considered by the cabinet that afternoon ceased to matter. All thoughts of the closure were put to one side. The severe coercion bill that Forster had sought and which the cabinet had previously rejected was now to be introduced immediately and, as Gladstone told the mourning Hartington, "Procedure goes overboard".[192] The new coercive legislation was assured of Conservative support, and the Home Rule party was also acquiescent, keen to distance itself from the murderers and other extreme elements.[193]

The question of how the Conservatives would have responded to the offer of a closure with a two-thirds majority but for the assassination of Cavendish and Burke remains an open question. On 2 May, the Opposition were reported by Hamilton to be "white with rage" at Parnell's release, which they viewed as a "complete surrender".[194] The support of Parnell and his party for the closure might have assured the government of victory in any division on the closure, but the Conservatives rather than the Home Rule party had anyway been at the forefront of opposition. At the same time, a closure requiring a two-thirds majority would have been much harder for the Conservatives to resist, because it would have undermined their claim that it was targeted at legitimate opposition rather than systematic obstruction.

Gladstone considered that he would benefit from making the conciliatory offer and making it public whichever choice the Conservatives made in response, writing to Chamberlain after the cabinet meeting on 6 May, that "We think it will do good, *whether* accepted or rejected". Either the procedural reforms would be passed quickly, with Conservative support, or the Conservatives would take the blame for continued obstruction, enabling the government to "break off

190 GD.x.253; BL, Add Ms 44125, fos. 139v–140, copy of Gladstone to Chamberlain, 6 May 1882 (GD.x.253–254); BL, Add Ms 44217, fos. 203–203v, copy of Gladstone to Northcote, 6 May 1882 (GD.x.254).

191 BL, Add Ms 44217, fos. 204–204v, Northcote to Gladstone, 7 May 1882.

192 GD.x.257.

193 GD.x.256; BL, Add Ms 44217, fos. 204–204v, Northcote to Gladstone, 7 May 1882.

194 HD.264.

procedure" to concentrate on Irish reforms without the criticism they might otherwise have faced.[195] Nevertheless, Gladstone's willingness to compromise in early May by agreeing to a proposal which he had viewed as "detestable" on 31 March also reflected the weakness of the government's position. On 7 April, Gladstone had privately expressed his frustration that "we have attached strong safeguards to the exercise of the closing-power, which greatly limit its working, and may to some extent interfere with its purpose", and yet "our reward is that opponents shut their eyes" to those safeguards "and indulge in fears".[196] The next day he wrote that "we have safeguarded it almost to the point of throttling it".[197] Bright had admitted more publicly the weakness of the closure, which he told the House "falls short" in that "it is not sufficiently comprehensive and sufficiently stringent", but was instead "a very limited and a very moderate one".[198]

The further concession on the two-thirds majority offered on 6 May thus reflected and threw into relief the weakness of the government's approach since January. The watering down of the closure by the cabinet in January had done nothing to conciliate opponents or make the passage of the closure easier. The weakness of the closure as first proposed to the House had limited the chance for concessions which might have been offered had the major closure been included.

"Disheartening to our friends in the country": preparations for the autumn session

While it was evident that procedural reform would remain on ice for some time in the wake of the Phoenix Park murders, there was continuing uncertainty as to whether it would be abandoned altogether. However, on 20 June, Gladstone made clear that the government had no intention of postponing procedure to another Session the following year, thus hinting at an autumn session to consider procedure.[199] This step had been urged upon Gladstone by Brand.[200]

The Times responded to this announcement with a revealing article the next day. It argued that there was an alternative to "the waste of public time and the exacerbation of party spirit" seen earlier in the year, in the form of "an expedient which would facilitate the adoption of the resolution by an overwhelming majority of the House". It suggested that "If the *clôture* resolution

195 GD.x.253; emphasis in original.
196 GD.x.233.
197 GD.x.234.
198 HC Deb, 30 Mar. 1882, col 317
199 HC Deb, 20 June 1882, cols. 1775–1776, 1790.
200 TPA, BRA/3/5, 20 June 1882.

had been amended so as to recognise the right of the Opposition to some share of control—as they had informally before,—over the power of closing debate, the subject would have been disposed of in a few days". It reported that it knew "as a matter of fact that immediately before assassinations in the Phoenix Park had thrown parliamentary business into confusion", the government had offered to agree to the Gibson amendment, although conveniently the leaked information did not extend to the conditions for that concession.[201] A question was then tabled to Gladstone that probed his intentions.

Chamberlain had not been as engaged as many cabinet colleagues in discussions on the form of the closure in January 1882, and had been absent from the cabinet meeting on 6 May which had decided to offer a concession on the Gibson amendment.[202] However, as time went on, Chamberlain increasingly saw the closure proposal through the lens of his wish to promote a radical legislative programme and to mobilise public support for parliamentary reform. Before the question was answered, Chamberlain wrote to Gladstone to urge him to stick by his previous position and suggesting that any change of front "will be most disheartening to our friends in the country"; he thought that, if an autumn session was announced, the recess could be used "for an agitation which will embrace every constituency in England and will be directed to strengthening the hands of the Government and securing support for their proposals—in their integrity".[203]

Hamilton personally favoured accepting the two-thirds requirement on trial and attributed Chamberlain's opposition to it to his obsession with public opinion.[204] Gladstone, in replying to the question, did not deny that the offer had been made on the two-thirds amendment, but declined to commit to renewing the offer.[205] In early July, the cabinet agreed to an autumn session, to abandon almost all of its legislative programme beyond Irish measures and to give precedence to procedure on each sitting day in the autumn session.[206] When the cabinet turned again to its political strategy on the closure in late July, all members of the cabinet who spoke with one exception were inclined to resist the Gibson amendment, although the plan was not to announce the position until the autumn itself.[207] Hamilton saw this as politically questionable, but not an act of bad faith because the original offer was contingent on rapid passage

201 *The Times*, 21 June 1882, p 11.

202 GD.x.253.

203 BL, Add Ms 44125, fos. 156–157, Chamberlain to Gladstone, 22 June 1882 (Hughes, pp 314–315).

204 HD.294–295.

205 HC Deb, 22 June 1882, cols. 66–68.

206 GD.x.294–296; HD.301.

207 GD.x.305.

of the procedure resolutions.[208] At a further cabinet meeting on 12 August, the provisional compromise on the Gibson amendment was "abandoned".[209]

The one exception who supported two-thirds within the cabinet was Hartington. He had been the most robust advocate of the case for closure to drive through a government programme in the spring, but his attitude to Irish measures had hardened following his brother's murder. He was deeply concerned about the possibility of Home Rule for Ireland, and Gladstone's apparent openness to overtures from Parnell, telling the Foreign Secretary Earl Granville: "I am literally horrified at Parnell's proposals and Mr. Gladstone's reception of them … If there is a possibility of clôture being used to read such a bill as this a second time the question of bare majority becomes one of principle, not merely of expediency".[210]

By the autumn, Hartington was no longer alone in seeing the case for concessions. Gladstone reported unease within cabinet about proceeding at all: "Plainly the Opposition mean that if we get our first rule it shall be at the expence of much delay, suffering & embarrassment to public business. I do not know what the Cabinet will say but some certainly appear to shrink from paying this heavy price."[211] Dodson was concerned at the extent to which Chamberlain has stirred up radical support for the closure in its present form. In early October, Dodson wrote to Gladstone:

> "It seems to me that it would be very desirable to offer some concession upon Closure which would mitigate the fear which many of its Opponents genuinely entertain of the proposal, a fear which the language of some radicals as to the use they hope to make of it eventually goes some way to justify."[212]

At the start of debate in February, Gladstone had declined to say whether or not the new rules would be made Standing Orders.[213] In March, however, he gave notice of an intention to move that the closure rule when agreed to, along with most of the other proposals, be made Standing Orders.[214] Dodson suggested that it would be better to concede on this, making them for the 1883 Session only in the first instance.[215] Gladstone indicated to Brand that he did

208 GD.x.305, 311; HD.320.

209 GD.x.311.

210 GD.x.305; P Jackson, *The Last of the Whigs: A Political Biography of Lord Hartington* (London, 1994), p 140.

211 TPA, BRA/1/5/55, Gladstone to Brand, 17 Oct. 1882 (GD.x.351).

212 BL, Add Ms 44252, fos. 180–182v, Dodson to Gladstone, 2 Oct. 1882.

213 HC Deb, 20 Feb. 1882, cols 1133–34.

214 HC Deb, 20 Mar. 1882, col 1301.

215 BL, Add Ms 44252, fos. 180–182v, Dodson to Gladstone, 2 Oct. 1882.

not rule out a concession along these lines.[216] Brand was firmly against this idea, pleading for the rule, whatever form it took, to be made a Standing Order, "otherwise you will have to do your work over again, for which the House will not thank you".[217]

Gladstone seemed disinclined to compromise on the majority. Brand encouraged him to stand his ground—"I hope & believe that you will sustain the principle of a bare majority as the foundation of Rule 1"[218]—and Gladstone confirmed in reply that his own objection of principle to the Gibson amendment was "much confirmed and enlarged by reflection".[219] Brand agreed with Gladstone that "of all the forms of closure before the House I think Gibson's the worst".[220] He told Gladstone that the "arithmetical juggle" required to determine whether 200 Members would support a closure was bad enough, but the requirement to calculate a possible outcome using the "new fangled idea of a fractional majority" was even worse.[221] Chamberlain also again urged Gladstone not to give way on the majority, arguing that:

> "The innovators are the Tories who would introduce the unconstitutional practice of a two-thirds majority. The effect would be formally to acknowledge the right of a 3rd minority to postpone indefinitely a decision on any proposal to which they object and practically to dictate the policy of the country."[222]

There were several cabinet discussions before the House resumed where the various positions were rehearsed. Hartington continued to make the case for compromise on the Gibson amendment, but Gladstone was "dead against" and the Speaker told the cabinet it was "practically unworkable". Gladstone indicated a willingness to make the closure a sessional rather than standing order, but the outcome was a decision to "simply *persevere*".[223]

"Do more and talk less": the autumn debates

Perseverance was certainly required when the debate on the closure resumed late in October. There were to be a further 13 days of debate before the closure rule was finally agreed. The tenor and conduct of debate were notably different to that in the spring. There was a consensus among newspapers that the delay to the autumn had enhanced the government's chances of carrying the closure

216 TPA, BRA/1/5/53, Gladstone to Brand, 10 Oct. 1882.
217 BL, Add Ms 44195, fos. 121–122v, Brand to Gladstone, 15 Oct. 1882.
218 BL, Add Ms 44195, fos. 119—120v, Brand to Gladstone, 7 Oct. 1882.
219 TPA, BRA/1/5/53, Gladstone to Brand, 10 Oct. 1882.
220 BL, Add Ms 44195, fos. 123–125v, Brand to Gladstone, 19 Oct. 1882.
221 BL, Add Ms 44195, fos. 123–125v, Brand to Gladstone, 19 Oct. 1882.
222 BL, Add Ms 44125, fos. 206–207v, Chamberlain to Gladstone, 18 Oct. 1882 (Hughes, 315–316).
223 HD.348–349; GD.x.353–355; emphasis in original.

resolution. *The Times* thought that Members of a radical stamp were more likely to attend in the autumn than "country gentlemen" whose proper place at that time of year was "the covert and the river, the moor and the hunting-field". *The Daily Telegraph* acknowledged that the Government now had behind it "a strong public impatience at the congestion of all public legislation".[224] This was coupled with a growing confidence arising from a series of foreign policy triumphs.[225] The sense of jeopardy was much reduced, with the government increasingly confident of defeating all amendments and securing the main question. In the spring, opposition to the closure had been led by the big guns of the Conservative frontbench. In the autumn, they played a lesser role, with Lord Randolph Churchill and his Fourth Party colleagues much more to the fore. There was much less interest in winning the argument, let alone the votes, and much more concern to take up time and prove an irritant to a government seemingly in the ascendancy at home and abroad.

In the prefatory debate to agree precedence for the debate on procedure on 24 October, Gladstone indicated that no substantive concessions would be offered.[226] Northcote replied seeking a relatively technical focus on amendments, calling for free votes on them, and indicated that the focus of the Conservative leadership would be on the Gibson amendment.[227] But he was soon outflanked. Another Tory made it clear they wanted to fight to the "bitter end", while a second characterised Gladstone's unwillingness to compromise as "a declaration of war".[228] Some Conservative newspapers such as the *Yorkshire Post* urged "the Conservative Party to battle manfully and determinedly with the forces of doctrinaire Radicalism".[229] The next morning, there was a meeting of Conservative MPs at the Carlton Club that was described by the *Daily News* as "practically an act of revolt against Sir Stafford Northcote's leadership". He immediately capitulated, agreeing to the harshest opposition to the closure motion.[230] The debate the next day began with the moving of an amendment in the name of Churchill's Fourth Party colleague Sir Henry Drummond Wolff which would exclude the Chairman of Committees from exercising the closure, preventing the use of the closure in Committee of the whole House. Harcourt pointed out that this would simply encourage obstruction in that forum.[231] The

224 *Pall Mall Gazette*, 24 Oct. 1882, p 11.
225 HC Deb, 1 Nov. 1882, cols 564–565.
226 HC Deb, 24 Oct. 1882, cols 47–48.
227 HC Deb, 24 Oct. 1882, cols 53–54.
228 HC Deb, 24 Oct. 1882, cols 60, 62.
229 *Pall Mall Gazette*, 25 Oct. 1882, p 12.
230 *Pall Mall Gazette*, 26 Oct. 1882, p 12.
231 HC Deb, 25 Oct. 1882, cols 74–90.

debate was dominated by Conservatives, with few Liberals speaking.[232] Balfour and Churchill made two of the more aggressive and concise speeches from the opposition benches.[233] Northcote, in contrast, gave a rather meandering and ineffective speech, barely referring to the amendment under debate.[234] An Irish Home Rule MP thought that "Sir Stafford Northcote … has lost almost all control over his followers" and that "Lord Randolph Churchill has done much to break down the authority of his chief".[235] Others, including Brand and Hamilton, noted how Northcote was left following in Churchill's wake, the head following the tail.[236] Hamilton reported Gladstone as concluding that even the concession on the Gibson amendment offered in May would not form the basis of a compromise in the absence of any "willingness on the part of the Opposition to meet the Government half way".[237]

After Drummond Wolff's amendment was defeated the next day, the next amendment was an amendment by the Conservative frontbencher Cecil Raikes to ensure that a temporary Chair could not initiate the closure.[238] Gladstone then accepted the amendment it in a warm speech praising the amendment and its mover.[239] Lord Randolph Churchill was immediately suspicious about "the interchange of flattering compliments" between the frontbenches, and suggested that "if that sort of thing was to go on much longer the Autumn Session would not be of very long duration".[240] He plumbed new depths by moving an amendment suggesting that the Chairman of Ways and Means should have to consult the Speaker before initiating the closure in Committee of the whole House.[241] At this point, it was suggested that Churchill was in "nearly open revolt" with Northcote, including an ostensibly anonymous article attacking "the disorganisation of the Conservative Party".[242] Northcote was forced into the awkward position of disowning Churchill's amendment.[243] In the ensuing division, 56 Members voted for the amendment, with Churchill apparently telling the government Chief Whip that "he had merely divided the House to see how many fools there were in it".[244]

232 HC Deb, 25 Oct. 1882, cols 109, 121.
233 HC Deb, cols 109–111, 106–108.
234 HC Deb, 25 Oct. 1882, cols 120–130.
235 *Gladstone's House of Commons*, p 259.
236 TPA, BRA/3/5, 25 Oct. 1882; HD.350.
237 HD.350.
238 HC Deb, 26 Oct. 1882, cols 239–240.
239 HC Deb, 25 Oct. 1882, cols 240–243.
240 HC Deb, 26 Oct. 1882, col 243.
241 HC Deb, 26 Oct. 1882, cols 243–247.
242 HD.352; *Gladstone's House of Commons*, pp 262–263
243 HC Deb, 26 Oct. 1882, cols 254–255.
244 HD.352; CJ (1882) 493.

In the ensuing days there were debates to exclude categories of business from the closure, including the Committee of Supply,[245] and matters relating to privilege or the business of the House.[246] The government made concessions on the wording of the Rule relating to the circumstances in which the closure was to be initiated.[247] This was followed by yet another debate on whether the initiative should lie with the Chair or with a Minister, which covered essentially the same ground as the comparable debate in the spring. Gladstone restated his opposition to the idea of Ministerial initiative, claiming that the amendment "hampered the Speaker without relieving him" of the duty to reach a decision on the merits of allowing the closure.[248]

On 31 October, debate finally began on Gibson's amendment requiring the closure to be supported by two-thirds of members present. Gibson made what Brand characterised as a "very good" speech, arguing that closure by simple majority threatened the proper role of the Opposition and undermined "a great tradition of Parliament that both sides of the House have a duty to co-operate in the maintenance of order". He conceded the necessity for procedural reform, and claimed an inconsistency between advocacy of a closure by a bare majority and the government's claim that "Obstruction came from a narrow section, and from a limited number of the House", thus alluding to the shared concern about Home Rule tactics that had made Gibson initially sympathetic to the closure. In concluding, Gibson referred to the compromise offer of 6 May, and argued that it was the withdrawal of this offer that had driven the Opposition into non-cooperation, thus carefully shifting the responsibility for the Fourth Party's antics to the government.[249]

Hamilton recorded that Gladstone's speech in reply was "a great speech—considered to be one of his best". He "smashed and pulverised" the amendment and "declared that a closing power dependent upon an artificial majority was worse than no closing power".[250] Gladstone's speech was at its weakest in dealing with the compromise offer of 6 May. He noted correctly that no reply had been given to the offer, and that the political circumstances had changed radically since the offer was made.[251] But it gave rise to the question which Brand noted in his diary: "How came you to be a party to so bad a plan?"[252] Gladstone adopted the argument first adumbrated by Hartington that the closure power

245 HC Deb, 26 Oct. 1882, cols 252–265; HC Deb, 27 Oct. 1882, cols 289–311.
246 HC Deb, 27 Oct. 1882, cols 311–317.
247 HC Deb, 27 Oct. 1882, cols 317–354, 355–361.
248 HC Deb, 30 Oct. 1882, cols 386–411.
249 TPA, BRA/3/5, 31 Oct. 1882; HC Deb, 31 Oct. 1882, cols 473–488.
250 HD.354; HC Deb, 31 Oct. 1882, cols 488–507.
251 HC Deb, 31 Oct. 1882, cols 491–492.
252 TPA, BRA/3/5, 31 Oct. 1882.

fitted logically with the responsibilities, including executive government, of the majority of the House.[253] Gladstone quoted tellingly from Northcote's words in opposition to a two-thirds majority in 1877 and again in 1880.[254] Gladstone argued that a closure requiring a two-thirds majority

> "hands over the rights of the majority to the minority. It paralyzes absolutely in respect to the closing power the majority of this House, unless they can obtain the concurrence of the minority."[255]

He closed with an appeal to the House that "it adhere to that which sense and usage and tradition alike dictate—that the majority not the minority should prevail".[256] Gladstone was, according to Hamilton, "much struck in the debate by the zeal and determination of the Government followers", with only Lubbock speaking in support of Gibson's amendment.[257] Lubbock pinpointed the inconsistency between Gladstone's attack on two-thirds and his use of the 200 Member safeguard:

> "The Prime Minister characterized a two-thirds' majority as something monstrous and unheard of, yet, up to a House of 300 Members, he himself required a majority of two-thirds."[258]

Perhaps one of the most important aspects of the debate was what was not said and who did not speak. Gibson's approach since 1880 had been dictated by a willingness to contemplate measures to combat Home Rule obstructionists, and this approach encouraged a shift in the position of some, but not all, Parnellite MPs as heralded before Parnell's release from prison, helpfully summarised by one of their number, T P O'Connor. He noted that "The rules of procedure were unquestionably first suggested by our attitude in the House", but also perceived that Gladstone's aims now encompassed a broader drive for efficiency in the transaction of business, and that Ireland as well as Britain might benefit from remedial legislation thus enabled. In consequence, many Parnellites had no time for the Conservative support for a two-thirds majority, which would predominantly make the closure an instrument exercised against them:

> "We object to the clôture at all; but if there is to be a clôture—and that is now certain—it had better be a clôture that will apply to all parties in the House, and not to the Irish alone."

They thus supported the simple majority closure for the very reason that the

253 HC Deb, 31 Oct. 1882, col 496.
254 HC Deb, 31 Oct. 1882, cols 499–500.
255 HC Deb, 31 Oct. 1882, col 503.
256 HC Deb, 31 Oct. 1882, col 507.
257 HD.354; HC Deb, 31 Oct. 1882, cols 540–547.
258 HC Deb, 31 Oct. 1882, col 545.

Conservative opposition was hardening: that Radicals might one day "push the clôture to its full and legitimate results, in order to break up the feudal and other institutions of England".[259]

There was a further twist in the debate on the Gibson amendment when it resumed the next day. Lord Randolph Churchill had been suspicious of Gibson and what the Fourth Party viewed as the "frightened landowners" within the Conservative party since 1880.[260] In words dripping with sarcasm, he said that he looked forward to voting against the resolution, in adherence to the views "of a Gentleman whom he respected most highly and followed", namely Northcote, and that "he looked forward with great pleasure to following the lead of his right hon. Friend".[261] But he said that he could not support Gibson's amendment which his party had come to support "under the influence of a Hibernian legal mind", because the requirement for a two-thirds majority was "a very much greater innovation on all our principles, ideas, and customs, than even the *clôture* itself".[262] Not for the first or last time, he seemed sympathetic to Irish obstruction, suggesting that a two-thirds majority would lead to "an understanding between those two front Benches that this *clôture* was to be used against the Irish Party, but not against any other Party in the House."[263] He broadened his attack on his own front bench by claiming the Disraelian mantle of "Tory Democracy" for his own approach, arguing that a future Conservative administration would be hamstrung by its support for a two-thirds majority closure.[264]

The next day's debate began with a short speech from Arthur Balfour of lasting significance. It was, in his official biographer's words, the "the first time he ever opposed" Churchill "in full dress debate".[265] Balfour broke with the Fourth Party, and turned around Churchill's argument that a two-thirds rule would be overturned by a radical majority by stating that he "preferred the most slender protection to none at all".[266] Gladstone considered it "an ingenious reply".[267] Churchill's isolation was enhanced when Henry Chaplin characterised his speech as being "full of mischief" and arguing that the Conservative Party was otherwise united on Gibson's amendment.[268]

259 *Gladstone's House of Commons*, pp 260–262.
260 "Part 1", p 31.
261 HC Deb, 1 Nov. 1882, col 608.
262 HC Deb, 1 Nov. 1882, cols 614, 608–609.
263 HC Deb, 1 Nov. 1882, col 611.
264 HC Deb, 1 Nov. 1882, cols 613–614; TPA, BRA/3/5, 1 Nov. 1882; HD.354.
265 B E C Dugdale, *Arthur James Balfour* (London, 1936), p 73.
266 HC Deb, 2 Nov. 1882, cols 674–678.
267 HD.355.
268 HC Deb, 2 Nov. 1882, col 711.

The wind-up speeches were preceded by a short intervention by Parnell himself, confirming his opposition to Gibson's amendment for the reasons already alluded to by Churchill, that it would be "fatal to the rights and liberties of the Irish Party".[269] In replying to the debate, Northcote could not resist an attack on Churchill—"He has, somehow or other, managed to elevate himself into a position, from which he finds himself capable of looking down upon the Front Benches on both sides, and of regarding all Parties in the House with an impartiality which is quite sublime"[270]—and praised Balfour's refutation of his argument. Northcote argued that his support for the amendment did not constitute an acceptance of the principle of the closure, but simply that, if it were to happen, he would prefer to see it in a form in which "the evils I otherwise apprehend" were materially diminished.[271] Having privately argued for accepting the Gibson amendment, Hartington showed his unswerving loyalty by returning to his earlier advocacy for a majoritarian approach.[272] The government defeated the amendment with a comfortable majority of 84, which was "better than expected"; only 16 Liberals voted for the amendment; Churchill abstained.[273]

The remaining days of the debate were something of an anti-climax, with the outcome no longer in doubt. On 3 and 6 November, the House considered some essentially trivial amendments, before the Speaker declared that the remaining amendments of which notice has been given were all out of order.[274] During the subsequent points of order, the Speaker also made an announcement about how he would interpret one of the most important safeguards in the rule:

> "With reference to the interpretations to be put on the expression 'evident sense of the House', I have no hesitation in stating that, according to my construction of the Resolution, it will be the duty of the Speaker to ascertain, so far as he is able, the evident sense of the House at large".[275]

Northcote and the Opposition attached importance to the Speaker's statement, and the last two words in particular. Brand noted that Gladstone had privately concurred with this interpretation, although the Prime Minister resisted suggestions that it be reflected in the text of the rule.[276] The debate on the main question began later on 6 November, with Northcote summing up the basis for Conservative opposition—that the closure was being promoted "not for the

269 HC Deb, 2 Nov. 1882; TPA, BRA/3/5, 2 Nov. 1882.
270 HC Deb, 2 Nov. 1882, col 730.
271 HC Deb, 2 Nov. 1882, col 735.
272 HC Deb, 2 Nov. 1882, cols 735–748; TPA, BRA/3/5, 2 Nov. 1882.
273 HC Deb, 2 Nov. 1882, cols 749–753; HD.355.
274 HC Deb, 3 Nov. 1882, cols 768–841; HC Deb, 6 Nov. 1882, cols 868–892; HD.356.
275 HC Deb, 6 Nov. 1882, col 894.
276 HC Deb, 6 Nov. 1882, cols 894–900; TPA, BRA/3/5, 2 Nov. 1882.

purpose of putting down Obstruction, but for the purpose of promoting Liberal legislation".[277] This theme was followed up the next day for the Opposition by W H Smith, who argued that the government was abandoning the possibility of managing the business of the House through agreement between the front benches.[278] Rather than winding-up the debate, Gladstone chose to make his final speech on Wednesday afternoon, much to Brand's consternation— "He speaks often at ill-advised moments".[279] Gladstone claimed popular support for his reform proposals, claiming that the clear message from the people was "Do more and talk less; talk less in proportion to what you do",[280] but arguably did not obey that injunction himself with a rather unfocused speech. He did, however, make a notable plea for Irish Home Rule support, contending that Irish business could only be accorded its proper priority if English and Scottish legislation could also progress.[281] His peroration echoed his rather more impressive speech of 20 February, asking that tradition of 600 years should not be "lost in an atmosphere of futile talk".[282]

Gladstone's implicit call for Irish support was picked up on 10 November by a supportive speech by Captain O'Shea, one of the architects of the agreement leading to Parnell's release, who explicitly linked his support to the prospects for Irish reforms.[283] It was however firmly rejected by another Parnellite, James Sexton, in what Hamilton termed a "powerful" speech, which argued that the closure in any form was unacceptable, and that Gladstone was playing a double game, seeking Irish support, but also arguing that Irish obstruction was a target of the measure.[284] When the House finally voted on the main question that evening, Parnell, Sexton and many Parnellites voted against the measure, but only 3 Liberals voted against and the rule was agreed to by 304 votes to 260, a majority with which Gladstone was "much pleased".[285] On 1 December, the rule became a Standing Order and Gladstone wrote that this was "A great day, as I think, for the House of Commons itself".[286]

277 HC Deb, 6 Nov. 1882, cols 921–922.
278 HC Deb, 7 Nov. 1882, cols 1019–1020.
279 TPA, BRA/3/5, 8 Nov. 1882.
280 HC Deb, 8 Nov. 1882, col 1080.
281 HC Deb, 8 Nov. 1882, cols 1084–1085.
282 HC Deb, 8 Nov. 1882, cols 1089–1090.
283 HC Deb, 10 Nov. 1882, cols 1207–1209.
284 HC Deb, 10 Nov. 1882, cols 1243–1253.
285 HC Deb, 10 Nov. 1882, cols 1283–1287; HD.358; GD.x.364.
286 GD.x.372.

"Permitted … to lie useless in the armoury": the closure in inaction, 1882–1884

Many accounts of the closure stop after the passage of the 1882 rule, and only resume when revised rules were under consideration in the second half of the 1880s. But a fundamental part of the history of the closure that has to be examined is the period from 1882 until 1884 when, as Lucy put it, "a powerful instrument, forged with infinite care" was "permitted through two years and a half to lie useless in the armoury".[287]

That the closure would not be frequently used had been widely predicted. Indeed, Hamilton suggested that this was Gladstone's expectation:

> "It is likely that the hopes of its friends will be disappointed and the apprehension of its enemies unfulfilled. Mr. G. himself has never thought that it will be anything like as effective in saving the time of Parliament as the adoption of a system of devolution by Grand Committees. He believes it will very rarely be put into force; and then when put into force it will only be so after great and evident waste of time."[288]

Others had disagreed. In October 1882, Chamberlain wrote:

> "I venture to differ from Mr Gladstone as to the importance of the closing power and the probable frequency of its use. I believe that obstruction will continue under any system and that the closure will gradually come into general use as it has done in France where its operation provokes no comment and no complaint."[289]

In the course of the prolonged debate, and to some degree because of the sheer effort involved in securing a closure rule, there seemed to have been a growing expectation of frequent use among its supporters, reflecting Chamberlain's position. On 25 October 1882, the Conservative MP Edward Stanhope had pointed out that, when the closure had first been proposed, Ministers had implied that "they did not rely upon this Rule specially to put down Obstruction, because they had other Rules in their quiver which would be still more useful in getting rid of Obstruction". However, as debate continued, "the *clôture* appeared to be regarded, both by their supporters in the country and by the government, as a means of putting down Obstruction".[290]

Stanhope pointed out that "this cumbrous procedure was utterly unsuited to Committees of the Whole House, especially when Supply was being taken".[291]

287 *Gladstone Parliament*, p 441.

288 HD.356.

289 BL, Add Ms 44125, fos. 206–207v, Chamberlain to Gladstone, 18 Oct. 1882 (Hughes, 315–316).

290 HC Deb, 25 Oct. 1882, col 99.

291 HC Deb, 25 Oct. 1882, col 99.

The former Conservative Chief Whip Sir William Hart Dyke suggested that the closure would be "ineffective": it would not counteract other methods of delaying debates before they even started, and, if used against individual amendments, it could be countered by further amendments.[292] Even one of its defenders, the Speaker's nephew, Samuel Whitbread, had acknowledged that the closure would not be abused precisely because of the possibility of further amendments being moved if that were the case.[293] Milman later noted the problem that the closure "could be applied only to the question immediately before the House" so that "the remedy only disposed of one question". This meant that it was not worth considering in instances where one amendment was before the House and another amendment could be proposed so that "the game" of obstruction could begin "again on the next amendment under the same hopeless conditions".[294]

There were rumours that the closure might be used during the debate on the Address in 1883, which stretched over 15 days, but they came to nothing.[295] There were some suggestions that the closure had a deterrent effect, so that debates were not extended as previously.[296] Thus, in April 1883, an overlong second reading debate on an uncontroversial bill was brought to a conclusion at 2.00 am by "a muster of ministerialists at this untimely hour, and a threat to invoke the Clôture".[297] One newspaper suggested that the closure was "kept in reserve, like an enchanted sword in a fairy tale, for great adventure. Yet the adventure has not presented itself."[298] Others simply concluded that the Speaker had made up his mind never to use it.[299] *The Morning Post* remarked that "the weapon is so terrible that even those who forged it are afraid to use" it, and subsequently suggested that it "bids fair to become a dead letter".[300] This last phrase was echoed by a sympathetic article on the troubles faced by the government due to obstruction in September 1884, partly inspired by Edward Hamilton.[301]

When Brand stepped down as Speaker early in 1884, *The Times* acknowledged somewhat grudgingly that "By many it [the closure] was thought to be a

292 HC Deb, 27 Mar. 1882, cols 100–103.

293 HC Deb, 27 Mar. 1882, col 81.

294 A Milman, "Parliamentary Procedure *versus* Obstruction", *Quarterly Review* (1894), Vol 178, pp 486–503, at p 490.

295 Masson, *De l'Obstruction*, pp 48–49; *London Evening Standard*, 2 Mar. 1883, p 4.

296 *Reynolds's Newspaper*, 18 Mar. 1883, p 1.

297 *The Graphic*, 21 Apr. 1883, p 12.

298 *St James's Gazette*, 14 Apr. 1883, p 14.

299 *The Graphic*, 16 June 1883, p 10.

300 *The Morning Post*, 23 July 1883, p 4; *The Morning Post*, 27 Aug. 1883, p 4.

301 J Guinness Rogers, "Chatter *versus* Work in Parliament", *The Nineteenth Century*, Sept. 1884, pp 396–411, at p 406; HD.663, 680.

dangerous experiment; but as yet no harm has ensued".[302] Brand stayed silent on the reasons for not using the closure, but in late 1882 he had blamed Gladstone for

> "the arithmetical puzzle, by which it was fettered … I never liked it, and in fact it has rendered the Rule practically inoperative, except in a very full House. It is not calculated for the daily work, and the repression of wilful obstruction."[303]

The requirement for the Whips to secure the presence of 200 supporters before the closure could be considered was undoubtedly a constraint on its use.[304] Brand's successor as Speaker, Arthur Peel, had not been associated with the creation of the closure and had been criticised before he took the Chair for likely partiality towards the government, and so was even more reluctant to use the closure.[305]

The absence of any use of the closure did not arise from the absence of obstruction. It is true that Irish obstruction was relatively limited. The coercive legislative passed in the wake of the Phoenix Park murders remained in force until 1885, and many Home Rule Members were sympathetic to the government's legislative programme.[306] By 1884, Hamilton noted that Irish obstruction had essentially ceased.[307] But obstruction continued, and indeed took new forms. This had been foreseen by Conservatives during the 1882 debates. One suggested that the closure "would not put an end to, but would refine Obstruction. It would drive men into becoming Obstructives who had never been Obstructives before."[308] Another opposed the closure in part because "it would not be an efficacious mode of dealing with the mischief we have to encounter".[309] The baton on obstruction was taken up by Churchill and the Fourth Party, and on occasions by the Conservative frontbench, and this was a harder target for the closure because the new obstruction was intermittent and targeted, rather than systematic and indiscriminate.[310] This was the system of "veiled", "indirect" or "Fabian" obstruction, which was designed in response to closure and recognised as reducing the utility of the closure. By spreading out those responsible for obstruction and making it less blatant, and retreating when closure seemed imminent, they were able to frustrate the government's

302 *The Times*, 26 Feb. 1884, p 4.
303 TPA, BRA/3/5, remarks at end of 1882 Session.
304 *London Evening Standard*, 9 Feb. 1883, p 5; *St James's Gazette*, 18 Mar. 1884, p 13.
305 *Globe*, 4 Dec. 1883, p 1; *Morning Post*, 27 Dec. 1883, p 6.
306 *Gladstone's House of Commons*, p 272.
307 HD.661.
308 HC Deb, 30 Mar. 1882, cols 351–352.
309 HC Deb, 30 Mar. 1882, col 376.
310 *Gladstone's House of Commons*, pp 305–312.

legislative programme without precipitating the use of the closure.[311] An article published in 1884 railed against the fact that Parliament was "unable to give effect to the will of its constituents", against "the utter helplessness of the House of Commons to do its proper work", with even "measures which have no relation to party, and which are not only of admitted utility but of positive necessity … opposed with the same pertinacity and the same wanton determination to obstruct".[312]

In a speech to present and former Liberal Whips in July 1884, Gladstone effectively conceded that the measures passed in 1882 with "enormous cost and enormous difficulty" had foundered because it was "the great practical principle of modern Conservatism to keep down the efficiency of the House of Commons".[313] The closure rule passed in 1882 was incapable of preventing that. Writing around the same time, Henry Lucy had little doubt as to the principal reason why:

> "The fatal blot upon the Closure Rule which, whilst it remains, will always make it inoperative, is that the initiative is left with the Speaker … No Minister is allowed to get up in his place, express the opinion that a particular discussion has occupied sufficient time to cover all useful purposes, and ask the House to decide by a vote whether that is so or not."[314]

Lucy's analysis prefigured a later one by Milman, who identified the first weakness of the 1882 closure rule as being that it "could only be initiated by the Chair".[315] This placed the Speaker "under the invidious obligation of intervening only on the side of the majority".[316] Milman considered it "objectionable because it involved the Speaker in party politics".[317] The Speaker thus became "extremely loth to intervene" and "lawlessness necessarily enjoyed a long immunity".[318] The weakness of the Speaker initiative was also apparent from the wholly false narrative constructed in an article sympathetic to the case for reform of the closure in 1884, which erroneously implied that "The Clamour which prejudice and passion combined to raise against the *clôture* made it impossible to secure a hearing for the proposal that the initiation should be left with the responsible Minister of the day",[319] whereas the case had been

311 *St James's Gazette*, 3 May 1883, p 13; *Reynold's Newspaper*, 24 Feb. 1884, p 1; *St James's Gazette*, 10 Mar. 1884, p 14.
312 "Chatter *versus* Work", p 396.
313 *Western Daily Press*, 12 July 1884, p 8.
314 *The Graphic*, 19 Apr. 1884, p 11.
315 "Parliamentary Procedure *versus* Obstruction", p 490.
316 "Parliamentary Procedure *versus* Obstruction", p 491.
317 "Parliamentary Procedure *versus* Obstruction", p 490.
318 "Parliamentary Procedure *versus* Obstruction", p 490.
319 "Chatter *versus* Work", p 406.

heard and rejected at every turn by Gladstone, during initial consideration and on several occasions during debate on the closure.

"Nearly ended in a catastrophe": the first use of the closure, February 1885

The continued failure to use the new closure rule compounded the problems arising from its complexity. Lucy wrote prophetically in 1884 that the rule "has so absolutely fallen into neglect that it is safe to assert there are not twenty men in the House of Commons who could, off hand, explain how its intricate machinery would work".[320] This limited knowledge became apparent when the closure was finally used for the first time on 24 February 1885.[321] As Hamilton noted in his diary, "This first trial of the closure was not very successful. Indeed, it nearly ended in a catastrophe."[322]

On 20 February, the government had agreed to give precedence on 23 February to a Tory censure motion following the failure to relieve Khartoum before General Gordon's death.[323] The censure debate had started that day and not concluded, but the motion to grant precedence did not apply to any subsequent day.[324] On 24 February, Gladstone accordingly proposed a new motion to grant precedence, which gave rise to vociferous objections from Irish Home Rule members, who had hoped to debate a motion to establish a committee of inquiry into the dismissal of an officer in the Royal Irish Constabulary.[325] A succession of Irish MPs defied the Speaker's authority and resisted his attempts to keep the debate on precedence within narrow confines.[326] After 90 minutes debate, and suitably goaded, "The Speaker availed himself of the Standing Order for putting in force the Closure, to which no resort has been had since the existence of the closing power".[327]

The decision had come without the advance preparation and consultation which many had assumed would be integral to the use of the closure. The Conservatives had been sounded out about the idea of using the closure, and had reacted without enthusiasm, and the timing seemed to take the House by

320 *The Graphic*, 19 Apr. 1884, p 11.

321 The confusion has also extended to historical accounts, with Colin Matthew erring uncharacteristically by focusing on the wrong date and denying that the closure was used at all: GD.x.cii; Matthew, *Gladstone*, p 172.

322 HD.800.

323 GD.xi.299.

324 *Gladstone Parliament*, p 439.

325 It was reported that notice of the motion had been given after it was known that the censure debate would continue beyond 23 February: *London Daily News*, 25 Feb. 1882, p 5. For a subsequent debate on the matter, see HC Deb, 30 Mar. 1885, cols 1018–1053.

326 *Gladstone Parliament*, pp 440–441; *Gladstone's House of Commons*, pp 489–490.

327 HD.800.

surprise.[328] Gladstone was "plainly taken aback", and had to grab a copy of the Standing Orders from the table to work out what to do, before moving the closure motion "with pale and pained face".[329] Proceedings were delayed by Irish members continuing to object loudly, with one of them being named and then suspended after a division.[330] It was reported that the Speaker "became nervous and confused" and "mixed up the question under debate with the simple issue as to whether the question should be put".[331] He therefore mistakenly tried to put the question on an amendment to the main motion, without first putting the question on the closure motion.[332] A division started on the wrong question, until Members pointed out the error. Peel at first denied that he had erred, and "In the midst of all this passion and confusion some amusement was supplied by the spectacle of Mr Milman … madly attempting to whisper into the ear of the Speaker that he was going wrong".[333]

The situation was then made far worse by the voting pattern on the question when it was finally put. Although the underlying motion was designed to enable the censure motion with which the Conservatives hoped to bring down the government, the Conservatives "went all ways".[334] Some 26 Conservatives voted against the motion along with the Parnellites, including Gorst and Drummond Wolff from the Fourth Party, and one Conservative Whip, which Hamilton viewed as "extraordinary and unaccountable behaviour".[335] Although some Conservatives voted for the motion, the party's MPs also "withdrew themselves in large numbers from the House".[336] Sir Robert Peel, the Speaker's eldest brother and a former Liberal MP who had been returned as a Conservative at a by-election in 1884, was among those "leaving the Speaker in the lurch".[337] The Conservatives voting with the Parnellites ensured that there were more than 40 in the minority, thus requiring over 200 in the majority—a requirement which the Speaker had probably not foreseen. In the end, only 207 voted for the closure motion, so that "The conditions of the Standing Order were only just complied with".[338]. Gladstone viewed the Conservative approach as "vile and disgraceful",[339] and drew the Queen's attention to what he saw as "the

328 *Gladstone's House of Commons*, p 490; *Gladstone Parliament*, p 441.
329 *Gladstone Parliament*, p 441; *Gladstone's House of Commons*, pp 305–312.
330 *Gladstone Parliament*, pp 441–442; *Gladstone's House of Commons*, pp 491–492.
331 *Sheffield Daily Telegraph*, 25 Feb. 1885, p 2.
332 *Gladstone Parliament*, p 442.
333 *Gladstone's House of Commons*, p 493.
334 *Gladstone Parliament*, p 443.
335 *Gladstone's House of Commons*, p 493; *The Times*, 4 Nov. 1886, p 6; HD.800.
336 *The Times*, 4 Nov. 1886, p 6.
337 HD.800.
338 HD.800.
339 HD.800.

very dangerous precedent" of the Opposition "declining to support the Chair established".[340] *The Pall Mall Gazette* suggested that "The Conservatives last night endangered the authority of the Speaker and the regulations of the House of Commons in their eagerness to deal the Government a nasty blow".[341] Hamilton was similarly critical:

> "For them to decline to support the authority of the Chair was a strong order of things; but it was a still stronger order of things on an occasion when the Speaker was using the closing-power in order to make way for them to continue their debate of Censure."[342]

The events had done little to enhance the authority of the Speaker or the prospects for effective use of the closure. One newspaper reported that "There is a general verdict that the Speaker has done a strong thing in a weak way."[343] O'Connor observed that "the victory had been so near a defeat as to amount to a very serious check".[344] Gladstone had what he termed a "serious conversation with the Speaker on the possible resignation".[345] Hamilton noted that "The Speaker was put in a most disagreeable and critical position; and had there been seven less votes in the majority he would undoubtedly have resigned".[346] The Speaker's willingness to resign had the necessary majority not been secured "in view of the extraordinary attitude of the Conservative party" was reported in *the London Daily News* the next day.[347] A Conservative newspaper responded to this by suggesting that, if opposing the Speaker's proposal as to the evident sense of the House was to be treated as "an act of dastardly desertion", then "it is clear that he can enforce the cloture of his own will whenever he chooses, and that this Ministerial official is yet greater autocrat of debate than the rules apparently make him".[348] After these events, as Harcourt was to note the following year, "it became practically impossible for the Speaker to put the rule into operation".[349] As Milman was also to write: "It was clear that no Speaker was likely to run the risk of a rebuff by again assuming the initiative unless in the face of extreme urgency".[350]

340 HD.800.
341 *Pall Mall Gazette*, 25 Feb. 1885, p 2.
342 HD.800.
343 *Sheffield Daily Telegraph*, 25 Feb. 1885, p 2.
344 *Gladstone's House of Commons*, p 494.
345 GD.xi.300.
346 HD.800.
347 *London Daily News*, 25 Feb. 1882, p 5.
348 *St James's Gazette*, 25 Feb. 1882, p 5.
349 *The Times*, 4 Nov. 1886, p 6.
350 *Encyclopædia Britannica*, p 478.

Conclusions

The introduction of a Standing Order to provide for debate to be curtailed by motion in the United Kingdom House of Commons was without doubt a moment of seminal significance in its procedural history. Although the closure and comparable methods of curtailing debate were amply precedented in foreign and colonial parliaments, and a form of closure on a temporary basis had been adopted in emergency conditions in 1881, the introduction of a permanent closure rule represented a critical point in the transition from reliance on precedent and shared understandings across the House to recognisably modern parliamentary practice deeply dependent on restrictive rules set down in standing orders.

The preparation and passage of this Standing Order represented a singular personal achievement by William Gladstone. Many cabinet ministers supported the introduction of the closure, but few other than Dodson engaged consistently with the drafting challenges, and many, not least among them Lord Hartington, were inconsistent in their approach on crucial features of the rule. It was Gladstone alone who guided the cabinet to an agreed position, and it was the power and logic of Gladstone's speeches which drove the argument forward and sustained the political momentum between February and November 1882.

The singularity of this achievement can overshadow the baleful influence that Gladstone ultimately exercised on the design of the closure. He was hesitant from the outset, conscious that the closure was unlikely to yield the benefits which its fiercest advocates, in his cabinet and beyond, foresaw. This was, however, in many ways a self-fulfilling prophecy. At an early stage, Gladstone perceived the need for the "major" closure, which encompassed successive amendments and the main question, if it was to be an effective tool against obstruction. This was an instrument so powerful that he and many of his cabinet felt that it had to be hedged in by safeguards. It is possible that a closure in this form would have attracted such virulent opposition that it could not have been proceeded with, but the cabinet decided not to try. It settled instead for the "minor" closure alone, and then weakened it further with safeguards conceived originally for the major closure. The opposition which this watered-down closure then attracted was extreme in its ferocity. It is thus not easy to imagine that the antipathy generated by a major closure, and a minor closure alongside it with more limited safeguards, would have been worse. By these decisions, Gladstone and his cabinet reduced their room for manoeuvre and negotiation, while still facing a monumental battle to secure passage. The stamina and resilience demonstrated by Gladstone and his cabinet colleagues to deliver the minor closure relatively unscathed was admirable, but should not detract from the strategic misjudgements at the outset.

Gladstone was also responsible for the deepest flaw in the closure rule agreed

by the House in 1882—the reliance on the Speaker's initiative. The draft closure resolution prepared by Brand in January 1881 had allowed for any Member to move the closure.[351] Compelling arguments were advanced on several occasions during the debates in 1882 for such a closure, or for the initiative to lie only with a Minister or the Member in charge of the business. Gladstone almost wilfully misunderstood some of these arguments, falsely equating such proposals with a closure which would automatically be granted. He ignored all suggestions that the Speaker's best role would be as an arbiter on claims for the closure made by others. He associated the Speaker's exercise of the initiative on the closure with his disciplinary powers, believing wrongly that the exercise of the power would be seen as beyond criticism or politics. This became all too evident when the closure was finally invoked on 24 February 1885. The role for the Speaker which was designed to remove the closure from the vortex of party politics had in fact ensured that the Speaker was sucked into it. Gladstone may have viewed this as unfair or inappropriate, but it had been amply foreseen in the debates of 1882.

Similarly, the concept of the "evident sense of the House" almost fatally undermined the 1882 rule. In February 1882, Gladstone had recalled the use of an informal closing power, whereby shared understandings between frontbenches could be imposed on recalcitrant backbenchers. The safeguard relating to "evident sense" sought to embody this informal understanding within the closure rule. Yet, the necessity for the rule arose from the fact that such informal understandings were harder to reach between frontbenches and next to impossible to enforce on the backbenches. When Brand announced that he viewed the rule as meaning the evident sense of the House "at large", he further undermined its utility. Lucy noted how, faced with such a "nebulous and disputable guide" as this term, the occupants of the Chair "have very naturally shrank from voluntarily bringing a hornet's nest around the Chair".[352] In consequence, as Lucy later noted, "though a score of times occasion has arisen when the Closure Rule might with public advantage have been applied, it has only once been taken from the armoury in which it was placed amid so much foreboding".[353]

For many historians, the significance of the closure debates in 1882 lies not in the effects of the rule they produced, but in what they indicate about the drivers of procedural change in the late Victorian House of Commons. Michael Koß is the most recent writer to reassert the role of Irish obstruction as the driver of procedural change and the introduction of the closure rule. He links the passage

351 "Part 1", p 29.
352 *The Graphic*, 19 Apr. 1884, p 11.
353 HW Lucy, *A Popular Handbook of Parliamentary Procedure* (London, 1886), pp 107–108.

of the 1882 rule directly to the Irish obstruction to coercion in 1881.[354] There were certainly times during the debates in 1882 when the particular challenges of Irish obstruction were uppermost in the minds of supporters of the closure, such as during John Bright's speech from the ministerial despatch box on 30 March. Support for this interpretation is also provided by the conciliatory offer to support the Gibson amendment for a two-thirds majority for closure in return for swift enactment of the rule which the cabinet agreed at lunchtime on Saturday 6 May. The significance of this offer has been neglected, overshadowed by the tragic events that unfolded in Phoenix Park later that day and by the determined resistance to the same amendment when it came before the House in the autumn. In May, with his eyes on the larger prize of passing reforming legislation in Ireland, Gladstone was certainly willing to contemplate a closure that was only likely to be effective against small minorities. However, this offer was made when the small minorities that concerned him most were those organised by Lord Randolph Churchill and the irregulars on the Conservative backbenches, not the Irish Home Rule party, who he saw hopefully at this juncture as allies in a great legislative enterprise.

For Josef Redlich, Irish obstruction "had the effect of accelerating" the speed of procedural change, but "was not its true cause". In his view, "The real motive power came from the *alteration in the nature of the British Government itself*".[355] That analysis has modern echoes in the work of Ryan Vieira, who sees in the language of modernity employed by advocates of the closure and wider procedural reform an indicator of the drivers of change.[356] This approach arguably attaches too much significance to one strand of arguments among many deployed in favour of the closure. There can be no doubt that one intention behind the proposals, frequently avowed by ministerial advocates of the closure, was to enable the more effective delivery of the legislative programme of a majority administration, by means of the reduction of the delaying powers available to its opponents. It was this aspect and this aim which provoked the sustained resistance of the Conservative party. When the front bench weakened in their resolve for all-out opposition, they were outflanked by Lord Randolph Churchill and his allies, leading to the prolonged and embittered debates of the autumn.

Closure was designed as a weapon against obstruction, and obstruction in the Parliament of 1880–85 took many forms, and arose from many quarters. The closure proposals took the form that they did because—at least from a government perspective—Irish and Conservative methods of obstruction

354 M Koß, *Parliaments in Time*, p 121.
355 J Redlich, *The Procedure of the House of Commons*, I.207.
356 R Vieira, "The Time of Politics and the Politics of Time", pp 186, 258.

were at times indistinguishable. The government was willing to contemplate a departure from established forms of practice relying on agreement between the two frontbenches because it was faced with an Official Opposition willing to tolerate and indulge obstruction. The government forged a new weapon to defeat a new enemy, obstructive behaviour that did not reflect partisan boundaries or established norms of parliamentary behaviour, and which was as likely to come from the British Conservative benches as the Irish Parnellite benches. The closure was thus a response to a particular pattern of parliamentary behaviour, not part of the ineluctable march towards a procedural embodiment of democracy.

The closure rule created by the Liberal government in this way and for these reasons failed utterly for the purposes for which it was designed. The effort involved in giving effect to the change was enormous and exhausting, and great efforts are often assumed to have great consequences, but the rule was all but inoperable. It would eventually fall to Conservatives, who had so steadfastly resisted the 1882 closure rule, to take the most important step in the evolution of the closure.

SCRUTINY OF TREATIES BY THE HOUSE OF LORDS: AN INSIDER'S REFLECTIONS

ALEXANDER HORNE[1]

Background

Treaty scrutiny has long been a challenge for the UK Parliament, but it is a crucial and developing area as competencies return to the UK post-Brexit. In January 2021, the House of Lords established a stand-alone International Agreements Committee. It succeeded the EU International Agreements Sub-Committee (which worked under the umbrella of the European Union Committee) and was established as recently as April 2020. This was the culmination of several years' work behind the scenes.

This article will seek to set out why the UK Parliament has been so bad at scrutinising treaties in the past and how Parliament has come to play a more prominent role in their scrutiny. It will then look ahead at some of the future challenges that may arise.

At the outset, it is worth highlighting that the focus of this article is on the work of committees in the House of Lords, which has conducted the only systematic scrutiny of treaties in the UK Parliament. This work did not commence until 2014.[2]

This is surprising as the issue was recognised as long ago as 1872. In the introduction to the Second Edition of his seminal work, *The English Constitution*, Walter Bagehot observed:

> "Treaties are quite as important as most laws, and to require the elaborate assent of representative assemblies to every word of the law, and not to consult them even as to the essence of the treaty, is prima facie ludicrous. In older forms of the English Constitution, this may have been quite right; the power was then really lodged in the Crown and because Parliament met very seldom, and for other reasons, it was then necessary that, on a multitude of points, the Crown should have much more power than is amply sufficient for

[1] The author is a barrister (Lincoln's Inn). During an 18 year career in Parliament he worked as the legal adviser to both the Lords European Union Committee and the International Agreements Committee where he led much of the initial work on treaty scrutiny. This article is based on a talk given to the University of Durham on 4 March 2021. The author would like to thank Dr Dominique Gracia, Professor Holger Hestermeyer and Eleanor Hourigan, each of whom has provided ideas and insights which inform this article. Any errors, omissions or infelicities remain his own.

[2] The House of Commons has established an International Trade Committee, which now considers many of the Free Trade Agreements negotiated by the Department for International Trade. However, there is no single Departmental Committee in the Commons that has taken responsibility for scrutinising treaties.

the present."[3]

Bagehot identified that, under the system as it then stood, "the Government which negotiates a treaty can hardly be said to be accountable to any one", even though, in some cases, once the treaty has been made by the Government it cannot be undone in the same way as domestic legislation. He argued that it would be advantageous to "require that in some form the assent of Parliament" should be given to treaties, and that "we should have a real discussion prior to the making of such treaties."[4]

Change was not swift to arrive. In 1998, Professor Robert Blackburn stated that Westminster was the "only parliament in the European Union that lacks a formal mechanism for securing parliamentary scrutiny and approval of treaties."[5] He noted a Labour Party policy paper as far back as the early 1990s, entitled A New Agenda for Democracy, which argued for extending Parliament's control over treaties.[6] However, despite a modest legislative change in 2010, which will be described below, the three Labour Administrations of 1997, 2001 and 2005 did little to increase accountability to Parliament.

It might be said that the earlier lack of interest in treaties stems from three main sources. First, that the treaty-making power of the Crown is a prerogative power, traditionally exercised by the Foreign Secretary. Importantly, this means that Parliament need not consent to the Crown entering into a treaty. Under the 'Ponsonby Rule' – introduced in 1924 – a treaty subject to ratification, or analogous procedure, was notified to Parliament alongside a short explanation. Although it could be debated, Parliament had no power of veto.

That element of the Ponsonby Rule was codified into statute under the *Constitutional Reform and Governance Act 2010* ("the CRAG Act") However, while Part 2 of the CRAG Act places some, modest, burdens on the Government, these can hardly be described as onerous. Under the CRAG Act, the Government must lay the agreement for 21 sitting days and provide an explanatory memorandum "explaining the provisions of the treaty, the reasons for Her Majesty's Government seeking ratification of the treaty, and such other matters as the Minister considers appropriate." Parliament has no power to preclude the ratification of a treaty, if it does not agree that the new agreement would be in the public interest.

And while the CRAG Act provides the House of Commons with a theoretical power to delay indefinitely the ratification of an agreement, this has never been

3 W. Bagehot, The English Constitution, 2nd Edition, Sussex Academic Press, 1977, p176-179

4 *Ibid.*

5 R. Blackburn, Parliament and Human Rights, in G. Drewry and D. Oliver (eds), The Law and Parliament, Butterworths, 1998, p188

6 *Ibid*, p189

used in practice, and can be sidestepped entirely in undefined "exceptional cases." Moreover, the obligations on the Government only arise once an agreement has been signed – which is far too late in the process to influence the outcome. Little changed after the passage of the CRAG Act and, in 2016, Arabella Lang noted that it did "nothing new to help Parliament scrutinise treaties effectively"[7]

Yet, the fact that the power to make treaties is a prerogative power and not subject to significant statutory control should not be the end of the matter. As we have seen with development of the War Powers Convention, and in the two *Miller* judgments of the UK Supreme Court, reservations are increasingly being expressed about the exercise of executive power without accountability to Parliament. Notably, in *Miller No. 2*, the Supreme Court observed that:

> "the effect which the courts have given to Parliamentary sovereignty is not confined to recognising the status of the legislation enacted by the Crown in Parliament as our highest form of law. Time and again, in a series of cases since the 17th century, the courts have protected Parliamentary sovereignty from threats posed to it by the use of prerogative powers, and in doing so have demonstrated that prerogative powers are limited by the principle of Parliamentary sovereignty."[8]

In a debate on the Trade Bill, the then-Chair of the International Agreements Committee, Lord Goldsmith QC, said: "I respectfully suggest that one should be wary of attributing too much sanctity to the position of Crown prerogative in today's day and age. The question one should ask, when looking at the modest rights provided to Parliament under the CRAG Act, is whether they offer sufficient protection to Parliament."[9]

The second reason for the lack of interest in treaties may be the UK's dualist legal system. This means that, in principle, international agreements have no legal effect within the domestic legal order until they are implemented by domestic legislation. Governments have sometimes relied upon this to suggest that this is where Parliament exercises power in the treaty making process. Yet, under this system, the only real influence that Parliament currently has is to refuse to enact the legislation, whether primary or secondary, necessary to implement an agreement in domestic law prior to ratification. Moreover, not all agreements will require legislation, and Parliament's scrutiny of secondary legislation is subject to sufficiently extensive criticisms that it is not necessary

7 A. Lang, Parliament and International Treaties, in A. Horne and A. Le Sueur, Parliament: Legislation and Accountability, Hart, 2016, p251

8 [2019] UKSC 41, para 41

9 HL Deb, 7 December 2020, Col 986

to rehearse the arguments here.[10] In any event, the fact that Parliament is responsible for passing legislation after the terms of an agreement have been struck hardly amounts to scrutiny at all, since it has no real power to amend the terms of the deal that has been agreed.

The third main reason for the lack of priority for scrutinising treaties was the role of the European Union. Prior to Brexit, the European Union was responsible for negotiating international trade agreements (and some other agreements within EU competence). Thus, much of the work negotiating agreements was done on our behalf. Agreements were scrutinised in detail by the European Parliament, including UK MEPs, and the European Parliament had veto powers in respect of certain agreements under Article 218 of the Treaty on the Functioning of the European Union. On the domestic front, the European Committees of both Houses (the European Union Committee and the European Scrutiny Committee) scrutinised the decisions made by UK Ministers at the main EU decision making body – the Council. These mechanisms have now come to an end following our exit from the European Union on 31 January 2020.

What has changed?

Post-Brexit, the UK finds itself in a wholly new position. I remember vividly attending a meeting with Government in 2017. *The Financial Times* had reported that after Brexit, the UK would need to renegotiate "at least 759 treaties."11 It provoked a certain level of alarm in both Government and Parliament. At that time, domestic Parliamentary scrutiny by Committees was very limited. Until 2019, the only systematic scrutiny of treaties was conducted by the House of Lords Secondary Legislation Scrutiny Committee (SLSC), which began to scrutinise treaties in the 2014-15 Parliamentary session. In written evidence to the Lords Constitution Committee, in 2019, the SLSC indicated that it had considered 69 treaties since 2014-15, had reported 18 of them for information and had not drawn any of them to the special attention of the House.

By 2017, it had become apparent that the SLSC would face an overwhelming tsunami of secondary legislation to implement "retained EU law", and would not be in any position to scrutinise additional international agreements. This was a direct catalyst for change. In 2019, the European Union Committee of the House of Lords accepted the task of scrutinising all 'Brexit related' treaties. It produced more than 20 reports looking at more than 50 agreements, many of them seeking to replicate, or 'roll over' trade agreements the EU had with third

[10] See: e.g. A. Tucker, Parliamentary Scrutiny of Delegated Legislation, in A. Horne and G. Drewry, Parliament and the Law, 2nd edition, Hart, 2018, p347

[11] Financial Times, After Brexit: the UK will need to renegotiate at least 759 treaties, 30 May 2017.

countries. 2019 also saw the first debate following a motion under the CRAG Act.[12]

Is there a need for a Committee to scrutinise treaties?

In a paper published by Policy Exchange, taking account of Brexit, the former First Parliamentary Counsel, Sir Stephen Laws, noted arguments in favour of parliamentary scrutiny of treaty negotiations and suggested the creation of a "supervisory committee … on the model of the Intelligence and Security Committee" which could "provide private challenge to the Government's negotiating strategy" while providing "reassurance to Parliament".[13] Yet a committee of this type would struggle to be public facing and deal with concerns raised by stakeholders.

Both the Lords EU Committee and the Constitution Committee have recently produced reports on parliamentary scrutiny of treaties. Both agreed that there was much more that could be done. In its report, *Scrutiny of International Agreements: Lessons Learned*, the EU Committee concluded that the CRAG Act is "poorly designed to facilitate parliamentary scrutiny" and that the timetable of 21 sitting days for scrutiny "is too short to allow for proper consultation or engagement by committees." While the agreements considered by the EU Committee were mainly rolled over trade agreements, such consultation and engagement will be even more vital to inform scrutiny of new international agreements that will affect every facet of life in the UK.

In its report, *Parliamentary Scrutiny of Treaties*, the Constitution Committee endorsed the creation of a new treaty scrutiny select committee which could "sift all treaties, to identify which required further scrutiny and draw them to the attention of the Houses", with the power to "secure a debate on treaties it deems significant."

Why should we scrutinise treaties?

Parliamentary scrutiny is important because treaties increasingly have a direct effect on daily life in the UK. Over the next few years, we expect the Government to negotiate important trade agreements with the United States, Australia, New Zealand and other major economies. It is also seeking to join the Comprehensive and Progressive Trans-Pacific Partnership Agreement These agreements may affect jobs, and the price and availability of goods in the shops. New agreements can also affect the role of Parliament itself by requiring legislation to be passed by Parliament, or by preventing a future Parliament from passing legislation which would place the UK in breach of its international

12 HL Deb, 13 March 2019, col 1108 et seq.

13 The Future for Constitutional Reform | Policy Exchange

law obligations.

However, it must be stressed that treaty scrutiny is not only about trade. Agreements can encompass security, the exchange of data, the environment and many other issues of public interest. Going forward, it will be essential that the UK Parliament is well informed about all new international agreements. And it is also important that the Government engages with the devolved administrations and legislatures, which will each have a legitimate interest in the agreements that are struck on their behalf – particularly where they engage with competencies that have been devolved to Scotland, Wales and Northern Ireland.

The International Agreements Sub-Committee commenced its work in the summer of 2020 with an inquiry and report on its working practices. This report set out the matters which it would have in mind when scrutinising agreements and noted five criteria under which it might draw an agreement to the special attention of the House of Lords. These were:

(a) that it is politically or legally important, or gives rise to issues of public policy that the House may wish to debate prior to ratification;
(b) in the case of any agreement that is intended to 'rollover' an agreement by which the UK was previously bound, as an EU Member State, that it differs significantly from the precursor agreement, or that it is inappropriate, in view of changed circumstances since the precursor agreement was concluded by the EU;
(c) that it contains major defects, that may hinder the achievement of key policy objectives;
(d) that the explanatory material laid in support provides insufficient information on the agreement's policy objective and on how it will be implemented;
(e) that further consultation would be appropriate, including with the devolved administrations.

Since then, the sub-committee, and its successor, have considered a wide variety of agreements, including treaties related to trade, space launches, police co-operation, as well as the UK's continuing failure to ratify the Istanbul Convention which is designed to prevent violence against women and girls.

The challenges ahead

While the establishment of the new International Agreements Committee in the Lords might be thought to be a significant building block toward establishing a parliamentary treaty scrutiny mechanism, to conclude it is worth looking forward at some challenges that our new system might face.

There are four issues to highlight. The first is a simple one and follows from the result of the 2019 election: when the Government has a substantial majority,

the requirements of CRAG are not absolute. This became readily apparent during the negotiations with the European Union. The requirements of CRAG were simply disapplied by domestic legislation when the Government wished to agree both the Withdrawal Agreement and the Trade and Co-operation Agreement. The legislation itself was fast-tracked and subject to limited debate. Given the UK's constitutional system, little can be done about this. However, as was noted previously, CRAG itself also contains an "exceptional circumstances" clause which can be deployed by Ministers. This power, contained at s22 of the Act, has never been used and, if it is, may potentially be challengeable in the courts. Nonetheless, given these potential weaknesses in CRAG, it is important to build into the new treaty scrutiny system a strong constitutional convention that the Executive will not ratify new agreements which do not have the support of Parliament.

It is instructive to compare and contrast the behaviour of the UK and European Parliaments. The European Parliament insisted on detailed scrutiny of the new trade and co-operation agreement with the UK and, at the time of writing, it is being provisionally applied until the EU is in a position to ratify. Whereas the UK fast-tracked its domestic legislation and many people falsely believed that the agreement had therefore already been ratified by the UK.

The second issue is the continuing reluctance of the Government to reform CRAG. Several parliamentary committees have expressed significant reservations about the legislation, but the Government insists that it is fit for purpose. The chance for significant statutory change in the short term may be lost with the passage of the Trade Bill. However, during the passage of this legislation, there was some movement by the Government. The Department for International Trade (DIT) had already acknowledged the importance of engaging with Parliament at an earlier stage when it negotiates agreements. Proposals for closer engagement first featured in a series of papers published in February and July 2019 and most recently in March 2020.

In its paper 'UK-US Free Trade Agreement', DIT republished an earlier, helpful, suggestion that it would publish an outline approach "which will include our negotiating objectives." It also said that it would provide specialist committees of Parliament with access to "sensitive information" and "private briefings from negotiating teams" to ensure that parliamentarians can follow negotiations and take a comprehensive and informed position on any final agreement.

Similar commitments were outlined during the passage of the Trade Bill in the 2019-21 parliamentary session and the International Agreements Committee received helpful co-operation from the Department during its scrutiny of the Japan trade agreement and the negotiations with Australia, New Zealand and the US. As the negotiations over the Trade Bill reached their conclusion, in the

process that is often referred to as 'Ping-Pong' between the two Houses, the Government made a further commitment, on 23 February 2021, in order to avoid amending CRAG.

This has been dubbed 'the Grimstone Rule' after the Minister who made it[14], and it might be seen as an adjunct to the earlier Ponsonby Rule. The new rule has two limbs: the first is that when the Government publishes negotiating objectives for Free Trade Agreements, if the IAC (or presumably the House of Commons International Trade Committee) should publish a report on those objectives then the Government would consider facilitating a debate should Parliamentary time allow.

The second limb has rather more force, and it is worth quoting Lord Grimstone directly. He said: "To provide reassurance to noble Lords, I would like to state from the Dispatch Box that I cannot envisage a new FTA proceeding to ratification without a debate first having taken place on it, should one be requested in a timely fashion by the committee."[15]

At the first debate on a treaty in the House of Lords, following these commitments, Lord Grimstone underlined the importance of this second undertaking, noting that the Government had not yet ratified that UK-Kenya Economic Partnership Agreement which it had "delayed deliberately" until after the debate "in order to ensure that Parliament has had the opportunity to effectively scrutinise the text."[16]

One might assume that these commitments will develop into a constitutional convention which will form the backbone of parliamentary scrutiny of trade agreements (until or unless there is sufficient momentum to amend the terms of CRAG). Some will no doubt think that it is a strength of the UK constitution that such scrutiny practices can grow organically without the need for legislation. Others will no doubt wonder why the 2010 Act wasn't simply amended by Parliament.

The final two issues may sound rather more tedious and technocratic, but they go to the heart of the scrutiny of agreements. The first is the question of amendments. the second that the use of Memoranda of Understanding.

Most international agreements can be amended by the parties, although the mechanisms to do so vary. Some agreements, which have courts attached, like the European Convention on Human Rights, have been treated as "living instruments", the interpretation of which may change over time. But these are unusual. More commonly, agreements simply make provision for amendments

14 Lord Grimestone, Minister of State for International Trade at the Department for International Trade.

15 HL Deb, 23 February 2021, col 724.

16 HL Deb, 2 March 2021, col 1136

to happen through the mutual decision of the parties. This can happen through a variety of mechanisms, including 'Joint Committees' that are set up under the terms of the agreement itself.

Two issues arise. First, amendments to agreements can be as important as the underlying agreement itself, and so significant amendments ought to be subject to scrutiny. This is provided for under CRAG, however the terms of section 25(2) of CRAG, which defines some of the exceptions to a treaty subject to ratification are far from clear. This means that Parliament is uncertain which amendments ought to be laid. This is a suboptimal situation.

Just as importantly, even if changes to an agreement are minor and technical, and do not need to be laid under CRAG, or require legislation to be implemented, they may still be of interest and it is important that there is an accurate repository of this information. The Government promised, in response to the IAC's working practices inquiry, that the it would work with Departments to ensure that all amendments to treaties are published in the UK's treaty series, including those that do not need to be laid under CRAG. The IAC is currently negotiating with the Government on how this will work in practice.

Finally, my fourth point is an issue which has proved somewhat contentious. The distinction between agreements which are considered to be treaties under international law and those "political agreements" between states which are often called memoranda of understanding, or MoUs.

Article 2 of the Vienna Convention on the Law of Treaties defines a treaty as "an international agreement concluded between States in written form and governed by international law". Section 25 of the CRAG Act similarly defines a treaty as "a written agreement—(a) between States or between States and international organisations, and (b) binding under international law". MoUs are agreements which are not legally binding, but which may have considerable political importance. For example, they have included diplomatic agreements on the treatment of terror suspects who are returned to their country of origin. At the high point of the trade continuity programme in 2019, the DIT also proposed using MoUs to provisionally apply legally binding international agreements, thus blurring the distinction between the two categories of agreements.

The Joint Committee on the Draft Constitutional Renewal Bill, which reported in 2008, recommended that the scrutiny of such documents should be enhanced. And it noted comments from the Foreign Affairs Select Committee that "many 'treaty-like' documents may be more important in their effects than most treaties."

The original Ponsonby Rule had three limbs, the last of which was that the Government desired that Parliament should: "also exercise supervision over

agreements, commitments and undertaking by which the nation may be bound in certain circumstances and which may involve international obligations of a serious character, although no signed and sealed document may exist."[17]

It seems plain that politically important MoUs should be captured by this limb and should be disclosed and scrutinised on request, unless they raise serious issues of state secrecy, such as national security. Again, this issue is currently being discussed with Government. If MoUs are not disclosed, then there must be a risk that such arrangements may be used as "workarounds" to enable scrutiny to be evaded where "parliamentary demands become too onerous".[18]

Conclusion

A number of the issues raised in this article were addressed in the Working Practices Report published by the IAC in July 2020. That report called for a review into progress after 12 months and, at the time of writing, that deadline was approaching rapidly. During the course of that inquiry, it quickly became apparent that the Westminster Parliament had a lot to learn about good treaty scrutiny practice from elsewhere and much to do.

In truth, progress has been somewhat slow. But progress can be seen. From the private briefings provided on trade negotiations, to the promises to engage with the devolved administrations. From debates on the floor of the House on new international agreements, to the commitments contained within the new 'Grimstone Rule'. There have been measurable changes and engagement from the Government.

The House of Commons will also have to judge how it responds to these new challenges. On 26 March 2021, the Public Administration and Constitutional Affairs Select Committee issued a call for evidence for an inquiry into post-Brexit scrutiny of treaties. Perhaps the biggest challenge for the Commons will be to determine how it might build upon the work of the Lords, rather than simply duplicate it. My advice would be that the well-resourced departmental select committees in the Commons should seek to mainstream and utilise the work of the IAC, to ensure that treaty scrutiny is conducted in a complementary fashion between the Houses.

Whatever comes of this, it will be for other to judge how well these new processes will work. Progress will no doubt continue and these new scrutiny arrangements must necessarily evolve.

[17] HC Deb, 1 April 1924, cols 2000-2005.

[18] House of Lords European Union Committee, 11th Report of Session 2019-21, HL Paper 97, para 104.

"UPON A GREATER STAGE": JOHN HATSELL AND JOHN LEY ON POLITICS AND PROCEDURE, 1760–1796

COLIN LEE AND PETER J ASCHENBRENNER[1]

Introduction

On 25 April 1784, the Clerk of the House of Commons, John Hatsell, wrote from Northamptonshire to the Clerk Assistant, John Ley, in Devon, to reflect on the political scene as results filtered through from that year's General Election:

> "I have so long consider'd the scenes exhibited before us, but as Farces upon a greater Stage, that they pass by me like Shadows, & are seldom the amusement beyond the day."[2]

This phrase vividly captures a Clerk's sense of being both a close observer of politics and yet detached from it. Over the long period during which Hatsell and Ley were closely involved in parliamentary politics, their writings provide valuable insights on the politics of the time. For much of the era, Hatsell and Ley were far from detached about contemporary political developments, reflecting their involvement with many crucial parliamentary events of the time.

The leading account of the careers of the Hatsell and Ley, and their relationship, by Orlo Williams, examines them principally through the prism of the organisational development of the Clerk's department.[3] That work has helped to shape views on Hatsell's procedural writings. Williams implied that Hatsell was a "very different person" in his private correspondence compared with his public life,[4] and referred to Hatsell's "rather ponderous book".[5]

This article adopts a different approach. It suggests that understanding the political perspectives and attitudes to contemporary events evident in the correspondence between Hatsell and Ley, and in their other unpublished writings, provides an essential perspective from which to view Hatsell's published writings, most notably the volumes known collectively as the

[1] The authors are grateful to the living relations of John Hatsell and John Ley for their hospitality and insights on the Ley family, and to Dr Stephen Farrell, Sir Malcolm Jack, Eve Samson and Dr Paul Seaward for comments on an earlier draft of the article.

[2] P J Aschenbrenner and C Lee, *The Papers of John Hatsell* (Royal Historical Society, Cambridge, 2020) (hereafter *Hatsell Papers*), pp 48–49.

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

[4] Williams, *Clerical Organization*, p 83.

[5] Williams, *Clerical Organization*, p 87.

Precedents of Proceedings in the House of Commons.[6] It argues that the detailed procedural analysis within those volumes is best understood and appreciated by placing them in the context of contemporary politics, and demonstrates how each volume had a clear purpose which shaped the overall approach.

A selection from Hatsell's papers, including excerpts from some of his letters to Ley, has now been published, along with an introductory survey of Hatsell's career and the context of his papers.[7] The papers published include what Hatsell termed his "Memorabilia"—a mixture of contemporary record, memoir and anecdote—which have not been used in previous accounts.[8] Of John Ley's papers relating to his professional life to 1796, the surviving record is more limited. From 1769 to 1772, Ley kept drafts of some of his letters to Hatsell.[9] No drafts of subsequent correspondence from Ley to Hatsell survive, although they maintained a regular recess correspondence for most of their lives. From 1774, Ley maintained an intermittent correspondence when the House was sitting with his elder brother Henry, which largely concerned the family legal practice and other family matters, but offers some insights on Ley's professional life and his views on political events.[10] Letters from Ley can be found in other archives, most notably the papers of Henry Addington, Speaker of the House of Commons from 1789 to 1801,[11] Edmund Burke,[12] and Frederick Robinson,[13] as well as official correspondence in the Home Office archives.[14]

"Even without any application on his part": initial appointments

Like many of those who served as Clerks of the House and Clerks Assistant in the Commons in the eighteenth century, neither Hatsell nor Ley had any experience in the service of the House of Commons prior to their appointment

6 In this article, the same method of citation of Hatsell's *Precedents of Proceedings in the House of Commons* has been used as in *Hatsell Papers*, on which see *Hatsell Papers*, p xiii. The text of each edition of each volume is available at www.precedentsofproceedings.com.

7 *Hatsell Papers.*

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

9 Devon Heritage Centre (hereafter DHC), 63/2/11/1.

10 DHC, 63/2/11/2 (1774–1789), DHC 63/2/11/4 (1790–1792). These form part of Ley family papers originally deposited in the former Exeter City Record Office in 1963. Some letters from Ley also appear in other bundles. The letters are uncatalogued, and referred to by date. Some further family papers are available at DHC, 2741M, Ley of Trehill, 1541–1878. These papers were deposited in the Devon Record Office in 1977–78. Most relate to the period after 1796.

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

12 Sheffield City Archives (hereafter SCA), WWM/Bk P, Wentworth Woodhouse Muniments, Correspondence and Papers of Edmund Burke.

13 Bedfordshire Archive Service (hereafter BAS), L 30/15/33, Correspondence between Frederick Robinson and John and Henry Ley.

14 The National Archives (hereafter TNA), HO 42/15/82.

as Clerk Assistant.[15] After taking a degree at Cambridge, Hatsell trained as a barrister, and was called to the bar at the Middle Temple in 1757.[16] When the Clerk Assistant, John Read, died in 1760, Hatsell was recommended to Jeremiah Dyson, the Clerk of the House, whose appointment it was. Hatsell was at pains to stress in his third person dedication to Dyson of the first edition of Privilege of Parliament in 1776 that the offer came "even without any application on his part".[17] The initial recommendation came from Dr Mark Akenside, the poet and physician, who was a very close friend of Dyson and who arranged for Dyson to meet Hatsell.[18]

It seems likely that John Ley was known to Hatsell before his appointment as Clerk Assistant in 1768, following Hatsell's appointment as Clerk of the House.[19] They were both Middle Templars, and, although Ley was four years younger, they had been called to the bar in the same year.[20] Hatsell and Ley had other links as well. Although Hatsell was a Londoner by birth and upbringing, he was very proud of his west country heritage, describing his great grandfather as "a Country-Gentleman, who liv'd at Saltram", and who had served as an MP in Cromwellian parliaments for the county of Devon and for borough seats in Devon.[21] Ley may therefore have served as a living reminder of this heritage, being the son of another John Ley, a gentleman of Exeter. The family had been established landowners at Ken in Devon since the sixteenth century and were settled at Trehill House in Ken since the early eighteenth century.[22] Hatsell was a frequent visitor to Devon, on occasion staying at Trehill, and also had social connections with the current owner of Saltram, John Parker, and his

15 As an exception, Jeremiah Dyson seems to have had some experience working in the House prior to purchasing the office of Clerk of the House in 1748: Jeremiah Dyson, entries in History of Parliament online (hereafter *HoPT*), Oxford Dictionary of National Biography online (hereafter *ODNB*), W R McKay, *Clerks in the House of Commons 1363–1989* (House of Lords Record Office Occasional Publications, 1989) (hereafter *McKay*), pp 40–41.

16 *Hatsell Papers*, p 3. On his family background, see *Hatsell Papers*, pp 1–3.

17 *Privilege of Parliament* (1776 edn), p vi.

18 *Members/Speaker* (1781 edn), p 170; Dr Mark Akenside, *ODNB*.

19 Hatsell was appointed following the resignation of Thomas Tyrwhitt, Clerk of the House from Dyson's resignation in 1762: *Hatsell Papers*, p 4.

20 Williams, *Clerical Organization*, p 86; *McKay*, p 69. Williams cites a letter to Ley from 1768, which the present authors have not been able to trace, suggesting Ley would have had a distinguished career at the Bar.

21 *Hatsell Papers*, pp 1–2, 167. On Henry Hatsell, see *ODNB*.

22 Listing for Trehill House, https://historicengland.org.uk/listing/the-list/list-entry/1306949; TNA, PROB 11/1013/112, Will of John Ley, 1770 with subsequent codicils, proved 1775.

family.[23] Ley and Hatsell also had or established wider family links, Ley meeting Hatsell's brother socially while Hatsell was away, and Hatsell making frequent references to Ley's brother and his family.[24] Despite the Ley's land holdings, the two families also shared a need to work for a living, and Ley maintained an involvement in the family law practice led by his brother Henry for much of his career in the House.

"Turbulent measures": Hatsell, Ley and Wilkes

In the 1760s and early 1770s, politics was convulsed by the activities of John Wilkes. He was first elected as MP for Aylesbury in 1757 and even before his political activities took centre stage, Edward Gibbon recorded that "his character is infamous, his life stained with every vice, and his conversation full of blasphemy and bawdy".[25] From 1763 onwards, Wilkes was to engineer successive confrontations with the Crown and the forces of law and order which tested the limits of the power of the House of Commons and the nature of parliamentary privilege. These confrontations provoked reactions from Hatsell and Ley, and helped to frame the context of Hatsell's published work on privilege.

In late April 1763, Wilkes used a periodical which he had helped to establish entitled *North Briton* to publish an anonymous attack on the King's speech delivered in the Lords on 19 April at the time of prorogation which celebrated the Treaty of Paris ending the war with France. Wilkes regretted that the King had been brought "to give sanction of his sacred name to the most odious, and to the most unjustifiable, public measures".[26] Egged on by the King himself, the Government decided to issue a "general" warrant—one that did not name those to be arrested—for all those involved in the publication of this "seditious and treasonable paper". The terms of the warrant were designed to circumvent any protection of parliamentary privilege, which was considered not to extend to treasons, felonies and breaches of the peace. Wilkes was granted a writ

[23] DHC, 63/2/11/1/1, Hatsell to Ley, 6 July. No year is given for this letter. O C Williams produced a "Handlist" of the correspondence, a copy of which is in the Devon Heritage Centre (held with DHC, 63/2/11/1) which suggests that this letter cannot be later than 1768, and a selection from the letter appears with that year in *Hatsell Papers*, p 28, but the reference to the second Mrs Parker means that it cannot be before 1769: John Parker, *HoPT*. See also, DHC, 63/2/11/1/24, Hatsell to Ley, 12 July 1772; DHC, 63/2/11/1/43, Hatsell to Ley, 18 October 1789.

[24] DHC, 63/2/11/1/9, draft of Ley to Hatsell, 14 October 1769; DHC, 63/2/11/1/23, draft of Ley to Hatsell, 7 October 1771; DHC, 63/2/11/1/30, draft of Ley to Hatsell, 29 September 1772; DHC, 63/2/11/1/36, Hatsell to Ley, 10 October 1787.

[25] John Wilkes, *HoPT*; P D G Thomas, *John Wilkes: A Friend to Liberty* (Oxford, 1996), pp 18–19.

[26] CJ (1761–64) 665–666; A H Cash, *John Wilkes: The Scandalous Father of Civil Liberty* (New Haven, 2006), pp 99–100; Thomas, *Wilkes*, pp 27–28.

of habeas corpus for his arrest under the questionable general warrant, but subsequently re-arrested with a warrant that named him. The Speaker of the Commons, Sir John Cust, was told that his arrest was for breach of the peace, so that parliamentary privilege did not apply. However, Charles Pratt, the lord chief justice of the court of common pleas, ruled on 6 May 1763 that Wilkes did have benefit of such privilege—because libel was not a breach of the peace—and ordered his release.[27]

The Government then spent the summer before the new session planning a strategy based on securing resolutions designed to establish that the offence committed by Wilkes did not have benefit of parliamentary privilege and then to expel him from the House as well. Given the scale of public support in London for Wilkes, and his links to Opposition leaders, the prime minister George Grenville indicated that successful delivery of this strategy was a matter of confidence for his government.[28] When the House met after hearing the King's speech at the start of the new session on 15 November, it faced competing demands for precedence from Grenville for consideration of a message from the King to proceed against Wilkes and from Wilkes himself for consideration of his complaint of breach of privilege. Cust had warning of the competing claims and chose instead to insist that the first business should be the traditional reading of a Bill "for the more effectual preventing clandestine Outlawries" to establish the House's right to consider business of its choosing before business proposed by the Crown. Attempts were then made to amend the motion for first reading of the Outlawries Bill to establish precedence for the complaint from Wilkes or the message from the King. There followed what Hatsell later termed "a very long debate" on "which of these three matters ought to have the precedence" involving "some very extraordinary" arguments. The House concluded by agreeing to the first reading, but then turned to the message rather than the complaint.[29] The House resolved that the offending edition of *North Briton* was "a false, scandalous and seditious Libel" and ordered it to be burnt by the common Hangman.[30]

Further consideration of the matter was delayed by the Speaker's illness, and during this interval Wilkes was shot in the stomach following a duel provoked by someone who, it was later suggested, had spent the summer busy at target practice.[31] Wilkes was therefore absent for the critical debates later

27 Thomas, *Wilkes*, pp 28–31.
28 Thomas, *Wilkes*, pp 32–38.
29 CJ (1761–64) 667; Thomas, *Wilkes*, pp 32–41; *Members/Speaker* (1781 edn), pp 49–50.
30 CJ (1761–64) 668; Thomas, *Wilkes*, pp 41–42.
31 CJ (1761–64) 673; Thomas, *Wilkes*, p 43; J Sainsbury, *John Wilkes: The Lives of a Libertine* (Aldershot, 2006), pp 77–79.

in November, during which it was contended that parliamentary privilege did not extend to criminal offences at all, and after which the House resolved that "Privilege of Parliament does not extend to the Case of writing and publishing Seditious Libels, nor ought to be allowed to obstruct the ordinary course of the Laws, in the speedy and effectual Prosecution of so heinous and dangerous an Offence", a resolution with which the Lords concurred.[32] Various aspects of the dispute continued to be considered by the courts and debated in both Houses, enabling Wilkes to mobilise public support in the City of London and beyond for the remainder of the year, but Wilkes could see the writing on the wall, and fled to France in late December 1763. Consideration of his privilege case was inconclusive in his absence, and in January 1764 he was expelled from the House.[33] The next month, he was found guilty by the court of King's bench of "a seditious and scandalous libel" for the notorious edition of *North Briton* and also of an "obscene and impious libel" arising from a parody on Alexander Pope's *Essay on Man* entitled *Essay on Woman* which Wilkes had written in 1754, had printed in 1763 for private circulation, but had never published, and which was obtained by the government by dubious means.[34]

Wilkes was not sentenced in his absence, but was outlawed in November 1764. In 1768, Wilkes decided to end his exile to escape his Paris creditors, and returned to England. His political strategy focused on being elected an MP at the General Election that year, in part to secure protection of privilege from his English creditors, and then to surrender to the court for sentencing.[35] After failing to be elected as MP for the City of London, he stood at short notice as MP for Middlesex and was elected for that constituency on 28 March. The following month, he surrendered to the court, was refused bail and committed to prison pending sentence. In June, he was sentenced to 10 months in prison for the *North Briton* libel and a further 12 months for *Essay on Woman*. Although Jeremiah Dyson—by this time an MP and a Minister—prepared a memorandum as a basis for Wilkes being expelled from the House, the Government seemed uncertain how to proceed, and it was Wilkes who was to provoke them into action, and bring the new Clerk of the House into the dispute.[36]

On 14 November 1768, Wilkes petitioned the House for redress of his grievances dating back to his first arrest under a general warrant. The House

32 CJ (1761–64) 675; Thomas, *Wilkes*, pp 43–45.

33 CJ (1761–64) 721–722; Thomas, *Wilkes*, pp 47–52. Debt may also have been a motivation for his flight: Sainsbury, *Wilkes*, p 215.

34 Thomas, *Wilkes*, pp 4, 34, 54; Sainsbury, *Wilkes*, pp 146–150.

35 Thomas, *Wilkes*, pp 54, 70; Cash, *Wilkes*, p 200; Sainsbury, *Wilkes*, p 217.

36 Thomas, *Wilkes*, pp 70–87.

came to no decision pending receipt of records of the court proceedings against him.[37] On 23 November, the clerk of the court of King's bench came to Hatsell with records of the proceedings leading to the two convictions. Hatsell noticed that they were endorsed in the same terms, and suggested that they should be endorsed differently. Hatsell then suggested that the first, relating to *North Briton*, should be endorsed "for a Libel" and the second, relating to *Essay on Woman*, "for Blasphemy".[38] That afternoon, the entire records of the two proceedings were read in the House, presumably by Hatsell, distinguished by the titles he had suggested.[39] Although the leader of the House, Lord North, proposed that the matter should be considered by a committee, the House agreed that Wilkes and other witnesses would be examined at the bar.[40] Wilkes built his case in part on a claim that there was a tiny discrepancy in the records of the court, and realised that this case would be strengthened by reference to inaccuracy in the endorsements suggested by Hatsell. Having got wind of this ploy, Hatsell wrote to Wilkes on 29 January 1769 to take responsibility for the inadvertent inaccuracy in the endorsement, while stressing that he had no intention "of injuring Your Character; or charging You with a crime not specified in the Information". Hatsell's apology was qualified somewhat in a postscript:

> "Since I wrote the above, I have look'd into the Record, & find in one place charg'd 'for impiously presuming & intending to blaspheme Almighty God' & in another 'to blaspheme & ridicule Almighty God & the Holy Trinity'. However as Blasphemy is not the crime charg'd in the Information, it was certainly a great inaccuracy to convey it in the Indorsem[t]."[41]

As Hatsell had perhaps foreseen, Wilkes reinforced his case by emphasising that the references to his conviction for blasphemy "were not founded", and he secured a vote to expunge the reference to blasphemy from the Vote entries in question, and used that to build support among those who might be alienated by the suggestion that he was a blasphemer.[42] Provoked by Wilkes, the Government finally decided to seek his expulsion. A resolution to that effect was agreed on 3 February, despite a brilliant speech in opposition by George Grenville, who had been prime minister when the prosecution of Wilkes had begun.[43] On 16 February, Wilkes was re-elected as MP for Middlesex in the

37 CJ (1768–70) 33–34; Thomas, *Wilkes*, p 91.
38 *Hatsell Papers*, p 29.
39 CJ (1768–70) 58–65
40 CJ (1768–70) 65; Thomas, *Wilkes*, p 92.
41 *Hatsell Papers*, pp 29–30.
42 *Hatsell Papers*, p 30, fn 8; Thomas, *Wilkes*, p 95; Cash, *Wilkes*, p 200. For use of the allegation of being a blasphemer in the Middlesex election, see Thomas, *Wilkes*, pp 74–76.
43 Thomas, *Wilkes*, pp 96–98.

consequent by-election unopposed. The next day, that election was declared null and void by the House. On 16 March, he was again re-elected, and the next day the House again declared the result null and void. On 13 April, a third by-election was held, this time with a court candidate, Henry Luttrell. Wilkes swept to victory, with 1,143 votes to Luttrell's 296. On 15 April, the House took the momentous step to invalidate Wilkes's candidacy, and to declare Luttrell elected.[44] Hatsell wrote an account of this debate to his friend, the MP Nathaniel Ryder, which was cautious and avoided taking sides on the merits of the matter in dispute. He nevertheless showed some concern that he had been insufficiently circumspect, closing his letter:

> "As I have perhaps given You an acct of our proceed^{gs} Yesterday more at large than was necessary, You will not be offended at my saying, there is no necessity of this going further than Your own family."[45]

When Hatsell finally got away from Westminster to the continent for the summer recess, he relished the respite from Wilkes, albeit with an interruption from an unexpected source which he reported to Ley:

> "It has been no little comfort not to have heard the name of Wilkes since I left England, except from an Old Chartreuz Fryar, who on my being shewn into his Cell, immediately ask'd if I was an Englishman & what news about Mons^{r} Wilkes; The Monks of this Order are not at liberty to speak, but to Strangers, so that for ½ an hour the Old Man's tongue ran at a vast rate about Wilkes, the Colonies, the State of France, in a tone more like a Politician of Tom's, than that of a Fryar who by the strict rules of their Order pray 16 hours out of the 24."[46]

Ley's letters to Hatsell also display some concern about the destabilising effect of radical campaigns. In October 1769, he reported on the activities of Wilkes's supporters in the City of London and their "turbulent measures".[47] A fortnight later, Ley deprecated the publication of a speech made during the debate on Wilkes's expulsion in February that year, stating that "This will have its Effects & add fuel to the present flames".[48] Ley's distrust of radicalism certainly did not equate to sympathy with the approach of the administration, which he viewed as passive and indecisive: "The Nation is in Confusion enough, but the Court is perfectly quiet; in that there is a dead Calm. Nothing transpires; no talk of Measures resolved on."[49]

44 Thomas, *Wilkes*, pp 98–102.

45 *Hatsell Papers*, pp 30–33.

46 *Hatsell Papers*, p 34. Tom was Thomas Walpole, nephew of former Prime Minister Robert Walpole, with whom Hatsell had stayed in Paris.

47 DHC, 63/2/11/1/9, draft of Ley to Hatsell, 14 October 1769.

48 DHC, 63/2/11/1/12, draft of Ley to Hatsell, 31 October 1769.

49 DHC, 63/2/11/1/12, draft of Ley to Hatsell, 31 October 1769.

The incendiary effect of the publication of parliamentary reports which had so disturbed Ley became more common during 1770 and 1771.[50] On 5 February 1771, the House was encouraged to assert its privilege by reading an order of 1729 declaring that it was a breach of privilege of the House to publish "any Account or Minutes of the Debates or other Proceedings of this House" and agreed to proceed against those who breached this resolution "with the utmost Severity".[51] Wilkes, who with his allies now controlled the levers of power in the City of London, set out to provoke a conflict, encouraging the publication of incendiary accounts by publishers who would then be granted the protection of the City authorities. The House fell into his trap. The House agreed to pursue the matter of privilege on 12 March, and was first made to look ridiculous.[52] Edmund Burke and other Opposition MPs resisted the exercise of the House's penal jurisdiction by forcing divisions and creating absurd motions, the first relating to a critical reference to Hatsell's predecessor Dyson.[53] The next stage of this low farce with a high purpose was a dispute over which Member should be called first, during which Burke argued with "mock earnestness" about the meaning of "the Speaker's eye".[54] An attempt to order the attendance of another printer was subject to an amendment to add "together with all his Compositors, Pressmen, Correctors, Blackers, and Devils", leading Burke to refer to the devil as "the most material personage in the whole business".[55] The majority only got its way by 5.00 am the next morning, much to the Speaker's frustration.[56] The ensuing months were spent in a dispute with the City authorities to enforce those orders, which created new martyrs and led to a situation in which the assertion of privilege to curb the freedom of reporting of parliamentary proceedings ceased to be realistically exercisable.[57] On 26 February 1772, Hatsell noted: "Mr Wilkes publishes every day in the London Eg Post the Votes & debates of both Houses", although he considered it was "without any success" in terms of provoking popular opposition.[58] Nearly a month later, Hatsell observed:

"The London Evg Post has given notice that they find it too tedious to insert

50 Thomas, *Wilkes*, pp 126–127.

51 CJ (1770–72) 127; Thomas, *Wilkes*, p 127.

52 CJ (1770–72) 249–251.

53 This was the motion "That Jeremiah Weymouth, Esquire, the D——n of this Country, is not a Member of this House": CJ (1770–72) 249.

54 CJ (1770–72) 249–250; R Palgrave, "The battle of Burke's minority in the House of Commons, March 12, 1771", in *Macmillan's Magazine*, No. 92 (1867), pp 138–143, at p 141; *Members/Speaker* (1781 edn), p 66.

55 CJ (1770–72) 250; Palgrave, "The battle of Burke's minority", p 142

56 Palgrave, "The battle of Burke's minority", p 143; Thomas, *House of Commons*, p 336.

57 Thomas, *Wilkes*, pp 130–138; F P Lock, *Edmund Burke: Volume I: 1730–1784* (Oxford, 1998), pp 305–306; Thomas, *House of Commons*, pp 336–337.

58 *Hatsell Papers*, pp 38–39.

the Votes of the H^e of C^s Th^t they have establish'd the freedom of the Press, & do now therefore leave off publishing them."[59]

"Always uncertain, and frequently matter of dispute": Hatsell's *Privilege of Parliament*

Against this backdrop, Hatsell published his first collection of precedents on *Privilege of Parliament* in 1776. It has not always been kindly looked upon by historians. Sheila Lambert's verdict is as follows:

> "The first volume has a very old-fashioned air: concerned entirely with privilege and containing no precedents later than 1628, one feels it might well have been written by Henry Elsynge senior."[60]

The volume undoubtedly has limitations, particularly when viewed in the context of Hatsell's later volumes. It is organised largely in chronological order rather than thematically, making it harder to use than its successor volumes.[61] There is a sense of a rushed production, with some cases added out of order without sustained analysis in a supplementary chapter.[62] He hints that he may return to consider precedents from the period after 1628,[63] but elsewhere suggests that he might be establishing a methodology for others to adopt.[64] However, despite these limitations, Lambert's assessment is misplaced. The approach taken by Hatsell is very different to that of some previous authors on the subject, including Henry Elsynge.[65] Hatsell's approach is fiercely contemporary, and he writes with a definite purpose.

In 1704, the House of Commons had assented to a resolution passed by the House of Lords asserting that neither House had any power to create new privileges.[66] Nevertheless, the eighteenth century saw an expansive approach to many aspects of privilege. This was an era, in the words of one of Hatsell's successors, when "The strength of Parliament was shown by arbitrary exertion of their privileges".[67] It has been noted that "The majority of 18th century MPs came … from a relatively small group of landowners, and a narrowing one

59 *Hatsell Papers*, p 41.

60 S Lambert, *Bills & Acts: Legislative Procedure in Eighteenth-century England* (Cambridge, 1971), p 28.

61 *Privilege of Parliament* (1776 edn), p v. He does, however, adopt a thematic approach in his analysis of cases from the early Stuart period: *Privilege of Parliament* (1776 edn), pp 130–188.

62 *Privilege of Parliament* (1776 edn), pp 189–195, and see especially, p 189, fn 1.

63 *Privilege of Parliament* (1776 edn), p 211.

64 *Privilege of Parliament* (1776 edn), p v. See also *Members/Speaker* (1781 edn), p vii..

65 On Elsynge, see Henry Elsynge (1577–1635), *ODNB*; E R Foster, ed, *Judicature in Parlement by Henry Elsyng Clerk of the Parliaments* (London, 1991).

66 T E May, *A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament* (1st edn, London, 1844), pp 48–49.

67 Palgrave, "The battle of Burke's minority", p 139.

over the course of the century",[68] and the interests of MPs as landowners were evident in their approach to many issues of privilege.[69] The defence of propertied interest can be illustrated by one issue among many. In 1753, John Jolliffe, the owner of the manor of Petersfield as well as one of its MPs, complained that his privileges as a Member had been breached because several men did "fish, with a Boat and a Net" in a pond belonging to him.[70] In 1759, Admiral Thomas Griffin made a complaint about individuals who had "forcibly entered upon, and still make use of, a Fishery" belonging to him.[71] The Committee of Privileges disregarded the defence of some of those concerned that they paid rent for use of the fishery, found them guilty of a breach of privilege and ordered them to be taken into the custody of the Serjeant-at-Arms.[72] Soon after this punishment, another complaint was made that certain men "have lately taken, and carried away, certain Fish out of the Waters of the Lordship of Hawarden, the Property of Sir John Glynne Baronet, a Member of this House".[73] While keen that his fish should have the protection of parliamentary privilege, Glynne spoke against privilege being granted to John Wilkes in 1763.[74]

Hatsell acknowledges the contemporary controversies over the scope of privilege:

> "What is the extent of these Privileges, and how long their duration, has been always uncertain, and frequently matter of dispute; nor are these points settled even at present."[75]

Hatsell begins by eschewing the suggestion that he is advancing a definite declaration of "what the Law of Privilege is"; his observations, he claims, "are designed merely to draw the attention of the Reader to particular points, and, in some degree, to assist him in forming his own opinion upon that question".[76] But this disclaimer is deceptive. From the outset, Hatsell is trying to delineate parliamentary privilege in limited terms. For him, it is about sustaining the ability of MPs to do their job only by protecting them from those legal processes which stand in the way of their doing so. By asserting the importance of the historical method to ascertain the extent of privilege, he is seeking to counteract

68 B Harris, "The House of Commons, 1707–1800", in C Jones, ed, *A Short History of Parliament* (Woodbridge, 2012 edn), p 175.
69 Thomas, *House of Commons*, p 335.
70 CJ (1750–54) 698; John Jolliffe, *HoPT*.
71 CJ (1757–61) 489; Thomas Griffon, *HoPT*.
72 CJ (1757–61) 545.
73 CJ (1757–61) 598.
74 Sir John Glynne, *HoPT*.
75 *Privilege of Parliament* (1776 edn), p 2.
76 *Privilege of Parliament* (1776 edn), p vi.

expansive tendencies in respect of privilege.[77] For him, privilege in Parliament, as in other courts, is driven by the need to secure attendance and as such is "an essential part of the constitution of every court of judicature, and absolutely necessary for the due execution of its powers".[78] In that sense, he is moving towards the term subsequently used by Thomas Erskine May when he referred to the House's power to enforce breaches of orders and rules "in the execution of its constitutional functions".[79]

Hatsell had long been sceptical about the protection afforded for proceedings for debt, not least for those who could seek to associate their debt with patriotic virtue.[80] When reporting on financial difficulties and their consequences in the City of London in June 1769, he told Ley: "many of our Patriots on the left hand, that are always talking of Virtue, & Public Spirit, are said to be very deeply cut, but they comfort themselves with having nothing wherewithal to pay, & the privilege of Parl^{t}".[81] With regard to freedom from arrest, Hatsell set out to debunk excessive claims about privilege, not least from Sir Edward Coke.[82] Hatsell also criticises Elsynge "who inclines to the enlargement of the Privileges of the House of Commons".[83] This privilege, Hatsell argues on the basis of early cases, endures only for the time of the Parliament and the journeys to Parliament by an MP before and after a session.[84] It was limited to Members themselves and their menial servants only.[85] The stress on menial servants was important because this concept seems to have been placed under strain in some cases. Thus, in 1746, a privilege complaint was made about those responsible for evicting the tenants of a so-called menial servant of an MP.[86] The protection for menial servants was so open to abuse that it was effectively repealed by statute in 1770.[87] Time and again, Hatsell stresses that historically privilege protected MPs from legal requirements which prevented their attendance; it was not intended as a protection against them being made parties to a legal action.[88] In this argument, he is bolstering the rationale for the legislation passed with relatively little contention in 1770 which established that approach in law.[89]

77 *Privilege of Parliament* (1776 edn), p 2.
78 *Privilege of Parliament* (1776 edn), p 1.
79 May, *Treatise* (1st edn, 1844), p 59.
80 On this theme, see Sainsbury, *Wilkes*, pp 213–240.
81 DHC, 63/2/11/1/3, Hatsell to Ley, 17 June 1769.
82 *Privilege of Parliament* (1776 edn), p 6.
83 *Privilege of Parliament* (1776 edn), p 91.
84 *Privilege of Parliament* (1776 edn), pp 39, 65.
85 *Privilege of Parliament* (1776 edn), pp 39, 65.
86 CJ (1745–50) 168.
87 10 Geo II, c 50, s III; May, *Treatise* (1st edn, 1844), pp 92–93.
88 *Privilege of Parliament* (1776 edn), pp 8, 39, 46–47, 51, 67–68, 123, 197–198.
89 10 Geo II, c 50; CJ (1768–70) 858, 914, 916, 919, 972.

Hatsell was on more contentious territory when writing about protection from the criminal law, and the controversy over the Wilkes case may help to explain his reluctance to refer to recent precedents. But, in his analysis of early cases, he sides with those who argued that there could be no immunity from ordinary criminal prosecution, while side-stepping the question of whether the case against Wilkes was such a case, as opposed to an exertion of executive power:

> "there is not a single instance of a Member's claiming the Privilege of Parliament, to withdraw himself from the criminal law of the land; offences against the public peace they always thought themselves amenable for to the Laws of their country; they were contented with being substantially secured from any violence from the Crown, or its Ministers; but readily submitted themselves to the judicature of the King's Bench, the legal Court of criminal jurisdiction."[90]

Hatsell also criticises excessive claims in relation to the penal jurisdiction of the House, viewing Elsynge's suggestion of a power of Parliament to have an individual committed to prison as "extraordinary".[91] Hatsell argues that the much more limited power for a person to be taken into the custody of the Serjeant-at-Arms was exercised with care and deliberation, and only rarely.[92] Again, Hatsell is proposing a limited approach, perhaps questioning the historical basis for the power of the House to commit a prisoner to Newgate which was established in Murray's case in 1751 and accepted as within the House's gift during a debate in 1774.[93]

In the context of the attempts by the House to unduly constrain the freedom of the press which had been effectively curbed in 1771, Hatsell is very sceptical about the weight given to the only case he can find prior to the Long Parliament —Hall's case from 1580—of someone being punished for a publication touching upon the honour and privileges of the House of Commons.[94] His general tone of scepticism is lessened slightly when it comes to defending the privilege of freedom of speech, breaches of which are "so destructive of the very existence of a free Council".[95] In considering an early case in the House of Commons, he suggests that "it may not be improper here to observe, how jealous that House has always been of this most valuable and most essential Privilege".[96] Surveying cases from the reign of Queen Elizabeth, he asserts that

90 *Privilege of Parliament* (1776 edn), p 197.
91 *Privilege of Parliament* (1776 edn), pp 10–11, 14.
92 *Privilege of Parliament* (1776 edn), pp 121–122.
93 May, *Treatise* (1st edn, 1844), p 57; Thomas, *House of Commons*, pp 337, 174.
94 *Privilege of Parliament* (1776 edn), pp 93–95, 127–129.
95 *Privilege of Parliament* (1776 edn), p 206.
96 *Privilege of Parliament* (1776 edn), p 86.

"the power exercised by the Ministers of the Crown, in committing Members … for a supposed breach of the Prerogative, by their speeches in the House of Commons, was indeed a very dangerous power, and most alarming to the essential Privileges of the House".[97] Cases where the House failed to defend this privilege are downplayed, with the hopeful suggestion that the Queen would have had the good sense to give way on this prerogative power if asked.[98]

The conflicts of the early Stuart period are seen in pleasingly black and white terms. James I is a "weak prince", with a "fondness for big words, and angry menaces".[99] Charles I is "Arbitrary, imperious, obstinate and deceitful".[100] During the period of personal rule, he "introduced such a system of tyranny into every part of the Government, that the Constitution was entirely destroyed, and lost in the power of the Crown".[101] The Short Parliament of spring 1640 rightly sought "redress for the several violations of their Privileges, in the former Parliaments" before consenting to supply.[102] The Long Parliament later that year was "determined to have ample satisfaction for these enormous breaches of the constitution".[103] The King's decisions leading to the first Civil War were "subversive of every idea of the Privileges of the House of Commons",[104] but the actions of the parliamentary side proved in their way even more destructive of the constitution, so that

> "if I shall ever have leisure or inclination to continue this Work, I shall think myself obliged to pass over every thing that occurred after this unhappy day, and shall collect only such precedents as are to be met with in the two Parliaments of 1640, till the 4th of January, 1641, and then proceed directly to the Restoration."[105]

While glossing over this unfortunate period in English parliamentary history, Hatsell offers a brief trailer for the happier and more civilised period following the Glorious Revolution when the privilege of the freedom of speech would be firmly established:

> "It was reserved for a more enlightened age, and for times when the true spirit of liberty should be better understood, to ascertain and establish this Privilege in its utmost extent, consistently with the language of good-

97 *Privilege of Parliament* (1776 edn), p 125.
98 *Privilege of Parliament* (1776 edn), p 125.
99 *Privilege of Parliament* (1776 edn), p 152.
100 *Privilege of Parliament* (1776 edn), p 145.
101 *Privilege of Parliament* (1776 edn), p 198.
102 *Privilege of Parliament* (1776 edn), p 204.
103 *Privilege of Parliament* (1776 edn), p 208.
104 *Privilege of Parliament* (1776 edn), p 210.
105 *Privilege of Parliament* (1776 edn), p 211.

breeding, and the behaviour of men of liberal education."[106]

The closing words shed light on Hatsell's overall purpose. He is offering a vision of privilege and its extent which should satisfy the political mainstream, and constrain both autocratic overstretch of penal jurisdiction and excessive claims of privilege from Wilkes or his radical successors.

"Blunders, & inattention, & want of foresight": Lord North's administration

During the 1770s, the central political theme of Hatsell's letters to Ley and his analysis in the Memorabilia concerned the failure of Lord North's administration. For Hatsell, the fatal flaw in Lord North's administration was his reliance on the King's personal support—"a mere dependence in the pleasure of the Crown". North's government lacked broad support within the House of Commons, but, while the King was supportive:

> "they were thereby secur'd in their offices, that they would be indifferent to the glory or happiness of the Country they were appointed to govern—There cannot be a clearer or stronger illustration of the truth of this Maxim, than the Hist^{y} of L^{d} North's Administration from 1769 to 1782, who, by the King's support, maintain'd his Post, untill half the Empire was torn away, & the Governm^{t} of the other half so loosened, that all Subordination seems almost to be at an end."[107]

Although this reflection was clearly written after the end of North's premiership and the final defeat in the American War of Independence, Hatsell kept a near contemporary record of the advice he dispensed to Lord North, sometimes un-proffered and sometimes solicited, and how North lacked the freedom of manoeuvre or the wisdom or both to follow it.[108] Ley was cautious in expressing political opinions even to his brother at this time, simply reporting the suggestions of others that the 1774 dissolution had been initiated "with a view of acting tyrannously with the Colonies".[109] There is evidence that Hatsell shared his scepticism about North and his administration with Ley and others at the time. His views are most strikingly expressed in a letter to Ley of August 1778 in which Hatsell welcomed the prospect of defeat by the American colonies and what it would mean for the health of the body politic:

"I have for some months convinc'd myself that the return of America to

106 *Privilege of Parliament* (1776 edn), p 126.

107 *Hatsell Papers*, pp 14, 195–196. North's premiership began in January 1770, rather than 1769, although Hatsell may have viewed him as effective head before the duke of Grafton's resignation.

108 *Hatsell Papers*, pp 171–176, 180.

109 DHC, 63/2/11/2, Ley to Henry Ley, 1 Oct. [1774].

> the Dependency of this Country, I mean such a Dependency as it must now necessarily be, would be our immediate ruin; the Expenses it would bring with it, & the enormous increase of Patronage to the Crown without any adequate advantages, would soon overwhelm us; &, therefore, though I cannot say I expected what is call'd a favourable answer from the Congress, Yet I almost dreaded it, considering how advantageous the terms were that were offer'd to them, & how absurd, & full of difficulty with respect to us – I am therefore satisfied that this loss of America, as it is call'd, is a fresh instance of the Divine interposition in favour of the preservation of the Liberty & Independence of this Island, & that to bring about this gracious purpose, Providence by the means of George, the 3d, chose out the only set of Men, that could be found in the Nation, for Ministers by whose blunders, & inattention, & want of foresight this blessing could have been dispens'd."[110]

Following the surrender of British forces at Yorktown in October 1781, and in view of the apparent reluctance of Ministers to accept responsibility, Hatsell wrote to another friend, the MP William Eden, warning that this approach "may destroy the most beautiful Fabrick of Government that the world ever saw", and summoned up images of rebellion and civil war of the kind seen in the previous century. He concluded:

> "These are not new Opinions – Nothing has happen'd that I did not foresee clearly, & predict to all my Friends many Years since. What I can say, is a direct & necessary conclusion from the mode, in which this Government is conducted – I can have no share in preventing it – I therefore amuse myself in my own way, & having, thank God! no Posterity for whom I am anxious, hope that I shall be able to bear my share of the Calamities, that are impending over us with submission & patience."[111]

"The British constitution, as it was declared and established": Hatsell's defence of revolution principles

These concerns about the failure of a government dependent on the monarch and the threat posed thereby to the constitutional settlement provided the immediate context in which Hatsell published in 1781 the second volume of his Precedents of Proceedings, and the first which indicated the probable intention to create a multi-volume work.[112]

Hatsell stated that he "was confirmed in a sincere love and reverence for those principles of the constitution, which form the basis of this Free Government". In the context in which he was writing, it is not perhaps surprising that he

110 *Hatsell Papers*, p 46.
111 *Hatsell Papers*, pp 47–48.
112 *Members|Speaker* (1781 edn), p vii.

argued that "the strict observation and adherence" to these principles, "as well on the part of the Crown as of the People, can alone maintain this country in the enjoyment of the invaluable Blessing" of political liberty "in which the laws are so well calculated to secure and defend the life, the property, and the personal liberty of every individual".[113]

One of the main purposes of his 1781 volume is to identify precedents which help to defend the constitution from the encroachments and excessive influence of the Crown that was all too apparent to him in contemporary politics and which were reflected in what Hatsell elsewhere termed the "famous proposition" agreed as a resolution by the House on 6 April 1780—"That the influence of the Crown has increased, is increasing, and ought to be diminished"—inspired by the Opposition, but garnering support from independent MPs.[114] Hatsell was concerned, for example, with improper Royal interference in the election of MPs.[115] He listed various Acts to disqualify holders of offices of profit from sitting as MPs and concluded:

> "These laws, which are all passed since the Revolution, shew how anxious Parliament has been, at these several periods, to diminish, as much as possible, the effect of that influence of the Crown, which, from the disposal of so considerable a number of lucrative offices and employments, might have an improper bias on the votes and proceedings of the House of Commons."[116]

Hatsell accepted the logic for Ministers and also serving officers in the Army and Navy to be Members of the House, while worrying about the effects that "titles of rank", "badges of different-coloured ribands" and "a considerable pecuniary addition to their income" might have "upon the minds of men, even of the highest rank, and of the most independent fortunes".[117]

Hatsell noted how the machinery of the State to raise taxes and manage the national finances, particularly in time of war, needed to be restrained by Parliament:

> "it is certainly at all times the duty of a Parliament, jealous of its own independence, to watch over the increase and operations of this new-acquired power in the Crown, and to take care that it be not extended too far, or exercised improperly."[118]

At the same time, he was concerned that efforts to constrain executive power, while "laudable", should not be so effective "as to weaken the legal prerogatives

113 *Members|Speaker* (1781 edn), p xi.
114 *Hatsell Papers*, p 187.
115 *Members|Speaker* (1781 edn), pp 14, 30–31.
116 *Members|Speaker* (1781 edn), p 42.
117 *Members|Speaker* (1781 edn), p 44.
118 *Members|Speaker* (1781 edn), pp 44–45.

of the Crown, and thereby endanger the balance of this most happy and most excellent constitution".[119] For Hatsell, the constitution had to withstand threats both from royal power and from populism. It faced the risk of being impaired not only "by any illegal exertions of power on the part of the Crown", but also "by any licentious abuses of liberty on the part of the People".[120]

Hatsell's sense of a balance within the constitution was hardly original, and his debt to William Blackstone in particular for the sense of mutual checks within the constitution is obvious. But he added to Blackstone's analysis by establishing a sense of interrelationship between the wider checks between King, Lords and Commons on the one hand and the internal operations of the Commons on the other.[121] Hatsell's approach to rules of procedure should be seen in this constitutional context. Hatsell's aim was to delineate and thereby enable the better enforcement of an edifice of rules of the House which helped to underpin the constitution. He cited approvingly a maxim which Arthur Onslow—Speaker from 1728 to 1761—had heard from experienced Members when he was a young man:

> "That nothing tended more to throw power into the hands of Administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, these rules—That the forms of proceeding, as instituted by our ancestors, operated as a check and controul on the actions of Ministers, and that they were, in many instances, a shelter and protection to the minority, against the attempts of power."[122]

Hatsell highlighted the importance of this maxim by effectively restating it in his own words:

> "as it is always in the power of the majority, by 'their numbers,' to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power, are the forms and rules of proceeding; which have been adopted, as they were found necessary, from time to time, and are become the Standing Orders of the House; by a strict adherence to which, the weaker party can only be protected from those irregularities and abuses, which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities."[123]

119 *Members|Speaker* (1781 edn), p 45.

120 *Members|Speaker* (1781 edn), p 11, fn 2.

121 P J Aschenbrenner, *British and American Foundings of Parliamentary Science, 1774–1801* (Abingdon, 2018), pp 13–14, 40–41; Sir Malcolm Jack, Preface, *Hatsell Papers*, p viii; *Members|Speaker* (1781 edn), pp 47, 200, fn 3.

122 *Members|Speaker* (1781 edn), p 157.

123 *Members|Speaker* (1781 edn), p 157.

"In competition with the good of the Country": King, Commons and the will of the people in early 1780s

Hatsell's vision of a parliamentary system that could constrain the power of the Crown was to be first supported and then severely tested in the years immediately following the publication of his second volume. In March 1782, Lord North finally relinquished office. The most extensive entry in Hatsell's Memorabilia relates to the formation thereafter of a new administration led by the marquess of Rockingham. Various political players used Hatsell as a reliable channel of communication between the various parties involved. Charles Jenkinson, the outgoing secretary at war and a close confidant of the king, and the lord chancellor, Lord Thurlow, both held discussions with Hatsell that sought procedural wisdom on managing the period until a new prime minister was appointed as well as advice on the temper of the House of Commons.[124] Hatsell recorded the event in detail in part because he sensed that the change heralded a novel departure from the primacy of the Crown in the choice of premier which he believed had been at the root of the problems of the preceding decade or so:

> "Having had an opportunity of knowing more, than would naturally fall to the share of a private person, of the very curious circumstances attending this change in the Administration, I have thought fit to preserve them to Posterity; not only for this curiosity, but as I think this History conveys a very important lesson, both to the Monarch & the People – I believe this is the first instance in the English History, where an Administration was ever remov'd by the mere weight of the independent part of the H^{e} of C^{s} unassisted by any great party in the Court, & in a Parliam^{t} in which the Minister had every advantage on his side."[125]

His private reflections on the episode concluded with an assessment which not only displayed his Whig sympathies more explicitly than ever before, but also demonstrated his capacity to identify the wider significance of the events:

> "Added therefore to the advantage, which the Country will, I hope, derive from the Councils of these new Ministers, this change has another circumstance attending it, which, as much or perhaps more, recommends it to my approbation; & that is, the Conclusion which Historians will draw from it, that no power of the Crown, no extraordinary exertion of influence, nor even the personal wishes of the Monarch, can stand in competition with the good of the Country, & the true & essential Interests of the People."[126]

While perceiving the benefits of the principle of a government constituted

124 *Hatsell Papers*, pp 182–193.
125 *Hatsell Papers*, p 193.
126 *Hatsell Papers*, p 193. For a modern verdict paralleling Hatsell's, see *Hatsell Papers*, p 14.

to reflect majority opinion in the Commons, he was not optimistic about how sustainable the new Government might be, bearing in mind that leading figures within it—Charles James Fox, the earl of Shelburne and the duke of Richmond— "were unpopular Characters" and "their political principles had been thought too Republican, & dangerous to the Constitution; & above all, the King was known personally to hate them, & even to fear them".[127] The compromises necessitated by peace negotiations with the United States of America and tensions over electoral reform and the East India Company weakened the administrations led by Rockingham (until his death in July 1782) and then Shelburne. At the end of February 1783, Shelburne's government was brought down by the House of Commons, in Hatsell's words, "refusing their approbation of The Peace just then concluded".[128] This defeat was due to what was seen at the time as an unholy alliance between Lord North and the Rockinghamites led in the Commons by Charles James Fox.[129]

Hatsell noted in his Memorabilia, drawing on a conversation with Jenkinson, that, after Shelburne's fall, "the King was almost in as much distress as he had been the Year before, on the going out of Ld North".[130] Hatsell learned from Jenkinson the source of so much political instability, in the form of George III's long-standing belief "That he was no longer King, if the Governmt of the Country was *in a Party*; as it had been, during his Grandfather's Lifetime". The King would agree to have North and Fox together in government, and even the duke of Portland, but was keen to resist having Portland as premier. Hatsell recollected his previous dismay at the doctrine that government could be above party and his own belief that "such a doctrine would soon destroy all Governmt".[131] After the chancellor of the exchequer in Shelburne's administration, the 23-year old William Pitt, declined the premiership because he knew he could not command a majority in the House of Commons, the King eventually accepted the need to appoint Portland.[132]

The so-called Fox-North coalition which Portland led was seen as unstable from the outset. Hatsell recorded that "A great deal of Wit pass'd, upon the famous coalition between Ld North and Mr Fox". It was sometimes compared with a marriage, and when the King's supporter George Selwyn was asked how it would end, he replied "Why … the same that is the end of many other Marriages, *A separate Maintenance*".[133] Fortified by its majority in the House

127 *Hatsell Papers*, p 193.
128 *Hatsell Papers*, p 193.
129 J Ehrman, *The Younger Pitt: The Years of Acclaim* (London, 1969), pp 100–101.
130 *Hatsell Papers*, p 194.
131 *Hatsell Papers*, p 195.
132 Ehrman, *Acclaim*, pp 101–104.
133 *Hatsell Papers*, p 196.

of Commons, the Portland administration survived for much of 1783. Pitt resisted overtures to form his own administration that July, as well as an offer which Hatsell recorded in October 1783 to join Portland's administration.[134] However, in November of that year, Fox introduced a Bill to reform the East India Company, wresting control from the Board and the Governor-General and placing it in the hands of a Commission to be appointed by the current administration. In this way, the vast patronage associated with the wealth of the Company was to be transferred not to the government of the day or the Crown, but to a body of Commissioners established by the Coalition and with security of tenure so that they could not be dismissed by a successor administration. The King may have been unsighted by the terms of the Bill, but soon realised its implications. Once the Bill had passed the Commons, he allowed Pitt's cousin Lord Temple to say that whoever voted for the India Bill was not only not the King's friend, "but would be considered by him as an enemy". The Bill was rejected by the House of Lords. The Coalition showed no signs of resigning, so the King sent for their seals, and appointed Pitt as First Lord of the Treasury and chancellor of the exchequer on 19 December. Early the following year, Hatsell expressed surprise that the King had not sent for Portland and Fox when the terms of the Bill became evident, told them of his opposition to the Bill, and asked them to withdraw it. Only then did he learn from Jenkinson the harsh political reality: that the King had made terms with Temple and Pitt over the latter forming an administration, and so felt able to dispense with Portland's services on grounds other than the India Bill, with that Bill as the trigger rather than the cause for bringing down the government.[135]

Pitt formed an administration knowing that he lacked support from a majority in the House of Commons. While withstanding the pressures from a majority Opposition led by Fox for some months, in circumstances that will be explored in more detail in the next section, Pitt not only used the powers of patronage of the Crown and the East India Company to bolster his electoral prospects, he also sought to build political positions that would win personal support from the electorate. In the ensuing general election, many of Fox's supporters lost their seats and it became clear, as Hatsell reported to Ley as the election unfolded, that "Mr Pitt will come forward at the head of 400 Members".[136]

The circumstances of the 1784 general election created a very particular

134 Ehrman, *Acclaim*, pp 112–117; *Hatsell Papers*, pp 199–200.

135 Ehrman, *Acclaim*, pp 118–127; R Bourke, *Empire & Revolution: The Political Life of Edmund Burke* (Princeton, 2015), pp 559–566; Lock, *Edmund Burke: Volume I*, pp 529–534; *Hatsell Papers*, pp 200–201.

136 Ehrman, *Acclaim*, pp 139–153; J Norman, *Edmund Burke: Philosopher, Politician, Prophet* (London, 2013), pp 120–121; *Hatsell Papers*, p 49.

sense of detachment from politics, most clearly expressed in a letter to Ley written as results started to come in during the 1784 General Election:

> "I am very much oblig'd to you for your letter of Monday last from Trehill, & happy, that forgetting Politicks, you derive so much amusement from the face & pleasures of the Country. I have so long consider'd the scenes exhibited before us, but as Farces upon a greater Stage, that they pass by me like Shadows, & are seldom the amusement beyond the day. I feel here totally indifferent, who gain the advantage in the present Contest, excepting where my own particular Friends think themselves interested, as I know that, when the Common Enemy is remov'd, it is the nature of Mankind in general, as well as the disposition of the individuals that compose the present Government, soon to differ among themselves, & by their squabbles & intrigues, to afford fresh sources of entertainment to the Spectators."[137]

Hatsell was sceptical about Pitt's longer term prospects. He thought that the issues that had bedevilled the succession of administrations to that point—the East India Company, the need to forge commercial relations with the United States, the state of the public finances, the state of Ireland and the suppression of smuggling—would overwhelm Pitt. In particular, he believed that the politics of the East India Company "will be the rock M[r] Pitt will split upon as his Predecessors did". Hatsell added:

> "the only thing, that would prevent my pitying a Minister under these circumstances, is the consideration, that he has not been forc'd into his miserable situation but has chosen, with his eyes open, to place himself there & in the Company of such an heterogenous set of Associates, that any one of these difficulties will probably overset him."[138]

"Nothing can justify the House of Commons": the power of the Commons and its limits

The impact of the political turmoil of the early 1780s was apparent in Hatsell's published writings. In August 1784, he completed work on the third volume of his collection of Precedents. His original intention had been that this volume would complete his work, but he found he had so much to say on the formal interaction between the Lords and the Commons and on financial procedure that three further topics—conferences, impeachment and Bills—would have to wait.[139] As before, Hatsell was at pains to claim that his account would steer clear of recent controversies:

> "care has been taken to avoid entering at large into the discussion of several

137 *Hatsell Papers*, pp 48–49.
138 DHC, 63/2/11/1/32, Ley to Hatsell, 25 April 1784.
139 *Lords/Supply* (1785 edn), p v.

> topics, that have engaged great part of the public attention within these last twenty years."[140]

However, as before, this claim was deceptive. He refers on several occasions to vital events from the period 1782 to 1784 and in some respects the volume reflects the various facets of the dramas which Hatsell had just seen play out upon the greater stage. The volume was intended in part to justify and assert the power of the Commons, but as he wrote about recent events, Hatsell was forced to address the failings of the Commons in exercising that power, and its limits. In doing so, Hatsell also faced a challenge to the certainties of his Whig ideology, a process probably accelerated as he engaged with the fiscal challenges with which Pitt's administration was grappling from 1784.

At the outset, Hatsell framed his ambitions in conventional Whig terms. He aimed to draw out a historical basis for the popular foundations of government and to show "that the Government, even in the earliest periods, was founded in principles of freedom, and has always had for its immediate object the interests of the Community at large". He also wished to emphasise the basis for a proper influence for the popular will that he had identified in his account of the formation of Rockingham's administration: "that the security and happiness of the people, as distinguished from the Crown and the Nobles, had at all times a considerable weight and influence in the administration of public affairs".[141] He made clear that he had little time for the historical writers such as "the Compilers of the Parliamentary History" and the revisionist David Hume who overstated the historical basis of prerogative powers.[142] To counterbalance this, Hatsell scoured the records for instances of "firm and successful opposition that has been made, at different periods, by the People of this Island, against attempts of the Crown derogatory from their rights and privileges".[143]

The House of Lords was not considered in its own right, because Hatsell showed little interest in its internal workings, but so far as it interacted with the House of Commons. Hatsell aimed to demonstrate that the Lords has no power over the Commons, and that instead

> "The leading principle, which appears to pervade all the proceedings between the two Houses of Parliament, is, That there shall subsist a perfect equality with respect to each other; and that they shall be, in every respect, totally independent one of the other".[144]

[140] *Lords/Supply* (1785 edn), p viii.

[141] *Lords/Supply* (1785 edn), p ix.

[142] *Lords/Supply* (1785 edn), pp viii–ix, 75. This is the "old" Parliamentary History published in 24 volumes (1751–61), distinct from the Cobbett/Hansard volumes with the same title published from 1806 onwards.

[143] *Lords/Supply* (1785 edn), pp ix–x.

[144] *Lords/Supply* (1785 edn), p 45.

Thus, neither House had any penal authority over Members of the other House.[145] Alongside this, he asserted that it was "essential to the House of Commons, to keep themselves entirely independent of any authority which Lords might claim to exercise over the them or their Members".[146] This injunction could be seen as especially barbed following a period when politics in the Commons has been dominated by the manoeuvrings of Whig factions led from the Lords by Rockingham and Shelburne.

The main way in which Hatsell asserted the power and authority of the Commons derived from the people was through the account of financial procedure to which the majority of his third volume was devoted. He was at pains to stress the historical basis for the controlling influence of the Commons over the levying of taxes and the grant of money to the Crown and how it represented the basis for the Revolution settlement:

> "It cannot but be very pleasing to any one, who is a friend and admirer of the present most excellent constitution of this country, to find, amongst his searches into the antient records and history of Parliamentary proceedings, the seeds and origin of those principles of political freedom, which, though from accidental circumstances they may have lain smothered for a time, particularly during the reigns of the Tudor family, began again to break forth under the Stuarts; and were brought to full maturity at the glorious *æra* of the Revolution."[147]

While noting minor disputes over Commons financial privilege as recently as 1783,[148] Hatsell suggested that "From the beginning of the present century, a period of above fourscore years, the claims of the House of Commons to their Rights and Privileges, in matters of supply, have been seldom or but faintly controverted by the Lords". The rules set down by the Commons have been "very generally acquiesced in", and Hatsell himself aimed to remove any remaining doubt by setting down "pretty nearly every thing which has at any time been claimed by the Commons upon this subject".[149]

For Hatsell, the most important financial power of the House of Commons lay in the use of appropriation, whereby the grants originating in the Committee of Ways and Means in the form of taxes were, in the course of a session, assigned to particular services authorised by votes originating in the Committee of Supply in that same session, along with a statutory direction that the supplies were not to be applied to any other purposes. Following the Glorious Revolution,

145 *Lords/Supply* (1785 edn), pp 45–46.
146 *Lords/Supply* (1785 edn), p 18.
147 *Lords/Supply* (1785 edn), p 75.
148 *Lords/Supply* (1785 edn), p 104.
149 *Lords/Supply* (1785 edn), p 110.

appropriation was "made part of that new system of government, which was then established for the better securing the rights, liberties, and privileges of the people of this country". He noted that, from the outset, "very severe penalties are inflicted upon the Officers of the Exchequer, if they shall permit any part of that sum to be applied in any other manner than is specified" in an Appropriation Act.[150]

At this point, however, Hatsell had to navigate the shoals arising from one of the key resolutions passed at the instance of the Opposition during the period of Pitt's minority Government early in 1784. Bills for granting duties upon land and malt had passed in December 1783, and Supply for the army, navy and ordnance had also been voted, but, as Hatsell noted, "no Bill had passed, appropriating the produce of these taxes to those services".[151] In view of the doctrine on appropriation as stated by Hatsell, "a doubt arose" as to whether it would be lawful to authorise expenditure for those services arising from those taxes if Parliament was dissolved. It was the usual practice for money from grants to be spent on services voted "under the confidence, that, before the session was finally closed, an Act of Parliament would pass, which, by appropriating the grants to the different public services, would thereby confirm and authorise that proceeding". But, if the session was ended without an Appropriation Act, "every resolution of the House of Commons, not carried into effect by a law, would be done away; the votes for the army, navy, and ordnance, would be as if they never had been passed" and Treasury and Exchequer officers would have no authority to "apply the produce of the land and malt duties to any of the public services".[152]

When the House returned on 12 January 1784, having inflicted two defeats on the government, the House agreed without division to a resolution, based on a motion moved by Fox, which effectively anticipated the ending of the present session without an Appropriation Act. It declared that any officer of the Treasury or Exchequer who authorised a payment out of sums voted in that session in the absence of such an Act would be guilty of "a High Crime and Misdemeanor, a daring Breach of a Public Trust, derogatory to the fundamental Privileges of Parliament, and subversive of the Constitution of this Country". The terms of this resolution were in effect intended to threaten impeachment against Pitt and his Ministers should they leave office.[153] This

150 *Lords/Supply* (1785 edn), pp 146–149.

151 *Lords/Supply* (1785 edn), pp 149–150.

152 *Lords/Supply* (1785 edn), p 150.

153 CJ (1782–84) 858; T Erskine May, *The Constitutional History of England since the Accession of George the Third, 1760–1860* (London, 1861, 2 vols), I.63–64; Ehrman, *Acclaim*, pp 138–139; W Hague, *William Pitt the Younger* (London, 2004), pp 150–157.

resolution, as Hatsell noted, increased the difficulty, as it restated the position on lawfulness, and the Government did not contest it, as it was agreed "without much difference of opinion".[154] Hatsell described the aims of the opposition in bringing forward this resolution:

> "The Members who proposed and supported this resolution, intended, by the terrors which it held out, to avert, what appeared to them to be a public inconvenience, a dissolution of the then existing Parliament; and hoped, by pointing out in this manner the difficulties which the Government would be under of providing for the public service for the space of near two months—the time necessary for the election of a new Parliament—to prevent the Ministers from advising this measure."[155]

Fox's hopes of forcing Ministers to admit their inability to carry essential financial measures and to resign from office before a General Election could be held had little chance of success. Pitt held his nerve, confident of the King's support, and the majority for the opposition fell gradually from 54 on 12 January, to 12 on 1 March and finally to one, as uneasiness about the tactic grew. The opposition tried to gain credit for agreeing to Supply measures, albeit without a clause of appropriation.[156] Thomas Erskine May, writing nearly 80 years after the events, reflected on how the former partners in the Fox-North Coalition had overplayed their hand:

> "Too much exasperated to act with caution, the Opposition ruined their cause by factious extravagance and precipitancy. They were resolved to take the king's cabinet by storm, and without pause or parley struck incessantly at the door. Their very dread of a dissolution, which they so loudly condemned, showed little confidence in popular support. Instead of making common cause with the people, they lowered their contention to a party struggle. Constitutionally the king had a right to dismiss his ministers, and to appeal to the people to support his new administration. The Opposition endeavoured to restrain him in the exercise of this right, and to coerce him by a majority of the existing House of Commons. They had overstepped the limits of their constitutional power; and the assaults directed against the prerogative, recoiled upon themselves."[157]

The result of the ensuing General Election meant that the threat to Pitt had passed. Accounts provided to the House on 11 June 1784 showed that only £70,000 from the unappropriated revenue from the land and malt taxes had

154 *Lords/Supply* (1785 edn), p 151.

155 *Lords/Supply* (1785 edn), p 151.

156 CJ (1782–84) 965, 978, 1048–1050; Erskine May, *Constitutional History*, I.64–70; Ehrman, *Acclaim*, pp 140, 142.

157 Erskine May, *Constitutional History*, I.71–72

been spent and, as Hatsell recorded:

> "No question was moved, or discussion had, upon the meeting of the new Parliament, relative to this question. Perhaps the smallness of the sum that had been issued, and the endeavours which, as appeared from the account presented to the House of Commons, the Ministers concerned in the department of the revenue had used to avoid any violation of the rule, as expressed in the resolution of the 12th of January, 1784, were considered as sufficient reasons to render any further proceeding upon this subject, at that time at least, unnecessary."[158]

Hatsell's account written soon afterwards understandably glossed over the political reality. The role of the Commons as a guardian of the constitution was, after the 1784 General Election, subordinate to its role in supporting and sustaining the new administration, including by retrospective authorisation of expenditure not duly authorised in the relevant session. Furthermore, as Erskine May noted and some historians before and since have missed, the amounts in question were voted again in the new Parliament and included in the next Appropriation Act.[159]

Hatsell was realistic about the limits to appropriation as a constraint upon the executive. In February 1778, in a debate on the Navy Estimates, Lord Mulgrave, one of the Lords of the Admiralty, admitted that the estimates were "the usual mode of raising money, but never meant to state the purposes the money was to be applied to".[160] In response, Burke

> "expressed his astonishment at what the Admiralty had dared to acknowledge; and, in the warmth of his indignation, threw the book of estimates at the Treasury-bench; which, taking the candle in its way, had nearly struck Mr Ellis's shins; Mr Burke exclaiming that it was treating the House with the utmost contempt, to present them with a fine gilt book of estimates, calculated to a farthing, for purposes to which the money granted was never meant to be applied".[161]

Hatsell did not share Burke's outrage, supporting the absence of detail in estimates for naval services. While this was a departure from the principle of strict appropriation, Hatsell thought it had "arisen from necessity, and the impossibility that has been found, from the nature of the sea-service, to confine the expenditure of the sums granted for wages, or building or rebuilding of ships, to those immediate services, and to no other". He thought that "the long absence of ships in the different quarters of the globe" and the difficulties of

158 *Lords/Supply* (1785 edn), pp 151–152.
159 Erskine May, *Constitutional History*, I.64, n 2.
160 *The Parliamentary Register* (London, 1802, 17 vols), VIII.29; *HoPT*, Constantine Phipps.
161 *The Parliamentary Register*, VIII.30. Welbore Ellis was Treasurer of the Navy

estimating the costs of repairs made the leeway granted to the Navy reasonable.[162]

More generally, however, Hatsell was keen to promote the role of the Commons in seeking to examine expenditure, influenced by the economical reform movement of the late 1770s and 1780 which highlighted abuses of civil list expenditure, the most celebrated expression of which was Burke's speech of 11 February 1780.[163] Hatsell quoted with approval the House's resolution of 6 April 1780 passed on the initiative of the Opposition asserting the right of the House to "examine into, and to correct, Abuses in the Expenditure of the Civil List Revenues, as well as in every other Branch of the Public Revenue, whenever it shall appear expedient to the Wisdom of this House so to do", and also provided historical precursors for such scrutiny.[164]

Hatsell reserved his most outspoken language for the way in which effective control over the use of public revenue was circumvented by extraordinary expenditure beyond the control of estimates and appropriation. He echoed Burke in his profound concern about the approach taken by the Navy, along with the Army and the Ordnance, in utilising their own borrowing authority. In 1780, Burke had termed these subordinate treasuries as "nurseries of mismanagement".[165] Hatsell noted subsequently that, during "the late war, carried on in America", such expenditure beyond the Estimates by the Navy

> "exceeded all bounds. There was a degree of negligence or extravagance, or both, in those who had the conduct of this department, which rendered all the votes of the House of Commons, or Bills for appropriating the supplies, ridiculous and nugatory."[166]

He drew attention to the fact that the amounts spent without parliamentary sanction on the Navy in 1782 actually exceeded the amounts authorised through the estimates.[167] He described this as "such a shameful prostitution of the money of the public, that … nothing can justify the House of Commons, who permitted this practice to continue uninterrupted through several sessions".[168]

Hatsell's exceptionally strong language reflected wider concerns at the state of the public finances at the end of the American War. Levels of both debt

162 *Lords/Supply* (1785 edn), pp 152–153.

163 W M Elofson and J A Woods, eds, *The Writings and Speeches of Edmund Burke: Volume III: Party, Parliament and the American War 1774–1780* (Oxford, 1996), pp 481–551; J E D Binney, *British Public Finance and Administration 1774–92* (Oxford, 1958), pp 118–120, 270–272; Lock, *Edmund Burke: Volume I*, pp 449–454; Bourke, *Empire & Revolution*, pp 421–432.

164 CJ (1778–80) 76; Erskine May, *Constitutional History*, I.44–45; *Lords/Supply* (1785 edn), pp 72–74.

165 *Writings and Speeches of Edmund Burke*, p 497.

166 *Lords/Supply* (1785 edn), pp 154–155.

167 *Lords/Supply* (1785 edn), pp 154–155 and footnotes.

168 *Lords/Supply* (1785 edn), p 155.

funded as part of the National Debt and unfunded debt held by the subordinate treasuries had frequently risen in wartime, but the sense of dismay was far greater in the early 1780s, in part because the war had ended in defeat and in part because the scale of debt was without precedent. The cost of funding the National Debt amounted to around two thirds of the total of the annual estimates, and many felt the country was on the verge of national bankruptcy.[169] In writing to Ley about the challenges that faced Pitt in 1784, Hatsell referred in particular to "twenty five Millions of Unfunded Debt".[170] Pitt set about tackling the state of the public finances with vigour, by reducing certain duties to tackle smuggling and increase yield, and by creating a series of additional taxes. These measures, together with what Hatsell termed "the flourishing state of the Commerce of the Country", turned a deficit into a surplus.[171] Hatsell was evidently fascinated by the fiscal challenges Pitt faced, advocating further reductions in duties to combat smuggling—a measure which he thought "would operate like a charm"—and suggesting that further taxes would be needed.[172]

Pitt's prospects, and over time the perspective of Hatsell and Ley on contemporary politics, were gradually transformed by the health of the public finances. In December 1785, Ley indicated to his brother that "things will still continue to prosper"; there was "almost a certainty of a disposable surplus" of £800,000, if not a million, with the surplus "promising to be an annual one, & increasing". He attributed this situation to "the Ball[ance] of trade being prodigiously in our favour with every nation in Europe & elsewhere except Russia".[173] Late in November 1785, Hatsell foresaw that Pitt would introduce legislation to use the surplus to tackle the National Debt.[174] A Bill to establish a new Sinking Fund, the distinctive feature of which was its management by independent National Debt Commissioners to ensure the proceeds were not diverted for other purposes, was introduced early in 1786. Despite initial scepticism, shared among others by Ley—"I have no great Confidence in the Sustainability of y^{e} new Sinking Fund"[175]—it proved highly effective. It was reinforced the following year by the creation of the Consolidated Fund, welcomed by Burke for abolishing the separate borrowing by individual

169 Ehrman, *Acclaim*, pp 157–158.

170 DHC, 63/2/11/1/32, Ley to Hatsell, 25 April 1784; Ehrman, *Acclaim*, at pp 240, 258–259, gives a somewhat lower estimate.

171 Ehrman, *Acclaim*, pp 240–258; *Hatsell Papers*, p 51.

172 *Hatsell Papers*, p 51; Ehrman, *Acclaim*, p 256.

173 DHC, 63/2/11/2, Ley to Henry Ley, 11 Dec. 1785.

174 *Hatsell Papers*, pp 51–52.

175 DHC, 63/2/11/2, Ley to Henry Ley, 2 Feb. 1786. See also 63/2/11/2, Ley to Henry Ley, 17 Feb. 1786

Departments, with the National Debt having the first call on the Fund.[176] One of the key challenges with which Pitt was concerned in shaping the 1786 legislation was to determine the mechanisms to be used by the Commissioners to finance the National Debt. Hatsell was a great enthusiast for one particular scheme using life annuities. He wrote an extensive memorandum to Pitt on the matter, was flattered by Pitt's willingness to consider it, and sent further detail of the proposal to Pitt.[177] Hatsell's proposals were not incorporated in the Bill, but may have had a wider impact on his engagement with politics. Prior to the 1780s, Hatsell had been instinctively sceptical about the policies and politics of Ministers, and supportive of opposition critiques. From the mid-1780s onwards, this became increasingly less evident.

"To controul and repress those acts of injustice and oppression": the practice and theory of impeachment

As already noted, Hatsell had promised in the mid-1780s a further volume on conferences, impeachment and Bills. A fourth volume covering the first two topics was delivered over a decade later in 1796, alongside new editions of the preceding three volumes. The delay was probably in part because impeachment, having been in abeyance when the volume was conceived, loomed large in contemporary politics by the time the volume was being finalised. Probably in part because of this, the approach differs from that of the second and third volume, and in some ways is a return to the style of the first volume. The fourth volume was organised as a collection of cases, with far less commentary, and almost no commentary on the 16 cases Hatsell listed since the Glorious Revolution, of which 15 were from before 1724 and the last from 1746.[178]

Thus, two generations had passed since the last use of impeachment procedure when, at Hatsell noted, "on the 4th of April, 1786, Mr. Burke, in his place, presents to the House several articles of charge of high crimes and misdemeanors against Warren Hastings, Esq".[179] Both the methods of administration employed by Hastings as Governor General in India from 1773 to 1784 and the extreme wealth he had acquired made him a target. In 1785, for example, Hatsell made some wry observations on a rumour that Hastings would make his base at Cheltenham:

> "This will make it the annual resort of all the Nabobs, & I shall not be surpris'd, instead of Chariots & Horses, to meet Litters & Palanquins. One

176 Binney, *British Public Finance and Administration*, pp 87, 110–116; Ehrman, *Acclaim*, pp 260–273.

177 *Hatsell Papers*, pp 53–64.

178 *Conference/Impeachment* (1796 edn), pp 231ff.

179 *Conference/Impeachment* (1796 edn), p 241 n 1.

bad effect, M^rs Hatsell complains of their having already produc'd, that of making everything dearer."[180]

Burke had made a deep study of the various failings of Hastings's administration, but, from the outset, Burke was as concerned to demonstrate the value of impeachment as a way to set the agenda from opposition as he was with the actual prospects of success, about which he was realistic.[181] Burke was keen to demonstrate that impeachment was part of the ancient constitution, and that it could be used more appropriately and more imaginatively than had been the case in the early part of the eighteenth century. After the Glorious Revolution, impeachment had moved primarily from a tool to challenge Ministers to a means by which Ministers could create a show trial for departed office holders.[182]

Hatsell's main concern about the impeachment evident in his contemporary letters relates to whether the appropriate method was being adopted to pursue the impeachment, and the impact on wider parliamentary business of what he saw as a confusion between two possible approaches. Pitt and his Commons deputy Henry Dundas wanted to stay neutral during the proceedings, to distance themselves both from the former Company administration in India and from some elements of the charge sheet. This meant they supported a detailed examination of each article of impeachment in turn by the House itself. In some cases, to the surprise of many including Hatsell, Pitt and some other members of the Government supported certain articles.[183] This approach made the process "agonizingly slow".[184] Drawing upon the collection of precedents which he would subsequently publish, Hatsell wrote a long memorandum for Pitt in March 1787 to give him blunt advice on the handling of impeachment proceedings and its destructive effect on the progress of business in the House of Commons:

"M^r Pitt & M^r Dundas express'd to M^r Hatsell their suprize that the Order Book of the H^e of C^s was continued beyond Easter. If this business goes on, it must be fill'd up to Michaelmas."[185]

In essence, Hatsell argued that the method used for the Hastings impeachment was an inappropriate hybrid, combining the examination of witnesses which would have been better delegated to a select committee and the more formal decision-making more appropriate for the House itself. Hatsell's advice almost

180 *Hatsell Papers*, p 51.
181 Norman, *Edmund Burke*, p 128
182 F P Lock, *Edmund Burke:Volume II: 1784–1797* (Oxford, 2006), pp 64–71.
183 *Hatsell Papers*, p 65.
184 Norman, *Edmund Burke*, p 128
185 *Hatsell Papers*, p 66.

certainly encouraged an acceleration of the process, enabling articles of impeachment to be decided upon by May 1787.[186]

The delays in the proceedings in the Commons to prepare articles of impeachment soon paled into insignificance compared with the drawn out nature of the subsequent trial in the House of Lords, which was to continue until 1795. On Thursday 17 April 1794, Burke presented a report from the Commons managers of the impeachment on the proceedings of the Lords in the trial, which he read in his place and which was ordered to be printed.[187] On Monday 21 April, Ley reported enthusiastically to Burke that "The Printer has by very extraordinary Exertions completed the proof of the Report", and invited him to comment on the proof and add marginal references.[188] Burke apparently replied seeking to include additional material in an appendix.[189] Ley wrote again on 23 April, politely but firmly rejecting this proposal, because no appendix had been referred to when the report was agreed. Ley suggested that a new authorisation for the publication of the appendix would be needed, and that Burke should seek this from the House, also noting that additional material would entail further delay in publication.[190] The following day, Ley wrote again advising that a proof including the appendix would not be available "till the middle of next week at the soonest".[191] Burke chose instead to have the order for publishing his report discharged and the report re-committed to enable the alterations and additions he wished to see, a proposal which was agreed to by the House on 29 April only after a division.[192]

Hatsell's fourth volume was completed not long after the verdict in Hastings's case. He noted some essentially procedural aspects of the conduct of the impeachment and trial.[193] He also commented on reports and pamphlets published in connection with the impeachment and trial.[194] In overall terms, Hatsell left little doubt where he stood on the potential value of impeachment when used against those whose "elevated situation" placed them beyond the reach of complaint from private individuals, and where complainants faced the threat of "tyrannical oppressions". He thought that the willingness of the

186 *Hatsell Papers*, pp 11–12, 66–72.

187 CJ (1794) 487–488.

188 SCA, WWM/Bk P/1/2963, Ley to Burke, 21 April 1794.

189 Burke's letters to Ley are recorded in a Handlist of letters on political matters in the Ley papers, available at DHC, 63/2/11, Appendix, items 7a to 7d, but it has not proved possible to trace these or other letters listed there.

190 SCA, WWM/Bk P/1/2964P, Ley to Burke, 23 April 1794.

191 SCA, WWM/Bk P/1/2966, Ley to Burke, 24 April 1794.

192 CJ (1794) 498. See also CJ (1794) 488.

193 *Conference/Impeachment* (1796 edn), pp 241 n 1, 242 n 2, 267 n 1, 280 n 3.

194 *Conference/Impeachment* (1796 edn), pp 69 n 3, 74 n 2, 192 n 1, 253 n 4, 281 n 1.

Commons, "as the representatives of the people at large", to act as "prosecutors of the highest and most powerful offenders against the State" had

> "very much contributed, in this kingdom, to controul and repress those acts of injustice and oppression, which, in more despotic governments, Ministers, protected by their great rank, and overbearing power, are but too apt to exercise against persons who presume to offend them".

In this way, impeachment had acted as a bulwark against those "who, by their actions or counsels, have endeavoured to subvert the fundamental laws of their country, and to introduce an arbitrary and tyrannical government".[195] He also quoted approvingly from a pamphlet published anonymously in 1791 and actually written by the future Prime Minister Spencer Perceval which noted the value of impeachment as both "a check and terror to bad Ministers" and "the most effectual preservative against the corrupt administration of justice".[196] Hatsell's assertion of the value of impeachment was to be quoted subsequently to make the case for the impeachment of Dundas, who by this time was viscount Melville, in 1805.[197] Hatsell was also referred to in the House of Commons to justify proceedings for impeachment against Marquess Wellesley.[198]

"Joy & Loyalty": Hatsell, Ley and the King

Hatsell's career coincided almost exactly with the reign of George III, and the personality, health and power of the King loomed large in the careers of Hatsell and Ley. Particularly in the late 1780s, they were required to deal with procedural and constitutional issues relating to the King, and were able to witness his renewed popularity when he recovered from the illness that convulsed politics late in 1788 and early in 1789.

In his Memorabilia, Hatsell reports the brief words spoken when he kissed the King's hand on his appointment: "I think you have already serv'd an Apprentice-ship to this Office".[199] Thereafter, most of his insight into the King's approach to politics he garnered from others, most notably the King's friend Charles Jenkinson. Hatsell was bemused by how different the private behaviour of the King could be from his political outlook. Hatsell was surprised to learn that the King, having resisted Portland's appointment as head of the Fox-North coalition, then received Portland, along with Fox and the new chancellor of the exchequer Lord John Cavendish "in his Closet, with as much apparent

195 *Conference/Impeachment* (1796 edn), p 63.

196 *Conference/Impeachment* (1796 edn), p 69 n 1. On Spencer Perceval's authorship, see Spencer Perceval, *ODNB*.

197 "Impeachment of Lord Melville", *Morning Chronicle*, 10 June 1805, p 2.

198 Parl Deb, 28 April 1806, col 936.

199 *Hatsell Papers*, p 170.

cordiality & graciousness, as if they had been those Ministers that he most wish'd for—Such is the History of Courts!"[200]

Even when Pitt secured a resounding majority in the House of Commons in 1784, Hatsell remained far from sanguine that he would not be knocked off course by the whims of the monarch. Indeed, Hatsell believed that Pitt's very electoral success might sow the seeds of the withdrawal of the King's support for him: "to add to his misfortunes, his popularity has return'd him a Parliam[t] personally devoted to him, which will have the immediate effect of estranging from him that support, without which no man can conduct the Affairs of this Country with firmness & success".[201]

The political centrality of the King was brought into sharp relief when his health deteriorated rapidly in early November 1788.[202] As Hatsell waited with others for bulletins on the King's health, on 9 November, he wrote to Ley reminding him of the practical consequences of the worst outcome:

> "should the Event of His Death happen – The Speaker & You are aware – *We* must all repair *immediately* to town, first to swear all the Members out of doors, & at the table."[203]

Two days later, he wrote again, stating: "I take for granted, that You or The Speaker have receiv'd … an account of the preparations" being made "in expectation of The King's Death".[204] By 13 November, he switched focus, stating that the latest reports from Windsor were "all very alarming, not with regard to the King's *life*, but his recovery of His *senses*".[205]

It was assumed that the Prince of Wales becoming Regent would spell the end of Pitt's premiership, given the Prince's closeness to Fox.[206] Pitt's main concerns in November and December were therefore to stall for time and to frame a limited regency, not least due to the King's fluctuations and the possibility of recovery.[207] Parliament had been prorogued in September until 20 November, with the expectation that a further prorogation would take place. Hatsell was exercised as to whether a commission for prorogation could be properly made out given the King's state of mind, and whether the House ought to adjourn instead.[208] This was the course followed when the House met on 20 November. Pitt told the House the King was in no condition to give commands, so there

200 *Hatsell Papers*, p 198.
201 DHC, 63/2/11/1/32, Ley to Hatsell, 25 April 1784.
202 Ehrman, *Acclaim*, pp 644–645.
203 *Hatsell Papers*, p 73.
204 DHC, 63/2/11/1/40, Hatsell to Ley, 11 November 1788.
205 *Hatsell Papers*, p 74.
206 Ehrman, *Acclaim*, pp 646–647.
207 Ehrman, *Acclaim*, pp 647–650.
208 *Hatsell Papers*, pp 73–74; DHC, 63/2/11/1/42, Hatsell to Ley, 18 November 1788.

was no authority either for a further prorogation or for a King's speech. With the agreement of the Prince of Wales, the House adjourned for a fortnight. When the House met again, it was agreed that business could continue, relying on the doctrine of the power of the Great Seal, which would also be necessary to give Royal Assent to a Regency Bill.[209] In the weeks that followed, Pitt successfully stalled for time by thorough investigation of the proper form and powers of a Regency while Fox, Burke and the Opposition overplayed their hand as they had in early 1784.[210] When the House was due to resume on 30 December, Hatsell informed the House that the Speaker, Charles Cornwall, was "indisposed with a Cold and Fever" and, accordingly, no business could be done other than agreeing a motion to adjourn the House. On 1 January, Cornwall was "still indisposed".[211] On 2 January, Hatsell was "extremely sorry" to have to inform the House that the Speaker had died that morning. As he made the formal report of that "melancholy event", he was "so affected, as to be scarce able to pronounce those words". When a ministerial motion to adjourn the House was contested, Hatsell nevertheless recovered his composure sufficiently to read a precedent justifying the course.[212]

The Speaker's death added another dimension to the procedural and constitutional conundrums arising from the King's indisposition. Hatsell had held in his published writings that it was "essentially necessary" that the King give direction or permission for the election of a Speaker, just as it he must give his approbation of the candidate elected by the House.[213] Pitt was clearly determined not to dwell upon the procedural niceties, relying on precedents from 1660 and 1689 for a Speaker being elected without Royal permission or direction and assuming the office without Royal approbation. Hatsell wrote to Pitt to express his unease about the adequacy of precedents from times when there was no King acknowledged by law. However, mindful of the political difficulties Pitt faced, he assured Pitt that "I shall however keep any opinion to myself".[214] Pitt's haste was also apparent in the candidate he chose to succeed Cornwall—Pitt's cousin William Wyndham Grenville. This highly partisan and highly politically ambitious man was reluctant and ill-suited to the role, which he accepted on the understanding it was a mere staging post to high Ministerial

209 CJ (1788–89) 3–6; Ehrman, *Acclaim*, pp 649–650.

210 Ehrman, *Acclaim*, pp 650–657; Norman, *Edmund Burke*, pp 132–133; Bourke, *Empire & Revolution*, pp 592–595; Lock, *Edmund Burke:Volume II*, pp 209–212.

211 CJ (1788–89) 45; *Members|Speaker* (1781 edn), p 147.

212 CJ (1788–89) 45; *Kentish Gazette*, 6 January 1789.

213 *Members|Speaker* (1781 edn), pp 145–147.

214 *Hatsell Papers*, pp 74–75; William Wyndam Grenville, *HoPT* 1754–1790.

office.[215] Grenville was predictably uninterested in the concerns expressed by Hatsell about the adequacy of precedents from 1660 and 1689 to justify him holding office without Royal approbation, and asserted the propriety of the course followed by reference to those precedents early the next month. Hatsell realised that his doubts on this score merely played into the hands of the Opposition, and left it until the publication in 1796 of the next edition of the relevant volume of the *Precedents* to signal his unease:

> "How far these precedents authorized a similar proceeding in the House of Commons, in the choice of a Speaker, on the 5th of January, 1789, under circumstances not exactly similar with those of 1660 or 1688, it would be presumptuous in me to discuss; especially after what was suggested to the House by the Speaker, Mr. Grenville, on the 2^{d} of February, and which is entered in the Journal of that day."[216]

Pitt's overall strategy to play for time was rewarded when the King recovered his senses by late in January.[217] The King's recovery was the cause of general delight and celebration. The duchess of Devonshire, although a firm friend to the Opposition, was caught up in this delight and had her diamonds set with the device of "God save the King" to attend the Queen's drawing room on 26 March. The Prince of Wales caught wind of this, and made it known to the duchess that if she wore the device, he would never speak to her again. Hatsell recorded this story in his Memorabilia "to show the strange & absurd lengths, to which Party at this time carried the highest Characters in the Kingdom".[218]

Beyond the party conflict at Westminster, there were signs of newfound popular support for the King, evident at a Thanksgiving Service on 23 April.[219] Ley also became a witness to the King's renewed popularity when he became involved with his visit to Devon that summer. In 1788, Ley had become a trustee of the estate of the second baron Boringdon, heir to the Saltram estate, and still a minor. In August 1789, Ley, along with his brother Henry, a fellow trustee, was asked by Boringdon's uncle to make arrangements for the King to stay at Saltram for "a few days" during a royal visit to Devon as the next stop after a short stay in Exeter. Although he was still in London at that point, Ley was required to liaise with Lord Sydney, a senior Cabinet minister, and Ley's brother in Devon about arrangements for the visit, including ascertaining the quantity of port needed and securing the killing of "a Buck or two" to ensure

215 Ehrman, *Acclaim*, pp 658–659; William Wyndham Grenville, *HoPT*; P Ziegler, *Addington: A Life of Henry Addington, First Viscount Sidmouth* (London, 1965), p 57.

216 CJ (1788–89) 93; Ehrman, *Acclaim*, p 659; *Members/Speaker* (1796 edn), p 209.

217 Ehrman, *Acclaim*, pp 659–663.

218 Ehrman, *Acclaim*, pp 664–665; *Hatsell Papers*, pp 213–214.

219 Ehrman, *Acclaim*, p 665.

an adequate supply of venison.[220] After final securing a coach out of London following prorogation, Ley made it to Exeter in time to learn of the warm reception given by that "loyal City" to the King and Queen:

> "From the Acc^{ts} I have heard they were much pleased with their reception—An immense Multitude of people being collected—who expressed in the strongest Manner their Joy & loyalty on the occasion, and at the same time preserved peace and good Order."[221]

The visit to Saltram was also a success, with the royal couple "satisfied with their reception & accommodation at Saltram". The house was able to provide 52 beds for the royal party and the King pronounced himself "perfectly well pleased" with the reasons given as to why there was no host present for his stay.[222] Ley's final duties in connection with the visit were to seek instructions for the distribution of the uneaten venison,[223] before turning his mind as trustee to the "extraord^{y} Expence" expected as a result of Lord Boringdon "first going to Oxford".[224] He also reported the general delight that the famous actor Sarah Siddons had arrived at Exeter: "Every ones attention is directed to Mrs Siddons, & our late Royal Visitors, are almost forgotten".[225]

Ley would soon be reminded of the King, not by his presence, but by his prerogative of mercy. One of Ley's commitments in Devon was a chairman of the Quarter Sessions—where he presided over jury trials on matters too serious for petty sessions. In October 1789, he wrote in that capacity to Grenville, who by this time had moved on from the speakership to the more congenial role of Home Secretary, to explain the desire of the justices of Devon to apply to the King for a Royal Pardon for one Henry George.[226] George was held with other prisoners in the county gaol at Exeter, among whom were 26 convicts awaiting transportation. Some of these felons had sawed off their irons, before overpowering the turnkey and making their way to the keeper's house. Their plan had been to take arms from there, and then escape. However, George

220 BAS, L 30/15/33/2, Ley to Robinson, 1 August 1789; BAS, L 30/15/33/3, Ley to Robinson, 5 August 1789; BAS, L 30/15/33/5, Ley to Robinson, 10 August 1789; BAS, L 30/15/33/6, Ley to Robinson, 11 August 1789.

221 BAS, L 30/15/33/4, Ley to Robinson, 7 August 1789; BAS, L 30/15/33/6, Ley to Robinson, 11 August 1789; BAS, L 30/15/33/7, Ley to Robinson, 15 August 1789.

222 BAS, L 30/15/33/7, Ley to Robinson, 15 August 1789; BAS, L 30/15/33/8, Ley to Robinson, 1 September 1789; BAS, L 30/15/33/9, Ley to Robinson, 19 September 1789.

223 BAS, L 30/15/33/8, Ley to Robinson, 1 September 1789; AS, L 30/15/33/9, Ley to Robinson, 19 September 1789.

224 BAS, L 30/15/33/9, Ley to Robinson, 19 September 1789; he supposed that £400 a year would be sufficient.

225 BAS, L 30/15/33/8, Ley to Robinson, 1 September 1789; AS, L 30/15/33/9, Ley to Robinson, 19 September 1789.

226 TNA, HO 42/15, fos 300–301, Ley to Grenville, 14 October 1789.

asked his wife to pass on the plans to the keeper. In consequence, the keeper was able to remove arms from his house, and arrange for a party of Dragoons to be on site, to be called in when the escapees entered his house. As a result, the escapees were apprehended and "securely chained to the floor". Although George was under sentence of transportation for stealing a sheep, he was said to have had "a good Character" before then. Perhaps more importantly, the justices believed that if George were not pardoned and "If he is Transported with the other felons they will probably Murder him as they will certainly discover that he has been the Cause of their disappointment".[227]

"A servant to the House, and not their master": Hatsell and the ideal Speaker

An important theme of Hatsell's writings, and the second volume of Precedents first published in 1781 in particular, concerned his description of the role of the Speaker. Hatsell depicted what he viewed as the ideal Speaker in a way that both reflected his experience with occupants of the chair that felt short of that ideal and also helped to shape subsequent understanding of what could be expected of the role.

Just as Hatsell saw understanding and adherence to a clear and agreed set of rules as fundamental to underpin the effective functioning of the House in its daily business and in its constitutional function as a restraint upon a largely untrammelled executive, so the Speaker's role was judged above all else by a capacity to uphold those rules. The Speaker had to be consistent in his enforcement of rules, so that the House was "not subject to the momentary caprice of the Speaker".[228] A Speaker also had to remember that he was "a servant to the House, and not their master", and that he himself was subject to the House's rules and orders.[229] It was his duty to explain matters, but not to sway the House.[230] It was also vital that the Speaker avoided partiality in who was called to speak.[231] In overseeing debate, he had to ensure that freedom of speech was "regulated in its use by the rules of decorum and good manners". A Minister's conduct could be criticised "in the strongest and severest manner, without violating that decency, or departing from those forms of expression, which the character of gentlemen requires to be observed one towards another". If those rules were breached, and "if public reprehension and accusation

227 TNA, PRO 42/13, fos 302–303, Memorandum by R Eales, Clerk of the Peace; *Hereford Journal*, 14 Oct 1789, p 2.

228 *Members/Speaker* (1781 edn), p 138.

229 *Members/Speaker* (1781 edn), pp 161, 138.

230 *Members/Speaker* (1781 edn), p 162.

231 *Members/Speaker* (1781 edn), p 68.

degenerate into private obloquy and personal reflections, it is the duty first of the Speaker, and, if he neglects that duty, then of the House itself, to interfere immediately, and not to permit expressions to go unnoticed or uncensured".[232]

In describing an ideal Speaker, Hatsell was hugely influenced by the towering figure of Arthur Onslow, Speaker from 1728 to 1761. Although Hatsell's time as Clerk Assistant overlapped only briefly with Onslow's speakership, they formed a personal bond which lasted during the latter's retirement.[233] Hatsell referred to Onslow as "my Old Master",[234] and noted how "it was under the patronage, and from the instructions of that excellent man", that Hatsell learnt "the first rudiments of his Parliamentary knowledge".[235] Hatsell's writings drew extensively on Onslow's notes made available to Hatsell, as well as from continuing discussions between them.[236] For Hatsell:

> "the distinguishing feature of Mr. Onslow's public character was a regard and veneration for the British constitution, as it was declared and established at the Revolution. This was the favourite topic of his discourse; and it appeared, from the uniform tenor of his conduct through life, that, to maintain this pure and inviolate, was the object at which he always aimed."[237]

Onslow possessed the personal qualities to discharge effectively the role of the Speaker. He was "full of resolution, yet of delicacy".[238] Elsewhere he is referred to as presiding "with great strictness, yet with civility".[239] But the skillset required went beyond personality. Hatsell viewed it as the duty of the Speaker "to make himself perfectly acquainted with the orders of the House, and its ancient practice, and to endeavour to carry those orders and that practice into execution".[240] A Speaker would be unwise to rely unduly on his clerks:

> "I have often heard Mr. Onslow say, that, in the first session he was Speaker, he was led into several mistakes, with regard to the proceedings of the House, by Mr. Stables, who was then Clerk … and that, in consequence of these, he applied himself with more than ordinary diligence to the reading and examination of the Journals."[241]

232 *Lords/Supply* (1785 edn), p 51.
233 *Hatsell Papers*, p 4.
234 *Hatsell Papers*, p 150.
235 *Members/Speaker* (1781 edn), p ix.
236 *Members/Speaker* (1781 edn), pp ix–x.
237 *Members/Speaker* (1781 edn), p x.
238 *Members/Speaker* (1781 edn), p 155.
239 *Members/Speaker* (1781 edn), p 156.
240 *Members/Speaker* (1781 edn), p 155.
241 *Lords/Supply* (1785 edn), p 136, fn 1. Ironically, Hatsell himself erred in attributing to Onslow's first session a "great mistake" in March 1727, which preceded Onslow's election as Speaker: *Lords/Supply* (1785 edn), p 136; CJ (1722–27) 809. For Onslow's first election and his celebrated speech denying his suitability for the post, see CJ (1727–32) 19–20.

For nearly thirty years after Onslow's retirement, his successors were measured by Hatsell against the ideal Onslow represented, and found wanting. Onslow was succeeded by Sir John Cust, who was seen by contemporaries as "plodding" and lacking the authority and firmness to preside effectively over the highly contested debates of the 1760s. He was regarded as biased towards the administration, but at the same time incapable of constraining the excesses of leading opposition figures.[242] In 1770, Cust was succeeded by Sir Fletcher Norton, of whom Horace Walpole wrote that "Nothing can exceed the badness of his character even in this bad age". Norton's reputation for venality was eventually exceeded by that for partiality.[243] Hatsell gives several insights into his dealings with Norton. He cited an instance where Norton used his speech in the House of Lords on a Money Bill to engage in a partisan speech.[244] Hatsell referred to an occasion when he gave advice to Norton on a matter of privilege, and Norton intended to follow that advice, but instead acquiesced in a contrary opinion of the Lord Chancellor.[245] Hatsell also recollected how he had been "put under very extraordinary difficulties" in February 1770 when Norton himself used what many viewed as unparliamentary language, and Hatsell faced demands to take down the words spoken by the Speaker as the basis for censure.[246]

When later asked how appropriate it was for the re-nomination of a Speaker to be undertaken by a Prime Minister—in circumstances to be explored shortly—Hatsell recollected the precedent of Lord North nominating Norton, and wrote bluntly: "I don't recommend the conduct of either of these Gentlemen to be follow'd in any instance".[247] It is striking that, while two subsequent volumes of his *Precedents* were dedicated to the incumbent Speaker,[248] that published during Norton's speakership was instead dedicated to Jeremiah Dyson. In 1781, Hatsell left little doubt that he viewed the speakerships of Cust and Norton as a period of decay:

> "It is very much to be wished, that the rules, which have been from time to time laid down by the House, for the preservation of decency and order, in the debates and behaviour of Members of the House, could be enforced, and

242 *HoPT*, 1754–1790, Sir John Cust; Thomas, *House of Commons*, pp 309–312.

243 Thomas, *House of Commons*, pp 312–325.

244 *Lords/Supply* (1785 edn), pp 118–119. The Speaker was entitled to make a speech to accompany the delivery of a Money Bill for Royal Assent during the prorogation ceremony, but this was not expected to be political in tone.

245 *Members/Speaker* (1781 edn), pp 151–152.

246 *Members/Speaker* (1781 edn), pp 182–183.

247 *Hatsell Papers*, p 79.

248 *Members/Speaker* (1781 edn), p vi; *Conference/Impeachment* (1796 edn), p v. See also, *Hatsell Papers*, p 100.

adhered to more strictly than they have been of late years."[249]

Hatsell considered that one of the most important rules of the House was that preventing a Member speaking more than once to the same question. He acknowledged that this was difficult to enforce, but thought that Onslow had "kept this order tolerably strict".[250] Subsequent Speakers had failed to enforce these rule effectively so that "under pretence of explaining", Members "speak several times in the same debate, contrary to the express orders of the House".[251]

The Speakership of Charles Cornwall beginning in 1780 must have been something of a relief to Hatsell after Norton's tenure. Cornwall has been described by one historian as "a vigorous and well-informed Speaker",[252] although contemporary verdicts on Cornwall's speakership were perhaps slightly harsher, summed up in Nathaniel Wraxall's verdict: "Never was any man in public situation less regretted, or sooner forgotten, than Cornwall".[253]

After the brief stop-gap speakership of Grenville, the House acquired in June 1789 a Speaker who would come far closer to Hatsell's ideal—Henry Addington. The circumstances of Addington's first election were hardly auspicious. Addington was nominated little more than a week after his thirty-third birthday. As Hatsell was later to note, Addington "has known M^{r} Pitt from a child", since Addington's father was physician to Pitt the Elder.[254] Addington's inexperience, coupled with the sense that he was not of the requisite social standing and was a "dependant" of the Pitt family, meant that his nomination was contested and decided ultimately on party lines.[255]

However, elements of contemporary snobbery could distract from ways in which Addington was well-suited to his new role. He had focused his parliamentary activities on sedulous committee work and had built bridges with opposition politicians to a greater extent than many Pitt loyalists.[256] He had prepared himself for the Chair by making a close study of the practice and procedure of the House.[257] Upon assuming the office, Addington made conscious efforts to establish his impartiality, and Hatsell must have been delighted when Addington slapped down William Wilberforce, a close friend and political ally of Pitt, in terms which could have come directly from Hatsell's

249 *Members/Speaker* (1781 edn), pp 154–155.
250 *Members/Speaker* (1781 edn), pp 66–67.
251 *Members/Speaker* (1781 edn), p 155.
252 Thomas, *House of Commons*, p 363.
253 Thomas, *House of Commons*, p 363.
254 *Hatsell Papers*, p 105; Ziegler, *Addington*, pp 31, 43.
255 Addington, *HoPT*, 1754–1790 (and see in particular the quotation from his opponent Sir Gilbert Eliot); Ziegler, *Addington*, pp 57–58.
256 Ziegler, *Addington*, pp 51–52.
257 Ziegler, *Addington*, pp 47–48.

writings:

> "if he was not mistaken, the Honourable Gentleman had spoken once or twice already, and if such a violation of order were acquiesced in from the Chair, the most valuable time of the House would be wasted in desultory debates".[258]

Hatsell nevertheless identified a continuing risk to Addington arising from his political and social closeness to the prime minister. This is apparent when, following the General Election in the autumn of 1790, Addington sought his advice on how he should respond to Pitt's offer to re-nominate him to the Speakership. Hatsell acknowledged that it would not be without precedent, referring to the instance of Lord North re-nominating Sir Fletcher Norton already quoted, but went on:

> "If you ask my opinion, I think the proposal, from any other quarter, would come more respectable for you – There does not want this testimony of Mr Pitt's regard & friendship towards you, to give any weight to Your situation in the Chair."[259]

He went on:

> "Indeed, I think an invidious use would be made of it, to represent You to be the Friend of the Minister, rather than the choice of the House; though everybody will know, that, so far from this being so, you will, let who will make the motion, probably have the unanimous approbation of all Parties."[260]

Hatsell went on to suggest possible Members to move and second the motion, while making it clear that this mattered less than the principle that the Prime Minister should not move it.[261] Hatsell's advice was followed, and ample evidence was to follow throughout Addington's speakership over the next decade to show how successfully Addington established a position of unquestioned impartiality.[262]

"Such Horrid scenes of Murther": Hatsell, Ley and the French revolution

In domestic terms, the start of the 1790s seemed to be a period of stability and prosperity.[263] In January 1792, Pitt told Hatsell that that year's session would be

258 Ziegler, *Addington*, pp 60–62.
259 *Hatsell Papers*, p 79.
260 *Hatsell Papers*, pp 79–80.
261 *Hatsell Papers*, p 90.
262 *Hatsell Papers*, p 90, fn 167; Henry Addington, *HoPT*, 1790–1820.
263 See, for example, the letter which Hatsell cites from January 1791: *Hatsell Papers*, p 214.

very short because "he has nothing to propose to Parlt". Ley told his brother that "The Produce of the Country is immense".[264] The next day he reported on proposals for "the taking off taxes", further debt payments and reductions in the size of the Army and Navy.[265]

However, this sense of stability was about to be challenged by developments in France, which both Hatsell and Ley followed closely. While staying in Bath in the autumn of 1789, Ley listened attentively to the stories from French noble refugees, reporting that one family "are in great distress, & augur very ill of the affairs of their Country".[266] Hatsell read *Le Moniteur* for reports on proceedings of the successive legislatures and wider developments as the revolution progressed, and lamented occasions when he lost access to this newspaper "from whence I us'd to receive so much entertainment & *instruction*".[267] Ley similarly followed reports of developments in France, which in June 1791 seemed to him "hardly credible".[268] Hatsell also relied on accounts by British travellers to France, including his stepson Newton Barton, who was in Paris in the autumn of 1791 and witnessed "all these extraordinary Exhibitions".[269]

In November 1790, Hatsell was an early reader of Burke's *Reflections on the Revolution in France*. While he considered the work overlong—"much of it might have been spar'd"—he made clear (in the same letter to Addington in which he advised Addington to guard against perceptions of partiality) his sympathy for its critical and conservative interpretation of events in France:

> "I have been wonderfully amus'd & inform'd by Burke's Pamphlet … His attack upon the two Societies & his observations upon proceedings of the French assembly, appear to me full of Sound Philosophy, true Politicks, express'd with great wit & powers of Eloquence."[270]

On 15 April 1791, Fox had made a speech praising the French Revolution in extravagant terms, leading to expectation of a showdown between Fox and Burke.[271] Hatsell wrote to Ley suggesting that recent developments in France, including the King's imprisonment, "will afford new arguments for Burke's speech on Friday"—the occasion on 6 May when the final schism within the

264 DHC, 63/2/11/14, Ley to Henry Ley, 31 Jan. 1792.
265 DHC, 63/2/11/14, Ley to Henry Ley, 1 Feb. 1792.
266 BAS, L 30/15/33/12, Ley to Robinson, 1 December 1789.
267 *Hatsell Papers*, pp 83, 84, 86.
268 BAS, L 30/15/33/14, Ley to Robinson, 27 June 1791.
269 *Hatsell Papers*, p 83.
270 *Hatsell Papers*, pp 80–81. Burke's attack was not only on developments in France, but also on "the solemn public seal of sanction they have received from two clubs of gentlemen in London, called the Constitutional Society and the Revolution Society".
271 Bourke, *Empire & Revolution*, p 765.

former Rockingham Whigs was exposed for all to see.[272] In early October, Hatsell reported with pleasure to Addington how Newton Barton's experiences in France had changed his political outlook from one of sympathy with the aims of the revolution to one of antipathy: "From a Democrat, that he went over, what he has seen & heard, has made him a violent Aristocrate".[273] Hatsell saw no prospects for the emergence of a stable constitutional monarchy in France:

> "there can be no settled Government, where, if The Executive Power exerts itself at all, The Spirit of Republicanism is spread too widely not to be too strong – & if the King & His Ministers sit still, Confusion will necessarily follow, & They will be accus'd of purposely refusing to carry the new Constitution into effect."[274]

On 1 July 1792, Hatsell wrote to Ley expressing optimism that the revolutionary regime was about to collapse: "What is to prevent the Austrians & Prussians from being at the Tuilleries, by the end of this month?"[275] Although these hopes were dashed, he still speculated in August that divisions among the revolutionaries between moderates and Jacobins would mean that "the next post from Paris will probably bring the news of some very extraordinary events".[276] By October that year, he was forced to acknowledge to Ley that French military successes have given them an "apparently brilliant situation" and went on:

> "It is well We have the Sea between us, or they might find as good reasons for marching hither, as into Savoy or to Geneva."[277]

The following month, he expressed concern that the French were better equipped to finance a war than the British due to the confiscation of the property of "all they chuse to call Emigrants".[278] In December 1792, Ley heard reports of developments in France with growing dismay. On 11 December, he told his brother "There is a Report which is rather believed by some that the K of F was beheaded or put to Death".[279] Although this rumour proved false, further reports came Ley's way:

> "People thought that yesterd^{y} was app[ointe]d for the K of Fr.^{s} ~~Execution~~ Murder. Good God — How it Shocked me — & everyone — They all seemed to Shudder at it and all spoke in despair on y^{e} Subject."[280]

272 *Hatsell Papers*, p 82; Norman, *Burke*, pp 144–145; Bourke, *Empire & Revolution*, pp 765–766; Lock, *Edmund Burke:Volume II*, pp 372–373.
273 *Hatsell Papers*, p 83.
274 *Hatsell Papers*, p 84.
275 DHC, 63/2/11/1/46, Hatsell to Ley, 1 July 1792.
276 *Hatsell Papers*, p 84; DHC, 63/2/11/1/47, Hatsell to Ley, 6 August 1792.
277 *Hatsell Papers*, p 85.
278 DHC, 63/2/11/1/53, Hatsell to Ley, 28 November 1792.
279 DHC, 63/2/11/14, Ley to Henry Ley, 11 Dec. 1792.
280 DHC, 63/2/11/14, Ley to Henry Ley, 15 Dec. 1792.

On 20 December, Ley wrote optimistically about the changing mood of the House, telling his brother that "every day produces something more wonderful than the former". He was particularly delighted to report that Fox had spoken in favour of preparation for war and indicated sympathy for "the unfortunate King" of France.[281] However, the following day his mood had changed completely, because "it was decided unanimously" by the House "to do nothing with respect to the present situation" of Louis XVI.[282] In 18 January 1793, Hatsell wrote to Ley from London that "Everything here looks like War, except the Stocks, which continue rising".[283] Although Hatsell remained sceptical as to whether restoration of the monarchy should be a British war aim,[284] he was blunt in his assessment of the revolutionary regime during the Terror:

> "Such Horrid scenes of Murther, & every species of irreligious & blasphemous Wickedness, exceeds all sorts of speculation; & what is, to me, most alarming, holds out no period of expectation, when the Civilis'd Nations of Europe, may look forward to scenes of Peace & Happiness, from these very wild & more than barbarous Savages."[285]

Ley also became increasingly forthright in his views to a wider range of correspondents. After the first incursion of Allied forces into French territory from Flanders in April 1794, Ley wrote to Burke: "I send you many Congratulations on our late important successes—and that some breach has been made in y^{e} Frontier, or steps taken for that purpose."[286] These successes proved short-lived, with French armies driving the Austrians, British, and Dutch beyond the Rhine, occupying Belgium, the Rhineland, and the south of the Netherlands by that summer. In September, Ley wrote to Addington that "I am by no means unmindfull of the late disasters that I observe with the greatest regret". He went on to some hope for progress: "Our Enemies however, seem by their Conduct to be giving us every advantage, except in the field".[287]

The strong opinions of Hatsell and Ley are all the more striking for the departure they represent from the sense of distant impartiality during the earlier part of the 1780s. Having welcomed the advent of Fox and his allies to government at the time of the Rockingham administration, Hatsell became sharply critical of political radicalism and those who supported the revolution

281 DHC, 63/2/11/14, Ley to Henry Ley, 20 Dec. 1792.

282 DHC, 63/2/11/14, Ley to Henry Ley, 21 Dec. 1792: second letter of this date, timed at 5.00 pm.

283 DHC, 63/2/11/1/54, Hatsell to Ley, 18 January 1793.

284 *Hatsell Papers*, pp 88–89.

285 *Hatsell Papers*, pp 89–90.

286 SCA, WWM/Bk P/1/2966, Ley to Burke, 24 April 1794. See the dispatch from the Duke of York from Cateau which reached London on 22 April: *The Times*, 23 April 1794, p 3.

287 DHC, 152M/C/1794/OZ/10, Ley to Addington, 13 Sept. 1794.

in France. In November 1792, having seemingly been assured by Ley of the strength of support for the administration in Devon, Hatsell replied: "I wish every County was like Devonshire — but I fear that in Ireland, Scotland, the Manufactur[g] parts of York[shr] & particularly in London, there is a very different spirit rising".[288] He was convinced that the Whig Opposition must disown "the French Principles".[289]

"Much mischief has already been done": Hatsell, Ley and the new conservatism

There was a significant element of conservatism apparent in Hatsell's writings from the outset of his career. However, in the 1770s and 1780s, his use of established practice as a basis for action was limited and purposive. One of the key lessons from his study of precedents was that past practice was inconsistent. He did not simply set out uncritical lists of precedents as the basis for action. He sifted them based on his own understanding of the basis for orderly and effective proceedings, identifying bad precedents not to be followed, as well as changes in practice that represented improvements. The concept of improvement also underpinned his commitment to codification, for example in relation to Standing Orders on private bills.[290] Hatsell's commitment to the procedural status quo was generally couched in the specific context of the need for certainty and a rules-based system in order to avoid political controversy arising unnecessarily:

> "If the maxim, 'Stare super vias antiquas' [to stand upon the old ways] has ever any weight, it is in those matters, where it is not so material, that the rule should be established on the foundation of sound reason and argument, as it is, that order, decency, and regularity, should be preserved in a large, a numerous, and consequently oftentimes a tumultuous assembly."[291]

However, by the 1790s, it is possible to detect a distinct hardening in Hatsell's attitudes, a new conservative, even reactionary edge. This can be illustrated by examining two matters—the presence of women during debates and the conduct of a division on 29 February 1796—the second of which also provides the most sustained insight into Ley's procedural thinking.

There is consistent evidence for most of the eighteenth century for the attendance of women in the galleries of the Commons.[292] On one occasion in

288 DHC, 63/2/11/1/53, Hatsell to Ley, 28 November 1792.

289 *Hatsell Papers*, p 90.

290 *Hatsell Papers*, pp 8–9; P J Aschenbrenner, *British and American Foundings of Parliamentary Science, 1774–1801* (Abingdon, 2018), pp 13–17.

291 *Members/Speaker* (1781 edn), p 138.

292 Thomas, *House of Commons*, pp 148–149; P Seaward, "Duchesses in the Gallery: women watching the eighteenth-century House of Commons", History of Parliament blog, 31 May 2018.

1778, a gallery was, as Hatsell later put it, "filled with ladies", around 60 in number, and including the Speaker's wife. When a Member objected that they did not respond to an initial call for strangers to withdraw, this produced what Hatsell called

> "a violent ferment for a long time; the ladies shewing great reluctance to comply with the orders of the House; so that, by their perseverance, business was interrupted for nearly two hours".[293]

In 1782, Charles Moritz noted that visitors to the galleries included "not unfrequently, ladies".[294] When rules against female attendance were enforced, a number of women attended debates by dressing in men's clothing, including the duchess of Gordon.[295] She was also at the forefront of a campaign to secure a right of attendance, for which she claimed the support both of Pitt and the rising young Whig politician Charles Grey.[296] In October 1790, when Hatsell was enjoying an otherwise civilized house party with the duchess and her daughters, he reported to Addington:

> "Her Grace made a violent attack upon me as an Enemy to the admission of Women into the H[s] of C[s] But I avow'd my very decided opinions upon the subject. I could not; however; convince Her of the impropriety of it."[297]

Although the duchess told Hatsell she was convinced "she shall still carry her point", Hatsell "ventur'd to offer a Wager that She would be mistaken".[298] Hatsell's confidence may well have been based on knowledge that Addington shared his opposition to the admission of women and enforced the prohibition more systematically than some predecessors.[299] Hatsell increased his own chances of winning the wager by using the new 1796 edition of his *Precedents* to set out the rationale as he saw it for his decided opinions. He noted that since the incident of 1778 "ladies, many of the highest rank, have made several very powerful efforts to be again admitted", but argued that if such a privilege were "allowed, to any one individual, however high her rank, or respectable her character and manners, the galleries must be soon opened to all women, who, from curiosity, amusement, or any other motive, wish to hear the debates". He argued that this would make attendance difficult for "many young men" whose attendance was "necessary to them and of real use and importance to

293 *Members/Speaker* (1796 edn), p 172, n 1; Thomas, *House of Commons*, p 149.

294 Thomas, *House of Commons*, p 149.

295 S Richardson, "Parliament as Viewed Through a Women's Eyes: Gender and Space in the 19th-Century House of Commons", *Parliamentary History* (2019), pp 119–134, at p 121.

296 *Hatsell Papers*, p 78; Richardson, "Parliament as Viewed Through a Women's Eyes", p 121. Grey's cousin Margaretta was a frequent attender of debates, dressed as a boy.

297 *Hatsell Papers*, p 78.

298 *Hatsell Papers*, p 78.

299 *Members/Speaker* (1796 edn), p 172, n 1.

the publick".[300]

The second example relates to the conduct of divisions. Late in 1795 and in early 1796 Pitt had come under attack over the generous commission paid to contractors for government loans. On 29 February 1796, a motion of censure against Pitt was moved, accusing him of "fraud and collusion" in the mismanagement of such loans. Pitt had agreed to postpone a tax bill to allow time for the debate, probably sensing that support for the motion was limited, that the main advocate of the case was unpopular and that it was time to lance the boil of criticism over the matter.[301] There seemed to have been little doubt that the motion of censure would be roundly rejected. After Speaker Addington declared that the Noes had it, Sir William Young, a supporter of the Ministry, forced a division by shouting Aye. Only 8 Members and two Tellers voted for the motion, but it also became apparent that Young had voted with the Noes. Charles Grey raised a point of order, alleging that Young's conduct was "disorderly". There then followed "a very pointed conversation", after which Addington asserted that what Young had done was "unbecoming, and inconsistent with the rules and practices of the House".[302] In so ruling, Addington almost certainly had in mind Hatsell's account of Onslow's characterisation of a previous such instance as

> "a very unparliamentary proceeding, in dividing the House for the sake of a division only; whereas the old rule, and practice too, were, that the House should be divided only when the Speaker's determination upon the voice was wrong, or doubtful, and thought to be so by the Member calling for the division, as the words then used imply.—For when the Speaker has declared for the Yeas or Noes, upon the cry, the Members, who would have the division, say, 'The contrary voice has the question'."[303]

However, both Pitt and Young, during the exchanges, had asserted the right of any Member to create a division, regardless of how they then voted:

> "Mr. Pitt's argument was that the right turned not upon a contradiction of the Speaker's declaration, but upon a right to ascertain the numbers, which could only be done by denying the Speaker's assertion; that in practice the minority, when they divided the House, never professed to believe that they were the majority, and that the practical utility required that the House and

300 *Members/Speaker* (1796 edn), p 172, n 1.

301 *The Parliamentary Register*, Series 2, Vol 44 (1796), pp 117–191, 194–212; *HoPT*, 1790–1820, Joseph Jekyll and Walter Boyd.

302 *The Parliamentary Register*, Series 2, Vol 44, p 212; CJ (1795–96) 450–451; C Abbot (Lord Colchester), ed, *The Diary and Correspondence of Charles Abbot, Lord Colchester: Speaker of the House of Commons 1802–1817* (London, 1861, 3 vols) (hereafter *CDC*), I.38–39; *HoPT*, 1790–1820, Sir William Young.

303 *Members/Speaker* (1781 edn), p 132, fn 1.

> the public should be enabled to see and estimate the proportion of assents and dissents expressed upon any question."[304]

Perhaps disconcerted by Pitt's willingness to contradict his position, Addington sought assurance on the matter. It is evident from Ley's account that he was present in the Chamber at the time, and he also spoke to Addington the following morning before he wrote. Hatsell had another engagement that morning, and so set down his opinion in writing only.[305]

Ley began his letter, which comprised 11 densely written pages, by stating that his feeling at the time was that what transpired was "highly improper", because he recollected that previous attempts to force a division in this way were "deemed irregular, and in every instance had met with the marked disapprobation of the House". Having then reflected further, he was reinforced in his view that Addington's opinion "expressed the true Rule & practice of the House". In support of that contention, he cited Onslow's words as reported by Hatsell. He also observed that the "present occasion" was an even clearer breach of the rule embodied in Onslow's dictum, because that related to the claims of minority to a division, rather than claims by supporters of the majority. Ley then proceeded to set out, in quite striking terms, why he believed that the claims of Pitt and Young were unacceptable. He claimed that attempts to force a division in this way had "in all Cases universally been not only disapproved, but, if I may say so, has revolted the feelings of the House". In most of the few such attempts he could remember in his "many years" in attending the House, "the attempt was immediately discountenanced and abandoned". On the one occasion when a supporter of the majority had successfully brought about a division, "the tumult & Confusion occasioned by it in the House is hardly to be described". Ley thought it likely that the Member concerned had been compelled to vote with the minority, but he was certain that "both Majority & Minority were equally disgusted with the part he has taken".

Next, Ley sought to address the nature of the rules of the House. Apparently, those who had denied that Young's action was contrary to order had pointed out that there was no order of the House governing the matter. Ley thought that such assertions were based on an "Error" which was a "very prevailing one" amongst "Ordinary Members of Parlt". Ley argued that in fact the rule observed by Addington was no less a Rule of the House for being unwritten:

> "proceedings are regulated and governed by laws not written, as well as by written Laws, which are usually called their Standing Orders. Nay, the first of these contain the Subject Matter on which the others operate, as Statutes are made for the purpose of abridging, extending & altering the Common Law."

304 *CDC*, I.39.

305 DHC, 152M/C1796/OZ16, Ley to Addington, 1 March 1796; *Hatsell Papers*, p 99.

He then addressed the question of "where this unwritten Law" was to be found:

> "I answer, just as you find the Common Law of England.—The law and the practice of all Courts, are derived from the Nature and Objects of their institution—They exist in the received and acknowledged usage—In the opinions of grave & learned men, whose Duty has led them to understand the subject."

He argued that references to rules in the Journals of the House did not generally represent instances of a rule being made, but rather of the House acknowledging the force of an existing rule.

Ley also addressed another suggestion, namely that it was the consistent practice for a minority in the House to force a division "knowing themselves to be so", and that the current instance was really just an extension of that principle.[306] This suggestion appears to have been advanced by Pitt.[307] Ley argued that, strictly speaking, the minority in such a case was "guilty of a breach of the Rule", but it was in practice impossible to prevent such irregularity, which the House therefore acquiesced in. More importantly, this was not what had happened in the current case, because the division had been caused by a Member who then formed part of the majority.

Ley then turned to the political heart of the case made by Pitt and Young, namely "That the House and the Country should know what the numbers are upon every Quest[n] decided by the House". On this issue, Ley was conscious that there might be an argument from utility for changing the Rule of the House, and he therefore rejected such a methodology:

> "A better course cannot be taken than to appeal from our imaginations, to the wisdom & experience of former times, because hasty alterations, however light they may appear, may possibly be attended with the most important Consequences".

Ley observed, probably alluding to the situation with regard to parliamentary reporting after 1771, that the Commons, unlike the Lords, had ceased to behave like a Secret Council "within these very few years". He thought that this represented "a great alteration in the nature of our Constitution", and that it was too early to tell whether this change was "likely to prove beneficial or not". He then went on to argue:

> "The House of Commons are not deputies but represent the people, that is, they are the people themselves—Their Votes are expressed by their Voice, which is fixed as declared by the Speaker unless contradicted by rectifying his Mistake. But the Voice is the Vote, which is not, once in a thousand times,

306 DHC, 152M/C1796/OZ16, Ley to Addington, 1 March 1796.
307 *Hatsell Papers*, p 97.

> declared erroneously. In which case, not only the people at large, but the House itself does not, cannot know, the numbers on each side—Nor is it of any importance that they should know them, because the Act is of the same Validity and Effect whether Voted by a Majority of one, or a hundred."

He then went further, claiming that actually knowing the result of a division was "mischievous, & every thing sh[d] be done to prevent it". To justify his case for suppressing popular knowledge of divisions, he suggested that it might encourage disobedience: if it became known that a Bill was only passed with a small minority, "it could only have the Effect of exciting discontent ag[t] that which must be acquiesced in, and cannot be resisted". He accepted that, for over a century, the House had intermittently chosen to publish its Votes, but these were "the result of their proceedings, not the proceedings themselves". He reluctantly conceded that, on occasions, the House had directed for the result of a division to be included in the Votes, but this "seems liable to great Objection", because it could be held to reinforce the proposition that some decisions had greater force than others.

There was one final argument that Ley felt it necessary to reject, namely "that the Constituents should know the Votes of their Representatives, that they may know for whom to give their Voices at the next Election". Such a proposition would rely upon the names as well as the numbers of those voting becoming "matters of public Notoriety". He referred with relish to a former era when those who published the outcomes of votes were committed to Newgate. Although this was no longer the practice, any publication of information about the business of the House should be done

> "with Circumspection and with a trembling hand, lest, in the stripping off … a Rent should be made in the substance and body of the Con[s]t[ution] itself. Of all things there is most to be apprehended from the Spirit of innovation an[d] improvement."[308]

In comparison with Ley's letter, Hatsell's reply was couched in moderate terms, but the kernel of his argument was similar, and his antipathy towards innovation just as apparent. He began by confirming that Young's conduct was "irregular & indecorous", recalling the citation from Onslow already referred to. He was dismissive of the case mounted by Young and Pitt:

> "The meaning of a division in the H[s] of C[s] is not to satisfy the curiosity of any number of persons within doors, or for the information of those without, but to ascertain, on which side the Majority of Voices really is."[309]

Like Ley, he linked his understanding of the basis of rules linked to common law to deny Young's claim:

[308] DHC, 152M/C1796/OZ16, Ley to Addington, 1 March 1796.
[309] *Hatsell Papers*, pp 96–97.

> "The rules, by which the H^s of C^s itself, or the individual Members ought to conduct themselves, can only be known from the establish'd practice of the H^s on similar occasions—The practice of the House gives the right of acting in particular cases, & constitutes the Law of proceeding—I believe it is a maxim at the Common-Law, 'that, where no right has ever been claim'd, it is a good presumption, that no such right exists' This is the case here."[310]

Hatsell found a new basis on which to dismiss any claim of justification by reference to the recent practice of the House. Any exceptions in fact "prove the rule". In one exceptional case, the Member concerned was forced to vote with the minority: "And, as to the others, I forget what they were, but I suppose they were of Young Men, not supported but reprobated by the opinion of the Older Members of the House, who, from experience, were better vers'd in what had been the practice of the former times."[311] Any suggestion that a "uniform practice of 200 Years" should be overturned arose from a belief that "this generation is so much wiser than those which have gone before them".[312] He could see no basis for thinking that "the present generation should have become on a sudden so enlighten'd as to set at nought & contradict the practice of their Ancestors, only because they *cannot foresee* any inconveniency, which may arise from the change".[313] Making explicit his sense of a connection between procedure and the greater stage of politics, he argued:

> "It is upon this principle of reform, exercis'd indeed in greater & more important matters, that much mischief has already been done to this Country; &, from the same principle, I fear much greater mischief is likely to happen … In cases, where a practice has obtain'd, & has been long & uniformly establish'd, & from which no inconveniency whatsoever has arisen, but, on the contrary much good perhaps, I should think it dangerous in matters of importance, & not wise in subjects of less importance, to depart from this practice, from a presumption that those, who for ages have conform'd to this rule, had less wisdom & understanding than ourselves."[314]

Conclusions

Those considering the careers and writings of Hatsell and Ley owe an immense debt to the research and writings of Orlo Williams. As he wrote, examining Hatsell's correspondence enabled him to be present as "a far more interesting person" than was apparent from contemporary appreciations

310 *Hatsell Papers*, p 97.
311 *Hatsell Papers*, p 97.
312 *Hatsell Papers*, p 98.
313 *Hatsell Papers*, p 98; emphasis in original.
314 *Hatsell Papers*, p 98.

at the time of his death. Williams described Hatsell as a person "of firm and sound views on contemporary politics and politicians" and "a fluent and lively correspondent".[315] Referring to the letters available in various collections, Williams wrote that "I cannot help hoping that, at some future time, it may be possible to produce an edition of Hatsell's letters".[316] The hope expressed by Orlo Williams in 1954 has now been fulfilled, and the published papers draw also on letters to which he did not have access as well as Hatsell's Memorabilia.[317]

If the publication of Hatsell's papers strengthens the case for Williams's assessment of Hatsell the correspondent, the present article seeks to revisit another, less flattering, verdict on Hatsell's *Precedents*, shared by Williams and other historians. Thus, Sheila Lambert is critical of Hatsell for an approach based on piling "precedent on precedent" and for never fulfilling his promise to produce a volume on legislative procedure.[318] Hatsell himself was clear that he made no claim to have written a manual or treatise on the passage of Bills,[319] and the absence of such a structure has encouraged the use of Hatsell's *Precedents* principally as a source book to be mined for individual precedents and the occasional observation. This approach was pioneered by Erskine May, who diminished his acknowledged reliance on Hatsell in successive editions.[320]

There is no gulf between Hatsell the keen observer of court and parliamentary politics on the one hand and the published writer on the other. His writings are infused and shaped by his keen sense of contemporary developments and their constitutional importance, sharpened by his exchanges with his correspondents.

As a correspondent and as a colleague in the service of the House, John Ley played a critical role in the development of Hatsell's thinking. From the turmoil of popular politics in the late 1760s to the upheavals of the French revolution, they shared both experiences and political opinions. During this period, Ley was an important sounding board, and someone with whom Hatsell could share the hardships of professional life and the consolations of social life. By considering Ley's remarkable letter to Addington of 1 March 1796, this article also shows how Ley was a kindred spirit, who probably strengthened Hatsell's growing procedural and political conservatism in the 1790s.

Hatsell understood and engaged with the challenges of contemporary politics. He understood that procedure and practice were not abstract, or a

315 Williams, *Clerical Organization*, pp 82–83.

316 Williams, *Clerical Organization*, p xiii.

317 *Hatsell Papers*, pp 10–13.

318 Lambert, *Bills & Acts*, p 28.

319 *Hatsell Papers*, p 156. On this theme, see also P Seaward, "Parliamentary Law in the Eighteenth Century: From Commonplace to Treatise", in P Evans, ed, *Essays on the History of Parliamentary Procedure In Honour of Thomas Erskine May* (Oxford, 2017), pp 97–114.

320 See, for example, *Hatsell Papers*, p vii.

technical exercise for parliamentary officials, but had value and importance because of how they shaped and were shaped by actions on the greater, political stage. Although his conception of the constitution was highly conventional, he demonstrated how parliamentary practice served a political and constitutional purpose. As he himself wrote:

> "if it shall be thought, that these publications have in any degree contributed to the better observance of the Rules and Orders of the House of Commons; or, that this Work throws any new light upon the History and true Principles of the Constitution of this Government, it will have answered every purpose for which it was intended."[321]

321 *Lords/Supply* (1785 edn), pp vii–viii.

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Condolence motion on Australian bushfires

On the first sitting of the year, the Prime Minister moved a motion of condolence in relation to the devastating bushfires across Australia over the summer. The motion acknowledged the loss of life and the destruction of homes and wildlife, and honoured the contributions of fire-fighters, emergency services personnel and Australian Defence Force personnel. The Leader of the Opposition seconded the motion and debate continued for the remainder of the day, the House having resolved that the debate take precedence over all other business. As a mark of respect, the House adjourned at an earlier time than usual.

The condolence motion was debated in the Federation Chamber, from the next day and over a number of days, and on return to the House, was carried on 12 February, with all Members present rising in silence. In total, 117 of the 151 Members spoke in support of the motion.

Address by President of the Republic of Indonesia

The President of the Republic of Indonesia, His Excellency Mr Joko Widodo, addressed Members and Senators in the House of Representatives chamber on 10 February, following welcoming remarks by the Prime Minister and Leader of the Opposition. President Widodo spoke in Bahasa Indonesia, the official language of Indonesia, with all those present listening to an English translation through headsets.

Consistent with practice, the address took place as a sitting of the House to which Senators were invited as guests.

Presentation of the Budget delayed

The presentation of the Budget, scheduled for 12 May, was delayed until 6 October due to uncertainties around the economic impact of COVID-19. As an interim measure, three supply bills were passed in March, to ensure funding for the continuation of parliamentary and government programs and service delivery would extend for seven months of the financial year starting on 1 July.

Senate

50 years of Senate committees

On 11 June, the President of the Senate made a statement to mark the 50th anniversary of the contemporary Senate committee system. He noted that Senate committees had produced around 120 reports in the 69 years before the

establishment of the modern committee system and more than 5,500 reports since then.

In recognition of this milestone, a digital archive and an online visualisation of the work of Senate committees titled Navigate Senate Committees was launched by the President in December.

Ruling on orders for documents

In support of the Senate's role to scrutinise legislation and the performance of the executive, Standing Order 164 provides that documents may be ordered to be "laid on the table" of the Senate. The power to require the production of documents is established under section 49 of the Constitution.

Orders for documents usually specify a time by which the documents are to be produced. A senator, after question time on any day in the Senate, may seek an explanation of, and initiate a debate on, any failure by a minister to respond to an order for documents within 30 days after the documents are due. As the provision to seek an explanation of a minister's failure to comply with an order for documents had been seldom used since its inclusion in the standing orders in 2005, its interpretation had not been the subject of any rulings.

The first ruling was made on 25 August when the President ruled that the process is not available if a minister has apparently complied with the order. The President indicated that compliance includes circumstances where the response from a minister is that no document within the terms of the order exist. The President noted that although the standing order does not provide a means for determining any disagreement over its interpretation, there are other Senate procedures that senators can use to further pursue such matters.

Australian Capital Territory Legislative Assembly

Parliamentary Partnership Agreement with Prince Edward Island Legislature—Renaming of committee room

On Thursday 13 February 2020 the Speaker presented a report outlining the Parliamentary Partnership Agreement which had recently been signed between the Speakers of the Legislative Assembly for the Australian Capital Territory and Prince Edward Island, Canada. The report also provided information to the Assembly on visits to the Nova Scotia and British Columbia Legislatures in November 2019 by the Speaker and the Clerk. One of the Assembly's two committee rooms was named the Prince Edward Island Room (it had previously been called Committee Room 1). The Assembly now has two committee rooms – the Kiribati Room and the Prince Edward Island Room reflecting the agreements it has with other parliaments.

Imputation and reflection on impartiality of Speaker

Following the posting of a video on social media which contained footage taken inside the building and which was being used for electioneering purposes, and a subsequent post from the same member which reflected on and questioned the impartiality of the Chair, the Speaker, on 2 July 2020, made a statement asking the member to withdraw any imputation and to delete the videos that breached the Assembly's broadcasting guidelines. The member withdrew the imputation, but indicated that he would seek advice before deleting the (TikTok) videos.

Later, having obtained leave to make a statement, the Member apologised for breaching the broadcasting guidelines and advised the Assembly that he had deleted one of the videos which contained footage taken inside the precincts, but was still waiting on advice concerning the second video. The Speaker indicated that he must delete both videos, and thereupon named the Member, who was subsequently suspended from the Assembly for three sitting hours.

Prior to the Member re-entering the Chamber after three sitting hours, the second offending video was deleted.

Possible structures of the committee system for the 10th Assembly

On 20 August 2020 the Speaker (as Chair) presented Report No 17 of the Standing Committee on Administration and Procedure entitled "Inquiry into possible structures of the Committee system for the 10th Legislative assembly". The report contained nine recommendations including:

- all Bills presented to the Assembly be automatically referred to the relevant committee for inquiry and report within two but not later than six months, with the proviso that the committee could decide not to undertake an inquiry;
- extra resources should be provided to committees if all bills are referred;
- as a general rule, MLAs should not serve on more than two committees, no more than eight standing committees should be established, only one select committee should operate at any one time, and there is a presumption that matters referred by the Assembly be referred to standing committees, not select committees, and that there be no sub-committees established;
- the 2020-21 budget be referred to standing committees as a trial (to be reviewed by at the completion of that process), and no select committee on estimates established; and
- the Public Accounts Committee concentrate solely on Auditor-General reports (the committee identified that only four out of some 40 Auditor-General reports were reported on by the PAC in the 9th Assembly).

When the 10th Assembly established general purpose standing committees on 2 December 2020, most of the committee recommendations were adopted.

Acknowledgement of country in Ngunnawal Language by Speaker

In accordance with a resolution agreed to by the Assembly, the Speaker, on Thursday 30 July 2020, made an acknowledgement of country in the Ngunnawal language, and the following entry appeared in the Minutes of Proceedings:

"The Assembly met at 10 am, pursuant to adjournment. The Speaker (Ms J. Burch) took the Chair and made the following acknowledgement of country in the Ngunnawal language:

Dhawura nguna, dhawura Ngunnawal.

Yanggu ngalawiri, dhunimanyin Ngunnawalwari dhawurawari.

Nginggada Dindi dhawura Ngunnaawalbun yindjumaralidjinyin.

This is Ngunnawal Country.

Today we are gathering on Ngunnawal country.

We always pay respect to Elders, female and male, and Ngunnawal country."

The Speaker asked Members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

The Speaker made a statement to mark the occasion, and the Chief Minister, the Leader of the Opposition and the Leader of the ACT Greens also made statements.

In the lead up to the acknowledgement that Speaker sought advice from the Ngunnawal Elders Council and undertook specialist linguistic training. It is intended that the words will be said by the Speaker on each sitting day. The Deputy Speaker and the Assistant Speakers have all undertaken the same training.

Highest number of women elected

On Tuesday 3 November 2020 the 25 Members elected at the Territory election on 17 October 2020 were sworn in before the Chief Justice of the Australian Capital Territory. Of the 25 members elected, 14 (56 per cent) were women MLAs.

Due to COVID-19 requirements only the eight newly elected MLAS were allowed to bring two guests each into the Chamber to witness the swearing in ceremony, with other guests returned MLAs watching the proceedings on TVs in the building or on the internet.

At the first sitting Ms Joy Burch, MLA was elected unopposed as Speaker, and the Assembly then elected Mr Andrew Barr, MLA (ALP) as the Chief Minister. In the days leading up to the first sitting Mr Barr (who had 10 of his party member elected, down from 12 in the previous Assembly) announced that he had signed a Parliamentary and Government Agreement with the Leader of the ACT Greens (Mr Rattenbury—who had six MLAs elected, up from two in the last Assembly). As part of that agreement there would be nine Ministers for the Territory appointed (the first time that has occurred, with six spots held by

ALP members and three spots held by Greens members).

The Leader of the Opposition was also appointed with her consent (Ms Elizabeth Lee, MLA—who had nine MLAs elected, down from 11 in the last Assembly). She also announced that her Deputy would be Mrs Giulia Jones, MLA. This is the first time that the Leader of the Opposition and the Deputy Leader of the Opposition positions had both been filled by women MLAs.

New South Wales Legislative Council

Condolence motion—2019-20 Bushfire Season

When the Houses resumed after a devastating summer of bushfires, usual business was suspended and a motion debated expressing condolence to the families of those who tragically lost their lives during the bushfire season, honouring the sacrifice of fire fighters who lost their lives and acknowledging the devastation caused by the fires.

Parliamentary Compliance Officer

The NSW Parliament is currently considering a proposal to establish a Parliamentary Compliance Officer. The Parliamentary Compliance Officer would expeditiously and confidentially deal with 'low level, minor misconduct matters' involving members, including bullying and harassment.

A draft resolution establishing the position, brought forward by the President and the Speaker, was referred to the privileges committees of both Houses in November 2020 for inquiry and report. Further information regarding the resolution and progress of the inquiry is available on each committees' website.

Capital works and digital parliament

The NSW Parliament has embarked on an extensive program of capital works and digital transformation. Supported by additional funding from Treasury, a wide range of projects have commenced which will deliver major improvements to precinct accommodation and facilities, heritage works, audio-visual systems and digital connectivity.

Digital transformation is focused on developing parliamentary information management systems and interactive apps. These projects will improve the systems used for producing House papers, chamber documents and Hansard, as well as developing an interactive and customisable dashboard for members to lodge questions and answers and to access House and committee related information.

In March 2020 the House agreed to a motion for the development of online petitions for the Council, based on the Assembly ePetitions module, which was launched in August 2020. It is anticipated that Legislative Council ePetitions, with minor technological and procedural modifications from the Assembly

system, will be up and running by late 2021.

The Council's power to amend the Parliament's appropriation bill

The Appropriation Bill 2020 and cognate Appropriation (Parliament) Bill 2020 and Payroll Tax Amendment Bill 2020 were considered by the Legislative Council in November 2020, somewhat later in the year than usual due to COVID-19.

The Council returned two of the bills to the Assembly without amendment but returned the Appropriation (Parliament) Bill 2020 to the Assembly with amendments. The amendments sought to implement recommendations of the Council's Public Accountability Committee for a more robust and independent funding model for critical oversight bodies, such as the Independent Commission Against Corruption, and for an independent funding model for the Parliament.

The Assembly disagreed with the Council's amendments and sent the bill to the Governor for assent under section 5A of the Constitution Act 1902, notwithstanding the Council amendments. Section 5A deals with disagreement between the Houses on appropriation bills 'for the ordinary annual services of government'. The section permits the Assembly to send such a bill to the Governor for assent, notwithstanding that the Council has not consented. However, the Council does not consider that the Appropriation (Parliament) Bill is a bill 'for the ordinary annual services of government' and therefore does not accept that the disagreement between the Houses should have been dealt with under this section. In the Council's view, the bill should have been dealt with under section 5B of the Constitution Act 1902. Section 5B provides for the resolution of deadlocks on all other bills introduced in the Legislative Assembly, including all other money bills.

Following the Assembly's rejection of its amendments the Council informed the Assembly by message that it disagreed with its action and advised that it intended to pursue a funding model for the Parliament and the various independent oversight bodies that recognises their independence from the Executive Government.

Scrutiny of delegated legislation

In the last few years the Council has placed a greater focus on the scrutiny of delegated legislation. This has occurred through the establishment of a Regulation Committee, and the disallowance of several statutory instruments by the House.

In 2020, the House disallowed two regulations. The first, the Industrial Relations (Public Sector Conditions of Employment) Amendment (Temporary Wages Policy) Regulation 2020, made in response to the economic impact of COVID-19, implemented a temporary freeze on public sector wages. Following

the disallowance the Government applied to the New South Wales Industrial Relations Commission which ruled that public sector wages would rise by 0.3 per cent rather than the 2.5 per cent annual pay rise that was sought by public sector unions.

The second was the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020 which sought to provide an interim framework for water harvesting during flooding events prior to the introduction of a new licensing regime in 2021.

The regulatory framework for water management in New South Wales is complex, involving both State and Commonwealth governments. When the regulation was made in February 2020, the House referred it to the Regulation Committee and postponed consideration of the motion for disallowance until the committee reported.

Following the committee inquiry, the House agreed to its disallowance, causing the regulation to cease to have affect from the time it was made. A rescission motion moved by the Government, which argued that floodplain harvesting should not be left unregulated, was not agreed to.

Electricity Infrastructure Investment Bill 2020

The Electricity Infrastructure Investment Bill 2020, with the object of supporting the private sector to develop renewable energy infrastructure, was the final piece of legislation debated by the Council in 2020.

The bill was strongly opposed by two minor parties—Pauline Hanson's One Nation Party and the Shooters, Fishers and Farmers Party. Pauline Hanson's One Nation Party drafted and circulated 249 of the 257 proposed amendments to the bill and sought to use a range of procedures to extend the consideration of the bill in committee of the whole including by moving each amendment separately, calling for a division on each question (divisions taking up to 15 minutes under the COVID-19 social distancing rules) and proposing that the committee report progress and sit again at a later time.

The House, on motions moved by the Government sought to hasten proceedings by instructing the committee of the whole to decline to consider any new amendments to those already circulated, to require that certain amendments be moved and debated concurrently, for certain questions to be put as one question and to speed up the division process.

Consideration of the bill occurred over three sitting days, the final sitting day continuing for 32 hours with only short recesses for lunch, dinner and breakfast. At the conclusion of the lengthy debate two amendments (moved by The Greens) had been agreed to.

Council Committees

The Legislative Council Committee office was particularly active in 2020. Despite the impact of COVID-19, by June 2020, the number of active inquiries before Council Committees had reached 23, a record for the Council. Compared with the same point in the previous Parliament this represents a doubling of active inquiries. To cope with the increased workload, the Committee Office secretariat has also expanded considerably.

The nature of inquiry work in the Legislative Council has also changed somewhat. The House is making increasing use of committees to inquire into bills and regulations. In 2020, 12 bills were referred to committee for inquiry and report. By comparison, in previous Parliaments the focus of committee work tended to be on longer policy related inquiries that might extend over 6 or 12 months, or sometimes longer.

These changes in the use and operation of committees in the Council undoubtedly reflect the changing party numbers in the House, with the Government well short of a majority and unable to resist the agenda set for committees by the Opposition and Cross Bench.

Northern Territory Legislative Assembly

Election of the Speaker and Deputy Speaker

On 23 June 2020, the Northern Territory Parliament elected the nation's first Aboriginal Speaker, the Hon. Chanston (Chansey) Paech MLA and Deputy Speaker, Ms Ngaree Ah Kit MLA.

At the 2016 election, Mr Paech was elected to the vast rural seat of Namatjira, bounded by the Queensland, South Australia and Western Australia borders. Named after Albert Namatjira, a pioneer of contemporary Aboriginal art and the first Aboriginal person to be granted restricted Australian citizenship allowing him to vote, the Division is the Territory's third largest at 351,294 km^2. At 28, Mr Paech, of Aranda and Gurindji descent, was the youngest Member elected to the Legislative Assembly. In his maiden speech, he declared: "I am the nation's first openly gay, Indigenous parliamentarian".

Ms Ah Kit was elected to the small urban seat of Karama at the 2016 election. The Division of Karama, encompassing two suburbs in Northern Darwin, has the smallest footprint of all 25 Northern Territory Divisions at just 4 km^2. The Division of Karama has 0.001 per cent of the landmass of the Division of Namatjira, demonstrating the great disparity in the size of Territory electorates.

In September 2020 Ms Ah Kit was appointed Acting Speaker, a role she was subsequently elected to by the Assembly on the first meeting day of the 14th Legislative Assembly in October and a role she continues in.

Resignation of the Speaker—Tabling of the first ever Independent Commissioner Against Corruption Report

On Monday 22 June 2020, the Chief Minister of the Northern Territory called a media conference and distributed copies of an Independent Commissioner Against Corruption (ICAC) investigation report entitled Investigation into the Conduct of the Speaker of the Legislative Assembly. The ICAC in the Northern Territory was established by legislation passed in 2017. This was its first report.

On Tuesday 23 June 2020, the Speaker of the Legislative Assembly, the Hon Kezia Purick MLA presided and announced to the Assembly that she would be resigning in writing to the Administrator of the Northern Territory, made a statement disagreeing with the findings in the ICAC Report, which had not yet been tabled in the Assembly, and left the Chair. The Assembly suspended until the ringing of the bells for the election of a new Speaker.

The investigation report of the ICAC was subsequently tabled by the new Speaker, the Hon Chanston Paech MLA, as his first act in the Chair a little more than half an hour later.

The report was tabled pursuant to section 50 of the *Independent Commissioner Against Corruption Act 2017* which (in part) reads as follows:

"(1) The ICAC may make a report (an investigation report) on an investigation to a responsible authority for a public body or public officer whose conduct is the subject of the investigation.

(6) For an investigation report made to the Speaker or Deputy Speaker, the Speaker or Deputy Speaker must table a copy of the report in the Legislative Assembly on the next sitting day after the Speaker or Deputy Speaker receives the report.

(7) In this section:

responsible authority means:

(b) for a minister or an MLA other than the Speaker – the Speaker; or

(c) for the Speaker – the Deputy Speaker."

Apart from a brief comment by the Chief Minister at the media conference stating that as the responsible Minister he was making the report public, it is unclear why the report was distributed prior to the section 50 tabling.

The investigation report was referred to the Assembly's Committee of Privileges, including questions relating to the Speaker and the Members' Code of Conduct and Ethical Standards.

A number of the recommendations of the report have been the subject of immediate action.

On Friday 17 July, Mr Speaker wrote to all Members to provide information on recommendation number one (see page 49):

"The (Deputy*) Speaker and/or the Clerk facilitate training for all existing and incoming Members on their obligations under the Legislative Assembly

(Members Code of Conduct and Ethical Standards) Act 2008."

The Deputy Speaker referred to in the Report became the Speaker for the remainder of the 13th Parliament.

The then-Speaker advised all Members that given the Report was released on 22 June and a general election in the Northern Territory was due to occur on 22 August 2020, the reality of election campaigning and the dispersion of Members across the Northern Territory during this period meant that training for Members would be conducted after September 2020.

The Code of Conduct and Ethical Standards is established under section 4 of the Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008.

The Code establishes principles of ethical conduct in four categories:

- integrity
- accountability
- responsibility
- the public interest

The Code is intended to be read in conjunction with other relevant laws, the Standing Orders of the Assembly, and any other standards established by the Assembly governing the conduct of Members. Where there is any conflict between the Code and the Assembly's Standing Orders, the Code prevails.

The legislation states that the Assembly may (not must) refer an alleged breach of the Code to the Committee of Privileges, and if the Committee finds a breach, the Assembly may punish the breach as a contempt of the Assembly.

The Role of the ICAC and the Code of Conduct

It appears fairly clear from the investigation report that the ICAC has determined it has an active role to apply the Code to alleged Member actions outside of a Committee of Privileges framework.

The Code has been in existence for more than 12 years; however, prior to Thursday 25 June 2020 there had never been a completed reference by the Assembly to the Committee of Privileges to consider any matters under the Code.

The publication of the ICAC Report has made it very clear that pursuant to the requirements of the ICAC Act any public officer who becomes aware of a potential breach of the Code has a mandatory obligation to report that breach to the ICAC as suspected improper conduct. Section 16 (2) of the ICAC Act defines a public officer to include any Member of the Legislative Assembly as well as any public servant, including an electorate officer and employees of the Department of the Legislative Assembly. Any person in that category has an absolute requirement to report suspected improper conduct to the ICAC.

While a breach of the Code is, according to the Legislative Assembly

(Members Code of Conduct and Ethical Standards) Act 2008, a matter for the Legislative Assembly itself, the ICAC Report clarifies that a suspected breach of the Code meets their requirements to report a suspected breach to the ICAC.

Whereas the procedure for a reference to the Committee of Privileges in the Northern Territory is complex, the reporting to the ICAC is a simple procedure available through their website.

Mr Speaker advised Members that in addition to the proposed September 2020 training for Members on the Code, recommendation two of the Report requires training on the ICAC Act. Madam Speaker is continuing that work.

Status of the Official Opposition

Prior to the Meeting of the Northern Territory Legislative Assembly on 24 March 2020, three previously Independent Members formally formed a political party called Territory Alliance. This new party now had more Members in the Legislative Assembly than the Country Liberal Party (who had two Members), and so became recognised as the official Opposition.

On the Meeting Day of 24 March 2020 the Territory Alliance Members took their places in the Chamber in the seats where the Opposition are located. All forms and documentation used by the Assembly had been amended to reflect that the Territory Alliance were now the official Opposition. During Question Time the new leader of the Opposition was afforded the normal courtesy to ask the first question.

At approximately 7pm that evening, the leader of the Country Liberal Party (the former Opposition) sought leave of the Assembly to move a motion concerning the status of the Opposition. No objection was raised, and leave was granted. The Member immediately moved the following motion:

"That this Assembly:

1. Agrees that the party or group that is the Official Opposition remains unclear;
2. Declares therefore that the office of 'Leader of the Opposition' is vacant;
3. Conducts a ballot, pursuant to Chapter 21 of the Standing Orders, to fill this vacancy;
4. Agrees that a ballot so conducted shall be a choice between the Member for Spillett (Leader of the Country Liberal Party) and the Member for Blain (Leader of the Territory Alliance Party) only;
5. Agrees that the result of the ballot, regardless of the number of Members participating, determines that the party or group led by the successful candidate shall be the Official Opposition; and
6. Agrees that this resolution merely binds the 13th Assembly."

In speaking to the motion the Member used the procedural mechanism of moving that the 'question be now put', which was agreed as the Government,

along with the CLP, voted in favour of this procedure during the subsequent division. The Government supported the CLP during the division on the question that the motion be agreed to. The substantive motion prevailed by 17 votes to three (the Assembly has 25 Members), and the Assembly then proceeded to conduct a secret ballot.

Balloting is a procedure which has always been available to the Assembly, but which is only ever used as part of the procedure to elect a Speaker or Deputy Speaker if these positions are contested. The result of the ballot process in this instance was that nine Members participated, with three supporting the Territory Alliance, five supporting the Country Liberal Party, and one informal vote. As a consequence of this process, the Speaker declared that the leader of the Country Liberal Party (CLP) had been elected Leader of the Opposition, and the CLP had therefore regained their status as the Official Opposition, despite being numerically inferior.

The procedural approach adopted by the leader of the CLP avoided the risk of a failed (no quorum) division on the question of who the Leader of the Opposition was, by ensuring that the final vote on this question was conducted via ballot, therefore avoiding the requirement for there to be a minimum number of Members participating.

By achieving a quorum during the two foregoing division (on the procedural mechanism and the substantive motion) CLP also ensured that they had succeeded in receiving the endorsement of the process by Members of the Assembly, many of whom did not participate in the ballot. In this way, the result of the ballot declared by the Speaker reflected the will of the Assembly.

The terms of the motion passed only applied to the 13th Assembly. On 22 August 2020 a general election was held, where the Territory Alliance failed to win a seat, the CLP won 8 and continues as the Official Opposition.

Points of Order during Divisions—not an opportunity for Debate

During the aforementioned events which occurred during the Meeting on 24 March 2020, two divisions were held in relation to the substantive motion moved by the leader of the Country Liberal Party. During these divisions a number of points of order were raised by Members of the Territory Alliance.

There is a procedure relating to raising points of order during divisions outlined in the House of Representatives Practice (7th Edition, Page 281):

> "While the House is dividing Members may speak, whilst seated, to a point of order arising out of or during the division. Because Members are required to be seated during a division, if a Member wishes to raise or speak to a point of order, it is the traditional practice of the House for the Member to hold a sheet of paper over the top of his or her head in order to be more easily identified by the Chair."

Owing to the fact that in the Northern Territory Members stand on either side at the rear of the Chamber during a division, and do not occupy seats, the Speaker advised Members that there was no need for this practice to be used in the NT.

However, the advice that *decorum should prevail during a division, and it is not in order for Members to engage in debate*, is applicable to the NT Legislative Assembly.

During the divisions on 24 March 2020 there was a notable lack of decorum from Members of the Territory Alliance, with an advisor in the Opposition advisor's box audibly calling to Territory Alliance members to encourage them to engage in debate or raise points of order.

Besides this offending the decorum of the Assembly, the raising of points of order by Members of the Territory Alliance as a vehicle in which to engage in debate was also somewhat redundant. Whilst these points of order sought to place on record the party's objection to the process that was before the Assembly, the House of Representatives Practice is clear that points of order during divisions are not part of the record of proceedings. Under the Standing Orders of the Legislative Assembly of the Northern Territory, Standing Order 1 states:

> "Rulings and interpretation of these Standing Orders is the responsibility of the Speaker or Member presiding in the chair, guided by previous rulings and practices of the Assembly and, if required, the most recent edition of the House of Representatives Practice."

The House of Representatives Practice at Page 281 states:

> *"Remarks made during a division are not regarded as part of the proceedings of the House and are not recorded in Hansard. The Speaker has pointed out to Members that such remarks might not be covered by privilege and that this also has implications for media reports."*

Therefore, on the basis of the authority in Standing Order 1, the text of the points of order and associated debate that occurred during the two divisions was not included in the Parliamentary Record. Therefore, the protestations of the Members of the Territory Alliance Party during the procedures that restored the Country Liberal Party as the Official Opposition went unrecorded.

South Australia Parliament

No confidence in the Speaker

Early in 2020, allegations of inappropriate behaviour were made regarding a Member of the House of Assembly. The Speaker appointed a private investigator to inquire into and provide a report on these allegations. The Member in question was subsequently charged with basic assault by police and the Speaker's investigation was suspended.

During Question Time on 3 March 2020, a Member of the Opposition moved to suspend Standing Orders to enable him to move, without notice, a motion of no confidence in the Speaker for his handling of this matter.

Pursuant to Standing Order No. 402, a motion to suspend Standing Orders without notice requires the concurrence of an absolute majority of the House (24 Members). A division being called for an equal number of members were recorded for the Ayes and Noes. Nonetheless, the Speaker cast his vote with the Noes. As there was a lack of an absolute majority in support of the motion, the Speaker declared the motion defeated and the Member could not proceed with his motion of no confidence.

Resignation of Speaker

On 29 July 2020, the former Speaker of the House of Assembly, the Hon Vincent Tarzia MP, was appointed a Minister having previously resigned as Speaker. As the House of Assembly adjourned on 23 July 2020, with its next sitting scheduled for 8 September 2020, it was expected that the Deputy Speaker would be able to perform the duties of the Speaker during the period of the adjournment. However, on a close reading of the Standing Orders and Constitution Act 1934, there was some doubt as to the role of the Deputy Speaker upon the resignation of the Speaker. Crown Law opinion was sought. The advice was that the provisions of the Constitution Act 1934 and the Standing Orders of the House of Assembly do not authorise the Deputy Speaker to exercise the powers of the Speaker following the former Speaker's resignation.

The Opinion advised that the Constitution Act 1934 provides for circumstances where there is no vacancy in the office of Speaker, but "the Speaker of the House of Assembly is absent in consequence of leave of absence granted by the House, or of illness or other unavoidable cause". In this context it is argued that "absent" means that there is a person filling the office of Speaker (as opposed to there being a vacancy in that office), and the Speaker is not able to be present in person at a meeting or sitting of the House. Similarly, the Standing Orders of the House are consistent with this, dealing with the absence only of the Speaker.

The provisions of the Constitution Act and Standing Orders relating to the Deputy Speaker do not deal with the situation where there is a vacancy in the office of Speaker, as opposed to the Speaker simply not being present at meetings of the House.

Thus, where the office of Speaker becomes vacant at a time when the House is not sitting, there is no means by which a Deputy Speaker may be chosen to act temporarily to perform the duties and functions of the Speaker.

The House of Assembly was without a Speaker from 29 July until 8 September 2020. During that time the Clerk was required to receive, publish and distribute

reports and documents normally received by the Speaker pursuant to section 15 of the COVID-19 Emergency Response Act 2020.

SA Parliament Harassment review and changes to the application of the Equal Opportunity Act SA

In 2020, the South Australian Parliament amended the Equal Opportunity Act 1984 (the Act) to ensure that sexual harassment by one Member of Parliament against another Member of Parliament is now unlawful.

While the Act had been amended in 1996 to make it unlawful for Members of Parliament to subject to sexual harassment their staff, the staff of other Members of Parliament, an officer or member of the staff of the Parliament or any other person who, in the course of their employment performs duties at Parliament House. (s. 87 (6c)), notably sexual harassment by one Member of Parliament against another Member of Parliament was not included in the 1996 amendment.

In her second reading speech the Attorney-General stated that the provisions of the Act to the extent that they excluded sexual harassment between Members of Parliament from being unlawful "no longer reflects community standards around sexual harassment in the workplace and the expected conduct of members of Parliament as leaders in the community"

Further amendments were agreed to, to include sexual harassment by judicial officers against other judicial officers.

On 12 November 2020 both Houses jointly passed a motion to invite the Acting Commissioner for Equal Opportunity to undertake a review into harassment in the South Australian parliament workplace.

The review was scheduled to report back to Parliament in 2021 and make recommendations on:

(a) Any action that should be taken to increase awareness as to the impact of harassment and improve culture, including training and the role of leadership in promoting a culture that prevents workplace harassment

(b) Any legislative, regulatory, administrative, legal or policy gaps that should be addressed in the interests of enhancing protection against and providing appropriate responses to harassment; and

(c) any other action necessary to address harassment in the parliamentary workplace

Fundamental to the review are the views and experiences of staff who work in the parliamentary precinct and electorate offices. A survey was forwarded to all individuals working in the parliament and electorate offices with an invitation to submit responses by 31 December 2020. The survey was voluntary and anonymous.

Participants were also invited to make written submissions and/or request an

interview.

A Final Report "Review of Harassment in the South Australian Parliament Workplace" containing 16 Recommendations was delivered by the Acting Equal Opportunity Commissioner and tabled in Parliament in February 2021.

Electoral (Miscellaneous) Amendment Bill

The Marshall Liberal Government introduced a Bill in July 2020 to amend the Electoral Act which potentially included introducing Optional Preferential Voting (OPV) in the House of Assembly (Lower House). The adoption of OPV where preferences from losing candidates are not required to be marked on ballot papers could result in members seats being determined via a first past the post type of system which would be a significant change from the current system of compulsory preferential voting in the Lower House. Critics of the Bill included the Labor opposition and the much smaller Greens Party (with just two seats in the Upper House and none in the Lower House). The Greens argued that such a change would entrench the two biggest parties and disenfranchise independents and the minor parties.

The Bill passed the Lower House but was negatived in the Upper House.

Victoria Legislative Council

Request by a member to call a special meeting of the Legislative Council

Legislative Council Standing Order 4.04 allows the President to call for a special meeting of the Council in the event of an emergency if, in the opinion of the President, the emergency requires a meeting of the Legislative Council to take place before the time previously fixed as the next day of sitting.

The Leader of the Opposition in the Legislative Council wrote to the President on 3 July 2020 to request a special meeting of the Council. He cited the return of Metropolitan Melbourne and the Mitchell Shire to COVID-19 stage 3 restrictions and the growing number of infections as the emergency that had arisen. He stated this required scrutiny of the Government and an explanatory statement from the Minister for Health.

The President considered that:

- the sitting of the House motion was already debated in the Council on 18 June 2020, where the House had considered and negatived the Leader of the Opposition's amendment to alter the next sitting date to the earlier date of Tuesday, 30 June 2020.
- the inquiry being undertaken by the Public Accounts and Estimates Committee into the Government's response to the COVID-19 pandemic was still ongoing.
- the extension of the state of emergency accommodated the response to the COVID-19 pandemic

- no other member had written to the President requesting a special meeting of the Council under Standing Order 4.04.
- there was no urgent legislation required to deal with the perceived emergency that specifically required the House to meet.
- there are other available forums for the Minister of Health to make a statement to the public—including the other Members of the Legislative Council—in relation to the COVID-19 pandemic.

The President further consulted other Members of the Council. The President found that the grounds for requesting a special meeting of the Council did not meet the threshold set for Standing Order 4.04. Even if the Council were to meet, it would not be able to progress anything which would directly impact the emergency. Further, other mechanisms for scrutiny were available outside a meeting of the House.

Referral of a matter to the Ombudsman

Section 16(a) of the Victoria's *Ombudsman Act 1973* allows the Legislative Council, or a Committee of the Legislative Council, to refer a matter to the Ombudsman for investigation and report. The Council rarely uses this referral power with the first time a referral to the Ombudsman under section 16 made only on 3 December 2008.

On 17 June 2020, the Legislative Council agreed to a motion referring branch stacking allegations against a Legislative Council member to the Victorian Ombudsman. This was only the third time a matter has been referred to the Ombudsman by the House. The motion referred to allegations recently televised on a current affairs program *60 Minutes* and published in *The Age* newspaper, that a Council Member and then Minister, as well as other Ministers in the Legislative Assembly, had misused Members' staff and other budget entitlements for internal party purposes. The House debated the motion for 45 minutes before agreeing to its terms on the voices.

The Independent Broad-based Anti-Corruption Commission (IBAC) also commenced its own investigation of the matters when the Premier referred the matter to them almost immediately after the *60 Minutes* broadcast. Following the House's referral to the Ombudsman, the Ombudsman and IBAC announced that they would investigate jointly, notwithstanding the scope of offences they investigate differ.

This was the first time a referral was made to the Ombudsman under section 16 of Victoria's *Ombudsman Act 1973* in the 59th Parliament.

All Ministers involved subsequently either resigned from Cabinet or had their commission withdrawn by the Governor on the recommendation of the Premier.

Change of Presidents mid-Parliament

The Honourable Shaun Leane was elected President of the Legislative Council on the Opening of the 59th Parliament on 19 December 2018. On 18 June 2020, after 19 months in office, President Leane advised the House after the lunch break that he would vacate the position of President, effective immediately. Mr Leane was appointed to a Cabinet position several days later.

Under Legislative Council Standing Order 2.01, if the office of President becomes vacant at any time, no business may occur until a new President is elected. The Clerk immediately conducted the elections of a new President and called for nominations. Mr Nazih Elasmar was nominated by his Government colleagues and was duly elected unopposed.

The Council has not experienced the position of President becoming vacant mid-term since 1988 when the Honourable Rod Mackenzie resigned from the role having lost the support of the Government Members.

CANADA

House of Commons

Financial procedure

On 28 February (the sixth of seven days in the supply period ending 26 March) Candice Bergen (Portage-Lisgar) moved an opposition motion that three additional allotted days be added for a total of 10, and that, if necessary to accommodate the additional days, the supply period run until 2 April 2020. Allotted days afford an opportunity to the opposition to decide upon a motion that is debated for the duration of the sitting. The House adopted the motion on 9 March and began to follow the revised procedure.

Budget presentation

On 11 March 2020, during Oral Questions, Bill Morneau (Minister of Finance) requested that an order of the day be designated for the consideration of a budget presentation on 30 March. This was subsequently cancelled as the House responded to the COVID-19 pandemic. On 30 November 2020, Chrystia Freeland (Deputy Prime Minister and Minister of Finance) delivered an economic statement in the House. The House, therefore, had no budget presented or budget debate in 2020.

Prorogation and opening of Parliament

The First Session of the 43rd Parliament was prorogued on 18 August 2020. On 23 September 2020 the Speaker announced that Her Excellency Julie Payette, the Governor General, would formally open the Second Session of the 43rd Parliament of Canada later that day. The Speech from the Throne was broadcast

live on large screens in the House chamber for members who could not attend in the Senate due to space constraints and COVID-19 physical distancing.

Report to Parliament on reasons for Prorogation

On 28 October 2020, pursuant to Standing Order 32(7), Pablo Rodriguez (Leader of the Government in the House of Commons) tabled the Report to Parliament outlining the reasons for the prorogation of the First Session of the 43rd Parliament. This was the first use of the Standing Order since its adoption in 2017. SO 32(7) requires the government to table a document outlining the reasons for the prorogation in the new session after prorogation. The document must be tabled no later than 20 sitting days after the beginning of the new session and is deemed referred to the Standing Committee on Procedure and House Affairs.

House Order for the production of documents

On 26 October 2020, the House adopted a motion instructing the Standing Committee on Health to investigate the government's response to the COVID-19 pandemic and ordering the government to produce a wide range of related documents. The government was instructed to submit the documents to the Law Clerk who would ensure personal information was removed. The documents would then be tabled in the House by the Speaker and referred to the committee.

On 1 December 2020, the Standing Committee on Health tabled a report entitled *Instructions to the Law Clerk and Parliamentary Counsel* with recommendations to prioritise the documents to be vetted by the Law Clerk and to allow the committee to grant one or more extensions to the Law Clerk and Parliamentary Counsel for the vetting of the documents, provided that the Law Clerk provide the committee with a weekly status report. The report was concurred on 4 December. On 7 December, the Office of the Law Clerk received a first batch of approximately 5,000 documents (almost 27,000 pages) for review. On 16 December, the Speaker tabled a portion of these documents, pursuant to the order of the House. As only a minority of the documents provided to the Office of the Law Clerk and Parliamentary Counsel were in both official languages, only those documents available bilingually were tabled.

Vote on a motion establishing a special committee declared a matter of confidence

On 20 October 2020, the House debated a supply day opposition motion in the name of Erin O'Toole (Leader of the Opposition) to create a special committee on anti-corruption. Mr Rodriguez indicated that the House's decision on this motion would be considered a matter of confidence. In response, Gérard

Deltell (House Leader of the Official Opposition) proposed an amendment to change the name of the special committee to replace "anti-corruption" with "allegations of misuse of public funds by the government", and adding a clause that "the establishment of the committee shall not, in the opinion of the House, constitute legitimate grounds for calling a general election". Neither the amendment nor the main motion was adopted.

Contravention of the Conflict of Interest Code

On 19 November 2020, pursuant to Section 28 of the Conflict of Interest Code for Members of the House of Commons the Speaker tabled a report from the Conflict of Interest and Ethics Commissioner entitled *Maloney Report*. In the report, the Commissioner concluded that James Maloney (Etobicoke-Lakeshore) had contravened paragraph 20(1)(i) of the Code and that no mitigating circumstances applied given the length of the delay in the member's submission of the Disclosure Report in question. The Commissioner recommended, pursuant to Section 28(6) of the Code, that the House require Mr Maloney to apologise, which he did later in the sitting on a point of order.

On 11 December 2020, Michael Barrett (Leeds-Greenville-Thousand Islands and Rideau Lakes) moved a motion for concurrence in the report of the Conflict of Interest and Ethics Commissioner. Carol Hughes (the Assistant Deputy Speaker) interrupted the proceedings on the motion at the expiry of the time provided for Government Orders. The House had not returned to the matter as of the end of 2020.

Changes to financial disclosures

Bill C-58, *An Act to amend the Access to Information Act, and the Privacy Act and to make consequential aments to other Acts*, came into force on 21 June. The Act requires more detailed disclosures for Members, Presiding Officers and House Officers on a quarterly basis. It also requires the House Administration to publish on a quarterly basis travel information and expenses, hospitality information and expenses, and information on House Administration contracts over $10,000.

On 26 November, the Administration published its first disclosure in compliance with the Act. The first disclosures in compliance with the Act for Members, Presiding Officers and House Officers were published in December. Reports will be published on a quarterly basis on the House of Commons website.

Senate

Prorogation

The First Session of the Forty-third Parliament was prorogued on 18 August

2020, and the second session started with a new Speech from the Throne on 23 September. Due to the pandemic, only 24 senators were present. The House of Commons was represented by its Speaker and a minimum of other individuals, and there were no guests or dignitaries other than those essential to the ceremony or for symbolic purposes. The Supreme Court, for example, was only represented by the Chief Justice.

Presiding Officers

Speaker Furey, who was named to that position in December 2015, has continued in office. Senator Nicole Eaton, who was named Speaker pro tempore in December 2019, was not replaced after her retirement in January 2020. In November 2020, a proposal to elect the Speaker pro tempore by secret ballot was referred to the Selection Committee. The committee recommended that Senator Pierrette Ringuette be named Speaker pro tempore on an interim basis while it continues to review the issue. The Senate agreed to this proposal on 10 December.

Recognised Parties and Recognised Parliamentary Groups

Since the start of the 42nd Parliament in December 2015, the Senate has amended its Rules to accommodate recognised parliamentary groups in addition to the more traditional recognised parties. There are now three recognised parliamentary groups (Independent Senators Group, Canadian Senators Group and Progressive Senate Group) and one recognised party (Conservative Party of Canada) in the Senate. The Progressive Senate Group briefly had recognised parliamentary group status from 14 to 18 November 2019, when it was first established, and regained status on 21 May 2020, after reaching the threshold of nine members required for such status pursuant to the Rules of the Senate. The government also has three non-affiliated senators to coordinate its business in the Senate.

Suspension

On 27 February, Senator Lynn Beyak was suspended from the Senate. She had been suspended during the previous session, and that suspension ended with the dissolution of Parliament. The new suspension ended with the prorogation of Parliament in August 2020. She subsequently resigned from the Senate on 25 January 2021.

British Columbia Legislative Assembly

Administration and governance

The Legislative Assembly Management Committee (LAMC) and the Assembly Administration continued work on comprehensive administrative, financial and

governance reforms.

LAMC implemented changes to its subcommittee structure to improve financial and administrative oversight of Assembly operations. Previously, LAMC had one sub-committee—the sub-committee on Finance and Audit—to examine and make recommendations on financial management and audit related matters. As the matters brought before this sub-committee increased in volume and complexity to include operational, administrative and human resource related policies, LAMC created a second sub-committee on Administration and Operations. The Sub-committee on Finance and Audit will consider and make recommendations on matters relating to financial, risk management and audit functions and the Sub-committee on Administration and Operations will address matters relating to the oversight of administration, operational and policy that are not of a financial or risk management nature. The sub-committees are subordinate to LAMC, not separate or autonomous decision-making bodies.

ADR Education, an independent contractor selected to undertake a workplace review in 2019, presented their final report on 2 July 2020 with nine recommendations. The Clerk of the Legislative Assembly issued a response and action plan with next steps for each recommendation, including work on governance, communications, strategic planning, performance management, and training. Work on the recommendations is ongoing. Several Assembly policies have since been revised, updated or introduced, including a new flexible work arrangements policy, and conflict resolution and other training opportunities have been offered to staff. A participatory strategic planning process is also underway.

The Clerk of the Legislative Assembly also established a Clerk's Leadership Group to strengthen the capacity of the institution's executive and renew organisational development and capacity. The Leadership Group includes three new positions—the Clerk Assistant, Parliamentary Services; the Chief Human Resources Officer; and the Chief Information Officer—as well as the existing Executive Financial Officer and Law Clerk and Parliamentary Counsel positions.

Demonstrations on the Legislative Precinct

On 6 February 2020, five days prior to the Speech from the Throne, demonstrators supporting the Wet'suwet'en hereditary leaders opposed to a natural gas pipeline in northern BC gathered on the steps of the Parliament Buildings, blocking the Ceremonial Entrance. The buildings were closed to the general public the following day in response to security concerns.

On 11 February, hundreds more gathered to join the demonstrators, who had remained in place over the weekend, obstructing all entrances to the buildings

on the Legislative Precinct. Some Members and staff were unable to enter the buildings and Prorogation, which was initially scheduled for 10 am, was delayed until the afternoon and the associated exterior ceremonies planned for the front of the Parliament Buildings, including the ceremonial military honour guard and the firing of cannons, were cancelled. The demonstrators left late that evening.

In response to these events, and in anticipation of additional protests on Budget Day, the buildings remained closed. The Speaker, on behalf of the Legislative Assembly, applied for an injunction to restrict anyone from intimidating, molesting or interfering with Members of the Legislative Assembly, legislative staff, and officers and staff of the Legislative Assembly. The Supreme Court of British Columbia granted the injunction on 13 February; the injunction restricted anyone from obstructing the access of Members, legislative staff of Members and officers and staff of the Legislative Assembly. Demonstrators returned on Budget Day, 18 February and left in the afternoon, and the buildings reopened to the general public on 19 February 2020.

Provincial General Election

The 41st Parliament was dissolved on 21 September 2020 and writs of election for the province's 87 electoral districts were issued, with general voting day set for 24 October 2020. This was a year earlier than anticipated; pursuant to section 23(2) of the provincial *Constitution Act* which provides for fixed election dates, the 42nd provincial general election had been scheduled to take place on the third Saturday in October 2021.

Initial results on general voting day indicated that the BC New Democratic Party (NDP) won enough seats to form a majority government; however, a significant number of absentee ballots, including mail-in ballots, still needed to be counted. In BC, the final count normally starts 13 days after general voting day to allow enough time for certification envelopes containing absentee ballots to be sent from the electoral district in which they were cast to the electoral district where the voter is registered. Due to the pandemic, vote-by-mail proved to be a popular option with 586,287 main-in ballots received, compared to just over 6,000 in the last two provincial general elections.

The final election results were as follows: BC NDP 57 seats; BC Liberal Party 28 seats; and BC Green Party two seats.

In light of provincial COVID-19 travel restrictions, virtual swearing-in ceremonies took place for Members of the BC NDP caucus on 24 November and for Members of the BC Liberal Party caucus on 27 November, and a small in-person swearing-in ceremony for the two Members of the BC Green Party caucus took place on 23 November.

Member transition and orientation

Following dissolution, a 2020 Transition Guide for Members of the Legislative Assembly was expeditiously developed and distributed to all Members on 25 September 2020. The Guide provided information for returning and non-returning Members regarding key steps, activities, procedures and policies relating to the transition period. The provisions within the Guide are based on previous decisions and direction of LAMC and the administrative practices of the Legislative Assembly. A number of virtual seminars were organised by the Legislative Assembly Administration for non-returning Members to provide information about key transition provisions available to them.

The Members' Guide to Policy and Resources website was also refreshed and moved to a new, mobile-friendly interface. The public website includes key information regarding Members' roles and responsibilities, legislative and constituency office operations, Assembly services, administration, financial policies, travel guidelines, and remuneration and benefits.

In addition, the Legislative Assembly offered a series of virtual orientation sessions for Members of the 42nd Parliament. The sessions covered: remuneration and benefits for Members; constituency assistant recruitment, hiring and onboarding; constituency office leases and set-up; travel provisions; constituency office management and financial operations; information technology; records and information management; Assembly services and supports for Members; House business and procedure, including information on hybrid House proceedings; parliamentary committees; and statutory offices.

Opening of 42nd Parliament and Presiding Officers

The 42nd Parliament opened on 7 December 2020 with the election of a Speaker; Hon. Raj Chouhan was acclaimed to the position. First elected as a Member of the Legislative Assembly in 2005, he served as Assistant Deputy Speaker from 2013 to 2017 and as Deputy Speaker from 2017 to 2020. He is the first person of South Asian heritage to serve as Speaker in any Canadian parliamentary jurisdiction.

Spencer Chandra Herbert was appointed Deputy Speaker, Norm Letnick was appointed Assistant Deputy Speaker, and Ronna-Rae Leonard was appointed Deputy Chair of the Committee of the Whole.

Leadership changes

On 6 January 2020, Andrew Weaver resigned his position as Leader of the BC Green Party; Adam Olsen was subsequently named Interim Leader. Following a nine month leadership race, Sonia Furstenau was elected leader of the BC Green Party on 14 September 2020.

Following the provincial general election, on 21 November 2020, Andrew

Wilkinson resigned as leader of the BC Liberal Party. Shirley Bond took on the role of Leader of the Official Opposition, and was later selected as Interim Leader by the BC Liberal Party caucus. Planning for a leadership contest is underway.

Prince Edward Island Legislative Assembly

Suspension of the First Session

The First Session of the Sixty-sixth General Assembly was set to reconvene on 7 April 2020, according to the parliamentary calendar then in effect. However, on 18 March 2020, Speaker Colin LaVie announced that the Assembly would not reconvene on that date due to the COVID-19 pandemic, and that the session was suspended. The Rules of the Legislative Assembly of Prince Edward Island permit the Speaker, in urgent or extraordinary circumstances, to waive the requirements that the House open at the normal time specified in the calendar, and that 60 days' notice of the opening be provided by the Speaker or Executive Council. The Chairs of standing and special committees of the Legislative Assembly cancelled all meetings after 13 March 2020. In keeping with public health measures, the buildings of the Legislative Assembly were closed to the public in mid-March. Personnel of the Assembly began working from home whenever possible at that point.

The Assembly reconvened with pandemic-related measures in place on 26 May 2020. Committees resumed meetings in June 2020.

New Legislative Assembly Act

During the fall 2020 sitting the House passed Bill 125, *Legislative Assembly Act*, which replaced the statute of the same name that previously applied to the legislature. Among other changes, the new Act builds upon the former Act by defining the Legislative Assembly precinct, establishing legislative security officers as peace officers and empowering them in various ways, and removing stipulations on severance pay for members so that they may instead be determined by the Indemnities and Allowances Commission.

CYPRUS HOUSE OF REPRESENTATIVES

Parallel Parliament

In 2020 the innovative institution of "Parallel Parliament" was implemented, with the aim of effectively engaging citizens, organised groups and other experts in identifying at first, issues that need discussion and which the government must address and then formulate concrete recommendations for tackling them. The institution of "Parallel Parliament", without being a legislative body, acts as a channel of communication between civil society and the House, fuelling with its action the legislative and overall parliamentary work, thus enhancing

participatory democracy.

Code of Conduct and Ethics

In 2020 the final adjustments were made to the Code of Conduct and Ethics for MPs, which reached its final form and was forwarded to the House for approval in early 2021 (a more detailed overview will be provided in next year's notes).

A new parliamentary building

The process relating to a new parliamentary building has been once again halted and the overall plan was eventually dismissed, due to budgetary restrictions.

House of the Citizen

2020 also marked the beginning of the function of the "House of the Citizen", a landmark colonial building in close proximity to the House of Representatives, that was fully restored in order to facilitate as a physical venue, interactive communication and dialogue between the Parliament and Civil Society. The actual venue is electronically connected to the House and citizens, who when visiting it have direct access to information, ranging from legislative work, to the Parliament's history as well as to its digitised library. The House of the Citizen is also equipped to host exhibitions, meetings, press conferences and a variety of other events. The full spectrum of activities that were planned to take place within 2020, unfortunately could not be materialised due to restrictions imposed by the COVID-19 pandemic.

STATES OF GUERNSEY

Appointment of a new Bailiff and the first female Deputy Bailiff

In May 2020 Mr Richard McMahon was sworn in as Guernsey's new Bailiff and Ms Jessica Roland was sworn in as Guernsey's new Deputy Bailiff, she is the first woman to hold the role since it was created in 1969. The Bailiff and Deputy Bailiff are ex-officio the Presiding Officers of the States of Deliberation.

Establishment of the States' Greffier post

In March 2020, a full-time Clerk was appointed to the States Assembly in Guernsey. The practice until this date had been for the Registrar of the Law Courts (HM Greffier) to act as the Assembly's Clerk. The statutory powers of HM Greffier in that respect have now been delegated to the new post of States' Greffier. Simon Ross took up the post as Guernsey's first Sates' Greffier in March 2020, and heads up a Parliamentary Team of three including the Clerk Assistant and the Parliamentary Officer.

New electoral system

The Island was due to hold a General Election in June 2020 however, given the advent of COVID-19, the Election was postponed until October 2020, when life in the Island had returned to a level of normality. At a referendum held in 2018, it was agreed to change the electoral system in 2020 from a seven-constituency system, where voters had up to five or six votes to cast, to a single island-wide constituency, where voters could cast up to 38 votes i.e. for all People's Deputies.

119 candidates sought election in 2020 (compared with 81 candidates at the 2016 election).

This was also the first Election which saw the emergence of political parties in the Island, with three political parties putting forward a total of 41 candidates. 78 candidates stood as independents.

The Election saw an increase in the number of postal votes applied for, with over 21,000 voters requesting postal votes (67 per cent of the 2020 Electoral Roll, compared with nine per cent choosing that option in the 2018 referendum). The popularity of this option can partly be attributed to the number of candidates' people could vote for, the sizeable ballot paper to complete and the shadow of COVID-19 deterring physical attendance. 21 per cent of those casting ballots still voted at the polling station (which included for the first-time advance polling stations being established for three days).

Voter turnout increased in 2020, with 80 per cent of those on the Electoral Roll voting, an increase of eight per cent from 2016. 22 independent candidates and 16 party-affiliated candidates (from two parties) were elected, with 20 of those Members being newly elected. The election saw an increase of female candidates standing (28) however the number elected fell with only 8 female Deputies elected (compared with 12 from 19 candidates in 2016), meaning that currently female Deputies make up 20 per cent of the States of Deliberation.

Moving to a new Electoral System brought challenges but also innovations. For the first time the Island automated the issue of postal votes, given the volume anticipated, and used e-counting machines to count the ballot papers.

UNITED KINGDOM

House of Commons

E-laying: Provision of papers during the pandemic

The laying of papers is a core, but often unnoticed, function of both Houses of Parliament in the UK. It is the responsibility of Government to provide both Houses with papers in the formats necessary for Members to discharge their responsibilities. Since 1 January 2020, 2826 papers have been laid before Parliament, including high profile trade agreements, EU exit legislation and

over 300 coronavirus regulations, containing profound changes to all our lives.

At the start of the year papers were laid physically in Parliament, presented in person to the Journal Office in the House of Commons and the Printed Paper Office in the House of Lords, and distributed physically by colleagues in Vote Offices around the estate. There was no system via which to receive digital copies of laid papers, and Members not on the estate would have to wait for online publication (in most cases by Government at an unspecified time after laying) to access the paper.

On 23 March 2020 the Prime Minister addressed the nation instructing the first "lockdown". On 25 March 2020 the Houses of Parliament, in consultation with the Cabinet Office and the office of the Leader of the House, commenced electronic laying.

Setting up any new process at great speed presents significant risks, especially when the length of its requirement is indefinite. The risks associated with e-laying identified early on included failure to provide papers to Members, papers being made publicly available online before being presented to Parliament, lack of understanding of any new system, version control issues and an increase in errors. An additional risk, perhaps unforeseen at the time, was the greater spotlight that would be cast on the operation of the process, particularly with eager Members (and members of the public) keen to see any last-minute changes to lockdown regulations made under the urgent made affirmative procedure and the Public Health (Control of Disease) Act 1984.

The system that has been set up, on a temporary basis, has been crude but effective with considerable benefits for Parliament. The obvious benefits have included the public health benefit (no physical contact), the environment benefit (less unnecessary printing), the accessibility benefit (allowing colleagues to work from home) and the archiving benefit (Parliament now has a complete digital record of all papers provided to it). The negatives however have also been significant and have needed to be mitigated. There has been a considerable increase in mistakes in laid papers, with scrutiny committees commenting that the error rate for statutory instruments is over double what it would normally be expected to be. Errors have ranged from the insignificant typos to significant policy omissions, in one recent instance leading to a correction issued by Written Ministerial Statement and an apology from the Secretary of State on the floor of the House. Perhaps correlation not causation, but anecdotally the laid papers offices have seen a similar increase in mistakes in papers initially presented to Parliament. In the absence of a bespoke digital solution (the current system was set up in two days) the laid paper process is also now considerably more time intensive for Parliamentary staff; a continuous improvement exercise identified that it takes on average 6 times longer to check and process a single paper.

Over a year since its introduction, e-laying looks set to become a permanent

feature post pandemic. The development has overall been welcomed both by Parliamentary officials and by Government departments. In evidence to the Procedure Committee the Clerk of the House identified e-laying as a procedural success story emerging out of the pandemic. However, a permanent system still needs to be designed, and in doing so, some important questions about how information is provided to Members of Parliament will need to be answered. Above all sits the question of how Parliament can ensure that all Members are aware of and receive access to the materials they need in order to do their jobs. A well-designed e-laying system will become increasingly important to facilitating effective scrutiny and debate and securing Parliament's future.

Paper petitions since the pandemic

Paper (or public) petitions are one of the oldest forms of parliamentary participation in the UK. In 1669, the House of Commons expressed two resolutions which set out the rights of petitioners and the power of the House to deal with petitions:

> "That it is the inherent right of every commoner in England to prepare and present petitions to the House of Commons in case of grievance, and the House of Commons to receive the same; That it is an undoubted right and privilege of the Commons to judge and determine, touching the nature and matter of such petitions, how far they are fit and unfit to be received."

Unlike e-petitions, which are started by the public, an MP is needed to present a paper petition to the House on behalf of their constituents. They can do this formally, by speaking on the petition for a minute in the Chamber, or informally, by slipping the petition into a bag that hangs off the back of the Speaker's chair. Either way, their petition will get a response from a Government department within two months. Paper petitions ask the Commons to urge the Government to change something.

Like most proceedings in Parliament, paper petitions have been through big changes since the pandemic after decades of little reform. At first, they were suspended completely between April and June 2020 as the House dropped all its in-person functions except substantive proceedings. Before April 2020, few paper petitions were concerned with the oncoming virus. Severe winter flooding was a more prominent concern among Members as Holly Lynch MP and Yasmin Qureshi MP called for better flood defences in Calderdale and Bolton. On 10 March two MPs presented the last paper petitions before the suspension. They urged the Government to cap the cost of school uniforms and to investigate the use of bio-fuels. Neither mentioned coronavirus.

Paper petitions returned in June 2020 to new social distancing requirements. Members still had to collect handwritten signatures and present them in the Chamber physically. However, to maintain social distancing, they no longer

took the paper petition down to the clerk at the Table. Instead, they stayed in their seat. The bag at the back of the Speaker's chair was removed and informal petitions were sent over email. For the first time, MPs were able to draft their petition online and send a scan with its signatures so that nobody had to be in the offices physically.

The initial petitions in June 2020 focused on the Black Lives Matter protests erupting in America. Four MPs presented joint petitions on behalf of their constituents calling for the Government to suspend the sale of riot equipment to the USA. Through June, MPs presented paper petitions on the conduct of Dominic Cummings (a former advisor to the Prime Minister) during the pandemic, on protection for airline workers, and on the need to give financial support to people in response to the pandemic.

The themes of paper petitions were shifting with the turbulent events of 2020, but the process for presenting them was not. In November, an MP asked how he could present a petition while shielding from the virus. He did not want another MP to read out the petition on his behalf because it was constituency-specific. He did not want to "e-bag" (informally present) the petition because his constituents wanted to raise awareness of the issue. He asked whether a clerk could read it for him.

The Journal Office set to work to identify whether a clerk had read out a petition before. Clerks usually say little on the floor of the Chamber, but we found provision in Standing Order No. 154(3) which says that a petition may be read by a clerk if required. The last example we could find of this happening was in 2001, where a petition was read on behalf of Mr Don Touhig, then a Minister.

With this, the Table Clerks were prepared and one of them ended up reading the petition on behalf of an MP for probably the first time in twenty years.

This case showed some procedural ingenuity from House of Commons staff but exposed the shortcomings of an old procedure that had not caught up with an online world. In January, however, the Government gave the Speaker the remit to extend hybrid proceedings to paper petitions. Since then, MPs have been able to choose whether to present their petitions on Zoom or in the Chamber, socially-distanced.

Despite the longer session, the pandemic means that we've seen a big drop in paper petitions. In the 2017–19 session, over 450 paper petitions were presented by MPs. This session, the number has only just gone over 100. This has not increased since MPs could present their petitions on Zoom, suggesting the mode of presentation wasn't the biggest barrier to bringing petitions forward in 2020/21. In the last session, around one and a half petitions were presented every day. Since January 2021, only 12 petitions have been presented in total. Around half were presented on Zoom and the rest were presented in

the Chamber.

Maybe paper petitions are not a priority for MPs while they are balancing everything else during the pandemic. Or maybe, because they are not currently required to stay late in Westminster for votes as their Whips vote for them, they prefer not to work into the evening and up until the Adjournment Debate when petition presentation happens.

What's next for paper petitions? The House and the Government have many decisions to make about the future of virtual proceedings. MPs might decide that paper petitions work well when they're presented on Zoom. Or maybe they will feel that they're only distinct from e-petitions when they're created and presented to a Table Clerk in their paper form. As with their younger cousin, e-petitions, they continue to represent to one of the most direct ways in which the public can engage in a parliamentary process and contribute to a decision. Sometimes, they might even change Government policy.

House of Lords

Unusual Second Readings

Two bills received Second Reading by unusual means. The Windrush Compensation Scheme (Expenditure) Bill had its Second Reading in the Chamber on 21 April 2020, with social distancing measures which severely limited members' participation. By arrangement through the usual channels, this was followed by a general debate on the issues of the Bill in virtual proceedings on 6 May, after Third Reading but before Royal Assent. And on 13 October the Social Security (Up-rating of Benefits) Bill was "debated before Second Reading" in Grand Committee, followed by a formal Second Reading in the Chamber without debate on 15 October—a procedure formally available only to uncontroversial Law Commission Bills, which this was not. The House authorised this by Business of the House motion on 12 October.

United Kingdom Internal Market Bill

The United Kingdom Internal Market Bill was politically memorable and also involved a number of procedurally significant moments. These included:

- At Report stage the Lords agreed inconsistent amendments, e.g.
  Clause 8
  9 Page 7, line 1, leave out subsections (7) and (8) [which delegated powers to make regulations]
  10 Page 7, line 4, at end insert— "(8A) Before making regulations under subsection (7) the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland."
  11 Page 7, line 4, at end insert— "(8A) Before making regulations under

subsection (7) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland."

The Commons disagreed with all of them, giving the following Reason—"Because a number of the Lords Amendments were inconsistent with each other or with Lords Amendments proposing the deletion of powers to amend provisions of Part 1 or 2 and it is appropriate, following the restoration of those powers, for the Lords to reconsider the Lords Amendments." The Lords did so.

- As part of the same story, on 23 November the Deputy Speaker told the House that Amendment 31 had pre-empted Amendment 34, but the House overrode the Deputy and purported to agree 34 regardless. Prudently, the member who moved it said, "I am sure that the clerks can then disallow it should they find that we should not have done it." They did, and proceedings on 25 November began with a statement from the Woolsack: "I should inform the House that, on Monday, Amendment 34 was agreed in error. It was pre-empted by Amendment 31."
- At Third Reading on 2 December 2020 the Lords received a ministerial statement that legislative consent had been refused by the Scottish Parliament and not yet granted by the Senedd or the Northern Ireland Assembly. This was the first exercise of a new procedure agreed by the House in October, following a recommendation of the House of Lords Constitution Committee in Brexit legislation: constitutional issues (6th Report, Session 19–21, HL Paper 71).

Recall of the House

Both the UK House of Commons and House of Lord were recalled on 30 December for "consideration of any Government Bill published on the future relationship with the European Union".

The EU (Future Relationship) Bill was introduced in the Commons on 30 December, was passed by both Houses the same day and received Royal Assent early on New Year's Eve, just in time to avert a "no deal" Brexit. To facilitate this, the Lords agreed a Business of the House motion that "Standing Orders 46 (No two stages of a Bill to be taken on one day) and 47 (Commitment of Bills) be dispensed with to allow the Bill to be taken through all its stages today and the Committee to be negatived". Dispensing with SO 46 is routine for a fast-tracked bill but dispensing with SO 47 for such a controversial bill, not protected by Money Bill or Supply Bill status, and thereby preventing the revising Chamber from considering any amendments, was unprecedented. It was however unavoidable in the circumstances, given the constraints of "hybrid House" proceedings. The same motion had been agreed just before

Christmas for the Trade (Disclosure of Information) Bill but that was short and uncontroversial.

Northern Ireland Assembly

An election to the Northern Ireland Assembly was held in March 2017. However, as a range of political issues remained unresolved following the election, there was not the consensus necessary to ensure the required first item of business—the election (with cross-community support) of a Speaker—could be concluded. Consequently, the Assembly could not meet and the Executive could not be established.

In the years that followed there were various attempts to reach a political agreement that would allow the parties to return to the Assembly and establish an Executive. These attempts were unsuccessful until the then Secretary of State, the Rt Hon Julian Smith CBE MP, and Simon Coveney TD, Tánaiste and Minister for Foreign Affairs and Trade, published in January 2020 the *New Decade, New Approach* Deal which they said was a deal to restore devolved government in Northern Ireland.

The New Decade, New Approach Deal

The *New Decade, New Approach* (NDNA) document set out a deal which the UK Government and Irish Government then invited the parties to endorse as a basis for restoring the Executive. The deal included actions the parties would agree to restore the institutions; priorities that the parties would agree for an incoming Executive; UK Government commitments to Northern Ireland; and commitments by the Irish Government in the context of an agreement being reached in support of greater cooperation, connectivity and opportunity North/South on the island.

Key aspects of the deal in relation to the Northern Ireland Assembly included:

- The anticipation that standing orders would be amended to allow for any Member to conduct their business in either Irish or Ulster-Scots;
- The corresponding provision of a simultaneous translation system;
- A reform of the Petition of Concern;
- In the event of the resignation of the First Minister or deputy First Minister a longer period before an Assembly election must be called;
- An independent review of the arrangements and entitlements for an Official Opposition; and
- The establishment of three new Assembly committees.

A return to Assembly business

The NDNA deal proved sufficient to allow the parties to restore devolved government. On 9 January 2020 the Assembly met and elected Alex Maskey

MLA as its Speaker. An Executive was then established with Ministers from all five of the largest parties. Arlene Foster returned as First Minister and Michelle O'Neill became the deputy First Minister. None of the parties eligible to do so opted to establish an Official Opposition.

On 20 January 2020 the Assembly then considered its first item of Executive business in over three years when it withheld its consent for the European Union (Withdrawal Agreement) Bill.

There were many challenges for the Assembly on its return including the relative inexperience of many of its 90 Members; the backlog of work built up over the previous three years; the ambitious programme of reform envisaged in NDNA and the limited period of time until the end of the mandate in which this could be implemented; and significant legal, political and procedural developments in relation to EU exit which neither the Executive nor the Assembly had had an opportunity to consider.

The RHI Inquiry

The Renewable Heat Inquiry (RHI) report was published on 13 March 2020. The inquiry had been established in 2017 by the then Minister of Finance, Máirtín Ó Muilleoir, to investigate the scheme. The scheme provided for a 20-year incentive to encourage the move from fossil fuels such as oil and gas, to a renewable source of heat and was similar to a parallel scheme that had been introduced in Great Britain. However, the Northern Ireland scheme differed in one especially significant way from the GB one—an absence of cost controls.

The scheme worked by paying applicants to use renewable energy. However, the rate paid was more than the cost of the fuel, and thus many applicants were making profits simply by heating their properties. The more heat generated, the more applicants were paid—so-called "cash-for-ash". There were no cost controls, no easy way to suspend the 20-year guaranteed payments, no planned review and the false assumption that the UK Government was paying the bill. The scheme was eventually closed but subsequent allegations of mismanagement, incompetence, and even corruption contributed to the collapse of power-sharing in Northern Ireland in 2017.

The inquiry was chaired by Sir Patrick Coghlin, a retired Lord Justice of Appeal in Northern Ireland. The report contained three volumes, running to 56 chapters and covering 656 pages. It made 44 recommendations following 319 findings which were critical of the actions, or inactions, of a significant number of people and organisations in respect of the scheme.

On 16 March 2020 the Executive agreed to accept the findings of the inquiry and said it would move immediately to consider how the recommendations could best be taken forward. The Assembly noted and debated the report later that same day.

The report focused on the actions of Executive Ministers, Special Advisors and departmental officials. However, one of the recommendations related to the Assembly. That recommendation said:

"The Northern Ireland Assembly should consider what steps are needed to strengthen its scrutiny role, particularly as conducted by Assembly Committees, in the light of lessons from the RHI. While it will be for the Assembly itself to decide, the Inquiry recommends that such a consideration might include significantly increasing the resources available to statutory committees and, generally, identifying what steps are needed to improve the effective scrutiny of Departments and their initiatives, whether in Assembly Committees or in the Assembly Chamber itself."

In light of this recommendation the Chairpersons' Liaison Group has agreed to carry out a review on strengthening the scrutiny role of Assembly Committees.

EU Exit

After COVID-19, the most significant issue the Assembly has had to consider is the implications for Northern Ireland arising from the UK's exit from the European Union. The Assembly actively withheld its consent for the European Union (Withdrawal Agreement) Bill in January 2020 and for the European Union (Future Relationship) Bill in December 2020. It did not give its consent for either the UK Internal Market Bill or the Trade Bill.

One of the most contentious issues arising from EU exit has been the Protocol on Ireland/Northern Ireland. The Protocol essentially creates an All-Ireland regulatory zone for all goods (i.e. NI aligns with EU rules on goods) - this means new arrangements for goods coming from GB to NI and new arrangements on customs, VAT and excise. The protocol essentially creates a customs and regulatory border in the Irish Sea.

Northern Ireland is to continue to follow the rules of the Single Market, and will have to transpose any new legislation added to the Annexes to the Protocol as agreed by the UK-EU Withdrawal Agreement Joint Committee. The annexes to the Protocol list more than 300 regulations and directives that will continue to apply in Northern Ireland, approximately half of which fall within, or partially within, the devolved competence of the Assembly. Given that NI will still implement EU law, it is unclear as to how NI (or indeed the UK) will make its voice heard at an EU level in upstream policy and legislative development.

In September 2020 a resolution of the Assembly called on the British Government to honour its commitments, and to ensure, now, the rigorous and full implementation of the Protocol. However, unionist parties at the Assembly are resolutely opposed to the Protocol and this opposition has grown since the

coming into effect of the Protocol in January 2021.

Regulatory alignment with EU rules will be subject to the consent of the NI Assembly on an ongoing basis, as provided for in Article 18 of the Protocol which details the provisions for 'democratic consent'. Two months before the end of the four year period after the transition period, the Assembly will vote on whether provisions 5 to 10 of the Protocol (i.e. those relating to customs and regulatory alignment) should continue to apply. The first vote would then take place before 31 October 2024. If the Assembly votes against the provisions continuing to apply, they will lapse after two years. The UK and the EU would then take 'necessary measures'

Scottish Parliament

Historical misconduct

During the course of the year, the Standards, Procedures and Public Appointments Committee (SPPA) agreed to instruct a Committee Bill which would amend the Scottish Parliamentary Standards Commissioner Act 2002 to address historical misconduct. The proposed Committee Bill was part of a wide range of measures put in place to tackle sexual harassment and inappropriate behaviour in the Scottish Parliament.

The Bill sought to:

- remove an admissibility requirement that a complaint be made within one year; and
- allow the Commissioner to investigate complaints in relation to sexual harassment to be made by Members' own staff who were employed by an MSP directly or as part of a pooled arrangement.

The Committee published its report on a proposal for a Committee Bill on 28 June 2020. The Parliament debated the Committee's proposal report on 29 September 2020 and agreed to the Committee's proposal to introduce a Bill to giving effect to the policy set out in its report. The Parliament debated and agreed the Bill on 4 March 2021.

Sexual harassment and sexist behaviour

In previous years the SPPA Committee has updated the Code of Conduct for Members of the Scottish Parliament in relation to sexual harassment and sexist behaviour. During the course of this work the Committee noted that the Code of Conduct did not cover MSPs' conduct towards the treatment of individuals who do not fall in to certain categories—constituents and people visiting the Parliament for example.

The Committee agreed to update the rules in the Code of Conduct to ensure that MSPs must not behave in a manner towards any individuals they are in contact with in their capacity as MSPs that involves bullying, harassment

(including sexual harassment), or any other inappropriate behaviour.

Committee on Scottish Government Handling of Harassment Complaints

A Committee was set up in 2019 to consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's "Handling of harassment complaints involving current or former ministers" procedure. It also considered actions on this matter in relation to the Scottish Ministerial Code.

The inquiry considered complaints of sexual harassment against Alex Salmond by two civil servants during his time as First Minister. Due to sub judice concerns with an ongoing criminal trial, the Committee did not commence its inquiry work until 2020, when that case was concluded.

The Committee's inquiry commenced in August 2020 and it reported in March 2021. The inquiry was complex for a number of reasons, including legal complexities as well as the public profile of the individuals concerned.

The Committee's findings were detailed and varied and raised a number of concerns regarding the conduct of the Scottish Government and Ministers in the handling of the complaints. The inquiry also generated a lot of public interest, in particular its conclusion that the First Minister had misled the Parliament in her evidence to the Committee. The Committee did not go so far as to conclude that she had knowingly done so.

COMPARATIVE STUDY: RESPONDING TO THE COVID-19 PANDEMIC

This year's comparative study asked, "Did you make any changes to procedures in the light of the COVID-19 pandemic? If so, what were the key changes? If not, why not? How did you agree any such changes? How have they evolved during the pandemic? Do you intend to keep any such changes when the pandemic subsides?".

AUSTRALIA

House of Representatives

The House of Representatives progressively adopted a number of changes to practice and procedure in response to the COVID-19 pandemic, the most significant being provision for Members to participate in certain proceedings remotely through video link.

Changes to sitting calendar

Due to COVID-19 there were a number of changes made to the agreed program of sittings for 2020. These changes were facilitated by resolution of the House or, when the House was not sitting, by the Speaker setting an alternative day for the next meeting and notifying all Members, in accordance with standing order 30.

Chamber seating

Special seating plans were created to allow for COVID-safe social distancing in the chamber. Additional microphones and lecterns were set up at the rear of the chamber to enable Members without an allocated seat to speak. Sometimes the seating plan was changed several times for the one sitting to facilitate the participation of Members in different business of the House.

Pairing arrangements

From March, informal pairing arrangements between parties allowed for reduced attendance in the chamber for divisions. On 12 May, the Speaker announced that, due to the necessity of such arrangements during the pandemic, the names of Members paired for each division would be recorded in the Votes and Proceedings and the Hansard.

Putting the question so as to limit movement across the chamber

For divisions in the House, Members continued to vote 'Aye' by sitting to the right of the Chair and 'No' by sitting to the left. However, in order to limit

the movement of Members across the chamber, Chairs put the question for decision in a form that reflected the government majority and enabled most Members to remain in their allocated seats. For example, Chairs put the question on opposition amendments in the form 'That the amendments be disagreed to'. This mostly allowed government Members to remain on the right side and opposition Members to remain on the left side of the chamber.

On rare occasions when government and opposition Members voted on the same side on division, the Speaker permitted Members to be counted while standing, to enable social distancing.

Amendment to standing orders

Previously, a motion to suspend standing orders moved without notice required the support of an absolute majority of Members (currently 76 Members, where the membership of the House is 151). On 23 March, the House agreed to amend standing order 47(c)(ii) to allow for such a motion to be carried by a simple majority, with the agreement of the Leader of the House and the Manager of Opposition Business.

This amendment allowed for standing orders to be suspended in circumstances where there was bipartisan support but where an absolute majority might not have been achieved due to COVID-safe measures.

Resolution of the House—Special provisions for human biosecurity emergency period

On 23 March, the House agreed that it may meet in a manner and form not otherwise provided in the standing orders with the agreement of the Leader of the House and the Manager of Opposition Business. On moving the motion, the Leader of the House explained that it provided the House with some flexibility to respond to the extraordinary circumstances of the pandemic.

Agreement for Members to contribute remotely

On 24 August, the Leader of the House presented a written copy of an Agreement for Members to contribute remotely to parliamentary proceedings, as agreed by himself and the Manager of Opposition Business in accordance with the above resolution. The House then agreed to a resolution authorising the use of an official video facility to enable remote participation by Members, and the recording, publishing and broadcasting of their contributions.

These arrangements allowed for Members unable to attend sittings because of COVID-19 to participate in certain proceedings in the House remotely from either their electorate office or a Commonwealth Parliamentary Office. Constitutional restrictions meant that Members could not perform the formal aspects of the role of a Member. Members participating remotely could speak

on a bill or motion, participate in statements by Members and the matter of public importance discussion, and ask and answer questions during question time. However, they could not vote, be counted for a quorum, move or second a motion, move or second an amendment, present a document, call for a division or call for a quorum to be counted. From 9 November, Members were also given the opportunity to participate in certain Federation Chamber proceedings via video link.

On 30 November, a revised version of the Agreement was presented, allowing the Prime Minister to participate in proceedings remotely from his official residence, the Prime Minister's Lodge, while he was in quarantine following official overseas travel.

Members participating remotely were seen on large monitors in the chamber and their contributions were recorded in the Hansard. They were not, however, recorded as having attended the sitting, although participating Members were identified in the Votes and Proceedings as having made a virtual contribution.

In total, 27 Members participated in proceedings remotely in 2020. This included the Prime Minister, who answered questions during question time.

Procedure Committee report

The House Procedure Committee conducted an inquiry into the practices and procedures put in place by the House in response to COVID-19. The report was presented on 7 December and provides a detailed record of the various measures adopted over the year. It also sets out principles intended as a guide should the House face similar challenges in the future.

Most changes temporary

In its report, the Procedure Committee noted that the procedures adopted in response to the pandemic were not intended to remain in place when the normal operation of the House resumes. For example, different versions of the agreement for Members to contribute remotely have applied only for a specified period of time. Most changes have involved adjustments to practice rather than amendments to the House standing orders.

During the year, House and joint committees took advantage of existing videoconferencing and teleconferencing facilities (enabled by standing orders for some 20 years) to maintain a high level of inquiry activity. It is anticipated that the experience during COVID times might lead to an increase in the use of such technologies by committees into the future.

Senate

COVID-19 and sittings of the Senate

On 23 March, in response to COVID-19, the Senate suspended its sitting

schedule until August and agreed to orders allowing the President to alter the date and time of the next meeting at the request or with the agreement of the Leaders of the Government and Opposition in the Senate.

The orders also allowed the Senate to meet in a 'manner and form not otherwise provided for in the standing orders', with rules to be determined by the Procedure Committee. The resolution did not attempt to define the ways in which a meeting might depart from the standing orders but broadly empowered the Senate to change its rules and orders, subject to Constitutional constraints.

It was the first time the Senate had provided a mechanism for delaying a scheduled sitting date (as opposed to enabling the President to fix a sitting date where none has been set). In the context of suspended sittings, the mechanism was intended to deal with circumstances in which urgent legislation is required, but an ordinary sitting is impossible or impractical due to pandemic-related restrictions.

On 2 April, the President notified senators of a request from the Leaders of the Government and the Opposition in the Senate for the Senate to meet on 8 April for a single day sitting to consider a further round of economic stimulus measures. A request in accordance with the order also prompted three days of sitting in May.

On the last sitting day in May, the Senate agreed to a government motion proposing seven sitting days in June and varying the calendar to accommodate Budget estimates hearings in October.

The Senate then ostensibly returned to its scheduled program of sittings. However, on 18 July, the President received a request to defer the scheduled August sittings (4–6 and 10–13 August) from the Leader of the Government in the Senate to which the Leader of the Opposition in the Senate concurred. The President noted that, as the request to defer the sitting was made by leaders representing more than three quarters of senators, quorum could not be established were the sittings to proceed. On that basis, the President notified all senators that the Senate would meet when next scheduled, from 24 August.

Continuation of Senate oversight and scrutiny functions

With the onset of COVID-19, the Senate sat for a single day on 23 March to consider the Australian Government's Coronavirus Economic Response Package Omnibus Bill 2020 which gave legislative effect to the government's response to the COVID-19 pandemic. By the end of March, the total amount of the government's fiscal support equated to $194 billion across the forward estimates, representing ten per cent of annual GDP.

Due to concerns that further sittings would risk spreading the virus, and lack of certainty about when the Parliament would next be able to meet, the Senate agreed to suspend its regular parliamentary sittings program until August. In

the absence of regular sittings, the Senate sat on 8 April and established the Select Committee on COVID-19 to inquire into the Australian Government's response to the COVID-19 pandemic, with broad terms of reference and a reporting date of 30 June 2022. As Parliament was not expected to meet for some time, the committee was established to discharge the parliamentary oversight and scrutiny function that Parliament itself was not able to carry out.

By 9 December, the committee had held 37 public hearings and one private hearing, accepted 505 written submissions and published 558 documents containing more than 1800 answers to questions on notice. It tabled its first interim report the same month.

On 1 April the Scrutiny of Delegated Legislation Committee announced that it would meet regularly and report to the Senate to scrutinise delegated legislation made while the Parliament was not sitting. The committee set expectations of delegated legislation implementing significant COVID-19 response measures, including that such delegated legislation be time-limited and trespass on personal rights and liberties only to the extent necessary to protect public health. The committee published a list of all COVID-19 related delegated legislation to facilitate public scrutiny.

With the expectation that Parliament would meet only intermittently for a time, the Senate agreed on 23 March to an order permitting committees to extend their own reporting dates for inquiries rather than seek authorisation from the Senate. The order remained in place for the remainder of 2020.

The 2020 Budget estimates took place in October rather than the usual May dates due to the COVID-19 related delay to the 2020-21 Budget. As part of efforts to ensure that hearings took place in a COVID-safe environment, each of the nine days of estimates hearings had some element of video and audio participation of both senators and witnesses.

Remote participation in Senate proceedings during COVID-19

The possibility of remote participation was raised early in the pandemic but only came into focus after the sittings scheduled for 4 to 11 August were set aside. Advice from the Acting Chief Medical Officer had recommended against parliamentarians and staff travelling to Canberra given the health situation then unfolding in Victoria, leading the Prime Minister to announce that the House of Representatives would not meet. The Leaders of the Government and Opposition in the Senate then wrote to the President requesting that the sittings not take place.

At the start of the 24 August sitting fortnight, the Senate adopted rules recommended by the Procedure Committee in its First report of 2020 to enable senators to participate in Senate proceedings via video link "while they are prevented from physically attending the Senate because of travel restrictions,

quarantine requirements or personal health advice."

In recognising the "primacy of attendance in the Parliament as a key means for senators to engage in and determine its work", the rules provide that remote participants cannot be counted towards quorum and are not able to participate in formal votes. In addition, senators participating remotely may not move motions and amendments to motions, but colleagues in the Senate can move them on their behalf. However, there is one important exemption as the rules provide for remote senators to move amendments and requests in committee of the whole, to enable all parties to have their legislative proposals considered and determined. By the end of the sitting fortnight, senators from every state other than New South Wales had used the facility.

On 3 September, following border closures in some states which may have impacted the ability of senators to travel to Canberra, the Senate unanimously agreed to a resolution jointly moved by the Leaders of the Government and Opposition affirming the right of the Senate to determine its own meetings and the rights of senators to attend. As part of the resolution, the Senate recognised a statement made by the President on 24 August regarding the risk of COVID-19 measures constraining the ability of senators to undertake their duties. Under its resolution, the Senate called on all executive governments and agencies "to have appropriate regard to these matters in devising and implementing public health measures and, wherever possible, to do so in consultation with representatives of the Senate."

Social distancing in the Senate chamber

On 23 March, the Senate adopted procedural variations to enable senators to observe public health advice on hygiene and social distancing.

Divisions were held and counted with the doors open and senators were authorised to vote from behind the banks of seats on the relevant side of the chamber. Committee of the whole was chaired from the President's chair rather than from the chair between the two clerks. Senators were authorised to speak from seats other than their own and (from May 2020) to occupy additional seats place around the perimeter of the chamber. Distribution of papers in the chamber was kept to a minimum as chamber documents, including amendments, were electronically circulated.

During the March sitting, 39 of the Senate's 76 senators were granted leave from the day's sitting, with extended pairing arrangements in place between the parties. No divisions were held; parties recorded their dissent from votes by leave.

For the April sitting, around 40 senators attended and at the May sitting, nearly 70 senators attended. At the June sitting, the practical and procedural adjustments that applied during the previous sitting periods remained in place,

although the use of extended pairing arrangements fell away, with most senators attending for some or all of the sitting period.

A number of the practical measures and procedural adjustments adopted earlier in the year to provide for COVID-safe sittings continued to apply for the remaining sittings of 2020.

Australian Capital Territory Legislative Assembly

Adjustment to sitting arrangements as a result of COVID-19 Pandemic

Like all legislatures, the COVID-19 pandemic has had a significant effect on the operation of the Assembly. The Assembly was due to meet on Tuesday 31 March 2020 for three sitting days, but all parties recognised that, given the uncertainty and the restrictions imposed via public health direction, changes to the way the Assembly would operate would need to be made.

Prior to the 31 March 2020 sitting the Speaker received emails from 24 MLAs, in accordance with a resolution setting the sitting pattern for 2020 that was made on 22 August 2019 requesting that the Assembly not sit on Tuesday 31 March and Wednesday 1 April 2020. All non-essential staff were directed to undertake home based work arrangements.

At its meeting on Thursday 2 April 2020 the Assembly:

- met with only the bare number of members required to meet (i.e. an absolute majority of 13 Members), and the building was subsequently closed to the public;
- suspended those standing orders requiring members to sit in allocated seats
- suspended standing orders to dispense with discussing matters of public importance;
- suspended the standing order requiring committee chairs to present reports, and instead allowing the Speaker to table all 12 committee reports that were due for presentation
- Introduced and passed on the same day two COVID emergency bills
- amended the sitting pattern to provide that, instead of sitting for 14 scheduled sitting days for the period up to the October election the Assembly it would sit on a Thursday in May, June, and 2 in August. Later, on 7 May 2020 the Assembly resolved to add six further sitting days with additional single day sittings on Thursdays for an additional six weeks.
- established a Select Committee on the COVID-19 Pandemic Response with two members to be nominated by the government, two members to be nominated by the opposition and one member to be nominated by the crossbench, with an Opposition Member to be elected Chair (subsequently the Leader of the Opposition was elected Chair). The Committee was to report to the Assembly on any matter relating to the ACT Government's health and financial response to the pandemic, and the resolution of

appointment set out ways the committee would conduct virtual public hearings and the way they would interact with Government ministers and officials, and prescribing that public hearings could not be held at the same time as National Cabinet of a meeting of the ACT Government Cabinet. The Select Committee presented interim reports on 21 May, 4 June and 2 July, with the final reported expected on the last day of sitting of the 9th Assembly (i.e. 27 August 2020);

- resolved to rescind the resolution that had established the annual select committee on estimates 2020-21 on the basis that the budget would be substantially delayed;
- passed opposition amendments to the COVID-19 Emergency Response Bill requiring that for each month that a COVID-19 declaration is in force, the responsible minister for a COVID-19 measure must prepare a report for the Assembly on the application of the measure;
- revised question time procedures in order the opposition were permitted to ask 33 questions, the crossbench member 3 questions, and two hours prior to question time the opposition was required to advise which Ministers questions would have questions directed to them and the order of questions so that the minimum number of ministers could be present in the Chamber and obverse physical distancing;
- on 7 May 2020 standing orders were suspended to allow 2 items of private members business to be discussed on each sitting Thursday that the Assembly was now meeting;
- relaxed the requirement that notices of motions and questions on notice be provided in signed hardcopy; and
- all tabled papers were circulated to Members in electronic form with only one hard copy being provided for tabling.

Reconfigured Chamber to accommodate all Members in a physically distanced way

Recognising that all members could not meet in the Assembly Chamber in accordance with the Chief Medical Officer's advice, and that there were provisions in the Australian Capital Territory (Self –Government) Act 1988 (C'wealth) that provided, at s 18 (2) that questions arising at a meeting of the assembly shall be decided by a majority of the votes of the members present and voting, discussions were had with the architect of the Assembly building to see whether the Chamber could be expanded. Following the construction of several desks, the Assembly reconvened for its scheduled sitting on Thursday 23 July with all members present and able to abide by the physical distancing requirements.

The Assembly has resumed a somewhat normal sitting pattern and most of

the changes made in response to COVID-19 remain in place. The Assembly building is now open to the public subject to physical distancing, sanitising and room capacity limits which are expected to remain in place in the foreseeable future.

New South Wales Legislative Council

The COVID-19 pandemic, which first impacted the operation of the NSW Parliament in March 2020, dramatically changed how both staff and members work and required a range of innovative solutions to ensure staff could continue to effectively support members.

In a rare step, the Parliament remained closed to the public for many months in order to protect the health of staff and members. Staff were encouraged to work from home where possible and were provided with technological solutions to ensure they stayed connected to the parliamentary network and to each other.

The Legislative Council, along with the Department of Parliamentary Services and the Department of the Legislative Assembly developed the Parliament of NSW Pandemic Plan which was first issued on 13 March 2020 and revised on 1 June 2020. It detailed the Parliament's response to COVID-19 in order to maintain the operational viability of the Parliament.

The plan considered a range of measures such as implementing employee leave, social distancing and travel, flexible working arrangements, flu vaccinations and support mechanisms.

The Parliament's Senior Management Group also met regularly and weekly emails were sent to all staff with updates about the pandemic and the Parliament's evolving response.

The Council sat on Tuesday 24 March 2020 to consider two Government bills relating to COVID-19 and adopted procedures to manage the impact of the pandemic on the House and its committees. While the Council had existing provisions to recall the House when on a scheduled recess, the President had no capacity to postpone a scheduled meeting. To address this, the House adopted a new sessional order which authorised the President, in the event of a public health concern and following consultation with the leader of each party and independent crossbench members, to postpone a scheduled meeting of the House and fix an alternative day or hour of meeting by communication addressed to each member. At the conclusion of proceedings the House adjourned until 15 September 2020.

By May the public health situation in New South Wales allowed for the resumption of sittings of the House. At the request of the Government and following consultation with the leaders of all other parties, the House was recalled on 12 May 2020 and a new sitting calendar was adopted.

A document entitled *'Proposal for COVID Safe Legislative Council proceedings'*

was developed in consultation with NSW Health, and with input from a hygiene consultant and a second consultant recommend by NSW Health. The proposal outlined for members the requirements for COVID safe sittings of the House from June 2020.

Specific measures put in place included:

- *Public health measures:* With Parliament closed to members of the public, members were instructed to utilise the public galleries of the Chamber in order to maintain social distancing of 1.5 meters throughout the chamber. Sanitiser was made readily available and water jugs were replaced with individual water bottles. In committee meeting and hearing rooms capacities set by public health orders were required to be adhered to.
- *A paperless chamber:* The House sought to achieve a paperless chamber by allowing amendments and other procedural documents to be lodged by email in place of hard copies and limited paper copies of amendments, bills and business papers were made available in the Chamber. Some relaxation to the rules occurred in November due to reduced public health restrictions and some administrative issues concerning version control of procedural documents prepared for members.
- *Divisions:* A new process for divisions was adopted, drawn from the practice used in the Victorian Legislative Council. Instead of the 'Ayes' and 'Noes' moving to either side of the Chair, under the revised procedure the Chair calls on the Ayes to stand, then appoints tellers to count their votes using the existing paper-based process, followed by the Noes standing to be counted. While this procedure meets social distancing reqirements and limits movement in the chamber, it takes longer than the usual practice. It takes approximately 15 minutes from the ringing of the bells to unlocking of the doors to conduct a division under this procedure.
- *Electronic participation in committee proceedings:* Providing continuity for committee activity was also a consideration when the House met on 24 March. Prior to COVID-19 members were only allowed to participate electronically in committee meetings if the Chair was physically in the room, and electronic participation in meetings at which a report was to be considered was prohibited. From March members of the committee and witnesses were able to participate electronically in hearings and all meetings provided that members and witnesses were able to speak and hear each other. In one instance a site visit was partly conducted online.

On the whole, Council Committees were able to successfully 'pivot' to the new way of working, and continue with relatively minimal interruption to inquiry timeframes, in fact activity increased. Given the improved accessibility and flexibility currently afforded to members and committee stakeholders, it is likely these new procedures will remain options for committees into the future.

At the end of 2020 the House was still operating under the varied procedures. While it is yet to be seen which ones are retained long term, with improvements in digital connectivity and the development of improved parliamentary information management systems and interactive apps it is possible that a paperless chamber will be achievable in the future.

Northern Territory Legislative Assembly

Owing to the worsening of the global COVID-19 pandemic, the NT Legislative Assembly had only met for one day during the month of March, where it passed a number of 'emergency' Bills, as well as a Supply Bill in lieu of the regular budget process. It had not been the intention of the Government to recall the Assembly whilst it was coordinating its pandemic response, however several issues arising from National Cabinet decisions required that legislation be passed in order to give these effect. Accordingly, the Government signalled its intention to recall members for what it termed an 'emergency' meeting of the Assembly.

The Government advised the Speaker of its intention to hold a 'special' meeting of the Assembly on Friday 24 April 2020 commencing at 8.30 am in order to pass pieces of legislation related to tenancy arrangements during the pandemic, introducing penalties for various COVID-19 related offences, and to adjust utility tariffs for businesses. Due to restrictions on movement in some areas of the Northern Territory, some Members sought exemptions in order to attend the Meeting, with their parliamentary business deemed essential travel. Given the situation the Government indicated it would move a motion to allow members to attend the meeting via teleconference. Parliamentary staff worked closely with the Government to provide a technological solution to allow this to occur.

When the Assembly met, two motions were moved by the Government. The first was to provide for a truncated routine of business for the Meeting, which would consist of Assembly Business, followed by Government Business and then followed by adjournment. The Government moved to put the question on this motion. The procedure of putting the question was rarely used in the NT Legislative Assembly, and the Government doing so caused some confusion and consternation from Opposition and Independent members.

The second motion moved by the Government provided for the detail of how Members not physically present at the Meeting were able to contribute via teleconference. This motion included provisions that the Speaker or Member presiding would be physically present for the Meeting and that they would have discretion to make rulings on adjustments to procedures to accommodate a visual or audio link for Members. The motion also contained provisions relating to voting for Members not present. A proxy vote was available to Members

attending via teleconference, and Members could indicate that their vote on all questions would be exercised in accordance with the direction of their party whip. This provision was used by the five Government members who attended via teleconference, whilst the Independent member attending remotely was asked to voice their voting intention on each question by the Speaker. A further provision of the motion allowed for a vote on a matter to be delayed should the equipment fail. Fortunately this did not occur.

All bills were introduced and passed on urgency that same day, with the Leader of Government Business moving a suspension of Standing and Sessional Orders to allow for this to occur. The Government had arranged for the Opposition and Independents to be briefed on the legislation prior to the Meeting of the Assembly, and there was general agreeance about the need for the legislation to pass.

After the Government had seen its three pieces of legislation passed, it moved a motion to provide for the Public Accounts Committee to meet on the last Thursday of each month for a public hearing with the Security and Emergency Management Sub-Committee of Cabinet. This was ostensibly to "give Territorians confidence in Coronavirus-related expenditure", while Assembly sittings were postponed during the Government's pandemic response. The Public Accounts Committee held four of these hearings, each lasting two hours.

South Australia Parliament

House of Assembly: COVID-19 measures

To comply with advice from health authorities arising from the COVID-19 pandemic, from March 2020 the Parliament of South Australia introduced several measures affecting the Chamber, Parliamentary Committees and the Parliament House precinct more broadly.

At the beginning of the outbreak in March, the House of Assembly sat for a reduced number of hours during the scheduled sitting weeks in late March and early April to consider emergency legislation only and did not sit for two consecutive Thursdays. On 8 April, the House of Assembly adjourned until 12 May, which would have missed a sitting week scheduled for late April. Later in the month, with the number of active cases in South Australia reduced, the Speaker recalled the House pursuant to Standing Order No. 57 to sit for the scheduled week in late April. In May, a revised sitting program was released.

To minimise the number of Members attending the House of Assembly, in late March the Government and Opposition agreed to pair arrangements to reduce the number of Members present from 47 to no more than 36. The House agreed to suspend Standing Orders to allow Members to speak and conduct business from any seat, allowing Members to comply with social distancing requirements. These arrangements were in place from late March until late

April. All Members returned for the sitting week in May and the House agreed to suspend Standing Orders to allow Members to speak and conduct business from the Speaker's Gallery (usually reserved for guests of the Speaker and Members of the Legislative Council) thus allowing all Members to be present while still complying with social distancing requirements.

As part of the Government's response to the pandemic, emergency legislation provided for parliamentary standing committees constituted under the Parliamentary Committees Act 1991 and the Aboriginal Lands Parliamentary Standing Committee Act 2003 to conduct meetings via audio or audio-visual means.

In anticipation of possibly long recesses of the House, emergency legislation was enacted to enable the Speaker or Clerk (in the Speaker's absence) to receive, publish and distribute reports required by legislation to be tabled in the House when the House is not sitting (see COVID-19 Emergency Response Act 2020, section 15). Despite the minimal interruptions to the sitting calendar, the Speaker received and published several reports under this provision. With the resignation of the Speaker, in the Speaker's absence all papers subsequently received were published and distributed under the signature of the Clerk. In the context of the emergency legislation, absence of the Speaker was given a broad meaning to include a vacancy in the position of Speaker.

Section 15 was initially included when there was concerns that the Parliament may not meet on a regular basis. With these concerns now abated, the section has been 'expired' by Notice in the SA Government Gazette (13 August 2020) pursuant to section 6 of the COVID legislation.

Parliament House Precinct measures

From mid-March 2020, the Presiding Officers restricted access to Parliament House to Members, staff and witnesses appearing before committees (i.e. no access for the general public, school groups or functions). Only essential meetings were allowed and required to comply with social distancing and cleaning requirements. Hand sanitiser was made available at all entry points, and internal doors were opened throughout the House to minimise contact with door handles. Additionally, the dining room was closed to guests, and the cafeteria open to Members and staff only, serving food on compostable plates and cutlery. To minimise the number of staff in the precinct, House of Assembly staff were supported to work from home from March until June 2020.

Legislative changes introduced as a result of the COVID-19 pandemic allowed for Standing Committees of the Parliament to meet remotely for the first time. Previously committee members were required to be physically 'present' at meetings to be counted for a quorum and to have their vote recorded. Neither the Parliamentary Committees Act 1991 nor Standing Orders provided an

opportunity for the standing committees to meet in any other way.

The COVID-19 Emergency Response (Further Measures) Amendment Act 2020 included provisions allowing Members to attend Committee meetings remotely; constitute quorum and vote; provided they could communicate with each other "contemporaneously".

Initially there were some technological challenges with remote hearings relating to the poor audio quality where witnesses did not have access to headsets and microphones. At times, the audio quality wasn't sufficient to enable higher-quality Hansard transcripts to be compiled. Audio quality issues were resolved once witnesses were able to source and use headsets.

While many jurisdictions are very familiar with remote meetings of their committees the pandemic has forced an accelerated roll-out and adoption of this technology in the SA Parliament. It is yet to be seen how this experience will play out longer term, supporting remote attendance of Members and witnesses may become the 'new normal' for parliamentary committee meetings into the future.

One of the committees which has continued to meet face to face during this period has been the Public Works Committee (PWC). This committee deals with public infrastructure developments and must recommend projects by way of a tabled report presented to the parliament before construction can be commenced. Members were keen to ensure projects continued to be approved during the pandemic to allow ongoing stimulus to the State's economy. In March the committee resolved that all witnesses would be heard remotely for the duration of the pandemic.

COVID-19 and the 2020 Estimates process

Parliamentary Estimates hearings are usually held annually in July. The 2020 Estimate hearings were disrupted by COVID with the Estimate hearings postponed from their usual time slot to later in the year.

The Estimates process was due to take place over the period of 18 to 20 and 23 and 24 November 2020. Day one began as scheduled at 9am. The State was already somewhat in the shadows of a developing COVID emergency with the so called 'Parafield Cluster' and during the morning break, the Premier, who was in the process of being examined in Committee A was required to leave the Parliament to be briefed on developments in relation to the virus outbreak.

Following the break, the committee resumed without the Premier in attendance. The Chair advised the Committee that pursuant to Standing Order No. 268, he would be requesting that the Speaker vary the Estimates timetable to facilitate the consideration of the proposed payments scheduled for that day due to the unavailability of the Premier for the remainder of the day. The committee then adjourned at 11.37 am until 12noon the next day.

At a subsequent press conference the Premier, the Minister for Health and Wellbeing, the Chief Public Health Officer and the Commissioner of Police in his role as State Coordinator, explained the decision of the COVID Transition Committee to implement the Emergency Management (Stay at Home) (COVID-19) Direction 2020, under section 25 of the Emergency Management Act 2004 (SA), better known as the 6 day hard lockdown. The direction was to come into effect at 12.01am the next morning.

Committee B was adjourned in the same way at 1.55 pm as preparations for the impending lockdown began to be put in place. In light of further information coming to hand in relation to the nature of the spread of the virus, the defined period to stay at home was reduced from its original conclusion at 12.01am on Wednesday 25 November to 12.01 am on Sunday 22 of November.

On 20 November 2020, the Speaker approved a request from the Committee Chairpersons for the resumption of sittings for Estimate Committees on Monday 23 November in accordance with the timetable previously distributed for Monday and Tuesday, 23 and 24 November. Both committees sat on Monday 23 November without incident. Estimate hearing were finally concluded for 2020 on Tuesday 24 November.

Tasmania House of Assembly

In the light of the Covid-19 pandemic the House of Assembly made a number of changes to procedures of the House through its sessional orders. On 17 March 2020 changes were made to standing orders 18, 119 and 76 for the remainder of the Session through a Motion in the House. Standing order 18 details the days and times of meeting of the House. Ordinarily adjournment of the House would be at 6pm but this was amended, inserting instead that adjournment "be no later than 5.25pm on Tuesdays and Thursdays and 2.30 pm on Wednesdays."

Standing Order 119, which requires the Members to address the Speaker standing, was amended to leave out the requirement that the Members speak 'in the Members place.'

This meant that Members were able to observe the practice of social distancing in the Chamber and speak from what was essentially another Member's place. Standing order 76, which details process for raising Matters of Public Importance was suspended, removing this item from the House's daily order of business. These changes aided in reducing the amount of time Members spent in the Chamber, allowed social distancing, and helped to prioritise necessary Government business. These changes were rescinded on 18 August 2020, with the exception of the change to Standing Order 119, which remains in place.

The House agreed to a further a sessional change to standing orders on 30 April 2020 in relation to the days and times of meeting in standing order 18.

Paragraphs (d) and (e) were suspended. Paragraph (d) required the Speaker to call for issues to be raised once the House adjourned and that members may then speak to any matter for seven minutes. This was changed to the Speaker calling on speakers on the 'Covid-19 Emergency Matter of Public Importance', in which members could speak for a maximum of seven minutes each with the debate not exceeding thirty-five minutes. Paragraph (e) was altered to note that following the debate of (e), the Speaker would then call for adjournment speakers, when any members may speak on any matter for seven minutes. When these issues were debated for the maximum of one hour, the House shall stand adjourned without the question being put, until the next sitting day. This was also rescinded by a Motion of the House for the Rescission of the Resolution on 18 August 2020.

Sessional Order 18A, regarding the extension of a day's sitting, was also altered to remove the words 'six o'clock pm' and insert 'the time prescribed for the adjournment in Standing order 18 (a).' This helped to reflect the change made to standing order 18 on 17 March 2020 as mentioned above.

Members in the House continue to social distance where they can in the Chamber, with Members not always sitting in their assigned seats to allow for this. Additionally throughout 2020 there was a reduced number of Clerks in the chamber. For a period of time there was only one Clerk at the Table, but this has now changed to two at any given time.

Victoria Legislative Assembly

The COVID-19 pandemic had a significant impact on the operations of the Legislative Assembly. Initially, when a state of emergency was declared in Victoria in March 2020 the Assembly agreed to a sitting of the house motion allowing the Speaker to set the next sitting day. A sitting arrangements motion was agreed to when the Assembly next sat on 23 April which allowed for:

- Changes to the order of business and earlier adjournment of the House to shorten the sitting day.
- The ability for members statements, constituency questions and adjournment matters to be submitted in writing and published in Hansard.
- Certain bills related to COVID-19 to be second read immediately after the first reading and debated concurrently.
- Limits on the number of members allowed in the Chamber at any one time.
- More discretion for the Chair in ringing the bells to form a quorum.

The motion also included measures due to uncertainty around when the House would next sit. These measures allowed for:

- Documents to be released at the end of each week while the House was not sitting.
- Questions on notice to be published at the end of each week while the

House was not sitting.
- The ability of the House to meet in another manner or form.
- The ability to replace and appoint members to committees by writing to the Speaker.
- Extensions to some committee reporting dates.

Following this the Assembly agreed to put measures in place using various motions to set sitting arrangements over different sitting weeks to allow the Chamber to continue to operate while keeping members and staff safe. Measures put in place through motions over the course of sitting weeks in 2020 included:

- Changes to the order of business and earlier adjournment of the House to shorten sitting days.
- Limits on the number of members allowed in the Chamber at any one time.
- More discretion for the Chair in ringing the bells to form a quorum.
- The ability for members statements, constituency questions, statements on parliamentary committee reports and adjournment matters to be submitted in writing and published in Hansard.
- The ability for speeches in the second reading debate of bills on the government business program to be incorporated into Hansard.
- The ability for speeches on substantive motions considered by the House that day to be incorporated into Hansard.
- Remote participation via audio link or audio visual link.
- Divisions to be conducted in voting groups to limit the number the number of members in the Chamber.
- Ability for members the register their opinion on a division without being present by notifying the Clerk in writing.
- Changes to start times staggered with the Legislative Council to reduce the chance of members congregating in common areas of the Parliament.
- Ability for the Speaker to order breaks to facilitate cleaning in the Chamber.
- Ability for the Speaker to reschedule sitting days based on health advice following consultation with the Leader of the House and the Manager of Opposition Business.

As each of these resolutions has had a set expiration date it is a decision for the House if any of these measures are kept.

The Parliament also made some changes to the way committees operate to allow for more remote participation. The *Parliamentary Committees Act 2003* was amended to allow certain committees to hold meetings and hearings virtually over audio visual links. One committee hearing that was held virtually was the Public Accounts and Estimates Committee's Inquiry into the Victorian Government's response to the COVID-19 pandemic. The amendments to the *Parliamentary Committees Act 2003* will be repealed on 26 April 2022.

Victoria Legislative Council

In March 2020, a state of emergency was declared in Victoria in relation to the COVID-19 pandemic and Parliament House closed to the public. The Council sat 17 to 19 March as scheduled and on the third sitting day resolved that the House next sit on a 'day and hour to be fixed by the President'. In late April, the President recalled the House for a one-off sitting to deal with certain emergency legislation and interim appropriation bills.

Certain Standing and Sessional Orders were suspended, and temporary orders were agreed to by the House at the one-off sittings on 23 April 2020, 4 August 2020 and 18 August 2020 as well as on various subsequent sitting days to allow core procedures to continue whilst still ensuring public health directions are adhered to.

The Council continued a sitting schedule in some manner throughout 2020, sitting a total of 42 days out of a scheduled 46. Members followed additional safety measures implemented by the Parliament to ensure the House could sit under the safest of circumstances.

The temporary orders and safety modifications implemented in brief:

- Masks became mandatory at all times and could only be removed in the Chamber by the Member who had the call to speak. This remained in place until the December sitting week when masks became optional in the Chamber.
- Designated entry and exit points to the Chamber were assigned.
- Members were encouraged to limit their presence in the Chamber to only when necessary — for divisions, to ask a question, to form quorum or to make their contribution.
- The Chair was given further discretion in ringing the bells to form quorum provided the Chair was confident that a quorum of Members was present within the Parliamentary Precinct.
- The House resolved to permit incorporation into Hansard of constituency questions, members' statements, adjournment matters and second reading debate contributions for Bills in lieu of the Member giving their contribution in the House.
- The process for divisions changed to enable members to stand in their places and be counted by Clerks, rather than moving within the Chamber and appointing tellers.
- The House suspended proceedings for regular deep cleaning of the Chamber throughout the sitting day.
- The Chamber operated with reduced Parliamentary staff.
- Documents, including Bills and Amendments, were not distributed in the House and instead were emailed to Members or published online by the Table Office.

- The lower galleries, lower side galleries and upper galleries were taken to be part of the Chamber for Member seating and many Members contributed to debates from these places. The temporary orders defining the upper galleries as part of the Chamber was rescinded on Tuesday, 13 October 2020. The lower public galleries and lower side galleries continue to form the definition of the Chamber.

The House also agreed to additional temporary orders on 23 April, 4 August and 18 August 2020 to allow for questions on notice to be asked and answers to questions on notice to be lodged, on non-sitting days.

Many of the above temporary orders relating to the sitting day proceedings were put in place until such time they were rescinded by the House and therefore may continue to be in place for much of 2021.

On several occasions in 2020 the House agreed to grant the President additional power to reschedule the next sitting day on the basis of health advice after consultation with the Leader of the Government in the Council, the Leader of the Opposition in the Council and Members representing the crossbench and independent Members. This arrangement has not continued beyond 2020.

Western Australia Legislative Council

Like most parliaments around the world the Legislative Council of Western Australia had to adapt to the conduct of a parliament during a pandemic. While Western Australia has fared better than most jurisdictions in relation to the health impacts of COVID-19, it still required procedural changes to ensure the safety of those participating in parliamentary proceedings.

In March 2020 the Legislative Council adopted a number of temporary measures to facilitate the business of the House and manage any Government Bills or business arising from or in connection to the COVID-19 pandemic.

The Council agreed to varied sitting arrangements to facilitate social distancing and minimise the potential for unnecessary physical contact between members and support staff. These arrangements included a mechanism allowing members to speak from a place in the Chamber other than the members' own seat, and provided that members could gather in the President's Gallery and indicate an "Aye" vote by standing and a "No" vote by sitting during divisions.

For the management of declared COVID-related Bills (or motions), the Council adopted a temporary order that set maximum time limits for each stage of the Bill. This was an extraordinary measure for the Council whose convention is that debate on matters should not be restricted. The temporary order required the Leader of the House to consult with opposition members prior to setting debate time limits. Following that consultation, the Leader of the House could then set limits for each stage of the COVID-related Bill under consideration.

While the speaking times provided under the Standing Orders for members remained unaltered, the effect of the temporary order had the potential to limit the number of members contributing to each stage of the debate. If a member spoke for the entire duration of the set maximum time limit, the presiding member was required to put and determine the question immediately upon the expiry of the set time. The limited scrutiny of potentially far-reaching legislation was a concern articulated by a number of members. On occasions where a set time limit was unexpectedly exhausted before members were willing to close certain debates, yet the Government was willing to extend a certain period of time (for example, during consideration in Committee of the Whole House), the Committee/Council was required to report progress in order to provide an opportunity for the Leader of the House to set a further maximum debate time. While this was not procedurally challenging, it was confusing for some members.

The motion to establish the temporary order was passed by the Council on 31 March 2020 with no dissentient voice. The temporary order expired in November 2020, days before the prorogation of the 40th Parliament. The 41st Parliament opened on 29 April 2021 and there is yet to be a temporary order in relation to COVID-19 put in place.

The following arrangements were put in place by the President of the Legislative Council on 31 March 2020. The measures were progressively relaxed throughout 2020 as there was no community transmission of COVID-19 in Western Australia. By October 2020 all measures had been revoked. Most of these arrangements did not require a resolution of the House with the exception of permission for Members to speak in a place other than their own and the alternate arrangements for Divisions:

- Seating arrangements were altered to ensure social distancing. Party Leaders, Ministers and Whips were allocated seats and other Members sat in unallocated seats. The President designated the President's Gallery as the Floor of the House and Members could use this seating. Members with allocated seating could speak from their place and other Members used a lectern positioned adjacent to the Table of the House.
- Chamber doors and the Bar of the House remained open at all times and were manned by Chamber staff at the usual times, for example during Divisions.
- Admission to the Chamber was subject to all persons strictly adhering to hygiene requirements. Hand sanitiser was available at each of the entrances to the Chamber and all persons were required to use this on entry to the Chamber. Members were encouraged to follow other health guidelines including only attending if they were well and maintaining appropriate social distance.

- Government Advisers were permitted to sit behind the President's dais to attend to their relevant Minister in the Chamber unescorted for the purpose of passing notes containing advice so as to minimise Chamber staff movements. During Committee of the Whole, Advisers continued to sit at the Table of the House along with the Minister.
- The Chair of Committees and Deputy Chairs sat in the President's Chair during Committee of the Whole House.
- Divisions were conducted without the need for Members to cross the Chamber. Those voting with the Ayes stood and those voting with the Noes sat.
- Hard copy answers were not be distributed in the Chamber. Answers will be provided to Members by email via the Parliamentary Liaison Officer to minimise staff movement in the Chamber and handling of papers.
- Hansard reported remotely and was not be present on the floor of the House.

BANGLADESH PARLIAMENT

The sessions were held in 2020 by maintaining social distancing, following the rules of hygiene and the periodic participation of the members of the parliament.

CANADA

House of Commons

Initial response to the pandemic

On 13 March 2020, the House adopted by unanimous consent a motion that among other measures, adjourned the House until 20 April 2020, cancelled committee meetings, and established terms and conditions for extending the adjournment of the House beyond 20 April. The Board of Internal Economy also determined that visitor access to the House of Commons precinct would be closed and public tours would be cancelled, committee travel would be suspended, and all parliamentary functions and events in the precinct would be cancelled. No provisions were made at that time for the House or its committees to conduct its proceedings in virtual or hybrid formats.

Physical distancing in the House and filing documents electronically

The House was recalled on 24 March 2020, and through an informal agreement between the parties, a limited number of members were present in the House. The House adopted by unanimous consent a motion ordering, among other things, the suspension of certain Standing Orders so as to allow members to speak from any seat in the House and thereby respect physical distancing. This

measure has been renewed as required and remained in effect for all sittings in 2020.

At subsequent sittings, the House also adopted orders containing provisions that remained in effect for the rest of 2020 allowing a wide range of documents to be filed electronically, thus reducing the need to deliver and handle paper copies of documents usually tabled in the House or filed directly in hard copy with the Clerk of the House.

Special Committee on the COVID-19 pandemic

On 20 April 2020, pursuant to the order made on 13 March, the House of Commons resumed business and adopted, after debate and on a recorded division, a motion, ordering among other things, the creation of the Special Committee on the COVID-19 pandemic. The Special Committee was created to consider ministerial announcements, to allow members to present petitions, and to allow members to question ministers of the Crown, including the prime minister, on the COVID-19 pandemic. The period for questioning ministers was similar to Question Period, but each member asking questions had five minutes to use for questions and answers, while questions and answers during Question Period are usually 35 seconds long.

Following an order adopted b the House on 26 May 2020 (by recorded division, after debate on a government motion), the Special Committee's mandate expanded to include authorising members to make statements in the manner provided for in Standing Order 31 (where in the fifteen minutes before Question Period on a daily basis members are permitted to make statements of up to one minute in duration). It also included a provision that any document presented by a minister or parliamentary secretary be deemed to have been laid before the House.

The Speaker of the House presided over the Special Committee, which was comprised of all members. Quorum for the Special Committee on the COVID-19 pandemic was service members. In practical terms, the Special Committee provided members a means to conduct some of the same kinds of business as would normally be done in a sitting of the House period where the House was not sitting according to its normal calendar.

In total, the Special Committee met 25 times, with seven meetings by videoconference, four fully in-person meetings in the Chamber, and 14 meetings in a hybrid format, with some members participating in person and others by videoconference.

Hybrid proceedings of the House

Pursuant to the order adopted by the House on 26 May, the House sat and resolved itself into a committee of the whole on 8 and 22 July and 12 August

2020, for the purpose of questioning ministers for not more than 95 minutes with respect to the COVID-19 pandemic and other matters, and for the purpose of holding a take-note debate on the pandemic and the measures taken by the government in response to it, for a period of two hours and 20 minutes. Members could participate either in person or by videoconference. These were the first hybrid sittings of the House.

Parliament was prorogued on 18 August, and Second Session of the 43rd Parliament opened on 23 September 2020, at which time the House resumed its typical sitting schedule for the first time since March. During the first sitting of the session, the House adopted, by unanimous consent, a special order to allow for the continuance of parliamentary proceedings while respecting public health guidelines. The special order was in effect until 11 December 2020 and included provisions stating that members may participate in all sittings of the House and committee meetings in persons or by videoconference and that members participating virtually would be counted for purposes of quorum

Technology and support for hybrid sittings

The House Administration adapted its existing portfolio of technologies and integrated them with a Zoom platform, enabling it to manage and configure the technology, impose security controls, and provide simultaneous interpretation services in both official languages.

For the hybrid meetings of the Special Committee and hybrid sittings of the House, two large screens were installed in the House on either side of the Speaker's Chair. This allowed members in the House to see members participating remotely. Those participating remotely could see their counterparts in the House through the Zoom interface. A screen was also installed in front of the Speaker's Chair to allow the Speaker to monitor the raised hand function in the Zoom participants list and to see the person speaking on Zoom, as well as the member "up next" to speak via Zoom.

An additional workstation was positioned next to the Speaker's Chair to allow a manager from Procedural Services to assist the Chair in monitoring proceedings on Zoom call, bringing potential technical issues to the attention of the Table and the Chair, liaising with broadcasting in response to the Speaker's intentions to recognise virtual participants, and liaising with IT support officers to ensure appropriate follow-up when issues arise.

Work was undertaken to try to ensure that all members have access to an adequate internet connection, for example from their home or constituency office, in order to participate in the proceedings. The House has equipped members with wired headsets with boom microphones to try to ensure the best possible sound quality.

Other changes in practice: recorded divisions and unanimous consent

The special order adopted on 23 September 2020 included provisions for taking of recorded divisions by electronic means until 11 December 2020. The motion requested that the House administration proceed with the development of a remote voting application, and that, until it is ready and approved for use, recorded divisions take place in the usual way for members participating in person and by roll call for members participating by videoconference, provided that members participating by videoconference have their camera on for the duration of the vote. With some exceptions, recorded divisions were automatically deferred until after Question Period, and the sitting was extended by the time taken for voting, up to a maximum of 90 minutes. Recorded divisions with roll call for members participating by videoconference each took approximately 40 minutes, whereas a traditional, fully in-person vote lasts approximately 10–12 minutes.

With respect to requests for unanimous consent, whereas the Speaker would normally ask whether there is consent and listed for members to voice their consent/dissent, the Chair reversed this practice to account for members participating by videoconference, asking only members opposed to the question to express themselves, to maintain clarity and avoid a situation which could be detrimental to the interpreters listening to the proceedings and be difficult for the Chair to assess.

Committees

The motion adopted by the house on 24 March 2020 authorised the Standing Committee on Health and the Standing Committee on Finance to hold meetings by videoconference or teleconference only for the sole purpose of receiving evidence concerning matters related to the government's response to the COVID-19 pandemic. On 31 March, the Standing Committee on Health held the first-ever committee meeting by teleconference. On 9 April, it held the first ever entirely virtual committee meeting of the House, with all members participating by videoconference.

The House was recalled for a second time on Saturday 11 April 2020. At that sitting, the House adopted a motion ordering, among other things, that a limited number of standing committees be permitted to meet by videoconference or teleconference only for the sole purpose of receiving evidence concerning matters related to the government's response to the COVID-19 pandemic and that the Standing Committee on Procedure and House Affairs be instructed to study ways in which members could fulfil their parliamentary duties while the House stood adjourned on account of public health concerns caused by the pandemic.

In the motion adopted by unanimous content on 23 September the House

authorised members to participate at committee meetings either in person or by videoconference and ordered that all witnesses participate remotely. Due to resource constraints to support hybrid meetings, the need to accommodate members participating from different time zones, and the need for cleaning of committee rooms between meetings, committees met on a different schedule than usual. Between September and November 2020, the House had the capacity to support 36 virtual or hybrid activities per week, and this capacity increase from November to 54 virtual or hybrid activities per week. A schedule was established and provided to the whips to plan parliamentary activities.

Duration of changes to procedures

The measures in place at the end of 2020 for hybrid proceedings of the House and virtual or hybrid proceedings of committees were renewed on 25 January 2021, in an order that remains in effect until 23 June 2021. As of 8 March 2021, the House has made no decision about extending any of the procedural changes beyond that date.

Senate

Senate Chamber

During the First Session of the Forty-Third Parliament, the Senate met on an irregular basis, often based on recalls or extensions of adjournment to deal with urgent and specific business, including regular Committees of the Whole to hear from ministers on the subject matter of bills and the government's response to the pandemic. Attendance was coordinated by the offices of the leaders and facilitators, working with the Speaker's office, with the goal of respecting physical distancing guidelines. The galleries have been closed to members of the public since the start of the pandemic.

Over the course of that session, the Senate adopted a number of motions to adapt to the evolving logistical challenges of the pandemic. Starting on 13 March, a motion was adopted at the start of each sitting to authorise senators to sit and vote from any seat in the Chamber in order to encourage physical distancing. On 12 March and 1 May, orders were adopted so that senators who were not present at a sitting of the Senate were presumed to be on public business and the requirement for a medical certificate after six consecutive sitting days of absence due to illness was suspended. Also on 1 May, the Senate adopted a motion to allow tabled documents to be provided electronically to avoid public servants having to come to the Senate of Canada Building in person.

At the start of the second session in September 2020, the Senate continued to sit in person with actual attendance still being coordinated by the offices of the leaders and facilitators, working with the Speaker's office. A motion to authorise

senators to sit and vote from a seat other than their assigned place was again adopted, but this time included the option for senators to sit in the galleries to help with physical distancing.

On 27 October, the Senate adopted a motion to allow hybrid sittings, which began on 3 November, using Zoom Meetings. The motion sets certain requirements for senators participating by videoconference, such as having to use equipment provided by the Senate, keeping their video on at all times (except for when the bells are ringing) and being the only people visible on their video feed. The motion also makes adjustments to the sitting start and adjournment times, and reduces the duration of the evening suspension. It gives the Speaker authority to suspend the sitting for technical reasons, or to adjourn the sitting for technical reasons, subject to appeal. The motion also contains special provisions for senators wishing to make interventions by videoconference and establishes a process for voting for remote senators. The terms of the order were to cease to have effect on 18 December. On 17 December, the Senate agreed to renew the terms of this order from 1 February 2021 to 23 June 2021, with some additional conditions being attached to the renewal (e.g., a requirement that senators voting remotely must be visible on the video broadcast feed).

Senate committees

Discussions between the recognised parties and recognised parliamentary groups delayed the normal processes for establishing the membership of committees at the start of the First Session of the Forty-third Parliament. Once the pandemic's full effects started to be felt, work was largely focused on a range of urgent issues directly relating to responses to the pandemic. As a result, only a limited number of committees were established during the first session. Three committees were authorised to meet by videoconference on April 11, and the Standing Committee on Internal Economy, Budgets and Administration held the first videoconference meeting of a Senate committee on 14 April, using web-based Zoom Meetings as the platform. On 1 May, a fourth committee was authorised to meet by videoconference.

In addition, a Special Committee on Lessons Learned from the COVID-19 Pandemic and Future Preparedness was established on 11 April, but members were not named before the session ended on 18 August.

On 27 October, the Committee of Selection was constituted for the purpose of nominating a Speaker pro tempore and to appoint senators to committees. In addition, the committee was authorised to make recommendations concerning virtual and hybrid sittings of the Senate and of committees. Although committee members were appointed in early November, it wasn't until after 17 November, when the Senate adopted a motion to authorise committees to meet in a virtual or hybrid fashion, that the majority of Senate committees started

to organise virtually and then began to hold hybrid or all-virtual meetings. The 17 November motion also gives precedence to hybrid meetings and limits virtual meetings to specific circumstances. It gives priority to committees studying government business, sets a hierarchy among certain committees, and establishes a process for dealing with conflicts relating to the scheduling of committee meetings. The motion also sets certain standards for senators' participation in committee meetings by videoconference, with respect to their location, establishes that videoconference participants count towards quorum, sets standards for the use of equipment and video functions, and cautions all participants about the inherent risks of using videoconferencing technology to hold in camera meetings. This order was set to expire on 18 December but on 17 December, the Senate agreed to renew its terms from 1 February 2021, to 23 June 2021.

Although it was common practice for witnesses to appear before Senate committees by videoconference prior to the pandemic, the use of Zoom has greatly expanded the Senate's capacity to integrate participants by videoconference. Furthermore, senators were previously not permitted to participate in committee proceedings unless they were present in person. It would be expected that some form of web-based videoconferencing will continue after the pandemic, considering the ease of use, greater capacity and relatively low cost of using such technology. However, it remains to be seen whether the Senate will allow senators to continue to participate in committee meetings by videoconference.

Employees

Since the start of the COVID-19 pandemic, the Senate has asked its employees to work from home unless their presence at the workplace is determined to be essential by their senator or manager. Adjustments to a number of services were made to reduce physical presence, and access to the buildings and the galleries has been limited.

Alberta Legislative Assembly

Temporary amendments to the Standing Orders

The Assembly agreed to a number of temporary amendments to the Standing Orders, which were intended to facilitate the functioning of the Assembly in an appropriate manner during the COVID-19 pandemic. One such measure provided that the quorum requirement be reduced from 20 to 12 Members. Another temporary amendment permitted the Speaker, in consultation with the Government House Leader and the Leader of the Official Opposition, to extend a period of adjournment beyond the originally specified date and time due to an emergency event or because it was not in the public interest to meet

on the specified date or time.

Other key changes came about pursuant to the passage of Government Motion 10, which was passed with amendments on 17 March 2020, and affected certain procedures during the spring sitting of the Assembly (February to July). The motion empowered the Government House Leader, in consultation with the Official Opposition House Leader, to extend a period of adjournment or, following the reconvening of the Assembly, to advise the Speaker of a further adjournment or continuation of an adjournment. It enabled the Government House Leader, after consulting with the Official Opposition, to file a revised sessional calendar with the Clerk. As well, it permitted the Government House Leader to advise the Speaker of when a sitting should be extended beyond the hour of adjournment on Thursday and to sit on Friday, Saturday or Sunday from 10am to 5pm (the Assembly does not normally sit on these days).

Government motion 10 also modified the process by which the Assembly considered its main estimates, pertaining to Budget 2020–21. The Assembly considered the main estimates in committees of the Assembly (as per standard practice) for the first week of what was to be a two-week main estimates process. However, the main estimates of the remaining ministries not considered at committee during week one were, pursuant to Government motion 10, considered on 17 March for three hours in Committee of Supply, after which a vote on the main estimates took place to complete the main estimates process. Following the vote, the Appropriation Bill was introduced and received first reading and, following a debate that included a Member from the Government and a Member from the Official Opposition, received second reading. The remaining consideration of the Bill at committee of the whole and at third reading stage was deemed to be completed without motion put.

Use of videoconferencing and remote participation at committee meetings

Committees of the Assembly have modified how their business is conducted in order to deal with the COVID-19 pandemic. The *Legislative Assembly Act* (Alberta) permits participation in committee meetings by "telephone or other communication facilities", and Members have for many years participated in committee meetings by teleconference. However, due to the pandemic, starting in April committees have adopted motions also permitting videoconference participation in committee proceedings. The result has been that "hybrid" committee meetings have taken place since April and for the remainder of 2020 and into 2021 in which committee members may take part in the proceedings by telephone, videoconference or in person (with the appropriate COVID precautions to be taken). In addition, witnesses, experts and staff are also afforded the opportunity to participate remotely or in person. Although a small number of committee practices and procedures have been modified

to accommodate hybrid meetings, for the most part committees continue to operate as they did prior to the pandemic, albeit with much greater remote participation.

British Columbia Legislative Assembly

On 18 March 2020, the Government of British Columbia declared a provincial state of emergency due to the COVID-19 pandemic. At the time, the Legislative Assembly was in the middle of a scheduled two-week adjournment. On 19 March 2020, the Government House Leader confirmed that the Legislative Assembly would sit on 23 March as scheduled to consider urgent business forthcoming by government. House Leaders of the three recognised caucuses worked collaboratively to ensure adherence to public health guidelines with respect to physical distancing by minimising in-person attendance while ensuring all-party representation.

Fourteen of 87 Members attended the sitting. The Deputy Chair of the Committee of the Whole, Spencer Chandra Herbert, presided, as both the Speaker and Deputy Speaker were unable to travel to Victoria. The House made several adjustments to facilitate the day's proceedings, which included the review and authorisation of urgent budgetary expenditures and legislative measures to support British Columbians during the pandemic. The House agreed to permit Members to speak and vote from a seat other than their assigned place for the day's sitting, notwithstanding Standing Orders 36 and 37, and agreed that the routine business be comprised solely of Oral Question Period and Presenting Reports by Committees, notwithstanding Standing Order 25.

During the sitting, the Legislative Assembly approved 2020/2021 supplementary estimates of $5 billion to support the government's COVID-19 response plan. Two bills were introduced and, following first reading, the House agreed that the bills be advanced through all stages that day, given the urgent and extraordinary circumstances. Bill 15, Supply Act (No. 2), provided funding for ministry operations for the first nine months of the 2020/2021 fiscal year. The previously introduced Bill 12, Supply Act (No. 1), which would have provided funding for ministry operations for the first three months of the fiscal year, was withdrawn by leave. Bill 16, Employment Standards Amendment Act (No. 2), provided workers with unpaid, job-protected leave if they are unable to work due to COVID-19 as well as three days of unpaid sick leave for all workers. The long adjournment motion adopted at the end of the sitting allowed for the location and means of conducting sittings of the House to be altered due to an emergency situation or public health measures, by agreement of the Speaker and the House Leaders of each recognised caucus. The motion also allowed for other presiding officers or another Member so designated by the House Leaders to act in the Speaker's stead if the Speaker was unable to act

owing to illness or another cause.

In consultation and collaboration with the Speaker, House Leaders and all Members, Legislative Assembly staff subsequently worked towards the resumption of sittings in the summer using hybrid proceedings with a limited number of Members and Assembly staff physically present and other Members participating via Zoom videoconferencing.

The Legislative Assembly also published and implemented a COVID-19 Safety Plan in consultation with the Provincial Health Officer that included measures for enhanced sanitation, increased physical distancing and the installation of plexiglass barriers where it was difficult to maintain physical distancing. Although the Parliament Buildings remained closed to the general public, access to limited seating in the public gallery was available by reservation, with seats positioned to allow for physical distancing and safe passage.

The Legislative Assembly of British Columbia moved to a hybrid proceedings model in the summer of 2020 to enable the continuation of House business within public health guidelines. This model allows for a limited number of Members and Assembly staff to be physically present in the Chamber while other Members participate virtually using Zoom videoconferencing technology. The Members' seating plan was adjusted to allow for up to 24 Members spaced three desks apart and the number of Legislative Assembly staff present during proceedings is also reduced. To ensure all in person participants could see Members participating virtually, Hansard affixed four large screens to the walls of the Chamber, two on each side. Two of the screens featured the 'gallery view' of all virtual participants and the other two featured the 'speaker view' which Hansard was broadcasting.

Special provisions respecting hybrid proceedings are set out by way of a Sessional Order. Key changes address quorum and attendance, voting and divisions, and document management, and are designed to ensure the equitable treatment of Members participating in person and virtually.

Members participating virtually are required to have their audio and video functions enabled with their face clearly visible to be counted towards quorum, to participate in debate, and to vote. In place of voice votes, Members participating virtually use a visual voting system by displaying a blank white voting card to indicate "aye," and a black "x" upon a white card to indicate "nay."

Formal divisions are deferred until 15 minutes prior to the fixed time of adjournment, or if there is less than 30 minutes remaining prior to the fixed time of adjournment, the division is deferred to the end of the afternoon sitting of the following sitting day. Similarly, if a division is requested during a morning sitting, it is deferred until the afternoon sitting of the same day. Following the final statement of the question, the Zoom meeting is locked and

Members participating virtually are not permitted to connect or disconnect until the division has concluded (mirroring the locking of the Chamber doors). Divisions are taken by roll call.

With respect to document management, any Standing Order that requires a document to be "handed in" or "laid upon the Table" or transmitted by other similar physical means is interpreted to include the transmission of a document by approved electronic means. Likewise, to fulfill the requirement for document distribution and delivery to Members, the Office of the Clerk may do so electronically.

The Sessional Order also empowers the Speaker to exercise discretion, in consultation with the House Leaders or the Whips, in the interpretation of any provision of the Standing Orders or Sessional Order that may require leniency or alteration to allow all Members to fully exercise their duties and rights in the proceedings of the House. This provision has been used, for example, when audio or connection issues affect a Members' ability to vote during formal divisions. To address this issue, it was agreed by the House Leaders, Whips and the Speaker that in cases where a Member's audio is not working, the Clerk conducting the division would call the Member's cell phone directly from the Table and accept their verbal vote over the speakerphone. The Member is still required to be visible on Zoom for the vote to be recorded.

To enable proceedings to flow smoothly, Whips are required to provide a speaking list to the Office of the Speaker at least two hours prior to the start of a scheduled sitting, outlining the sequence of Members wishing to make an introduction, to participate in an item under Routine Business, or to participate in debate at Orders of the Day. This does not, however, prohibit other Members from seeking the floor. Members participating in person can rise in their place as per the usual practice and those participating virtually can use the chat function to advise the Clerk of their desire to seek the floor who would then flag it for the Chair. Similarly, and notwithstanding the usual practices of the House, any Member who intends to move a motion to amend a bill at committee stage, of which notice is not typically required, is requested to provide at least one hour of notice to the Office of the Clerk prior to introducing that motion in the House to ensure the electronic distribution of that motion to all Members once it is moved.

Two Clerks are present at the Table during hybrid proceedings. One Clerk monitors Members participating virtually, including the chat, while the other Clerk focuses on Members physically in the Chamber. In the case of a formal division, a "Division Clerk" (a Table Officer) also attends the Chamber to assist and sits in the corner. The role of "Zoom Clerk" (fulfilled by Assembly staff) was also initially created to support the hybrid proceedings. The Zoom Clerk was responsible for monitoring the chat function in Zoom and for directing

procedural questions to the Clerks at the Table and technical questions to Hansard Broadcasting. The role was discontinued for the December sitting period as Members and staff became more familiar and comfortable with the hybrid proceedings and the position became unnecessary.

The provisions in the Sessional Order for the summer sitting period authorised the House to sit 22 June, 6, 13, 20 and 27 July, and 10 August. During the weeks of 22 June and 6, 13, 20 and 27 July, the House sat on Mondays and Tuesdays (morning and afternoon) and Wednesdays (afternoon). For the week of 10 August, the House sat on Monday, Tuesday, Thursday and Friday (morning and afternoon) and Wednesday (afternoon). For the weeks of 22 June, 6, 13, 20 and 27 July, the Sessional Order authorised Committee of Supply, Sections A and C, to sit virtually on Thursdays and Fridays (morning and afternoon); the House and Committee of Supply, Section B did not sit on these days.

Typically, Committee of Supply is authorised to sit in two or three sections that operate concurrently with proceedings in the Chamber; Sections A and C sit in committee rooms while Section B sits in the Chamber. For virtual Committee of Supply, the Committee Chair and Clerk for each of Section A and Section C were present together in a committee room while all other Members participated virtually. The provisions for the proceedings mirrored those for the hybrid sittings of the Chamber with a few exceptions. During in person Committee of Supply proceedings, the proposed ministry votes are usually physically handed to the Minister so that they may move the motion to begin debate. During the virtual proceedings, the Clerk in attendance screen shared the vote through Zoom for the Minister to move the motion. The same approach was taken for all motions. Unlike the hybrid proceedings in the Chamber, the Committee Chair was not provided with a speaking list; to be recognised, Members used the 'raise hand' function in Zoom.

The Sessional Order specified the membership of Sections A and C which each had 17 designated voting Members in keeping with usual practice. The Committee of Supply also used voting cards for voice votes; however, according to the Sessional Order, if a division was called it was taken immediately, not deferred to the end of the day or the following day, as is the procedure for the hybrid Chamber proceedings. When a division is called, typically caucus Whips attend the committee room to authorise any membership substitutions. For the virtual proceedings, the Sessional Order required each caucus to submit their list of authorised substitutions to the Office of the Clerk at least one hour in advance of the start of each sitting. A second Clerk was also available to assist in the event that a division was called; however, no divisions were called in Committee of Supply during the summer sitting period.

As the House was adjourned during Committee of Supply proceedings, the Committee Chair did not report to the House at the conclusion of each

sitting, as is the usual practice. Instead, the Clerk in attendance transmitted a written report of proceedings to the Office of the Clerk. The reports were then incorporated into the Votes and Proceedings for the next sitting day.

To prepare for the hybrid proceedings, Legislative Assembly staff conducted a thorough review of the technology and numerous simulation exercises with an increasing number of participants, including Members. This also included the use of different scripts to test all possible scenarios and walkthroughs with Presiding Officers and Committee Chairs. These tests helped inform a number of processes and procedures, particularly with respect to voting. For example, when testing the roll call for formal divisions, it was noted that at times, virtual participants were indecipherable or cut off when they simply stated "aye" or "nay". Accordingly, all Members are asked to state "I vote aye" or "I vote nay" when their name was called to ensure clarity. A Members' Guide to Hybrid and Virtual Sittings was also developed to assist Members with procedural processes and technical support.

Overall, the shift to hybrid proceedings has been successful and well-received with Members appreciating the adaptability of the Legislative Assembly and its staff in enabling Members to fulfill their critical legislative duties. Collaboration between the Speaker and three House Leaders, and flexibility, consultation and responsiveness with Members were critical to the success of the hybrid proceedings. The House Leaders released an agreement on 17 June 2020 with respect to the proposed adaptations which was tabled in the House on 22 June and Sessional Orders with respect to hybrid proceedings of the House and virtual proceedings of Committee of Supply were subsequently adopted. Following the fall provincial general election and the opening of the new Parliament on 7 December, simulations were held with new Members and a new Sessional Order with respect to hybrid proceedings was adopted based on the sessional measures adopted in the summer. One key change for the December sitting period was the revision to a regular Monday to Thursday sitting schedule. The use of hybrid proceedings is expected to continue well into 2021 with Members and staff continuously reviewing processes and procedures with a view to making any necessary adjustments.

Ontario Legislative Assembly

For a two-month period after a state of emergency was declared for the COVID-19 pandemic in March 2020, the Legislative Assembly of Ontario ("Assembly") met monthly to pass emergency legislation and extend the state of emergency. Both the legislation and the motion to extend the state of emergency were adopted unanimously and with very little debate. Starting in May 2020, the Assembly began to adopt measures to allow for more regular meetings of the House and increased debate time while still allowing Members to maintain

physical distancing. The key procedural changes include: (1) hybrid in-person/remote committee meetings, (2) lobby voting in the Chamber, (3) formal and informal measures to facilitate physical distancing in the Chamber, and (4) a requirement to wear face coverings in the Legislative Precinct and Chamber.

Hybrid meetings of committees

Prior to the state of emergency, the Assembly's Standing and Select Committees met exclusively in person. On 12 May 2020, the Assembly passed a temporary order to permit its Standing and Select Committees to hold hybrid (in-person/remote) meetings subject to the following conditions:

1. Meetings must be held using an electronic means of communication that is approved by the Speaker;
2. Meetings must be physically located in the Legislative Building and the Chair and Clerk must be physically present;
3. The Chair must verify the identity and location of every Member who participates electronically; and
4. The Chair can make any necessary amendments to procedures to facilitate physical distancing and electronic participation.

The motion to authorise hybrid committee meetings was adopted unanimously by the House.

While Committees were permitted to hold hybrid meetings, the House continues to meet exclusively in person.

Lobby voting

The Assembly's voting procedures have changed significantly during the pandemic. Prior to the pandemic, the Assembly's recorded division procedures required Members to be present in the Chamber at the same time for their votes to be recorded. Due to the number of Members and the size of the Chamber, it would be impossible for even a majority of Members to physically distance during a recorded division.

Consequently, the House initially adopted a temporary order to permit Members to vote from the public galleries while masked. Subsequently, the Assembly adopted a temporary order to permit lobby voting to ensure that Members can be physically distanced while they cast their votes. When a recorded division is required, Members and staff are asked to vacate the lobbies (which are frequently used by Members to meet with party colleagues, and political and legislative staff). Once the lobbies have been prepared, Members cast their votes by passing through the Aye (East) or Nay (West) lobbies. Each division lasts either 15 or 30 minutes, which provides sufficient time to permit Members to cast their votes in a physically distant manner.

Informal and formal measures to facilitate physical distancing in the Chamber

The Government and Opposition caucuses informally agreed to limit the number of Members present in the Chamber at any time. This ensures that there is adequate space for Members to maintain physical distance while in the Chamber. The two recognised parties and the independent Members agreed to a system of cohorting whereby Members of a cohort will attempt to avoid intermingling with Members of another cohort as much as possible. The decision for Members to attend the Chamber in cohorts was made voluntarily and informally; the House has not adopted any formal measures to this effect.

The Clerks-at-the-Table have also adopted a cohorting system to ensure continuity of operations in the event that Clerks are required to quarantine or self-isolate.

In addition to the informal cohorting agreement, the House has also temporarily waived its rule requiring Members to sit in and speak from their assigned seats. While Members could technically sit in any seat in the Chamber, they have generally limited themselves to the seats assigned to Members of their own party.

Requirement to wear face-coverings in the Legislative Chamber

The Speaker, exercising his authority over the Legislative Precinct, and notwithstanding any incompatible orders of the Province of Ontario or the City of Toronto, has issued COVID-19 protection orders for the Legislative Precinct. The Assembly has separately adopted an order requiring Members to wear facemasks while in the Chamber and Members' lobbies, specifying that masks must be tightly woven, completely cover the mouth and nose, and fit snugly against the sides of the face without gaps. Members are permitted to remove their face masks when they have been recognised by the Speaker to speak. Failure to comply with this House directive can be treated as a matter of order by the Speaker, and enforced as such, to the point of naming a member and causing their exclusion from the Chamber and all other parliamentary proceedings, outside of which the Speaker's orders for the Precinct otherwise prevail.

The Assembly has authorised the Speaker to delay or deny the entry into the Legislative Precinct of any Member who is not compliant with the Speaker's mask Order, or who fails the COVID-19 entry screening questionnaire/secondary screening. Any Member's claim in these circumstances of a breach of privilege on grounds of their being blocked or obstructed from participating in parliamentary proceedings is proactively quashed. The Assembly's Order cites the overriding necessity to preserve the parliamentary process by protecting the health of its key participants as justification for the delegation of this power to the Speaker.

The Speaker has also issued guidelines on what constitutes appropriate face masks (i.e. masks should not contain commercial, political or brand logos, emblems, or be associated with campaigns, causes, intuitions, or organisations).

Prince Edward Island Legislative Assembly

Prior to reconvening the First Session on 26 May 2020, the operations of the Legislative Assembly were reviewed in consultation with the PEI Chief Public Health Office, in order to ensure that physical distancing and other safety protocols could be observed. The Legislative Chamber was reconfigured to allow Members to observe the recommended six-foot separation. Plexi-glass barriers were erected between desks that could not be moved six feet apart. The public gallery and media gallery, which are normally located at floor-level in the Chamber, were removed. Enhanced cleaning measures were added. Mask wearing was made mandatory at all times for members and staff, except when seated or standing to address the House at their desks in the Chamber. The Hon. George Coles Building, like all buildings of the legislative precinct, was closed to the public at the outset of the pandemic, and remained so throughout 2020. Different accommodations for the media were provided on the Coles Building grounds and later within the Coles Building itself. Proceedings continued to be broadcast on a local television station, and live-streamed on the Legislative Assembly's website and Facebook page, as they were prior to the pandemic.

Manitoba Legislative Assembly

The Rules of the Manitoba Legislative Assembly were not permanently changed in 2020 however many of its provisions were altered to cope with the COVID-19 pandemic on a Sessional basis. These changes were initially accomplished by leave and subsequently, a Sessional Order was adopted which altered the Rules primarily to deal with the ability to sit with Members both in the Chamber as well as through virtual connections.

As part of the provision for Members to participate virtually, a legal opinion was sought and given by Legislative Counsel to provide the advice that the Assembly had the ability to define what attendance means, and that there were no restrictions for attendance to include virtual attendance.

In 2020, the Legislative Assembly had commenced its regularly scheduled sitting on 4 March 2020 and that session was expected to continue until June. However, on 16 March 2020, a motion was adopted by leave in the Assembly to give the Speaker, the Government and Opposition House Leaders and the Honourable Member for River Heights (House Leader of Independents) the authority as a group to vary the sitting hours and location of sittings of the Manitoba Legislative Assembly as required by emergency public health measures, to be in effect until rescinded by the Legislative Assembly. On 19

March 2020, the Legislative Assembly adopted a request by leave to suspend the sittings of House indefinitely and adjourn until the call of the Speaker at the end of the sitting day. The same group was empowered to consider ways for the Assembly to modify its operations to accommodate social distancing in light of the pandemic situation.

On 15 April 2020 the Legislative Assembly resumed for one day, with numerous social distancing measures in effect, to pass legislation and approve additional funding for the pandemic fight. All Members agreed to reduce the numbers of the total 57 MLAs in attendance by one-third to twelve Government MLA, six Official Opposition MLAs and one Independent MLA. In May, the Assembly resumed sitting one day per week. It was agreed by leave to alter the Rules temporarily for all these sittings with such measures including:

- All recorded divisions would respect the party breakdown of twelve Government MLAs, six Opposition MLAs and one Independent Liberal MLA;
- No public presentation on Bills;
- No quorum counts would be permitted;
- MLAs would be allowed to speak from a seat in the Chamber other than their own;
- Independent Liberals would be allowed to move motions without a seconder; and
- Committee rooms were also reconfigured to facilitate better physical distancing, as there was also an agreement to reduce the Committee membership from 11 MLAs to six (except for the Public Accounts Committee which met in the Chamber to all for distancing).

In September 2020, the procedural Clerks collectively designed new Rules incorporated into a Sessional Order in order to accommodate an environment where MLAs would be able to fully participate through virtual means in all House proceedings. In addition many documents were created including a Virtual Sittings Members Guide as well as a Quick Reference Guide. In addition, significant amounts of virtual technology was purchased and nine Broadcast Media Technicians were hired and trained to facilitate the resumption of Assembly operations in October.

The Legislature resumed sitting on 7 October 2020 with a Throne Speech and the start of the 3rd Session, 42nd Legislature instead of continuing with the 2nd Session which is the usual practice. Several logistical and ceremonial components were also omitted from the Throne Speech proceedings due to the pandemic, such as no guests in attendance at the Throne Speech, no inspection of troops by the Lieutenant Governor or firing of cannons and the judiciary were not in attendance for the Throne Speech with the exception of the Chief Justice. After the Throne Speech debate, the House agreed by leave

to consider the Sessional Order created to deal primarily with the ability to sit with Members both in the Chamber as well as through virtual connections.

In the first week of November, the Assembly adopted a new seating plan, further reducing the number of Members in the House to twenty-five per cent to reflect the entire province moving to Code Red status and the numbers in the Chamber were reduced to ten Government Members, five Official Opposition Members and one Independent Liberal. The Legislative Assembly resumed normal operations with the vast majority of Members participating on a virtual basis through sophisticated Zoom operations. On 3 December 2020, the last scheduled House sitting day of the calendar year, all parties agreed to extend the Sessional Order passed on 7 October 2020, from 3 December 2020 to 1 June 2021 and added a provision that all presentations to Bills at the Standing Committee stage would be virtual.

Response of the leadership team

As the COVID-19 pandemic began to significantly affect the province in March 2020 a Legislative Assembly Pandemic Leadership Team was established with weekly meetings conducted via teleconference or in person with social distancing comprising of the Speaker and Senior Managers—Clerk, Deputy Clerk, Sergeant-at-Arms, Executive Director of Administration, Director of Human Resources and Director of Finance.

The Legislative Assembly made significant physical and procedural changes in 2020 to cope with the pandemic including the purchase of expensive virtual technology. Any changes to procedure were made by consensus through the House Leaders and some of the significant steps included:

- Hiring of Broadcast Media Technicians to manage the platform and host the meetings with the Committees Clerks and Digital Media Specialist acting as the initial Moderators until those hired become more familiar with the unique procedural aspects of the House:
- Creation of a new Moderator work station inside the Chamber to monitor proceedings and send MLAs documents virtually when required.
- Sending PDFs to MLAs of Bill Motions, Petitions and other House documents enabling them to move such items virtually.
- Changing the method of Recorded Voting by first counting MLAs in the Chamber and subsequently counting virtual Members by calling their names alphabetically, with each virtual Member stating either "I vote yes" or "I vote no."
- A fourth row of seating was provided for MLAs to further enhance physical distancing with the fourth row consisting of individual portable tables for each MLA assigned to sit in that row. "Fourth row" Members spoke from one of two stand up podium microphones on either side of the Chamber.

- Use of large screen televisions in the Chamber and Committee rooms, to enable Members, the Speaker and the Clerks to see who is participating virtually.
- The seating plan was adjusted weekly, so that MLAs from each caucus could take turns being present in the Chamber to participate in proceedings while other MLAs participate by a virtual platform.

Government and Opposition staff were further instructed to provide the following information on a daily basis to the Clerks and Moderators:

- A list of remote/virtual Members (weekly) including the questioners in QP, the Members who will have Members' Statements; any Members who will raise a Grievance and a list of Members speaking in various debates.
- Provide any document to be tabled in the House in both hard copy and PDF so the PDF could be sent to remote Members.

Québec National Assembly

The exceptional circumstances we were confronted with as a result of COVID-19 forced our parliamentarians to adapt and to modify our rules so that the National Assembly and its parliamentary committees could continue to play their role despite the circumstances. The following is a summary of the main actions taken since March 2020.

First, on 12 March 2020, in consultation with the Premier and the parliamentary group leaders, the President announced the closure of the National Assembly's reception pavilion and the suspension of visitor access in order to limit the number of people present in the Parliament Building. In addition, all Members' international missions as well as hosting of foreign delegations were cancelled.

On 13 March, by virtue of the powers conferred on it by the *Public Health Act* the Québec government issued an order in council declaring a public health emergency throughout Québec. At the time, the National Assembly was engaged in the budget process for the 2020–2021 fiscal year. The Minister of Finance had delivered the budget speech on 10 March and the parliamentary committees had begun examining the interim supply the following day. The Assembly was also slated to examine the supplementary estimates of expenditure requested by the Government for fiscal year 2019–2020. The onset of the public health emergency cut this process short.

In the days that followed, parliamentarians reached a first agreement by unanimous consent enabling the Assembly to adjourn its proceedings, while expediting certain urgent matters. At the beginning of the 17 March sitting, the Government House Leader moved a motion detailing the plan for adjourning the Assembly.

First, under this motion, several steps in the budget process were deemed to

have been completed. The Assembly considered the supplementary estimates for the fiscal year then ending to have been examined and adopted. However, it mandated the Committee on Public Finance to debate them once the remainder of the main estimates had been adopted in order to allow Opposition Members to question the Government on them. The debate on the budget speech was also deemed concluded, and the Members agreed to put grievance motions moved during this debate and the Minister of Finances' motion that the Assembly approve the Government's budgetary policy to an immediate vote. The Members also agreed to hold a debate in the House and before the Committee on Public Finance should the Government decide to introduce an economic update before tabling the next budget, which it did on 12 November. In addition, in order to be able to pass a number of key bills during that same sitting, the Assembly agreed to consider several stages of the legislative process required in their regard to have been completed. Lastly, under this motion, the Government also undertook to communicate frequently with the leaders of the Opposition groups to inform them of changes in the situation.

After the 17 March sitting, the Assembly adjourned until 21 April, while providing for the possibility to defer resumption of its proceedings if in the public interest. On 16 April, a second agreement was reached. Although the Opposition groups and independent Members acknowledged the need to extend the adjournment, they also felt it was their duty to question the Government with regard to the pandemic and the emergency response measures adopted to contain it.

The Members thus agreed to mandate several parliamentary committees to meet in order to allow exchanges between committee members and Government ministers on the subject of the COVID-19 pandemic. For these accountability meetings, it was decided that committee members would participate remotely via the Microsoft Teams videoconferencing platform. It was also decided to defer resumption of the Assembly to 5 May since the Members' agreement had to be ratified by adopting a motion once the Members reconvened.

The first virtual sitting of a National Assembly parliamentary committee took place on 24 April 2020 and the virtual format was used again the following week for three other similar sittings.

A third agreement on the gradual resumption of parliamentary proceedings was reached on 4 May. This agreement provided for a two-phase resumption plan. First, the Members agreed to hold the first meeting on 13 May, to officially adopt the two agreements reached during the adjournment, following which, exceptionally, two consecutive question periods were to be held. Second, at the end of the 13 May sitting, the Assembly would be adjourned until 26 May, when regular proceedings would resume for a period of three weeks.

The Members established a plan to examine certain urgent matters, and

agreed to introduce and pass three private bills and to finish examining a number of public bills by setting aside the Standing Orders so as to be able to carry out several stages in their consideration in the same sitting. In addition, the parliamentary committees were mandated to carry out certain specific orders of reference.

The 4 May agreement also provided for holding further accountability meetings using the virtual parliamentary committee format established on 16 April.

At the same time, certain logistical arrangements were made to comply with public health directives. It was determined that a maximum of 36 Members, in addition to the President and the Assembly staff needed for parliamentary proceedings, could sit in the National Assembly Chamber at a time while maintaining a minimum two-metre distance. A seating chart was prepared and desks were either moved or removed from the Chamber as required. It was strongly suggested in the beginning, then made mandatory, that masks be worn when circulating in the Parliament Building. In addition, traffic corridors were defined to regulate travel in the hallways. Printed documents were replaced by implementing a digital document tabling platform allowing the Assembly clerks to classify and publish tabled documents in real time during the sittings.

Given the maximum number of Members authorised to sit at one time, not all could be present simultaneously to participate in the Assembly's decisions. To sidestep this difficulty, they adopted an exceptional voting procedure, informally referred to as "recorded voting." In keeping with this procedure, when the Assembly is asked to rule on a matter, the President calls on the leaders of the parliamentary groups in turn to take a position on behalf of all Members of their respective groups. This way, all Members who belong to a parliamentary group can, through their parliamentary leader or designated Member, express their assent or opposition to the Assembly's decisions and, thus, have their name recorded in the *Votes and Proceedings*. It was agreed that the Government House Leader would be authorised to vote on behalf of the independent Members in their absence, in accordance with their instructions, on the bills governed by the agreement.

The parliamentarians also took steps to finish examining and adopting the estimates of expenditure. To allow the opposition groups to question the Government on them, the Assembly mandated the standing committees to examine the 2020–2021 estimates of expenditure for a total of 100 hours, reserved exclusively for opposition Members. The examination of the estimates took place in August.

At the time proceedings resumed for the fall session, the Members moved a fourth motion to establish specific rules for the proceedings to be held between 15 September and 9 October 2020. This fourth agreement essentially included

the same logistical arrangements as the previous agreement, in particular those concerning the reduced number of Members in the House and those providing for recorded votes. However, the new agreement provided that a Member could individually record a vote different from that of their parliamentary group or choose not to take part in the vote.

In addition, given the reduced number of Members allowed in the House, new measures on the presence of independent Members were included in the motion. In particular, they had to notify the Assembly Secretariat of which periods of Routine Business they wished to take part in each week. Another change in the fourth agreement called for the Government to provide opposition groups with a preliminary list of the ministers who would be present for Oral Questions and Answers the following day. These measures allowed the various parliamentary groups to adjust their reduced numbers accordingly.

Rules for quorum were also adjusted for Business Standing in the Name of Members in Opposition and interpellations so that a lack of quorum could not be raised as long as the minimum number of Members in opposition were present in the House.

Committees resumed face-to-face meetings with the necessary adaptations, in particular by using the principle of votes by proxy for certain sittings since the number of Members able to be present varies according to the rooms committees use. In addition, it was agreed that the proceedings of committees would be suspended, for no longer than ten minutes, when a question was put in the Assembly if a parliamentary group was not represented by a House Leader or Deputy House Leader, or by a Member designated to act on their behalf for the purposes of the vote, and had not notified the Chair that it would not take part in the vote. Technological means were put in place to communicate with committees and parliamentary groups to notify them of the start and end of a vote in order to synchronise the suspension and resumption of committee proceedings.

A fifth agreement, which was the last one for 2020, was reached when proceedings resumed on 20 October of that year. That agreement remained in effect until the work break for the holiday season. It was almost identical to the agreement introduced by the motion moved in September, with the exception of a few minor changes. For example, it provided that ministers would participate in the Oral Questions and Answers period in two predetermined groups, one being present during Tuesday and Thursday sittings and the other during Wednesday sittings and, when there were extended hours of meeting, during Friday sittings. The new agreement also set out that the debates upon adjournment normally scheduled to be held on Thursdays at 6pm under Standing Order 309 would instead be held on Thursdays at 1pm.

The possibility of the Assembly being able to hold virtual sittings with 125

parliamentarians has been discussed on several occasions since March 2020. It was agreed however to maintain the formula of having a reduced number of Members in the House, in particular because of the high cost and delays that implementing such a measure would entail.

As in many other places, the circumstances surrounding the COVID-19 pandemic have enabled the National Assembly to advance certain projects and to develop certain processes in an accelerated manner, in particular thanks to technology. It is conceivable that some of these changes could remain in place after the return to normal. Examples of this are the electronic filing of documents in the House and the possibility of being able to participate in parliamentary committees by videoconference for certain mandates.

Saskatchewan Legislative Assembly

Several rules and procedures were amended in June 2020 for the safe resumption of the current session, and again in November 2020 for the start of a new legislature.

In Saskatchewan, at least 15 members are necessary to constitute a quorum for the transaction of business in the Legislative Assembly. An amendment to The Legislative Assembly Act, 2007 was required to define quorum to be no less than 10 members for the period of 15 June to 3 July 2020. Quorum was reduced from 15 to 10 members to facilitate an agreement to have a maximum of 10 government members and five opposition members plus the Speaker participating in proceedings.

Procedure for recorded divisions was substantially modified on two occasions. In June 2020, the usual practice of calling members' names in the Assembly during a recorded division was temporarily suspended. In its place, whips registered the votes of members not present in the Chamber on a tally sheet and reported their names to the Speaker. Members were also permitted to vote by proxy during recorded divisions in both Assembly and committee proceedings if they were unable to be present in person.

Following the provincial election in November 2020, after the 29th General Election, the desks in the Chamber were repositioned to provide physical distancing, and the seating plans were revised in both the Chamber and committee room in order to accommodate more members while maintaining a high threshold of safety. Additionally, Plexiglas barriers were installed between desks in the Chamber, and a mandatory masking requirement was recommended for everyone attending Chamber or committee proceedings. This allowed for more members to be present in the Chamber during proceedings and for full committee participation.

Subsequently, procedures for recorded divisions were changed to allow for every member to express their vote from their seat in the Chamber by voting

in two tranches. Proxy voting was retained for any member unable to cast their vote in a recorded division in the Chamber due to COVID-19; however, proxy voting was eliminated in committee proceedings because all members could participate.

The Standing Committee on House Services made two reports with the recommended changes which were then adopted by the Assembly. The reports reflected the work of the Standing Committee on House Services, in consultation with the House leaders and the Clerks-at-the-Table, to identify and develop temporary modifications to the processes, practices, and Rules and Procedures of the Legislative Assembly of Saskatchewan.

House Services has made two reports and changes to processes, practices and procedures were made from the first to the second report to adapt to a changing environment in the context of the pandemic. It is anticipated that processes, practices, and procedures will continue to evolve as the pandemic continues.

It is still too early to say whether any of the processes, practices, and procedures of the Legislative Assembly will be changed permanently. With that being said, following the provincial election, the Legislative Assembly Service delivered the new member induction and orientation in a staged rollout online with supplementary Zoom sessions. This proved to be successful and the administration is considering the staged, virtual delivery as a permanent feature.

Yukon Legislative Assembly

The main procedural change, not specific to any physical plant changes to account for physical distancing in the Chamber, was to allow for MLAs and witnesses to appear by teleconference. This was accomplished by way of motion adopted, setting out how this would occur. In addition, a back-up procedure was put in place by way of motion that would enable virtual sittings if in-person sittings were not possible to due to the COVID-19 situation. Fortunately, we have not had to meet virtually, nor have any members used the teleconference call system to participate in meetings of the Assembly. On one occasion (19 October 2020), we did have two witnesses appear before Committee of the Whole via conference call.

CYPRUS HOUSE OF REPRESENTATIVES

The COVID-19 pandemic obligated the House to adapt its mode of work in order to adhere to restrictions imposed in order to curb the spread of the virus. As regards the everyday work of the House, the President along with the Secretary General following recommendations issued by the Government,

decided to introduce a system of remote working, allowing only a limited number of staff members to be physically present at the House. Furthermore, personal sanitisation and protection measures were introduced, including the compulsory use of face masks at all times inside the House, temperature measuring at the entrance of the House and the wide use of disinfectants.

Concerning parliamentary work, during the early stages of the pandemic, Parliamentary Committees were held virtually, while Plenary Sessions were convened only to discuss and approve legislation concerning the measures for the protection of public health and the support of the economy. In these plenary sessions, only one third of MPs participated, which constitutes the necessary quorum. Subsequently, as it became apparent that social distancing measures would need to be imposed for a longer period of time, the House took the decision to transfer its work (Committees and Plenary Meetings) to a different venue (the "Filoxenia" Conference Centre was chosen), where social distancing measures could be better imposed, as meeting rooms there are significantly larger than those of the House (this arrangement still applies).

Overall, and despite the practical difficulties, the House of Representatives responded to the challenges and produced significant work regarding pandemic response. At the same time, the special working conditions created by the pandemic acted as an incentive for the Parliament to further promote and enhance the existing use of technology for both Members and staff.

GUYANA NATIONAL ASSEMBLY

In accordance with Proclamation 1/ 2020, dated 28 August, 2020, issued by His Excellency the President, a Member may choose to participate in the deliberations of the National Assembly by electronic means.

Members participated in hybrid and virtual Sittings of the National Assembly and Meetings of Parliamentary Committees. Virtual participation was facilitated by guidelines prepared to support virtual and hybrid Sittings of the National Assembly and Meetings of Parliamentary Committees.

Standing Orders No. 10(1) and (2) were suspended to enable the Assembly to sit in the Twelfth Parliament during the following hours due to the COVID-19 pandemic. The new sitting pattern became:

- Sit between 10am and 12noon;
- Suspend between 12noon and 1pm;
- Sit between 1pm and 4pm;
- Suspend between 4pm and 5pm; and
- Sit between 5pm and 8pm.

These changes were embodied in a Motion and passed by the National Assembly on 1 September 2020.

INDIA

Lok Sabha

In the light of the COVID-19 pandemic and the need to maintain social distancing, a number of changes and special arrangements were made during the 4th Session of the 17th Lok Sabha (14 September to 23 September 2020).

Seating arrangement

Members were seated in the Lok Sabha Chamber and its Galleries, and the Rajya Sabha Chamber and its Galleries instead of the usual Lok Sabha Chamber on its own.

For the convenience of Members, number stickers had been affixed on the seats in each venue. Members were advised to sit only in the marked seats in the Chambers/Galleries.

Participation in proceedings

Each seat in all the venues had been provided with a sound console and earphone. The Lok Sabha Chamber, Rajya Sabha Chamber and Rajya Sabha Gallery had been provided with microphones. Members were requested to participate in the discussion from their respective seats from these three venues. While participating in the discussion, Members were asked to be seated in their respective seats instead of the normal practice of standing and speaking.

Since a microphone facility was not available in the Lok Sabha Galleries, podiums had been placed for members to participate in the discussion.

As per Government guidelines, Members had to wear masks at all times.

The audio and video system between the Lok Sabha and Rajya Sabha Chamber and their Galleries had been integrated so that the Members speaking from any one of the venues could be heard and also seen in all the other venues and vice versa, along with interpretation facility.

Divisions in the House

During a voice vote, Members had to raise their hands from their respective seats while saying 'AYES' and 'NOES', as the case may be.

Divisions, if any, were to be done through slips and Members were provided slips at their seats in all the venues.

Attendance of members

As a precautionary measure, in addition to the physical Members Attendance Register, Members were also given the option of marking their attendance through a Mobile Attendance Application 'Attendance Register'.

Laying of papers in the House

The Hon'ble Minister in charge of Parliamentary Affairs laid papers listed under "Papers to be Laid on the Table" on behalf of Ministers.

Counter of Parliamentary Notice Office at Parliament House reception office

A special counter of the Parliamentary Notice Office was made functional in Parliament House Reception Office to receive various notices for Members.

All the above arrangements, except for the seating, continued in the 5th Session of the 17th Lok Sabha (29 January to 25 March 2021). Similar seating arrangements continued until 8 March 2021. However, from 9 March 2021, the Lok Sabha conducted its sittings in the Lok Sabha Chamber and its Galleries only. Accordingly, all members were accommodated in the Lok Sabha Chamber and its Galleries.

Rajya Sabha

In view of the COVID-19 pandemic, the Parliament of India adopted new and innovative ways of working to contain the spread of the pandemic. Before convening the Monsoon Session held in September 2020, the Hon'ble Chairman of Rajya Sabha and the Hon'ble Speaker of Lok Sabha held extensive consultations/meetings with all stakeholders regarding the measures to be followed to conduct the Session in a safe environment.

Laying papers

The Chairman of the Rajya Sabha during the Monsoon Session (252nd Session) held in September 2020 announced in the House on 15 September 2020 that in view of the limited functional time available and the special seating arrangements made for the Session in view of the COVID-19 pandemic, he had acceded to the request made by the Minister of Parliamentary Affairs for the laying by him of all the papers listed against the names of different Ministers under the heading 'Papers to be Laid on the Table' and Statements by Ministers related to the Department-related Parliamentary Standing Committees in the List of Business for the day on their behalf.

Salaries and allowances

On the basis of the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2020, to meet the exigencies arising out of the COVID-19 pandemic, the salary of the Members of Parliament has been reduced by 30 per cent for a period of one year *w.e.f* 1 April 2020 to 31 March 2021. Under Section 3 of the said Act, the salary of a Member of Parliament is one lakh rupees per mensem. The Joint Committee on Salaries and Allowances of Members of Parliament has further decided to decrease the allowances of the

Members of Parliament by 30 per cent for a period of one year *w.e.f* 1 April 2020 to 31 March 2021, as follows:

- Constituency Allowance – from Rs. 70,000 per month to Rs. 49,000/- per month; and
- Office expense Allowance – from Rs. 60,000 per month to Rs. 54,000/- per month (out of which Rs. 14,000/- is for stationery item, postage, etc. and Rs. 40,000/- is for Secretarial Assistance).

Direction by the Chair

To meet the need to socially distance, there was a requirement for suitable directions from the Hon'ble Chairman of the Rajya Sabha to broaden the meaning of "Precincts of the Council" during the 252nd Session of Rajya Sabha, when Members were to be seated in Rajya Sabha Chamber and its Galleries, and the Lok Sabha Chamber (the other House). Accordingly, the Hon'ble Chairman, Rajya Sabha issued the following Direction which was published in Parliamentary Bulletin Part – II:-

Precincts of the Council**.**

"Under Rule 2(1) of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha), the "Precincts of the Council" means and includes the Chamber, the lobbies, the galleries and such other places as the Chairman may from time to time specify.

In pursuance thereof, the Chairman specified that the precincts of the Council shall also include Lok Sabha Chamber, its lobbies and galleries during the period of the 252nd Session of Rajya Sabha in view of the seating of Members of Rajya Sabha in Lok Sabha Chamber besides the Rajya Sabha Chamber and its Galleries."

Observation by the Chair

As mentioned above, the 252nd Session of Rajya Sabha commenced from 14 September 2020 with the first sitting scheduled from 3pm. In respect of the sittings from 15 September 2020 onwards and the timings for the Calling Attention and Special Mentions, Hon'ble Chairman, Rajya Sabha made the following observation on 14 September 2020:

"The sitting of the House from 15th September, 2020 to 1st October, 2020 will be from 9.00 am to 01.00 pm. Rule 180(5) of the Rules of Procedure and Conduct of Business in the Rajya Sabha provides that the admitted Calling Attention shall be raised at 02.00 pm and at no other time during the sitting of the House of the Council. In view of the change in time of sitting of the House, it is not possible to take up the Calling Attention at 02.00 pm. Accordingly, the Calling Attention shall be raised in the House at such time as may be decided. Similarly, Rule 180C(1) provides that the time for

submitting notices for Special Mention shall be up to 05.00 pm on a day for raising the matter on the next day of the sitting. Again, in view of changed timing, it has been decided that the time for submitting notices of Special Mention shall be up to 12.00 noon on a day, for raising the matter on the next day of sitting. Further, as the time of sitting is restricted to four hours daily, those Members whose notices of Special Mentions have been admitted should lay the approved text when called by the Chair."

Government Motion regarding suspension of Questions for oral answers and the Private Member's Business

The following Government Motion regarding suspension of Questions for oral answers and Private Members' Business during 252nd Session of Rajya Sabha was adopted on 14 September 2020:

"Keeping in view that the current Session of Rajya Sabha is being held in extra-ordinary circumstances prevailing due to COVID-19 pandemic requiring maintenance of social distancing and keeping the movement of Government officials and others within the Parliament precincts to the bare minimum, this House resolves that Starred Questions and Private Members' Business may not be brought before the House for transaction during the Session, and all relevant Rules on these subjects in the Rules of Procedure and Conduct of Business in Rajya Sabha may stand suspended to that extent".

Special seating and other arrangements

Various measure were taken during the Session in adherence to guidelines issued by the Government of India and the World Health Organisation (WHO) to contain the pandemic and to protect the health and safety of the Members and other dignitaries of Parliament. To ensure that the Session is held in compliance with the social distancing norms such as six feet physical distancing norm, the normal seating arrangement with fixed seat/Division numbers had been dispensed with. Members of the Rajya Sabha were seated in a staggered manner in the Rajya Sabha Chamber, its Galleries (except the Press Gallery) and the Lok Sabha Chamber, i.e., at three places instead of the normal seating in the Rajya Sabha Chamber alone. For the first time in the history of the Indian Parliament, the Chambers and Galleries of both the Houses were used for holding the Session in September 2020. The sittings of both Houses were staggered adhering to social distancing norms and protocols. The Rajya Sabha sat from 9am to 1pm, and the Lok Sabha sat from 3pm to 7pm instead of the usual sitting time of the House from 11am to 6pm.

The seats were earmarked for Members to sit in the Rajya Sabha Chamber, Rajya Sabha Galleries and the Lok Sabha Chamber. However, no fixed seat was allotted to individual Members. Fixed seats were, however, earmarked for the

Prime Minister, Deputy Chairman, Rajya Sabha, Leader of the House, Leader of the Opposition, and Leaders of Parties. The number of seats for each party at three places was fixed as per their numerical strength for allocation amongst their party Members by the respective party.

As there was no fixed seat/divisional number, Members were requested to write their name and mention their Identity Card number instead of Division Number while giving notices or their names for participating in the proceedings of the House and in the Division slips used during the voting of the House. In the case of the requirement for Division/Voting, it was decided that instead of using electronic means, it would be conducted through distribution of slips at three places. As mentioned earlier, in view of the change in the sitting of the House, the time for submitting notices for raising issues of public importance through procedural devices such as Calling Attention, Special mention, Zero Hour Submissions had been changed accordingly.

A Member who wished to raise a matter of urgent public importance on a particular day, was required to give a notice of his or her intention to the Chairman, Rajya Sabha between 12noon until 8pm. on the previous day instead of the existing practice of submitting notices until 9am of the day on which the matter is sought to be raised.

Audio-visual arrangements

Special arrangements had been made for audio-visual integration of the Rajya Sabha Chamber, Rajya Sabha Galleries and Lok Sabha Chamber for providing seamless participation of members in the proceedings of Rajya Sabha.

Visual display of the Rajya Sabha proceedings of all the three seating places were made by interlinking the coverage of Rajya Sabha Television and Lok Sabha Television to facilitate the seamless live telecast of the House proceedings. For this purpose, four display screens were installed in the Rajya Sabha Chamber, six screens in the Rajya Sabha Galleries and two screens in the Lok Sabha Chamber (in addition to two display screens already installed).

The sound system of the three places was integrated so that the Members speaking from the Lok Sabha Chamber were heard in the Rajya Sabha Chamber/Galleries and vice-versa. The interpretation services provided from the Interpreter Booths were made available to Members seamlessly and simultaneously at all the three places through an integrated sound system. The Chairman or Presiding Officer in the Rajya Sabha Chamber could see the Members speaking from Rajya Sabha Galleries or the Lok Sabha Chamber through the integrated sound system. When the voice vote was to be taken by the Presiding Officer on a question before the House, he/she could hear the voices of Members seated in Rajya Sabha Chamber and its Galleries and the Lok Sabha Chamber.

In view of the prevailing COVID-19 pandemic and in adherence to the social distancing norms, visitors were not allowed to witness the proceedings of the House. Members were also requested not to bring any visitors or guests to the Parliament House. Personal staff of Members were also not allowed to come inside the Parliament House.

Enhanced use of ICT system during the pandemic period

The physical circulation of parliamentary papers had been discontinued and electronic copy of parliamentary papers was circulated to the Members through electronic mechanism. The PDF copies of parliamentary papers were sent to them on the Members' Portal accounts through customised software application 'e-Transmission of Parliamentary Papers'. Members were also requested to utilise e-Notices portal to submit notices electronically for various parliamentary devices and bring their e-reader/smart phone to access parliamentary papers made available electronically. This was also done to minimise the personal contact of the Members with the hard copies of the parliamentary papers and the staff.

Arrangements for the media

It was decided to restrict the number of seats in the Press Gallery of both Houses of Parliament for journalists/media persons covering the House proceedings in view of the need to maintain social distancing norms. A draw of lots on rotational basis was conducted amongst the media persons holding annual passes to decide the entry of journalists allowed in the Press Gallery. There were, however, fixed seats for the official media.

Oathtaking arrangements for the newly elected Members

As per the constitutional provision, newly elected/re-elected Members are required to subscribe oath/affirmation before the Chairman of Rajya Sabha to enable them to participate in the proceedings of the House or its Committees. Subscribing to oath/affirmation is usually done during the Parliament Session in the Chamber of the House or in the Chamber of the Chairman of Rajya Sabha when the House is not in session. About 75 Members were elected to the Rajya Sabha from several States in biennial/bye elections in the year 2020. Most of these Members subscribed oath/affirmation during the inter-session period on 22 July, 30 November and 12 December 2020 in the Chamber of Rajya Sabha for which special arrangements were made for the first time in the history of Rajya Sabha in view of the prevailing COVID-19 pandemic.

Requirement for furnishing information regarding assets and liabilities by Members

Under sub-rule (1) of Rule 3 of Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004 framed by Hon'ble Chairman, Rajya Sabha pursuant upon adoption of the Representation of the People (Third Amendment) Act, 2002, every elected Member of the Rajya Sabha is obliged to declare within 90 days from the date of his/her taking oath/affirmation in the Council, the details of his/her assets and liabilities and assets of his/her spouse and dependent children in a prescribed form. Also, under sub-rule (2) of Rule 3, changes, if any, in the declarations furnished under sub-rule (1), as on 31 March are to be notified by 30 June of that year. In view of the nationwide lockdown imposed due to the spread of COVID-19 pandemic, it was decided to extend the last date of furnishing yearly changes in the statement of assets and liabilities by the Members from 30 June 2020 to 30 Novembe 2020 to make it in consonance with the last date of the Income Tax Return (ITR) filed by the Member. This decision was taken considering the fact that some Members might face difficulty in furnishing yearly changes in their statement of assets and liabilities before the last date. As the pandemic subsides, Members would be required to furnish yearly changes in the statement of assets and liabilities by 30 June of every year as prescribed in the Rules.

Meetings of Parliamentary Committees during the pandemic period

Guidelines and protocols were issued to the Members and the officials on attending the Parliamentary Committee meetings and conducting these meetings in accordance with the preventive and safety measures.

Functioning of the Rajya Sabha Secretariat

In view of the COVID-19 pandemic, the following measures were taken by the Rajya Sabha Secretariat:

- Compulsory wearing of face masks and scattered seating adhering to social distancing norms;
- Suspension of biometric based attendance system for parliamentary staff.
- Work from home facility and rotational/rotation based attendance of the staff.
- File movement through electronic mode in e-Office to avoid physical movement of office files to the extent possible as a precautionary measure.
- Holding meetings by the Secretary-General, Rajya Sabha with senior officers through video conference to monitor the working of the Secretariat.
- Use of mobile 'Aarogya Setu' app for breaking the chain of the transmission of COVID-19.

Thus, elaborate arrangements were made by the different agencies of the

Government of India and sections/branches of the Parliament Secretariats for ensuring the smooth conduct of the sittings of the Parliament as well as the functioning of the respective Secretariats of the two Houses during the COVID-19 pandemic. It may be mentioned that the Standard Operating Procedures and protocols evolved during the Monsoon Session of Parliament held in September 2020 were also followed during the Budget Session of Parliament held in January-March 2021. As regards the continuance/ discontinuance of these practices and changes in procedures as mentioned above and in reply to Question No. 2 and 3, when the pandemic subsides, a decision will be taken by the competent authority after a holistic examination of the prevailing situation at that point of time.

STATES OF JERSEY

The Assembly adopted Standing Order 55A which provides for Members participating remotely to count as present for the purposes of the States of Jersey Law 2005 (which sets the Assembly's quorum as 50 per cent of the membership) and also adjusted procedures to deal with the new way of working. A decision was taken that all Members absent without a reason given would be formally excused attendance, to avoid catching out Members suffering technical difficulties. The Assembly has operated since April 2020 using MS Teams, with votes taken using MS Forms. Hybrid proceedings, with a proportion of Members present in the Chamber, operated in autumn 2020 and from Easter 2021. Like with the French revolution, it's too early to tell what the long-term effects of the pandemic will be on the Assembly's procedures and ways of working.

UNITED KINGDOM

House of Commons

The UK House of Commons adapted its procedures between March 2020 and July 2021.

The single most significant change was to allow Members to take part in proceedings remotely, by video link, in Chamber proceedings and in select committees. The Zoom video conferencing platform was used for the Chamber and public meetings of select committees; Microsoft Teams was used for private meetings of select committees. The Chamber operated on a "hybrid" basis with some Members participating remotely, others in person.

The House agreed on 24 March 2020 to:

"Allow Members of select committees to participate in select committee proceedings through electronic means of communication approved by the

Speaker.

Allow Chairs of select committees to report to the House an order, resolution or Report of the Committee not agreed at a meeting of the committee as long as agreed by the committee and that it represents a decision of the majority of the committee."

On 1 April, during the Easter Recess, the Speaker announced that the House should be able to operate 'virtually' if the UK was "still in the grip of the coronavirus crisis" at the time the House was due to return on 21 April. During the recess, staff of the House and the Parliamentary Digital Service worked at great speed to develop, test and implement the technical and procedural changes needed to enable this.

On 21 April, the first sitting day after the Recess, the House agreed the following resolution:

> "That this House is committed to taking all steps necessary to balance its responsibilities for continuing scrutiny of the executive, legislating and representation of the interests of constituents with adherence to the guidance issued by Public Health England and the restrictions placed upon all citizens of the United Kingdom, and is further committed, in pursuit of that aim, to allowing virtual participation in the House's proceedings, to extending the digital capacity of those proceedings to ensure the participation of all Members, and to ensuring that its rules and procedures are adapted to permit as far as possible parity of treatment between Members participating virtually and Members participating in person."

The House also agreed a detailed resolution which in effect set out the "operating model" for the new hybrid proceedings. The first "hybrid sitting" took place on 22 April 2020.

Changes were made to the practice of the House to facilitate the new arrangements. For instance, lists of speakers in each debate and question period (known as "call lists") were published in advance, to assist the broadcasting team in setting up participation by Members taking part remotely.

The House also agreed to give the Speaker power to limit the number of Members present in the Chamber at any one time, in order to maintain safe social distancing. A maximum of about 50 Members were permitted in the Chamber at any one time; this was later increased to about 90 when the two-metre social distancing rule was reduced to one metre, with mask-wearing. Having published call lists also helped with managing numbers in the Chamber, as Members had a better idea of when they need to be in the Chamber to be called to speak.

The House also changed the way Members vote. Traditionally, Members have voted by walking through either the "Aye" Lobby or the "No" Lobby, next to the Chamber; their names are recorded by House staff and they are

counted by Tellers, usually party Whips. These lobbies tended to get very crowded and it was clearly impossible for this way of voting to be made covid-secure. The Parliamentary authorities were asked to devise a solution which allowed Members to vote remotely, using their smartphone or other device, and after extensive testing, including with Members, and consideration by the Procedure Committee, the House agreed to its introduction on 12 May 2020. The House of Lords subsequently adopted a similar system. This system was dropped in the Commons at the end of May 2020, along with other provision relating to changes in Chamber practice. It was initially replaced, at the start of June, with a form of "roll call" voting: Members queued in a social distanced fashion to enter the Chamber and announce, in turn, their name and whether they were voting Aye or No. Tellers counted them from a distance; the record of the names of Members voting was compiled by staff watching a video playback of the vote. This system was cumbersome, as it required Members to queue for quite long periods, so it was in turn replaced with a variant on lobby voting, in which Members tap their security pass on pass readers in each lobby. This still required socially-distanced queuing, so in order to avoid this, and to reduce the risk of crowding, the system of voting method was changed again by the extension of proxy voting to *any* Member who wishes to register for a proxy vote. This greatly reduced the number of Members who needed to be present in the voting lobbies.

The House approved all the main changes. As noted above, on 24 March 2020 the House agreed a resolution allowing select committee members to participate remotely up until 30 June 2020. The House gave the Speaker power to extend this date on his own initiative. He has continued to extend it at regular intervals, usually after consultation with the Liaison Committee, which represents all select committee chairs. Most recently the Speaker extended the provision to 21 June 2021, in line with the provisions allowing remote participation in the Chamber.

On 21 April, the House passed the initial resolution allowing remote participation in the Chamber, and allowing the Speaker to regulate numbers in the Chamber. This was renewed, in various forms, and always with the House's authority. There was a brief hiatus at the start of June 2020 when the House reverted to an entirely in-person model; but soon afterwards a limited form of hybrid proceedings was re-introduced, extending only to scrutiny proceedings. The hybrid model was extended to all proceedings in December 2020 and this arrangement lasted until July 2021.

Remote participation in the Chamber was initially limited to "scrutiny" proceedings only—questions to Ministers and statements by Ministers—and each sitting period was shorter than usual, to allow the new arrangements to bed in. On 27 April the "hybrid" arrangement was extended to proceedings on

legislation. As noted above, the temporary orders allowing remote participation lapsed at the end of May 2020; they were revived early in June, but only for scrutiny proceedings. In December 2020, the House agreed to extend the "hybrid" model to all proceedings, and this arrangement remained in force until 21 June 2021. These orders were then further extended until 22 July 2021 (the last sitting day before the summer recess). At the same time, the order relating to select committees was also extended to 22 July, and the Speaker's power to extend it further was removed.

All the orders arising from the pandemic—permitting remote participation by Members in proceedings in the Chamber and in select committees and mass proxy voting, and giving the Speaker power to regulate numbers in the Chamber—lapsed at the end of the sitting on 22 July. In procedural terms, everything has now gone back to normal, and when the House was recalled for one day on 18 August, the Chamber was full and no call list was published. Select committee meetings are once again physical-only, but committees' ability to take evidence by video-link (which was always possible even before the pandemic) has been retained. It is expected that more use will be made of this facility in future.

The Speaker has agreed that pass reader voting should be retained, replacing the previous system whereby House staff recorded the names of Members as they passed through the division lobbies. Additional pass readers will be installed in both lobbies to facilitate this.

House of Lords

At the time of writing in mid-July 2021, the House of Lords has been operating for 16 months in either hybrid or virtual form and proceedings in the House of Lords still look very different from how they did 16 months ago. Almost all spontaneity has gone from Lords proceedings, with almost all debates governed by a prearranged speakers' list; only some Members are physically present in the Chamber, with others contributing via Zoom, the now ubiquitous internet videocall app that most of us had not heard of at the start of 2020; and if there were to be a division, Peers would use their phones (or another electronic device) to register their votes.

In looking at the changes to procedure in the Lords that have taken place over the past 16 months, this article will do simply that: look. As a long-time member of staff in Hansard, the Official Report, my perspective brings little behind-the-scenes knowledge or insight, but is that of a close observer who knows the House and the way it works, and has had a constant ring-side seat for the transformation in proceedings. It has been nothing short of revolutionary and, though many of its most far-reaching changes may be short-lived, others will survive and may permanently alter the way the Lords works.

Events

On Thursday 20 May 2021, the Government used a debate on what have become known as hybrid sittings to outline their desire for the House to return largely to how things have historically worked. In a further debate on Tuesday 13 July 2021, the House agreed to recommendations of its Procedure and Privileges Committee that did just that, including:

- Normal oral questions would continue to be allocated by ballot;
- Speakers' lists for normal and topical oral questions, and questions to Lords ministers who are full members of the Cabinet would be retained;
- The total question time for normal and topical oral questions should be 40 minutes; that the time allocated for questions to Lords ministers who are full members of Cabinet should be 30 minutes; and Private Notice Questions should be allocated 15 minutes;
- Questions for short debate in Grand Committee would continue to be allocated by ballot;
- The de-grouping of amendments after each day's groupings have been published should be discouraged;
- The requirement to convene a reasons committee should cease; and that a standard Reason should be given when the Lords disagree with a Commons proposition without proposing an alternative;
- The House should continue to vote using the PeerHub electronic system but should be required to do so from a place of work on the parliamentary estate. In due course a passreader voting system would be rolled out as a permanent voting solution;
- Members who were unable physically to attend the House on grounds of disability should be able to continue to participate virtually in all business in the Chamber where there is sufficient notice and when they choose to.

It is not true to say that things will go totally back to the way they were. Some of the features of the hybrid House will be retained, but the chosen balance of old and new proceedings is, difficult to achieve in a House where views on what to retain do not accord to traditional party lines. Not all Members are happy with the arrangements: Lord Hunt of Kings Heath, for instance, said that "the committee seems to have combined the worst aspects of how we worked pre Covid with the worst aspects of our current working" (Hansard, 13/7/21; col. 1755).

Probably the first changes of significance to proceedings in the second Chamber occurred on 23 March 2020, by which time the majority of parliamentary staff were working remotely in anticipation of the announcement of a full national lockdown, which was indeed made that same day. Compared to that, it seems quite small fry that the House agreed to a Motion allowing any Member to act as a Deputy Speaker, but this highlighted the particular

weakness of the Lords to COVID-19: the average age of Peers (in this instance, the average age of the panel of Deputy Speakers, without whom debate would grind to a halt) put them in the high-risk categories for hospitalisation and death if they caught the disease. The previous week, on 19 March—incidentally, the first day in the history of parliamentary reporting that a Westminster *Hansard* had been compiled without a single member of its staff in the Palace—Lord Fowler, then Lord Speaker and 82, had announced his intention of working from home and implied that it was the duty of Members to show leadership by following public health guidance and doing likewise.

After an extended Easter Recess, with furious and frantic work behind the scenes, especially by the digital and broadcasting departments, the House returned on Tuesday 21 April, and agreed a Motion allowing virtual proceedings for most of its business, except the scrutiny of Bills, its most important and time-consuming task. This was to be accomplished using video calls through at first Microsoft Teams, which was very quickly superseded by Zoom. At 3.09 pm—without the world watching, because broadcasting resources had been prioritised to the House of Commons—the virtual Chamber began its first Oral Question. That first question was on a well-worn topic to make everyone feel at home in this brave new world: "House of Lords: Membership".

The problem with the all-virtual House was that it was, essentially, a talking shop, unable to make any decisions. It could consider items of business, but could not agree—or disagree—them. A debate of any significance, especially on legislation, required a formal Motion to be put before the House with physically-present members. Members, in common with the rest of the country, were being advised not to attend physically and this therefore severely limited their ability to meaningfully challenge the Government on what were not uncontroversial or insignificant changes to law. The virtual House could only ever be a temporary solution.

Fully virtual sittings, or mostly virtual ones interrupted by occasional physical proceedings, carried on until Thursday 4 June, at which point a Motion was agreed to allow hybrid proceedings—part virtual, part actual, with interaction between Members in the Chamber and Members appearing on large screens dotted around the Chamber—to take place from the following Monday, 8 June. The Motion also made provision for use of a remote voting app ("PeerHub"), starting from Monday 15 June, so that the House could take substantive decisions without needing to herd through crowded Division lobbies in which there was no hope of social distancing. To further ensure not too many Members were in the Chamber at once, a maximum limit of 30 was placed on the numbers (this was later upped to 60).

Behind the scenes

By this point, staff had been recruited from around the administration to support new teams whose role was to make the virtual proceedings go as smoothly as possible for its participants, and for those watching their broadcasts, which began on Tuesday 28 April. Again reflecting the outside world, where a generation of isolated grandparents had to become "silver surfers" or risk losing contact with their friends and loved ones, many Members of the Lords, with an average age of 70, had to master technology that they had previously struggled with or been able to ignore. An example is Lord Cormack, who said, at col. 122 of *Hansard* on 28 July 2020, "I must confess that I had never used a computer before", but continued: "I was determined that I was not going to be excluded from your Lordships' House". To assist such Members, and manage the relatively elaborate new processes supporting sittings, a Virtual Proceedings Administration Team—VPAT—was hastily put in place, as well as what became known as hub clerks, whose job was to pass information between the clerks in the Chamber and the broadcasters. Additionally, when virtual proceedings began the team had a "producer" to help schedule business on Teams and keep proceedings moving, as well as a "mute clerk"—the person responsible for making sure Members' microphones were silenced when they were not meant to be heard by others.

Self-regulation and spontaneity

The Lords famously works by what is known—often more in hope than expectation—as self-regulation. Traditionally, it has not had a Speaker like the House of Commons who selects Members to speak; rather, the membership itself comes to a group decision to let someone have the Floor—an unlikely "anarchist collective", as Baroness Bennett of Manor Castle has pointed out (*Hansard*, 21/4/20; col. 5). At Question Time in particular, this had always lent an extra zip to proceedings—woe betide anyone who wasted the House's time, as they would find themselves subject to shouts of "No!" and "Too long!" from their colleagues. But if Members are not actually in the Chamber to exercise their right to speak, self-regulation becomes basically impossible. How can the House decide who talks next? And for all the help from the likes of VPAT, how can a Member contributing via Zoom from home get any sense of the mood of the House—of what Lord Strathclyde claimed on 13 July 2021 that Lord Hennessy of Nympsfield had christened its "emotional geography" (*Hansard*, col. 1733)?

Even before the pandemic, though, many debates—including Second Reading—were governed by a speakers' list to which Members had to sign up in advance. The obvious solutions to the problem of self-regulation were twofold: first, to temporarily extend those lists to all debates, and secondly, to

ban interventions. That way, everyone knew the scripted order in which things should happen, and the Speaker could call people in their expected turn to make their contributions. The noisy free-for-all of Lords Questions was replaced by a civilised list of the first 10 Members to sign up to speak, the first six or seven of whom know that they are very likely to get to ask their question. Despite many suggestions that this makes life too easy for Ministers, others have found it a less aggressive and more inclusive way of deciding who asks supplementary questions. It is set to remain in place, though those with a sense of theatre may mourn the passing of Questions of old!

More controversially in the hybrid House, each group of amendments discussed in Committee, on Report or at Third Reading stages of Bills has to be signed up for in advance, and if anyone—even someone physically present in the Chamber—wants to challenge the Minister on something he or she says, they have to email the clerk about it. This was, of course, extremely unpopular and featured prominently in accusations of dilution to legislative scrutiny. Baroness Fox of Buckley bemoaned it on 13 July, for instance, at col. 1744 of *Hansard*: "What has been lost is the meaningful, interactive spontaneity that the noble Lord, Lord Cormack, and so many other noble Lords have discussed. That has been a loss for democracy." Before one reaches for one's handkerchief, it is worth remembering how infrequent interventions and spontaneity were in the pre-pandemic House, especially in non-legislative debate, but it is true that the return to list-less, more free-form legislative amendment debates is very much looked forward to by most Members.

Virtual proceedings

The ability to contribute to the House from one's study or living room has certainly proved popular, and has led an increased number of Members to sign up for debates. Members can claim an attendance allowance, which during the pandemic was reduced to half for those participating virtually. This problem was described graphically by Lord Stoneham of Droxford, the Liberal Democrat Chief Whip, at cols. 465-66 of *Hansard* on 6 May 2020. He invoked the spectacle of his party's needy Peers queueing up, desperate to be picked by him to work that day, saying: "50 years ago I spent time in the London docks", and that the government Whips were "making me like a shop steward in the casual system who will determine who speaks … and, effectively, who gets their income." The convenience of speaking from home might well be a factor too. Of course, the more controversial the debate, the greater the number of speakers signing up, and the shorter the time each of them has, sometimes down to only one or two minutes. Again, this was very unpopular, but it seems likely to be a difficult challenge to overcome in a House with more than 800 Members who are paid on the basis of their attendance.

Particularly striking in the 20 May debate was the argument about the merit of continuing virtual contributions to the House once the pandemic was over. Baroness Campbell of Surbiton, who suffers from spinal muscular atrophy, said, at col. 724 of *Hansard*, that remote working "improved my focus, decision-making and health. As a result, I worked harder, longer and more effectively than ever I had done before the pandemic. Yes, I did my duty better. Surely remote working should at least be seen as a 'reasonable adjustment' under the Equality Act." Members who travelled long distances to Westminster likewise made the case for their continuation. The Government flatly said no to both, citing cost, and others quoted the Writ of Summons and its insistence on Members being present in Westminster. Deliberately or not, this came across as callous, especially to disabled Peers. Lord Forsyth of Drumlean, for instance, pulled no punches at col. 713: "We do have a duty to participate, and if we feel that we are not able to do so … we should make way for those people who are."

In the end, a sensible compromise appears to have been reached, with long-term disabled Members being allowed to continue virtual contributions from September, albeit that such contributors will not have the parity with physically present Members that has been such a feature of the hybrid House. The next problem that will arise is the eligibility criteria, particularly remembering the average age of Members. Whatever the arguments about a distinction between age and disability, it is hard not to envisage a creeping increase in the number of eligible Members. It could be suggested that the line has been drawn too firmly. One of the most frequent visitors to the Hansard office pre-pandemic, despite his two walking sticks and increasing frailty, was Lord Judd, who died in April 2021 aged 86. He made a series of virtual contributions in his final months notably more powerful and incisive than those he had made physically for several years. How much energy did it take him to travel from Cumbria to Westminster every week, and simply to get around the Palace? It is hard not to think he was able to direct that effort into his final speeches, to some advantage.

Procedural decisions and remote voting

The decisions about changes to procedure have been made in the Lords' usual way: the House has had to approve Motions suggesting that it adopt recommendations from the House of Lords Commission or the House's Procedure and Privileges Committee (PPC). Both bodies are small groups of senior Peers (although the Commission has at least one lay member) including the Leader of the House, the leaders of the Labour and Liberal Democrat groups, the Convenor of the Cross Benches, the Lord Speaker (who chairs the commission) and the Senior Deputy Speaker (who chairs the PPC). The PPC also contains the Chief Whips of the three party groups. Both bodies also have backbench members. The significant amount of power usually vested in these

bodies was shown in the huge changes that their recommendations led to over the course of the pandemic.

Initially, decisions on the Motions to approve those recommendations were slightly hollow, as voting was impossible and the denuded, virtual House had no real power to prevent their going through. After the arrival of the app through which Members can vote remotely, ,—the perhaps rather ill-advisedly named PeerHub—the House's not agreeing to the Procedure Committee's recommendations became more of a possibility. It hasn't happened, though, for all the strong feeling these matters evoke. Although there have been inevitable problems, remote voting through PeerHub has largely been a great success—even if it will not be used for divisions for much longer. With strong arguments made by members on all sides of the debate, the arguments that voting remotely was too easy, and that the serious business of legislating should be done by Members in and around the Chamber and not by those off the estate, just in case they're not paying full attention to proceedings prevailed. Although it won't happen immediately, a pass-reader system similar to that being used already in the House of Commons will replace the time-honoured Division system and use of clerks in lobbies taking names.

Select Committees

Perhaps the most successful and popular use of videoconference technology during the pandemic has been its adoption by the House's Select Committees. Witnesses had been able to appear remotely before 2020, but it was never widespread and usually used for foreign witnesses whose travel to Westminster would be impractical or prohibitively expensive. But shortly after the Easter Recess in 2020, all evidence-taking Select Committee sittings had become fully virtual (the first virtual public evidence session took place on 28 April by the Economic Affairs Committee), with even the Members appearing via videocall from their homes. Although this hasn't been without its hiccups, perhaps it has suited the generally relaxed, information-gathering style of Lords committees well. Commons Select Committees can be aggressive and intimidating, which is unusual in the Lords. Even so, witnesses might be less open and forthcoming in the horseshoe hothouse of Committee Room 1 than in a relatively casual video chat. Although all-virtual Select Committee evidence-taking sessions aren't without their critics—Lord Elder, for instance, used the debate on 13 July to say "It seems to me that Zoom has put a great deal more power and control in the hands of the chair and the secretary, and diminished the contribution of Members" (*Hansard*, col. 1744)—it seems likely that they will be the least controversial permanent change to Lords business as a result of the pandemic.

Grand Committee

Unlike most legislatures, the Lords does not have myriad committees to consider Bills or pieces of delegated legislation. Beyond the select committees which do consider delegated legislation in the Lords in detail, the Grand Committee is used to carry out much of the consideration of secondary legislation as well as the Committee stage of some government bills. This traditionally took place in the Moses Room, a large room very close to the Chamber, with vast paintings of biblical scenes on the walls. This was impractical as a Covid-secure venue, though, and the large Committee Room 2A was transformed instead into a Grand Committee room fit for 2021, bristling with large video screens to show the virtual participants, while those actually present were encased in Perspex booths at individual desks, with the Deputy Chairman reminding them to please sanitise their desks and chairs.

Though no doubt efficient and safe, the effect is rather like the Members being in a self-service checkout in a supermarket. Lord Foulkes of Cumnock complained early on that he was not able to "cause as much mischief as I normally do in Grand Committee as we are a bit like battery hens in here" (*Hansard*, 2/9/20; col. GC 41). It is certainly true that the environment actively cut off even the physically present participants from one another, although spontaneity and interaction could still occur. From September, Grand Committees will return to the Moses Room, initially at least for all-physical sittings.

Sitting hours

There have been other changes too, but the last very visible one was to the House's sitting hours. Some years ago, the Commons made a big deal of trying to become more "family friendly" by sitting more in the daytime and less in the evening. But the Lords (historically due to the nature of its part-time membership, many of whom still do the other jobs that have caused them to be selected as Members in the first place) did not, except for the 11am start on a Thursday. During the pandemic, the Lords has moved its sitting hours forward from 2.30pm or 3pm, mostly to midday, with a general intention of sitting for approximately eight hours and finishing around 8pm.

The downside of this is that, given the greater number of Peers wanting to speak, the Whips have rarely been able to get the business they wanted through in time. Before the end of the transition period of the UK's exit from the EU in December 2020, and given the emergency of Covid, it was inevitable when days rolled on to 10 or 12 hours. Then, in early 2021, there was the imminent end of a very busy Session. But in the new Session, it seems as though days spent on government Bills are just expected to go till 10pm or beyond, meaning long—and distinctly un-family friendly—days for staff as well as Members. Arguments for retaining early sittings were heard on 13 July, with Lord Adonis tabling

an amendment about them, but the House did not support it. Perhaps Lord Newby put it best, saying that he "would support it to a greater extent if it were coupled with a firm proposal that the House finish earlier as a matter of course if we start earlier. At present, we sit early but, as last night's midnight finish" on yet another day in Committee on the Environment Bill "demonstrated, we are sitting longer and still at ridiculously late hours." (*Hansard*, col. 1671). Staff in the Official Report are certainly grateful that the toothpaste of early sittings has somehow been squeezed back into the tube—for now.

Conclusion

In the 13 July debate, the turmoil of Easter 2020 was called the introduction of "a century and a half of change into your Lordships' House in about three weeks" (Lord Newby again, *Hansard*, col. 1759), which gives a sense of how revolutionary it has been. It has been remarkable to work through (remotely, from home) and it will be fascinating to see, this winter and long beyond, what fallout there continues to be on the second Chamber, both from Covid itself and from the procedures that have been put in place to help the House withstand it. But the Procedure Committee's report to which the House agreed on 13 July didn't talk about procedural revolutions; it talked about "procedural adaptations". In the end, the revolution that COVID-19 forced on the House has been called off.

Northern Ireland Assembly

Like other legislatures, the Northern Ireland Assembly had to make significant changes to its procedures and how it manages its business in response to the public health crisis. In March 2020 the Speaker and Business Committee agreed that the Assembly's priority would be to ensure that Executive business and the ability for ministers to provide updates and be subject to scrutiny would continue but that non-essential Assembly business would be avoided in order not to distract from the delivery of public services (to deal with the impact of COVID-19). This meant that, on certain weeks at the start of the pandemic, the Assembly was only meeting in plenary once per week.

Others steps that were taken included:

- Social distancing in the Chamber which allowed for a maximum of 23 (out of 90) Members to be present at any one time. Seats were allocated amongst parties on a broadly proportional basis;
- The establishment of an Ad Hoc Committee on the COVID-19 response, of which all MLAs were members. The purpose of the Committee is to enable Ministers to make statements and answer questions on COVID-19 matters on days on which the Assembly is not meeting;
- Temporary proxy voting arrangements of which any Member can avail

(and which have the consequence of significantly reducing the number of Members who need to pass through the lobbies during divisions);
- The wholesale introduction of remote participation in committee proceedings (either in fully virtual or hybrid committee meetings);
- Temporary arrangements to allow committees to take decisions without meeting, and to allow proxy voting at committee; and
- More recently the Assembly has agreed temporary arrangements to allow for remote participation in plenary business.

Scottish Parliament

As with other legislatures, the year was dominated by the response to COVID-19. Following the introduction of "lockdown" provisions in late March 2020 in response to the pandemic, the Scottish Parliament adapted its practices and procedures through the variation and suspension of some of the Rules in the Parliament's Standing Orders.

Key early changes included allowing meetings of the Parliament to "be held either in the Debating Chamber of the Parliament, Holyrood, or remotely by video conference in a virtual Debating Chamber hosted on such platform as may be provided by the Parliamentary corporation". This allowed the Parliament to meet in virtual or hybrid format, in addition to wholly in person.

In mid-March, the Parliamentary Bureau proposed that "the priorities for parliamentary business in the coming weeks should be the response to COVID-19 and other time-bound legislation." The Parliament agreed a number of temporary procedural changes to allow it to focus on these priorities, including:

- Removing the obligation to schedule a minimum number of afternoons for opposition and committee debates and to schedule Members' business; and
- Enabling the election of an additional Deputy Presiding Officer by electronic voting (while maintaining a secret ballot).

The model of a reduced chamber was the operating norm in April, supplemented by virtual question times. During the Easter recess, three virtual question times were held to provide opportunities for opposition leaders to question the First Minister.

Chamber meetings began again after the Easter recess and from April 2020, the Chamber and committees of the Parliament met in a mix of virtual, hybrid and socially-distanced formats to ensure that parliamentary business continued.

With the agreement of the political parties, the number of seats in the chamber for Members was reduced from 129 seats to 79 seats, which were proportionally allocated to the parties.

At the end of April in a letter to Members the Presiding Officer outlined a

range of developments, including:

- extending First Minister's Questions to one hour providing the opportunity for more Members to participate;
- increasing the Parliament's capacity for chamber and remote committee business so that by early May up to 16 meetings could be supported over four days;
- virtual meetings of the Parliament could be held, again by early May, involving all MSPs; and
- creating a 'hybrid' style Parliament by mid-May where Members could speak in debates, participate in the consideration of legislation and take part in question times.

The general pattern for the remainder of May and June was for hybrid meetings to be used on Tuesday and Wednesday afternoons, with virtual meetings of the Parliament taking place on Thursday afternoons.

As the Scottish Parliament was in the last year of the current parliamentary session, there were considerable demands on it during this period in relation to legislation as well as the Scottish government's response to COVID-19 and the increased legislative burden presented by Brexit. A significant challenge early on in lockdown was to consider the Scottish Government's Coronavirus (Scotland) Bill. As this was emergency legislation, all three stages were completed in one day on 1 April in the chamber.

The length of the Scottish Parliament's summer recess was shortened. Procedural steps were also taken to allow parliamentary business to continue over the recess period to allow consideration of matters relating to COVID-19, but also a range of other issues including education and the economy. The default position was for these sittings to be held in the virtual space with the exception being where the Scottish Government had significant announcements to make. This included announcements following the statutory reviews of the emergency legislation on 9 and 30 July where the proceedings were conducted in hybrid format. The COVID-19 Committee (established in response to the pandemic) also met during recess to consider secondary legislation related to the easing of lockdown restrictions.

By the end of June, a digital voting system had been developed and work continued over the summer to ensure that this was reliable and operational. Remote voting was introduced in the chamber after the summer recess to allow all Members taking part in chamber business to vote, including those participating virtually.

From early September, the Scottish Parliament moved to holding three hybrid meetings a week with a remote voting system, thus returning to its pre-lockdown sitting pattern with all Members able to vote, notwithstanding whether they were physically present in the Parliament or not. In addition,

business in the chamber largely returned to its pre-lockdown pattern, including time being provided for opposition and Members' business.

Alongside changes to standing orders for the chamber, several rules relating to committees were changed to accommodate the new reality of meeting in the pandemic. Changes were agreed to enable committees to meet in a wholly virtual manner via a video-streaming application and then again to accommodate the range of options (fully virtual, hybrid or in-person meetings). This included rules to enable voting to be done electronically. Changes were also been made to allow for more flexibility on other Members substituting for a member of a particular committee due a reason relating to the pandemic.

As a unicameral parliament, the Scottish Parliament's committees have a key role to play in the continuation of essential business during the pandemic. Committees continued to function during the pandemic just as the chamber did. In the very initial stages (mid-March), all committee business halted prior to Easter recess. After the recess, committee meetings then moved to a more informal basis, in the online world, via Microsoft Teams, where some pressing business was conducted.

On 23 April, the first, formal, remote meeting of a parliamentary committee was held, with Members, staff and witnesses attending remotely from their homes. This was followed over the coming weeks by more and more committees following suit. By May and June, most committees were back to their usual schedule of weekly or fortnightly meetings, with around 12 to 15 committee meetings taking place in a given week.

As lockdown eased in part over the summer recess, the desire from Members to return to some form of face-to-face scrutiny, especially of government ministers and on other high-profile matters, meant that hybrid committee meetings increasingly took place. By September, of the approximately 15–18 committees held in any given week, around one-third were hybrid and a little under two-thirds virtual (there were a few instances of fully in-person meetings if the committee's membership was small enough to adhere to the tight social distancing guidance in committee rooms—room occupancy had been cut in half in most rooms).

A key decision taken early in the pandemic was the creation of a new nine-member COVID-19 Committee. The remit of the Committee was drafted deliberately narrowly to avoid duplication with the work of subject committees who have responsibility for scrutinising the impact of the pandemic in their own areas. Its remit was to consider and report on the Scottish Government's response to COVID-19, including the operation of powers under the various pieces of legislation which applied in response to the pandemic.

By the end of October, the committee had met 19 times since lockdown in mid-March, including, as noted above, during the summer recess when

parliamentary committees do not ordinarily meet.

Care was taken at the time as to whether these changes should be time-limited or otherwise temporary in nature, and whether making a change would set a precedent for the future. Additionally, such changes needed to be clear as to what was permissible, but flexible enough to allow for changes in practice and process as the nature of how business was conducted evolved.

PRIVILEGE

AUSTRALIA

House of Representatives

The Speaker made a statement on 5 February in response to a privilege matter raised by the Manager of Opposition Business on the last sitting of 2019. The matter concerned whether, in statements made to the House, the Minister for Energy and Emissions Reduction had deliberately misled the House in relation to the use of incorrect figures in ministerial correspondence.

The Speaker explained that, in order to establish that contempt had been committed in this case, it would need to be shown that a statement had been misleading, the Member knew at the time that the statement was incorrect and the misleading had been deliberate. In the Speaker's view, a *prima facie* case for contempt had not been made out, as required by the standing orders. In accordance with the practice of the House, the Speaker did not give precedence to a motion to refer the matter to the Committee of Privileges and Members' Interests.

New South Wales Legislative Council

Execution of search warrants by the Australian Federal Police

In June and July 2020 the Australian Federal Police (AFP) executed search warrants on the office and residence of Mr Shaoquett Moselmane MLC and his parliamentary staffer, Mr John Zhang. The search warrants were authorised under various sections of the *Crimes Act 1914* (Cth), to obtain evidence for the investigation of potential breaches by Mr Zhang of the so-called "foreign interference" laws, that is s 92 of the *Criminal Code 1995* (Cth).

Contrary to implications in some media reports on the day the search warrants were executed, and in subsequent reporting, the warrants did not allege that Mr Moselmane had committed offences under the Commonwealth legislation.

The NSW Parliament does not have a formal memorandum of understanding with the AFP for the execution of search warrants. However, in 2010 the Privileges Committee wrote to the AFP to seek the Commissioner's view as to whether a search warrants protocol was required. The AFP responded that, should the rare occasion arise, the 2005 *AFP National Guidelines for Execution of Search warrants where parliamentary privilege may be involved* used in the context of the Commonwealth Parliament would be an appropriate framework for dealing with claims of parliamentary privilege. The committee concurred.

The warrants involving Mr Moselmane afforded the first opportunity for the National Guidelines to be tested in the NSW context. The committee's judgement in its 2010 report was found to be sound. The President granted

the AFP permission for the execution of the warrants on Mr Moselmane's parliamentary office on the condition that the Clerk of the Parliaments or the Deputy Clerk be present at all times during the search and the member or his legal representative had the opportunity to make claims of parliamentary privilege over any items seized. The Clerk received the documents subject to a claim of parliamentary privilege for safekeeping as the neutral third party and the member nominated the House rather than a court to determine the claims of privilege. The AFP investigation team at all times acted professionally and respectfully, in contrast with some recent instances in the Senate in 2016 and 2017 and with the difficulties this committee experienced between 2003 to 2004 with the Independent Commission Against Corruption during a search warrant executed on former member the Hon Peter Breen. In these other instances, breaches of privilege and a possible contempt followed investigations by the relevant Privilege Committees.

However, on Friday 31 July the Clerk was notified verbally by Mr Zhang's solicitor that he had that day commenced proceedings in the High Court of Australia, challenging the legality of the search warrants executed by the AFP in respect of Mr Zhang. On 3 August the Clerk received correspondence which indicated that the proceedings would concern arguments as to the constitutional validity of the offence provisions underpinning the investigation, which if successful would result in the warrants being declared invalid. (Subsequently on 12 May 2021 the High Court upheld the validity of the search warrant: *Zhang v Commissioner of Police [2021] HCA 12 May 2021)*

When sittings resumed on 4 August 2020 the President made a statement to the House advising of the execution of the search warrants, and indicating that he would await the receipt of a sealed copy of the application being sought from the High Court by Mr Zhang's representatives. However, the following day the Leader of the House, with support from the Opposition, suspended standing orders to move the referral of the determination of Mr Moselmane's claims of privilege to the Privileges Committee, notwithstanding Mr Zhang's High Court action.

In determining the claim of parliamentary privilege over 119 documents, the committee applied the test used in the determination of matters involving documents seized by the Independent Commission Against Corruption from the Honourable Peter Breen in 2003 and 2004, as amended by the Senate Privileges Committee in its Report 164, dated March 2017, as follows:

"STEP 1: Were the documents **brought into existence** in the course of, or for purposes of or incidental to, the transacting of business of a House or a committee?

YES □ falls within "proceedings in Parliament". NO □ move to step 2.

STEP 2: Have the documents been **subsequently used** in the course of, or

for purposes of or incidental to, the transacting of the business of a House or a committee?

YES □ falls within "proceedings in Parliament". NO □ move to step 3.

STEP 3: Is there any contemporary or contextual evidence that the documents were **retained or intended for use** in the course of, or for purposes of or incidental to, the transacting of the business of a House or a committee?

YES □ falls within "proceedings in Parliament". NO □ report that there are documents which fail all three tests.

Note: Individual documents may be considered in the context of other documents."

The committee elected not to view the documents directly and sought submissions from the Clerk of the Parliaments, the AFP and Mr Moselmane on which to base their examination.

The index list referred by the House to the committee of 119 documents and other things over which parliamentary privilege was claimed was reduced to only 12 items through the submission process. The AFP accepted that all 12 of the items over which Mr Moselmane continued to claim privilege related to parliamentary proceedings. The member requested Parliament retain the remaining 107 items until the High Court case had been resolved, however the AFP submitted that the committee should decline the member's request.

The Privileges Committee recommended that the House uphold the claim of privilege over 12 of 119 items held by the Clerk. The House agreed to a motion on 15 October 2020 which implemented the recommendations of the Committee, and provided instructions to the Clerk to return the remaining 107 documents to the AFP within seven days.

Actions against the Leader of the Government for non-compliance with Standing Order 52

Standing Order 52 regulates the Council's power to order the production of State papers as confirmed by *Egan v Chadwick* (1999) 46 NSWLR 563. It is an important mechanism through which the Council scrutinises government decisions and holds the government to account. While this power is now well-accepted, in 2020 the Council and the Government continued to dispute the extent of the power and its operation. In a record year for sheer number of orders made (116 orders were passed), the House also took action to enforce compliance with the orders, as detailed below.

In recent years the Council has taken assertive action in responding to the non-production of documents that are claimed to be 'cabinet documents' in response to orders of the House (we note our entry in The Table for 2018). In summary, the Council and Government disagree on the definition of a cabinet document. The Government seemingly prefers the broad definition of

'cabinet documents' contained in the *Government Information (Public Access) Act 2009*, whereas the Council asserts that a narrower definition, articulated by Speigelman CJ in *Egan v Chadwick*, is the proper limitation of its power to order the production of state papers. In Speigelman's view only documents that reveal the *actual deliberations of cabinet* are covered by cabinet-in-confidence.

In 2020 the Council demonstrated that it was unwilling to accept the Government's narrow definition. On five separate occasions the House ordered the production of the final and strategic business cases for the proposed Western Harbour Tunnel and Beaches Link, a major government infrastructure project. Responding to the orders, the Government stated that the relevant departments held *no documents lawfully required to be produced*. On the third occasion, the Minister for Transport stated that the documents held were "Cabinet information". The Government subsequently argued that even if otherwise covered by the terms of an order, cabinet documents are neither identified nor produced in response to an order as the House has no power to order their production.

The Leader of the Government, under threat of suspension from the House, provided the documents on a "voluntary and confidential" basis, albeit with extensive redactions. Consequently, the House censured the Leader of the Government for continued non-compliance. The House also rejected the Government's proposition that the documents were provided voluntarily. The final business case was subsequently provided without redaction, but again on a "voluntary and confidential basis". Accordingly, the documents were tabled by the President and made available to members on a confidential basis only.

Recovery of digital records of shredded papers and deleted documents

In the latter half of 2020 the House and certain committees scrutinized the allocations from various government grant funds. Evidence at a Budget Estimates hearings had suggested that allocations from the Stronger Communities Fund had been substantially allocated to projects in government held electorates and that the relevant Ministers had approved the allocation of the funds. On three occasions the House ordered the production of documents related to the approvals process. The Public Accountability Committee (PAC) also established an inquiry into allocations from the fund.

With the return to the first order failing to produce the documents showing the approval of funds, the House specifically ordered the return of the signed written briefs showing approval of the fund's guidelines and successful applications. While it was known from evidence to the PAC inquiry that relevant documents existed, the Government advised that the guidelines were cabinet documents and would not be returned to the House. Nevertheless, during debate on a motion to censure the Leader of the Government for non-

compliance with the orders of the House, the Leader of the House 'voluntarily' tabled the guidelines. The Leader of the Government also advised the House that documents showing the approvals for successful applications did not exist. The Leader of the House asserted that as the documents did not exist, and could not therefore be produced, the grounds for censure did not apply. The House rejected this argument, censured the Leader of the Government and again called for the production of documents showing the approvals.

Again no documents were produced and the House adjudged the Leader of the Government in contempt of the House and suspended him for the remainder of the sitting for non-compliance with the order, stating it as necessary "to protect the rightful powers and privileges of the House, and to remove any obstruction to the proper performance of the important function it is intending to execute".

In response to questions at a subsequent committee hearing about the approval process of the fund, a witness revealed there had been relevant documents but that they had been shredded and emails deleted. Consequently, in the fifth and final order of the House for the production of documents, the Leader of the Government was again adjudged guilty of contempt (without suspension) and the House ordered the recovery and production of the deleted emails. The deleted emails were electronically recovered and produced to the House.

South Australia Parliament

Coercion of Members during ballot to elect Speaker

During the ballot to elect the Speaker on 8 September 2020, a point of order was raised concerning Members showing each other their ballot papers, which could be in breach of Standing Orders. As the Clerk was acting as Chairman at the time, he acknowledged the comment but could take no further action. The following day, the Member for Florey raised the issue as a matter of privilege, alleging that Members may have been coerced into showing their ballots, and this would constitute a contempt of parliament. On 10 September, the Speaker stated that there was nothing in the Standing Orders preventing Members from showing their ballot papers, and there was no evidence presented to him that Members had been coerced into sharing their ballot papers. The Speaker suggested that the Member could raise the issue with the Standing Orders Committee to consider whether any changes to the Standing Orders may be necessary. The Speaker made a further statement warning Members about taking photographs from within the Chamber of their ballot paper. The Member for Florey subsequently gave notice of a motion seeking to amend the Standing Orders to provide for a secret ballot. The motion has yet to be debated.

Speaker allegedly mislead the House

On 6 February 2020, the Member for Lee raised as a matter of privilege the alleged misleading of the House by the Speaker in regard to a statement he made on 5 February 2020 regarding his appointment of an independent investigator to inquire into the alleged conduct of the Member for Waite. The Member alleged that the Speaker had provided inconsistent advice to the House about when he became aware of the alleged conduct and when he appointed the investigator. The Speaker referred the matter to the Deputy Speaker. On 18 February 2020, the Deputy Speaker advised the House that a case of privilege had not been made and as such he would not give precedence for a motion to establish a privileges committee.

Victoria Legislative Council

Matter of Privilege under Standing Order 21.01

Legislative Council of Victoria's Standing Order 21.01 allows Members to make a written submission to the President on an alleged breach of privilege or contempt. The President will then determine whether the matter merits precedence over other business.

On Tuesday 16 June 2020, the President responded to a matter of privilege raised under Standing Order 21.01. The submission alleged that a Member was jeopardising the health of other Members of the Council and consequently obstructing them from performing their duties by attending a protest during the COVID-19 pandemic against the advice of the Chief Health Officer's and then attending Parliament.

The President rejected this submission and pursuant to the Standing Order informed the Council of his decision at the commencement of the sitting day on Tuesday 16 June 2020.

In ruling on the matter, the President considered the elements of contempt. Contempt of Parliament is an act or omission to act, which directly or indirectly obstructs or impedes any Member of the House in the discharge of their duty. The President did not consider that the issue of increased health risks resulting from the attendance of another Member reached the threshold of privilege. Further, the President did not want to set a precedent which encouraged issues of privilege to be raised any time a Member attends Parliament with the slightest of COVID-19 symptoms.

The Member who initiated the submission chose to subsequently withdraw from the Chamber for the rest of the day.

CANADA

House of Commons

On 25 February 2020, Rob Moore (Fundy Royal) rose on a question of privilege concerning the premature disclosure of Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)*. According to Mr Moore, press reports showed that details of the bill were made public before it was introduced in the House. He noted that the reports explicitly stated that the source of the information was not authorised to reveal detailed of the bill before its introduction, which Mr Moore suggested was proof that a contempt had occurred. The Speaker took the matter under advisement.

On 28 February, Kevin Lamoureux (Parliamentary Secretary to the Leader of the Government in the House of Commons) apologised for the premature disclosure and noted that no one from the government had been authorised to speak publicly on the bill before its introduction.

On 10 March, the Speaker ruled that there were sufficient grounds to conclude that there was a *prima facie* breach of the privilege of the House. The Speaker noted that it seemed clear that the content of the bill was disclosed prematurely while it was on notice and before it was introduced in the House, and that everything indicated that the act of premature disclosure was deliberate. The Speaker asked Mr Moore to move the appropriate motion, namely, "That the matter of the premature disclosure of the content of Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying*) be referred to the Standing Committee on Procedure and House Affairs."

Mr Moore moved the motion, which was then adopted. The House adjourned on 13 March 2020 due to the COVID-19 pandemic, and as a result of the subsequent restrictions on committee activity, the Committee did not consider this order of reference, which lapsed with prorogation on 18 August 2020.

On 30 September, Gérard Deltell (Louis-Saint-Laurent) requested that the Speaker find again a *prima facie* breach of privilege on the matter. The Speaker ruled out that, given that eight months had elapsed and all proceeding on the legislation, as well as any House orders of reference had ended with prorogation, the question of privilege would not be revived. The Speaker also raised concerns that the question had not been raised at the earliest possible opportunity.

Manitoba Legislative Assembly

From 11 March to 17 March 2020, the Official Opposition Party (NDP) raised a series of Matters of Privilege. Some NDP Members stated in interviews with the press that their intent was to bring the proceedings of the House to a halt and cause the Government to miss the sessional calendar deadline to introduce specified Bills—Government Bills that, if introduced by a certain deadline, are

guaranteed completed consideration by the end of the spring sitting period.

On 11 March 2020, Mr. Kinew (Leader of the Official Opposition) raised a Matter of Privilege alleging that the Government was abusing the Rules by introducing a large volume of legislation in a short period, thereby limiting opportunity for debate

On 11 March 2020, Ms. Fontaine (Official Opposition House Leader) raised a Matter of Privilege alleging that the Government was misrepresenting its financial statements and

providing misleading information on the state of the province's finances, which impeded her ability to perform her duties as an MLA.

On 11 March 2020, Mr. Wiebe (Member for Concordia) raised a Matter of Privilege regarding the Government's failure to table its first quarter financial report, which impeded his ability to perform his duty as an MLA to hold the Government to account.

On 11 March 2020, Mr. Lindsey (Member for Flin Flon) raised a Matter of Privilege contending that the lack of a recent Standing Committee on Crown Corporations meeting to consider the annual reports of Manitoba Public Insurance impeded his duty as a Critic to ensure proper management of the corporation.

On 11 March 2020, MLA Asagwara (Member for Union Station) raised a Matter of Privilege alleging that the Premier was in contempt of the House by making misleading comments and false statements regarding government programming to help feed hungry children.

On 11 March 2020, Ms. Fontaine (Official Opposition House Leader) raised a Matter of Privilege alleging that the Government was in contempt of the House by introducing legislation in opposition to intentions previously expressed by Government Members in the House.

On 11 March 2020, Mr. Wasyliw (Member for Fort Garry) raised a Matter of Privilege alleging that cuts to the public service made by the Government impeded his ability to perform his parliamentary duties. The Member moved: "That this matter be moved to an all party committee for consideration." The Speaker took the matter under advisement and returned with a ruling on November 2, 2020. The Speaker ruled that there was no breach of privilege because Mr. Wasyliw failed to demonstrate how his privileges as an MLA had been breached.

On 11 March 2020, Ms. Fontaine (Official Opposition House Leader) raised a Matter of Privilege regarding the Government's education review, arguing that her party was denied access to the review report and, as a result, the opposition Members were prevented from discharging their duties to review Government legislation and relay information to their constituents.

On 12 March 2020, Mr. Sala (Member for St. James) raised a Matter of

Privilege alleging that the Government had infringed on the privileges of opposition Members because they had not called a meeting of the Standing Committee on Crown Corporations to consider annual reports from Manitoba Hydro since June 2018.

On 12 March 2020, Ms. Naylor (Member for Wolseley) raised a Matter of Privilege alleging that the Minister of Conservation and Climate's failure to table an annual report on the Government's Climate and Green plan obstructed her ability to perform her duties as the Critic.

On 12 March 2020, Mr. Bushie (Member for Keewatinook) raised a Matter of Privilege alleging that the Government made misleading statements during an update outside of the Chamber regarding delays in the Lake St. Martin and Lake Manitoba Outlet Channels project.

On 12 March 2020, Mr. Moses (Member for St. Vital) raised a Matter of Privilege alleging that the Government had infringed on the privileges of opposition Members because they had not called a meeting of the Standing Committee on Crown Corporations to consider annual reports from Efficiency Manitoba since June 2018.

On 12 March 2020, Mr. Wiebe (Member for Concordia) raised a Matter of Privilege alleging that the Government abused the power of a commission of inquiry into Manitoba Hydro, and hired a former BC Premier, Gordon Campbell, paying him $600,000 with no proof that any work was completed.

On 12 March 2020, Mr. Kinew (Leader of the Official Opposition) raised a Matter of Privilege alleging that Government's lack of disclosure about the operations of a construction company, Fresh Projects, building a school in Brandon, and the Minister's failure to answer questions on this matter during Oral Questions impeded Mr. Kinew's ability to perform his duties as an MLA.

On 16 March 2020, Ms. Fontaine (Official Opposition House Leader) raised a Matter of Privilege alleging that, during the meeting of the Standing Committee on Social and Economic Development on December 5, 2019, Hon. Mr. Schuler (Member for Springfield-Ritchot) infringed upon the privileges of Members during debate by interfering in Committee proceedings and moving that the Committee rise without agreement from all Committee Members.

On 16 March 2020, Mr. Wiebe (Member for Concordia) raised a Matter of Privilege regarding what he argued were unsatisfactory answers from the Minister of Crown Services about the rideshare and taxi industries during Oral Questions.

On 16 March 2020, MLA Asagwara raised a Matter of Privilege regarding the Government's delay in issuing Manitoba Health Cards to newcomers and its failure to address questions on the issue.

On 16 March 2020, Mr. Bushie (Member for Keewatinook) raised a Matter of Privilege alleging that the Government had infringed on the privileges of

opposition Members because they had not called a meeting of the Standing Committee on Crown Corporations to consider annual reports from the Workers' Compensation Board since July 2016.

On 16 March 2020, Mr. Wasyliw (Member for Fort Garry) raised a Matter of Privilege alleging that the Government intentionally withheld information about the amount paid by the Government and the Winnipeg Regional Health Authority to the advisory firm KPMG for conducting a healthcare review.

On 17 March 2020, Mrs. Smith (Member for Point Douglas) raised a Matter of Privilege regarding the Government's failure to institute certain provisions of The Child and Youth Advocate Act, which received Royal Assent in 2019.

On 17 March 2020, Mr. Wiebe (Member for Concordia) raised a Matter of Privilege alleging that the Government made misstatements regarding the strategic infrastructure budget, specifically regarding flood mitigation.

On 17 March 2020, Mr. Lindsey (Member for Flin Flon) raised a Matter of Privilege regarding Government cuts to healthcare and frontline services. The Member argued that Bill 28, which addressed these issues, was unconstitutional, and that the Government's attempts to implement it impeded his ability to discharge his duties as an MLA.

On 17 March 2020, Mr. Moses (Member for St. Vital) raised a Matter of Privilege alleging that the Government's use of omnibus legislation obstructed Members from discharging their duties as MLAs.

In each and every case, the Speaker eventually returned with findings of no *prima facie* case of privilege.

Québec National Assembly

Misleading the Assembly

In a notice sent on 7 December 2019, the Official Opposition House Leader alleged that the Minister of Health and Social Services misled the House by giving two contradictory versions of the same facts.

The Official Opposition House Leader was referring to the fact that on 29 November 2019 the Assembly carried a motion which the Minister voted in favour of, reminding the Government that a serious shortage of patient attendants was affecting the health and social services network and requesting that the Minister table an action plan in the Assembly before the end of the sessional period. During the Assembly's extraordinary sitting held on 6 December 2019 which was the last sitting of that sessional period, the Minister affirmed that the action plan would be tabled as soon as possible.

In its ruling, the Chair recalled that deliberately misleading the Assembly or its committees could constitute contempt of Parliament. To reverse the principle under which a Member must be taken at his or her word, the Member in question must have misled the Assembly or a committee when speaking,

and subsequently acknowledged having done so deliberately. Jurisprudence has also established that giving two contradictory statements regarding the same facts in the context of parliamentary proceedings may also result in misleading the House and give rise to contempt of Parliament. The question, in this case, was to determine whether the statement the Minister made during question period could constitute an acknowledgement of her having deliberately misled the Assembly during the vote on the motion, or whether it was a case of there being two conflicting statements regarding the same facts.

None of the Minister's statements quoted by the Official Opposition House Leader could be considered as an admission that her vote in favour of the motion was intended to mislead the Assembly. Nor were there two statements relating to a specific fact which contradicted each other. Moreover, the Minister's vote on the motion could not be construed as a statement that was allegedly contradicted the following week. In addition, the facts brought to light did not suggest that the Minister intended to mislead parliamentarians when she cast her vote.

The 29 November 2019 motion provided that the Assembly "request" that the Minister table her action plan. As Standing Order 186 states, every motion, when carried, becomes either an order or a resolution. As drafted, the motion could not be likened to an order of the Assembly, but rather had to be considered as a simple resolution that the Government was not strictly required to follow up on.

The Chair noted that the Assembly may ask the Minister to explain herself, but a point of privilege or contempt is not the appropriate means by which to do so. Points of privilege or contempt are intended for serious breaches and violations of the rights of the Assembly and of its Members. They are not meant to be a means of parliamentary oversight.

When a motion is unanimously carried, there is a legitimate expectation that it will be complied with. In this respect, the Members are entitled to expect a certain degree of government coherence. However, this facet is not within the purview of the Chair. When the Government does not follow up on a moral commitment, it falls on the Government to explain afterward.

As a result, the Chair found the point of privilege raised by the Official Opposition House Leader to be out of order.

Disclosure of the content of the report of the Select Committee on the Sexual Exploitation of Minors before its tabling

During the sitting of 3 December 2020 the House Leader of the Second Opposition Group requested a directive from the Chair. He alleged that an article published that morning dealt with the content of the report of the Select Committee on the Sexual Exploitation of Minors, which was scheduled to

be tabled in the House a few hours later. He specified that he had no factual information which enabled him to say who had disclosed the report to the media, but nevertheless stressed that only one Member was mentioned in the article, namely the vice-chair of the select committee in question and a member of the parliamentary group forming the Official Opposition. He asked the Chair to clarify whether the principle that Members must be the first to be apprised of information intended for them, which applies to the disclosure of the content of bills and written questions, also applies to committee reports.

In its ruling, the Chair concluded that there was no evidence that the report in question had been prematurely disclosed, but that the confusion generated by this situation required a reminder of the basic principles applicable in this area.

Members must be the first to be apprised of information that is intended for them. It is not only a matter of respecting parliamentarians, but also of respecting the important duties of their office and the essential role they play in society as legislators.

Parliamentary jurisprudence has oftentimes stated that it is crucial for Members, and not journalists, to be informed first of the information that is intended for them. This is true for bills, reports to be tabled in the Assembly and written questions to be entered on the *Order Paper and Notices*. Journalists have no special status in this respect and therefore cannot be given documents that Members should be apprised of first.

The content of the final reports to be tabled by parliamentary committees must be disclosed first and foremost to Members, in particular because they themselves are the main initiators.

A distinction must be made between, on one hand, a committee's work that is conducted in public, which can be the subject of comments at any time in the public sphere, and, on the other hand, the final report of a select committee containing specific observations, conclusions and recommendations, which reflect work conducted in working sessions. Such sessions are not public, but they are also not in camera. The reason these deliberative meetings are private is to establish an environment in which committee members may speak openly and frankly. The Chair relies on committee members to conduct themselves in a manner that serves that purpose and asks that they measure the impact of their actions in public.

The report from the Select Committee was the product of the collective efforts of its members, and its findings wholly belonged to the Committee. The Committee therefore should have been able to table its report and make its content public before media articles covered its content.

If the members of a committee agree in advance when to release the content of a report to the media, it is their collective and individual responsibility to

honour that commitment. Caution should therefore be exercised, and even more so when a Member has an important role within the committee.

If a Member speaks to the media on the very morning that a report is to be tabled, it could be confusing both to other Members and to the public. Associating one's name with an article dealing with certain aspects of a report may create the impression, rightly or wrongly, that one may have given a journalist access to the content of a report before it was tabled in the House. For this reason, the President urged Members to act with caution.

Disclosure of draft recommendations made to a committee carrying out an order of initiative

During the sitting of 8 December 2020 the House Leader of the Third Opposition Group requested a directive from the Chair. He stated that on 24 November 2020, he had received an email sent by the office of the Government House Leader to the political advisors of the Minister of Education and the Minister of Health and Social Services. The email sought their opinion on a discussion paper, attached to the email, compiling the draft recommendations made to the Committee on Health and Social Services within the framework of its order of initiative on the alarming increase in the use of psychostimulants by children and young people in connection with attention deficit hyperactivity disorder.

The document, originally prepared for the Committee's broader steering committee, was to be discussed at a meeting of the Committee's steering committee three days later.

The House Leader of the Third Opposition Group maintained that the sending of that email constituted a lack of deference toward the independence of the National Assembly and the autonomy of its Members. In light of the principle of the separation of powers and that of Members having to be the first to be apprised of information intended for them, he asked the Chair to clarify the rules applicable to the working documents of parliamentary committees, in particular with regard to the preparation of a report concerning an order of initiative.

In its ruling, the Chair recalled that, out of deference for the offices Members hold, certain information must be disclosed to them before being disclosed to others. This includes not only bills but also reports that must be tabled in the Assembly. Some experts on parliamentary law are of the opinion that revealing the contents of a committee report before it is tabled in the House can constitute contempt of Parliament. The importance given to the confidentiality of the work conducted in the preparation of committee reports is clear in numerous decisions rendered on the subject in many jurisdictions.

This case, however, was not about the disclosure of the final report of a

committee or even that of a draft report. Rather, it was about a working document produced for the Committee's steering committee, which compiled, by theme, the recommendations proposed by each parliamentary group.

Not all documents have a special status such that their disclosure could constitute contempt of Parliament. For example, before a bill is introduced in the Assembly, its directions and preliminary versions may be the subject of consultation and discussion. Only the communication of the text of a bill before its introduction may constitute contempt of Parliament.

In keeping with this principle, the disclosure of a working document that does not include the committee's final conclusions relating to its order of initiative, but rather a number of draft recommendations for consideration, cannot be likened to the disclosure of a draft report or to the early disclosure of the final report on the order of initiative.

Likewise, in this case, the communication could not be characterized as being an attempt to interfere with the Committee's work. Instead, it appeared that the communication was geared toward assessing the feasibility of the recommendations, which did not constitute an attempt to influence the Committee's work or to impose a government department's views as to which recommendations to accept.

However, discussions that a committee has about the observations, conclusions and recommendations it may adopt at the end of an order of initiative take place in deliberative sessions that are not public. The release of confidential information can break the trust built up between committee members and adversely affect the committee's mandates. It is therefore essential to maintain a context conducive to ensuring that committees have this privileged space for discussion. This principle does not apply exclusively to Members, but also to all of their staff, who must exercise great care when called on to assist them in parliamentary proceedings of a confidential or private nature.

One of the purposes of orders of initiative is to enhance the role of Parliament and its Members by empowering them to perform their duties more effectively and with greater autonomy vis-à-vis the Executive. For this reason, the disclosure, to employees of the Executive, of the recommendations a committee may potentially adopt with regard to an order of initiative could give the impression of the Executive having influence over a committee's final decisions with regard to its work, a situation that would compromise the principle underlying orders of initiative.

While there was no indication that there was any interference in this case, Members were urged to preserve the autonomy of committee members who take part in orders of initiative.

Saskatchewan Legislative Assembly

On 16 June 2020 the Opposition House Leader brought forward a priority of debate motion. Speaker Docherty ruled the matter was proper to be discussed, but could not let the motion proceed because on the previous day, the Assembly had adopted a sessional order, based on an agreement by the House leaders, that was very prescriptive in regard to the resumption of sitting during COVID-19. The member also had other means to bring the matter before the Assembly in a timely manner.

Prior to the Assembly's daily sitting and the Speaker's ruling, the Opposition House Leader had posted to her Twitter account the letter outlining her request to bring a priority of debate motion forward which she had sent to the Speaker as notice. As a result, the Government House Leader raised a question of privilege the following day, claiming the Opposition House Leader attempted to influence the Speaker's decision on the priority of debate request by exerting public pressure through the release of the letter on social media.

The Speaker addressed two items in his ruling. First, he addressed the release of the priority of debate request to the public via social media. He stated that it was highly improper, both as a matter of order and as an interference in the Speaker's consideration of the matter. He further ruled that the letter was phrased in a way that implied the Speaker's decision was based on the merit of a public policy decision, which was irrelevant to the Speaker's decision.

The Speaker found that the Government House Leader had established a *prima facie* case for the matter to be considered as a question of privilege. The Assembly determined that the member's actions constituted a contempt and required her to apologise to the Assembly and remove all offending social media posts which she did.

UNITED KINGDOM

House of Commons

In the first half of the year, the action was focused on the courts. As readers (particularly those from New Zealand and Australia) will know, the extent to which the courts make use of parliamentary proceedings, and the way in which those proceedings are used can cause concern. Two recent judgments have, we hope, brought more clarity into this, each accepting the submissions of Speaker's Counsel about what uses are acceptable, and rejecting uses which we would consider impermissible. The submission adopted in Heathrow Hub was cited with approval in R (PRCBC) v SSHD and runs as follows:

> "The Speaker accepts that there are circumstances in which reference can properly be made to proceedings in Parliament and where therefore this will not constitute impermissible "questioning" of statements made in Parliament:

(1) The Courts may admit evidence of proceedings in Parliament to prove what was said or done in Parliament as a matter of historical fact where this is uncontentious: see Prebble v Television New Zealand Ltd [1995] 1 AC 321, at 337

(2) Parliamentary material may be considered in determining whether legislation is compatible with the European Convention on Human Rights: see Wilson v First County Trust Ltd (No. 2) [2004] 1 AC 816, at paragraph 65 (Lord Nicholls of Birkenhead)

(3) The Courts may have regard to a clear ministerial statement as an aid to the construction of ambiguous legislation: see Pepper v Hart [1993] AC 593, at 638.

(4) The Courts may have regard to Parliamentary proceedings to ensure that the requirements of a statutory process have been complied with. For example, in this case, the Courts may admit such material in order to be satisfied that the steps specified in section 9 of the Planning Act have been complied with.

(5) The Courts may have regard to Parliamentary proceedings in the context of the scope and effect of Parliamentary privilege, on which it is important for Parliament and the Courts to agree if possible: see the decision of Stanley Burnton J (as he then was) in Office of Government Commerce v Information Commissioner [2010] QB 98, at paragraph 61.

(6) An exception has also been identified for the use of ministerial statements in judicial review proceedings. The Speaker accepts that such an exception exists but contends that the scope and nature of this exception has not yet been the subject of detailed judicial analysis. It calls for careful consideration of the constitutional issues involved. We respectfully agree".

While the author might wish that the list of exceptions to Article 9 was less extensive than set out above, it is excellent that there is now a clear and judicially endorsed set of exceptions.

Better still, there is a mechanism for a House to put its view of the scope of privilege forward in a way which can be used by the courts, and there is acceptance that the use of ministerial statements in judicial review may not be unbounded and needs careful consideration.

Another welcome development is that the court in PRCBC had taken the point that the Government might be seeking to rely on parliamentary material in breach of Article 9, and actively sought input from the two Houses. We hope this example is repeated.

Another case looked not at the use of proceedings, but their definition. The most recent edition of Erskine May covers the first instance case of Warsama & Gannon v FCO, in which the central question was whether a Return to an Order was a Parliamentary Proceeding, and noted that although it had been

held to be so:

> "The judge reached this conclusion with some 'unease' and gave permission to appeal of her own motion. Her concerns were that the unopposed return procedure was not a matter of debate; rather it was a device to allow the Executive to publish material under the cloak of parliamentary privilege."

Last February the Appeal was heard, and a Bench which included the Lord Chief Justice concluded:

> "…we have no doubt that the Unopposed Return is a proceeding in Parliament for the purposes of article 9 of the Bill of Rights 1689 and does confer on the content of the Report the protection of Parliamentary privilege."

It considered "this process forms part of the essential business of Parliament. It is the business of keeping Members informed of the important work being carried out within Government departments so that they can hold those departments to account."

And finally, just as this update was completed, the Committee of Privileges produced its long awaited report into the powers of select committees to compel evidence and witnesses. The House of course has theoretical powers to imprison contemnors, but recent events have shown these are mere paper tigers. Faced with the options of doing nothing, reasserting existing powers or new legislation, the Committee has launched a consultation into its preferred option, legislation. The report evaluates several different models for legislation and includes "a draft Bill that would make failure to comply with a summons issued by a select committee a criminal offence, with the person concerned liable to a fine or imprisonment." In addition to legislation "the House should clarify and reassert its commitment to fair treatment of witnesses to ensure that the practices of select committees comply with modern standards of fairness and natural justice." This may all sound quite familiar to colleagues from Australia and New Zealand.

House of Lords

There was one development in the House of Lords which may be worth mentioning, concerning the relationship between the privileged status of parliamentary proceedings and the new system for dealing with bullying, harassment and sexual misconduct (known as the Independent Complaints and Grievance Scheme, or ICGS). The two Houses have implemented the system in different ways. Whereas the House of Commons has adopted the ICGS policies and procedures as a package, the House of Lords decided that, in respect of its members, a better approach would be to add a clause to the Code of Conduct stating that any member engaging in bullying, harassment or sexual misconduct in the course of their parliamentary duties and activities would be in breach of that Code. Several members have already been found in

breach of the new clause.

In the course of the year, the Conduct Committee considered to what extent the bullying, harassment and sexual misconduct clause could apply to behaviour in the course of parliamentary proceedings. The Committee concluded that the clause did apply to parliamentary proceedings because Article IX of the Bill of Rights did not restrict the House's ability to regulate itself. Thus, for example, a member could in principle be sanctioned for verbally bullying somebody during a debate in the Chamber. Noting the significance of this conclusion, the Committee recommended to the House that this be made explicit in paragraph 17 of the Code, but also that a balancing provision be added to enjoin the Commissioners for Standards and the Committee itself to bear in mind the importance of freedom of speech in proceedings. The wording, which was accepted by the House, requires the Commissioners and Committee to "recognise as a primary consideration the constitutional principle of freedom of speech in parliamentary proceedings, including but not limited to the need for members to be able to express their views fully and frankly in parliamentary proceedings". Although there is a ban on third parties making complaints of bullying, harassment or sexual misconduct, it is perhaps only a matter of time before the relationship between the anti-bullying provision and freedom of speech in proceedings is put to the test.

STANDING ORDERS

AUSTRALIA

House of Representatives

The House standing orders were not extensively amended in 2020. In March, the House agreed to amend standing order 47(c)(ii) to allow motions to suspend standing orders moved without notice (which previously required an absolute majority) to be carried by a simple majority, with the agreement of the Leader of the House and the Manager of Opposition Business. This was partly in response to travel restrictions and a reduced number of Members attending sittings of the House, due to the COVID-19 pandemic, and the potential difficulty of an absolute majority being achieved.

Senate

Formal motions

The formal motions procedure under standing order 66 allows senators to fast-track the consideration of their motions, on the provision that they be dealt with without amendment or debate.

In its First Report of 2019, the Procedure Committee found that over the last ten years, there had been increased use of the procedure (more requests for formality), increased contestability (more divisions; more denials of formality; more suspension motions) and increased statements by leave, effectively in lieu of debate.

On 18 June, on the motion of the Leaders of the Government and the Opposition, the Senate agreed to a temporary order introducing two types of restrictions on general business notices of motion. The temporary order limited the number of motions that may be proposed by this method to one per senator per week, including a maximum of four motions per day for government, opposition and crossbench senators, respectively. The order also placed a limit of 200 words on motions, with exemptions. The Procedure Committee will review the effect of the temporary order and report to the Senate by May 2021.

Procedural changes to streamline the business of the Senate

At the beginning of the 2020 sitting in February, a revised routine of business and new debating times came into effect under a temporary order. On 25 August, the Senate adopted as permanent those changes to the standing orders to streamline aspects of Senate business and reduce speaking times in general debate.

The main features include shorter time limits for general debate (20 minutes reduced to 15) and debate in committee (15 minutes reduced to 10); a more

streamlined approach to considering reports and other documents on Thursday afternoon; and a new division-free period replacing the former dinner break on Monday evenings.

New South Wales Legislative Council

Over recent years, the Council has trialled new procedures and varied others by sessional order, which lapse at the end of a session, as discussed in The Table 2020 and 2019. The significant reforms introduced in 2019 at the beginning of the new Parliament have had a substantial impact on the House, particularly private members' business, and committee procedure.

The majority of new rules adopted in 2020 related to the conduct of the House and committees in response to COVID-19. These are outlined in the annual comparative study.

In November 2020, a sessional order was adopted to allow an order of the House for the production of State papers to be varied if the Government and the member who initiated the order agreed. The intention of the rule was to allow the parties to agree on additional time for the return of documents when necessary and also to narrow the scope of an order if the terms of the order were unnecessarily broad

CANADA

Senate

On 1 October 2020, the Senate amended its Rules to create the Standing Committee on Audit and Oversight (AOVS). The committee is authorized, on its own initiative: to retain the services of and oversee the external auditors and internal auditors; to supervise the Senate's internal and external audits; to report to the Senate regarding the internal and external audits, including audit reports and other matters; to review the Senate Administration's action plans; to review the Senate's Quarterly Financial Reports and the audited Financial Statements, and report them to the Senate; and to report at least annually with observations and recommendations to the Senate. The Rules provide that AOVS is to be composed of three senators and two non-parliamentarians, a first for the Senate. The external members can participate in all proceedings of the committee, but do not have a right of vote. They may, however, choose to include individual observations and dissenting opinions in any report of the committee. The committee met for the first time in November 2020 to elect its chair and deputy chair, and to begin establishing a process to select the external members.

Alberta Legislative Assembly

Morning Sittings

Amendments were adopted to make morning sittings effective on passage of a Government motion. Prior to these amendments, which took effect following the fall sitting, the Assembly sat on Tuesday, Wednesday and Thursday mornings except when notice was provided by the Government that a morning sitting was cancelled.

God Save the Queen

The Standing Orders were amended such that on each Thursday, following the prayer, God Save the Queen is sung in the Assembly.

Temporary Amendments to the Standing Orders

The Assembly agreed to a number of temporary amendments to the Standing Orders, which were intended to facilitate the functioning of the Assembly in an appropriate manner during the COVID-19 pandemic. One such measure provided that the quorum requirement be reduced from 20 to 12 Members. Another temporary amendment permitted the Speaker, in consultation with the Government House Leader and the Leader of the Official Opposition, to extend a period of adjournment beyond the originally specified date and time due to an emergency event or because it was not in the public interest to meet on the specified date or time.

Manitoba Legislative Assembly

In September 2020, the procedural Clerks collectively designed new Rules incorporated into a Sessional Order to cope with sitting during the COVID pandemic. The Legislature resumed sitting on 7 October 2020 and passed the Sessional Order created to deal primarily with the ability to sit with Members both in the Chamber as well as through virtual connections. The Sessional Order originally was to expire on December 3, 2020 but has since been extended to June of 2021. The Order contained the following preamble:

- THAT in order to accommodate the use of virtual technology for sittings of the Manitoba Legislative Assembly and of the Assembly's Committees, the following sessional orders are to apply until June 1, 2021.
- THAT the Assembly's customary procedures and practices remain in effect for Members situated in the Assembly Chamber and committee rooms unless otherwise noted.
- THAT in the event of a discrepancy with the existing Rules, the provisions of the sessional order are to apply.
- THAT in the event of public safety requirements as set out by an Order under The Public Health Act prescribed by the Chief Provincial Public

Health Officer, the Speaker, House Leaders of Recognized Parties and the Honourable Member for River Heights (or their designates) collectively will have the ability to vary, pause or postpone the proceedings of the House and Committees until the said Order is terminated. Upon termination of the said Order, the proceeding of the House and Committees will resume immediately.

- THAT for the purpose of attendance, all MLAs participating virtually or observing the Throne Speech proceedings outside of the Chamber due to physical distancing requirements are deemed to be in attendance retroactive to October 7, 2020.

Key aspects of the sessional order include the following:

Virtual Proceedings

1. Notwithstanding the Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba, the House and the Assembly's Committees can meet from time to time in virtual proceedings, which includes Members physically present in the Chamber or committee room and Members participating from locations outside of the Chamber or committee room using an approved videoconferencing technology platform.

Definitions

2. In this Sessional Order,

"committee proceeding" means a meeting of the Assembly's Committees taking place in a committee room or the Chamber and remotely from locations outside of a committee room or the Chamber using an approved videoconferencing technology platform.

"Moderator" means a Legislative Assembly employee acting under the authority of the Speaker to facilitate the remote participation of Members in the proceedings.

"sitting of the House" means a sitting of the House taking place in the Chamber and remotely from locations outside of the Chamber using an approved videoconferencing technology platform.

"virtual proceeding" means a sitting of the House or committee proceeding using an approved videoconferencing technology platform involving Members of the Legislative Assembly who are not physically present in the Chamber or committee room.

"virtually" means participating in a virtual proceeding and appearing visually on the approved videoconferencing technology platform screens in the Chamber or committee room.

Quorum and Attendance

3. Members who are participating virtually in the proceedings are to be counted as part of the quorum of 10 Members required as set out in sub-rules 5(1) and 75(2) and section 8 of The Legislative Assembly Act.

Quorum Count

4. If a quorum count is requested during a sitting of the House
   (a) the division bells shall ring for one minute during which time the doors shall remain open and Members may enter the Chamber or join the sitting virtually;
   (b) once the division bells stop, no further Members may enter the Chamber or join the sitting virtually, with the Moderator to block online access once the division bells have stopped;
   (c) the Clerk shall then count and announce the number of Members present in their seats in the Chamber and those Members who are present virtually, including the Speaker; and
   (d) if a quorum of Members is not present, the Speaker must adjourn the House for the sitting day.

Notice to participate virtually

5. Members are to provide two hours' notice for any given day to the Moderator of their intent to participate virtually.

Audio and video functions

6. Members who are participating virtually must have their audio and video functions enabled with their faces identifiable in order to be included as part of the quorum, to participate in proceedings and to vote.
7. Members participating virtually must keep their audio muted until recognized by the Chair and should also mute their audio if stepping away from the screen.

Dress Code

8. Business professional attire comparable to attire worn in the Chamber is required for Members participating virtually.

Use of electronic devices

9. Members participating in a sitting of the House or a committee proceeding may use electronic devices in silent mode. During Oral Questions, such devices should be kept below the desk or table and out of the camera's view.

Decorum on Adjournment

10. When the House adjourns, Members present in the Chamber shall stand

and remain in their places until the Speaker has left the Chamber, while Members participating virtually shall not log off until the Speaker has adjourned the House.

Order in Addressing the Chair

11. Every Member in the Chamber desiring to speak shall rise in their place and address themselves to the Speaker. In accordance with the Legislative Assembly seating plan, Members seated in supplementary seating must proceed to a stand up podium microphone to speak, while Members participating virtually shall signal the Moderator of their intention to speak, and should speak from a seated position once recognized.

Tabling of Document

12. A Member presenting a report or document to the House while participating virtually must state that they are "tabling" a report or document, and must provide an electronic copy to the Moderator immediately.

Motions to be in writing

13. All motions shall be in writing, except motions to adjourn a debate or to adjourn the House. This includes motions moved by Members participating virtually, which must be submitted electronically to the Moderator immediately.

Motions moved and seconded

14. Members must be in attendance, including virtually, to move or second a motion.

Conduct during the Putting of the Question

15 . When the Speaker is putting a question, all Members are to remain seated and are not to make any noise or disturbance.

Request for recorded division

16. A recorded division on any question put to the House may be requested by
    (a) a House Leader from a Recognized Party; or
    (b) any Member with the support of three other Members including Members participating virtually who raise their hands to show support.

No Debate permitted

17. After all Members have been summoned to the sitting for a division, no further debate shall be permitted.

Conduct during stating of the question

18. No Member shall enter or leave the sitting whether present in the Chamber or participating virtually during the stating of the question, and may not leave the sitting during the final statement of the question until the division has been conducted and the result of the vote announced.

Time Limit on Division Bells

19. Not more than one hour after directing that the Members be summoned to the sitting, the Speaker shall
    (a) order that the division bells be turned off;
    (b) state the question again; and
    (c) immediately order the recording of the division.

Requirement to vote

20. Every Member present whether in their seat or participating virtually must vote. Voting will first be conducted with the Members seated in the Chamber followed by the Members participating virtually.

Conducting the vote

21. For the Members participating virtually, the vote will be conducted by calling the names of Members individually starting with the Leaders of Recognized Parties and then alphabetically, with each Member to say yea or nay when their name is called.

Raising of Points of Order and Matters of Privilege

22. Members participating virtually must signal the intent to raise a point of order or matter of privilege by unmuting their audio and seeking the floor.

Procedure on Point of Order

23. A Member addressing the House, if called to order by either the Speaker or on a point of order raised by another Member, shall cease deliberations and be seated, and if participating virtually shall mute their audio while the point of order is being stated, after which the Member may explain.

Privilege rulings subject to challenge

24. The Speaker shall determine if a prima facie case of privilege has been established and provide the House with a rationale for this decision. Rulings of the Chair dealing with Matters of Privilege may be challenged by
    (a) a House Leader from a Recognized Party; or
    (b) any Member with the support of three other Members; including Members participating virtually who raise their hands to show support.

Naming a Member

25. The Speaker shall be vested with the authority to maintain order by naming individual Members for disregarding the authority of the Chair

and ordering a withdrawal from the Chamber or termination of virtual participation for the remainder of the sitting day.

Disregarding an order of the Chair

26. In the event of a Member disregarding an order of the Chair made pursuant to sessional order 25, the Speaker shall order the Sergeant-at-Arms to escort the Member out of the Chamber or direct the Moderator to terminate the virtual participation of the Member.

Suspension

27. A suspension under sessional order 26 shall be decided by the Speaker but shall not exceed two weeks, including virtual participation.
28. If a Member refuses to obey the Speaker's order to accompany the Sergeant-at-Arms out of the Chamber, the Speaker must then advise the House that force is required to implement the order. Any Member removed from the Chamber by force is then suspended from all sittings for the remainder of the session.

Moment of Silence

29. At the conclusion of the Speeches for condolence motions, the Speaker puts the question and asks Members to signify their approval of the motion by observing a moment of silence, with Members present in the Chamber to rise.
30. With unanimous consent, a moment of silence may be observed with the Members present in the Chamber to rise and the Members participating virtually to remain seated.

Committee of Supply

31. The following physical distancing measures are to be taken into account when the Committee of Supply is meeting in the Chamber and in the committee rooms
    (a) limiting attendance to no more than six Members at a time in any one section;
        (i) Chair
        (ii) Minister
        (iii) One Government Member
        (iv) Two Official Opposition Members
        (v) One Independent Liberal Member
    (b) having one Member per table in the committee rooms, and in the Chamber having Members similarly distanced as set out in the regular House proceedings;
    (c) limiting attendance in each section to no more than four Ministerial staff at a time;

(d) limiting attendance in each section to one staff person from the Official Opposition; and

(e) limiting attendance in the committee rooms to one staff person per section from the Independent Liberals.

Standing Committee Membership

32. The rule governing Standing Committee membership is altered with the understanding that these arrangements will be in place for all meetings, but can be changed either by leave of the House, or by written agreement from the Government House Leader, the Official Opposition House Leader and the Member for River Heights (or their designates) by:

(a) Waiving Rule 83(2) and reducing membership for all Standing Committees (except for Public Accounts and Rules of the House) from 11 to six, with proportional representation as follows:

Four Government Members (including the Chairperson)
Two Official Opposition Members

(b) Waiving Rule 83(2) and reducing membership for the Standing Committees on Rules of the House from 11 to eight, with proportional representation as follows:

Speaker (as Chairperson)
Four Government Members
Two Official Opposition Members
One Independent Liberal Member

Non-Committee Members and Staff attendance

33. With the exception of the Public Accounts Committee, the following non-committee Members and staff persons are permitted in the committee rooms during a meeting of a Standing Committee.

One non-committee Government Member
One non-committee Official Opposition Member
One non-committee Independent Liberal Member
One Ministerial staff person
One Official Opposition staff person
One Independent Liberal staff person.

Rules governing Standing Committees

34. The Government House Leader, the Official Opposition House Leader and the Member for River Heights (or their designates) collectively are authorized to make further changes to rules governing Standing Committees when the House is not sitting by providing a letter to the Speaker detailing such changes.

Presentations to Standing Committees

35.

(a) All public presentations to Bills at Standing Committees will take place remotely, with presenters appearing either virtually or by telephone.

(b) When appearing before a Standing Committee, representatives of a Crown Corporation or an Office of the Assembly may participate in the meeting either in person or virtually.

Amendments

36. After adoption by the House, this Sessional Order may be amended only by

(a) unanimous consent of the House;

(b) passage of a subsequent Sessional Order by the House; or

(c) written agreement of all House Leaders if the House is not sitting.

Ontario Legislative Assembly

The Standing Orders of the Legislative Assembly of Ontario were amended on 14 September, 22 September, and 20 October 2020. The amendments included permanent changes to the Standing Orders as well as provisional changes in response to the COVID-19 pandemic.

The permanent changes to the Standing Orders can largely be divided into the following three categories: the meeting schedule of the House; new proceedings; and paper reduction.

Meeting schedule

Prior to these Standing Order amendments, the House met from Monday to Thursday until 6pm., and three items of Private Members' Public Business were debated each Thursday afternoon. The meeting schedule of the House was amended to shift consideration of those three items of Private Members' Public Business to one item per day on Tuesday, Wednesday and Thursday evenings, commencing at 6pm. This provided an additional two hours and 15 minutes of debate time in the House each week.

These changes also provided for the automatic deferral of any recorded division arising out of Private Members' Public Business, which was not previously permitted.

New proceedings

The Standing Order amendments also added two proceedings that are new to the Ontario Legislature: Report Stage debates and Take-Note debates. Under the amended Standing Orders, an immediate 30-minute debate can be initiated on any government bill being reported from a committee by 12 Members

standing in their place.

There is also now an opportunity for the House to engage in a Take-Note debate, notice of which is provided by a Minster following consultation with the House Leaders. The debate consists of 10-minute speeches on the topic provided for in the notice, and ends without a vote or question being put to the House.

Paper reduction

There were a number of technical changes to the Standing Orders that had the effect of reducing the need for the production of documents in a paper format. The most common change was to authorise the Clerk to "publish" certain documents in place of printing.

Provisional changes in response to COVID-19

During the COVID-19 pandemic, the Ontario legislature continued to meet with its Members physically present in the Chamber. While voluntary arrangements between the parties reduced the number of Members in attendance for debates, the ability for Members to safely vote required temporary changes to the Standing Orders. On a temporary basis, Members' votes are cast in one of the two lobbies located adjacent to the Chamber. During a 15 or 30-minute bell, Members may (one at a time) pass through the Aye (East) or Nay (West) lobbies to cast their votes. This is in contrast to our normal practice of having all Members vote at the same time from their seats in the Chamber.

Prince Edward Island Legislative Assembly

Changes to sitting hours and calendar

On 3 June 2020, the Standing Committee on Rules, Regulations, Private Bills and Privileges tabled a report proposing changes to sitting hours and the parliamentary calendar as specified in the Rules of the Legislative Assembly. The report was a continuation of the committee's review of the Rules which it had begun in 2019. The committee put forward recommendations on the sitting hours and parliamentary calendar. On the sitting hours, the committee recommended a new schedule that would see the House sit from 1pm to 5pm Tuesdays, Wednesdays and Thursdays, and 10am to 2pm on Fridays. This would eliminate the Tuesday and Thursday evening (7pm to 9pm) hours that had been part of the schedule previously, but retain the same total weekly sitting hours by adding one hour to each day during the afternoon. Regarding the parliamentary calendar, the committee recommended that the House continue to hold two sittings per year, but to change them to one beginning on the fourth Tuesday of February, and the other on the third Tuesday of October. Previously the calendar called for the House to begin sitting during the first week of April,

and the first sitting day following Remembrance Day (11 November). The committee also recommended that, during sitting periods, the House not meet for the week of the spring mid-term break prescribed by the School Calendar Regulations under the Education Act, nor during "legislative planning" weeks, which would be held every fourth week. The committee called for these recommendations to take effect on 1 January 2021. The report was debated in the House over several days, with the House ultimately voting to adopt it.

During the fall sitting the Rules committee also tabled an additional report on rule changes to the Order of Business following the Ordinary Daily Routine, which were necessitated by the previous change to the hours of sitting that will take effect in 2021.

Rule changes to permit virtual proceedings

In response to the COVID-19 pandemic, the House passed a motion during the spring, 2020 sitting calling on the Standing Committee on Rules, Regulations, Private Bills and Privileges to make recommendations on rule changes necessary to facilitate virtual proceedings. The committee issued its report during the fall sitting, recommending first that all efforts to hold in-person proceedings be exhausted before resorting to virtual hybrid proceedings (a mixture of members present in the Chamber and members participating remotely via video conference). The committee put forward a new chapter to be added to the Rules of the Legislative Assembly of Prince Edward Island to adapt various rules and procedures in case virtual proceedings are invoked by the Speaker. The new chapter addresses matters such as participating remotely and counting toward quorum, tabling documents electronically, changes to Committee of the Whole, changes to recorded divisions, and other adjustments. Rule changes to allow for virtual hybrid proceedings for committees were also developed. The rule changes are to come into effect on 1 January 2021, and are to be reviewed annually by the committee. To date virtual hybrid proceedings have not been employed.

STATES OF GUERNSEY

Like many Parliaments, the Standing Orders ('the Rules of Procedure') had to be adjusted to accommodate remote meetings of the States of Deliberation. The proxy voting arrangements introduced in 2019 for parental leave (similar to those introduced in the House of Commons) were temporarily extended to enable those shielding or unable to attend a sitting due to public health advice to cast their vote via a proxy.

STATES OF JERSEY

2020 saw the introduction of "parental responsibilities" as a reason for absence which cannot be challenged and voted upon. This relates to the roll call at the start of each day's proceedings. Previously, a reason for absence because of parental responsibilities could be challenged, debated and voted upon leading to a Member not being formally excused attendance.

The Assembly also moved from a two week to a three week sitting cycle, and saw the introduction of time limits on speeches

UNITED KINGDOM

Northern Ireland Assembly

On 31 March 2020 temporary provisions were introduced in response to the pandemic including provision for proxy voting in plenary sittings; wholesale introduction of remote participation in committee proceedings (either in fully virtual or hybrid committee meetings); provision for proxy voting in committees and provision to allow committees to take decisions without meeting.

On 13 October, provision was made to extend to two years from the initial appointment of Ministers, the period of time during which an eligible party may choose to be recognised as part of the official opposition.

Scottish Parliament

Variations were made to the rules in response to the pandemic. The Parliament subsequently reviewed these variations to the rules and incorporated some of them on a permanent basis into the Standing Orders. In particular, the new rules now make provision for the Parliament to meet in a hybrid or wholly virtual format.

The variations that were made to the rules were often difficult to follow and not particularly transparent. The Parliament also has now agreed a mechanism to allow it to make temporary rules for a defined period which is intended to address this point.

SITTING DAYS

Figures are for full sittings of each legislature in 2020. Sittings in that year only are shown. An asterisk indicates that sittings were interrupted by an election in 2020.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Aus HR	0	11	5	1	3	7	0	5	3	11	5	7	58
Aus Senate*	0	11	1	1	3	7	0	5	3	3	5	7	46
Aus Australian Capital Territory LA	0	6	0	1	2	2	3	3	0	0	1	2	20
Aus New South Wales LC*	0	3	1	0	2	6	0	6	6	6	8	0	38
Aus Northern Territory	0	6	1	1	0	3	0	0	0	3	3	1	18
Aus South Australia HA	0	5	5	5	3	7	5	0	6	3	5	3	47
Aus Tasmania HA	0	0	9	1	3	4	0	6	6	3	6	4	42
Aus Victoria LA	0	6	6	1	0	6	0	0	4	6	6	3	38
Aus Victoria LC	0	6	6	1	0	6	0	2	4	8	6	3	42
Aus Western Australia LC	0	6	7	4	6	9	0	6	9	7	9	0	63
Bangladesh	15	13	0	1	0	7	2	0	5	0	10	0	53
Can HC*	5	14	6	3	3	2	4**	1**	6	17	16	9	81
Can Senate	0	9	5	1	2	7	1	0	2	5	6	10	48
Can Alberta LA	0	3	9	5	5	16	14	1	0	7	13	5	78
Can British Columbia LA	0	10	5	0	0	3	12	5	0	0	0	8	43
Can Manitoba LA	0	0	10	1	4	0	0	0	0	11	12	3	41
Can Ontario LA	0	7	10	1	5	6	8	0	11	13	13	5	79
Can PEI LA	0	0	0	0	4	16	7	0	0	0	10	4	41
Can Québec NA	0	10	4	0	4	8	0	0	8	10	9	8	61
Can Saskatchewan LA	0	0	11	0	0	12	2	0	0	0	1	7	33
Can Yukon LA	0	0	9	0	0	0	0	0	0	16	15	14	54
Cyprus HR	2	3	3	3	2	2	4	0	3	3	2	6	33
Guernsey	3	5	5	7**	4**	6**	7	5	0	4	2	4	52
Guyana	0	0	0	0	0	0	0	0	13	0	0	2	15

continued overleaf

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
India LS*	1	8	14	0	0	0	0	0	10	0	0	0	33
India RS	1	8	14	0	0	0	0	0	10	0	0	0	33
Jersey	2	3	6	4	7	4	6	0	6	4	9	9	60
UK HC*	15	12	16	5	9	17	13	0	18	15	17	12	149
UK Lords	15	13	16	6	9	18	20	0	20	18	17	12	164
UK NIA	4	5	8	2	4	6	5	1	8	7	9	7	66
UK Scottish Parliament	12	9	10	9	13	12	4	9	14	8	12	12	124

** remote

UNPARLIAMETARY EXPRESSIONS

AUSTRALIA

House of Representatives

'This corrupt minister should resign—'	6 February
'…they can smell the stench of corruption from that side of the House now.'	6 February
'…the Waikiki kid…'	10 February
'It is one giant corrupt patronage network.'	11 February
'What I do care about is the fact that he lied to the media, snuck out of the country and refused to tell anyone who was in charge.'	13 February
'…they put a gun to the head of Australian agriculture…'	24 February
'Those opposite have the hypocrisy to walk in here—'	26 February
'He's a hypocrite!'	26 February
'I enjoyed the irony of the member for Ballarat using the word 'rort' at the despatch box. It's a word that's become synonymous with the member for Ballarat, so I think we all enjoyed the irony there.'	26 February
'…this corrupt government…'	26 February
'It's good that he's awake at least today.'	4 March
'…I do understand that the concept of tax integrity—or integrity, period—is difficult for the member for Whitlam…'	4 March
'When the member opposite likes to cite her diversity as something better than other people's diversity, she ignores reality.'	5 March
'…either because they're on the take from the nuclear power and fossil fuel advocates or because their long-term goal is to make Australia the nuclear waste dump of the world.'	11 June
'…led by this callous and cowardly Prime Minister—'	11 June
'These people stood up for paedophiles over our Aussie kids and should be deeply ashamed.'	16 June
'The member for Mackellar, not usually one for bright ideas…'	16 June
'This Leader of the Opposition, in the midst of a debacle and corruption scandal that he has overseen…'	18 June
'They are the defenders over there of bikies, who are involved with the CFMMEU.'	18 June
'Let's work together to send a strong message to Queensland Labor that their de facto protection of paedophiles is not acceptable.'	26 August
'He has abused public office for his own private purpose.'	27 August
'…Prime Minister has reacted by doing everything within his power, and some things outside his power, to cover that corruption up. Now we have a new corruption scandal that extends all the way to the Assistant Treasurer and to the member for Menzies.'	27 August
'It shows that the minister knew what was happening and endorsed it.'	27 August
'I would also say to the member for Fenner: you're not as smart as you look, mate.'	27 August

'The member for Rankin should no longer be known as the member for Rankin; he should be known as Jumble Jim.'	1 September
'Like many in the coalition, such as the member for Hughes, these comments may grab attention, particularly from some groups elegantly described by a Victorian policeman as "the batshit crazy"—'	2 September
'bloody'	19 October
'…the Prime Minister has made it very clear that the standard he walks past includes conduct by a minister that Federal Court judges described as both disgraceful and criminal, it includes dodgy land deals by government departments to benefit Liberal Party donors and it includes the illegal use of taxpayers' money as if it were a slush fund for the Liberal Party's election campaign...In the absence of an anticorruption commission, we've only been able to scratch the surface of those scandals because, using all the resources of government, the Prime Minister has done everything he can to stymie any rigorous and independent investigation of those matters.'	19 October
'…the Minister for Home Affairs, himself a COVID spreader in my home state.'	20 October
'What are the implications for Australia because of their criminal negligence in climate policy?'	9 November
'He's an absolute mess!'	10 November
'…the member for Hunter, aka General Custer…'	11 November
'hack'	12 November
'They're not going out on the piss.'	2 December
'corruption'	2 December
'He has the Rudd force field around him in the protections that were put in place to keep this Leader of the Opposition in his job. Lucky Albo!'	8 December
'Look at that smug, little whippet over there. What did you do to the previous member? We know about your loyalty and what happened.'	8 December

Senate

The President requested that a senator withdraw a personal reflection on a member of parliament and noted that senators should not refer to members of parliament by nicknames.	7 October
The President requested that a senator withdraw two separate statements about the motives of other members of parliament while reminding the chamber of the requirements under standing order 193 regarding personal reflections.	10 October

Australian Capital Territory Legislative Assembly

Deceived	19 February
Duplicity	21 May
Grubby	21 May

New South Wales Legislative Council

Hypocrite	2 June
She carries on like a recalcitrant child in the principal's office	3 June

A fool and a liar	4 June
Stop covering for your mate	25 August
Today we saw Ministers in Question Time covering up for the Treasurer. We saw them scurrying like cockroaches	25 August
Penguin	16 September
Greasy fingers	24 September
You are a goose, a deadest goose	10 November
A disgrace/an absolute disgrace	20 November

South Australia House of Assembly

Phoney	22 September
Goose	24 September
Yapping dog	10 November
Bloody oath	4 June

Victoria Legislative Assembly

“pig-headed”	19 March

Victoria Legislative Council

Member called a name by Member interjecting	6 February
Member “lied on radio”	3 March
“Some have very unkindly suggested she is a sanctimonious windbag”	17 June
Further reflections on Member whilst withdrawing unparliamentary remarks	17 June
Member needs “a psychiatrist”	17 June
Reflections that the Opposition writes a crossbench Member’s speech	14 October
Reflections on a Legislative Assembly Member	28 October
Member called a “hypocrite” by Member interjecting	30 October
Derogatory comments about a Member by Member interjecting	9 December

CANADA

House of Commons

Mr. Speaker, I would respond to that by asking the hon. member across the way if it is an area of work that she has considered and if that is an appropriate-	4 February
That is bullshit	24 February
However, it is under threat from a strange invasive species, and no, not the Conservatives	24 February
Mr. Speaker, what a complete crock	24 February
This is Canada, not the Canada that this generation or future generations deserve, but the Canada that a Prime Minister who is incredibly ignorant, selfish and dedicated to his own image is creating	25 February
That is a powerful message the groper sent to women and aboriginals	9 March
Madam Speaker, yes, I did call him a racist, and I do believe he is	17 June
Mr. Speaker, after still having a bit of PTSD from my time with Phoenix (:.)	29 September

The contract that is referenced is with FTI, so the question is actually irrelevant.	1 October

British Colombia Legislative Assembly

"Inspector Clouseau"	24 June

Manitoba Legislative Assembly

"bullshit"	29 October

Ontario Legislative Council

"Speaker, it's unfortunate that the government decided to fudge around with the numbers and not treat Hamilton the same way as they treated all other transit projects—"	3 March
"The minister's reply to my question this morning was not factual. It was erroneous. It attempted to relieve her of responsibility through fiction and misinformation."	3 March
"You know, at least be truthful. At least be up front."	4 March
"Those are the weasel words the government was using over the last number of weeks when they talked about the fact that we have to look into this…"	19 May
"I hope that at some point, the opposition will drop its partisan stupidity and join us at that."	23 June
"You're such a piece of shit."	24 June
"Will the Premier stop the misinformation…"	6 July
"(1) What's it like talking out of both sides of his mouth; and (2) what's it like getting all that money?"	8 July
"I'm going to firmly challenge her very misleading statements—repeatedly,"	15 July
"Mr. Speaker, the Leader of the Opposition is speaking out of both sides of her mouth."	6 October
"Not sure too many of us are going to survive this bullshit—"	8 October
"Why is this government hell-bent on not providing provincial direct funding to our small businesses across Ontario? Businesses like Pure Vibes Barber Shop in Little Jamaica had to shut down because this government has done jack-all for small businesses across Ontario."	8 October
"Why would the Premier of Ontario make such a completely untrue claim?"	22 October
"During this period, it is important that the government avoid providing inconsistent or false information."	27 October
"I feel like we were intentionally deceived"	29 October
"The problem with that is that this man to whom the Premier is returning a favour is full of—"	5 November
"…but your characterization of what has been going on in long-term care in terms of the staffing is fabrication."	18 November
"Baloney. Baloney."	18 November
"Mr. Speaker, through you, it seems to me they either just want to play politics, they want to mislead the public, or—"	18 November
"It's classic NDP stupidity—"	24 November

"—say that this minister is just making stuff up and that he's not even remotely close to the facts."	1 December
"not at all comparable, and it's highly misleading to say that it is."	1 December
"Misinformation"	1 December

Prince Edward Island Legislative Assembly

"Gaslighting"	7 July

Saskatchewan Legislative Assembly

"filling the pockets of friends and insiders."	10 March

Québec National Assembly

"Boss des bécosses" ["bossy pants"]	6 February
"Perte de temps" ["waste of time"]	6 February
"Jolin-barrettées (des réformes)" ["Jolin-Barretted (reforms)"]	12 February
"Mauvaise foi" ["bad faith"]	12 February
"Enfantillage" ["childishness"]	13 February
"Cacher (choses à…)" ["hide (things from)"]	11 February
"Honneur (je pensais que le député avait de)" ["honour (I thought the Member had some)"]	2 June
"Foutaise" ["hogwash"]	4 June
"Bonniche" ["poodle"]	5 June
"Faire peur aux Québécois" ["frighten Quebecers"]	8 October
"Ridicule (une chance que le ridicule ne tue pas, parce qu'il y aurait une autre course au leadership)" ["ridiculousness (it's a good thing ridiculousness does not kill because there would be another leadership race)"]	27 October
"Contournement des lois et règlements (Guide de)" ["circumventing laws and regulations (Guide for)"]	29 October
"Mesures sanitaires (dire aux gens de ne pas tenir les)" ["health measures (tell people not to stick to the)"]	1 December
"Manque de maturité" ["lack of maturity"]	3 December

Yukon Legislative Assembly

"gaslighting"	18 November

INDIA

Lok Sabha

…Sir, you are asking us to go back to our seats but you are not maintaining the dignity of, your Chair…(Aspersion on the Chair)	3 February
…Psychopath…	3 February
…Merchant of Death…	3 February
…Descendants of Ravana….	4 February

…Traitor…		3 February, 4 February, 10 February
…Lie…		3 February, 4 February, 5 February, 11 February, 11 March, 12 March, 13 March, 18 March, 17 September, 18 September , 19 September, 22 September
…Nonsense…		5 February
… Shut up…		5 February
...Pleasure seeker…		5 February, 6 February
…Shame…		5 February, 11 March, 11 July, 19 September
…Touting…		5 February , 2 March , 19 September
…Hooliganism…		5 February , 10 February
…Rubbish…		5 February
…Arrogant…		6 February
…Licentiousness…		6 February
…Scolding…		7 February
…You should	give me the same amount of time… (Aspersion on the Chair)	10 February
…Lieology…		11 March
…Thief…		11 March, 19 September
…Liar…		11 March, 16 September, 22 September
…Lame …		13 March
…Why are you speaking this… (Aspersion on the Chair)		14 September
…Don’t suppress our voice… (Aspersion on the Chair)		15 September

…Riot…	15 September
…Forbidden…	15 September
…Naked…	17 September
…Brat…	18 September, 19 September
…Donkey…	18 September , 19 September
…Theft…	18 September , 20 September
…Invectives…	18 September , 19 September , 20 September
…Torture…	18 September
…Foolish…	18 September
…False…	18 September
…Slave…	18 September
…Atrocities…	18 September
…Shameless	19 September
…Inane…	19 September
…Bundle of lies…	19 September
…Serial offender…	19 September
…Stolen…	19 September
…Does this behavior of yours…(Aspersion on the Chair)	20 September
…Loot…	20 September, 21 September
…Gang…	20 September
…Cunningness…	20 September
…Cut money…	20 September
…False drama…	21 September
…Crocodile tears…	21 September , 22 September
…Corruption…	21 September
…Scoundrel…	21 September
…Goons…	22 September
…Fucking…	22 September
…White lie…	22 September

Rajya Sabha

Fool	5 February
Drama	5 February
Idiot	5 February

BOOKS ON PARLIAMENT IN 2020

CANADA

Anatomy of an Election: Canada's 2019 Federal General Election through the Lens of Political Law, by Gregory Tardi and Peter Mansbridge, Irwin Law, $59.95, ISBN: 9781552215296

Canadian Government and Politics – Seventh Edition, by Robert J. Jackson, Doreen Jackson, and Royce Koop, Broadview Press, $64.95, ISBN: 9781554814879

Canadian Politics (7th edition), by James Bickerton and Alain Gagnon#, University of Toronto Press, $62.95, ISBN: 9781487588106

Guide de lecture du budget du Québec, collective work by the Chaire de recherche en fiscalité et en finances publiques, Sherbrooke: Chaire de recherche en fiscalité et en finances publiques, Université de Sherbrooke

Inside the Campaign: Managing Elections in Canada, by Alex Marland and Thierry Giasson, UBC Press, $29.99, ISBN: 9780774864671

Parliamentary Practice in British Columbia (Fifth Edition), Editor: Kate Ryan-Lloyd, Assistant Editors: Artour Sogomonian, Susan Sourial and Ron Wall, The Legislative Assembly of British Columbia, $199.99, ISBN 9780772678874

The Fifth Edition of *Parliamentary Practice in British Columbia*, the primary procedural authority in BC, captures 12 years of procedural developments and features many user-friendly enhancements. While previous editions had been organised numerically by Standing Order, this new edition is organised thematically across 18 chapters. Content and commentary have also been significantly expanded, particularly in areas such as the roles and work of Members, the foundation of parliamentary procedure, voting and divisions, the legislative process, financial procedures and parliamentary privilege, as well as the administrative operations of the Legislative Assembly. The book is also large format and has a number of modern design elements to make the content more accessible, including numbered sections, callouts with key information, an improved index, and the use of colour, photographs and charts.

Proposition de réforme parlementaire du président de l'Assemblée nationale : Une Assemblée nationale dynamique, moderne et à l'écoute, by Province of Québec, Québec: Assemblée nationale du Québec

Real House Lives: Former Members of Parliament on How to Reclaim Democratic Leadership, by Michael D. Morden, Friesen Press, $22.99, ISBN: 9781525564307

Réforme parlementaire: pour une modernisation de l'Assemblée nationale, by Province of Québec, Québec: Secrétariat à l'accès à l'information et à la réforme des institutions démocratiques, 2020

Réforme parlementaire : cahier de propositions, by Province of Québec, Québec:

Direction des communications, Ministère du Conseil exécutif and Secrétariat du Conseil du trésor, 2020

La réforme du mode de scrutin au Québec : trajectoires gouvernementales et pistes de réflexion, by Julien Verville, Québec: Presses de l'Université du Québec, ISBN: 9782760553910

Whipped: Party Discipline in Canada, by Alex Marland, UBC Press, $34.95, ISBN: 9780774864978

INDIA

Compendium on Parliamentary Enactments: The Prevention of Money Laundering (Amendment) Act, 2012, by Rajya Sabha Secretariat

Rajya Sabha Members Biographical Sketches (1952-2019), by Rajya Sabha Secretariat.

Sixteen stormy days: the story of the First Amendment of the Constitution of India, by Tripurdaman Singh, Vintage Books, ISBN: 9780670092871

UNITED KINGDOM

Ayes and Ears: Opening Up the World of Westminster, by David Amess, Luath Press Ltd, £14.99, ISBN: 9781913025922

Dramas at Westminster: select committees and the quest for accountability, by Mark Geddes, Manchester University Press, £80, ISBN: 9781526136800

The end of the small party? Change UK and the challenges of Parliamentary politics, by Louise Thompson, Manchester University Press, £12.75, ISBN: 9781526145581

Governing Britain: Parliament, Ministers and our ambiguous constitution, by Philip Norton, Manchester University Press, £13.39, ISBN: 9781526145451

Guide to the House of Commons 2019, Times Newspapers Ltd, Times Books, £60, ISBN: 9780008392581

The House of Commons, 1422–1461, by Linda Clark, Cambridge University Press, £550, ISBN: 9781108882002

The House of Lords, 1604–29 – History of Parliament, by A D Thrush, Cambridge University Press, £205.21, ISBN: 9783030452193

The House of Lords during the Civil War, by C H Firth, Routledge, £87.78, ISBN: 9780367608989

The law-making process (8th ed), by Michael Zander, Hart Publishing, £35.43, ISBN: 9781509934539

The political lives of postwar British MPs: an oral history of parliament, edited by Emma Peplow and Priscilla Pivato, Bloomsbury, £85, ISBN: 9781350089266

Rebuilding the Houses of Parliament: David Boswell Reid and Disruptive Environmentalism, by Henrik Schoenefeldt, Routledge, £96, ISBN: 9781138741522

Reform of the House of Lords – Pocket Politics, by Philip Norton and Bill Jones, Manchester University Press, ISBN: 9781526153609

Who Enters Politics and Why: Basic Human Values in the UK Parliament, by James Weinberg, James Weinberg, £75.00, ISBN: 9781529209167

Women and Parliament in lade medieval England, by W.Mark Ormrod, Palgrave Macmillan, £44.99, ISBN: 9783030452193

Women of Westminster: the MPs who changed politics, by Rachel Reeves, Bloomsbury, £8.19, ISBN: 9781448217854

CONSOLIDATED INDEX TO VOLUMES 85 (2017) – 89 (2021)

This index is in three parts: a geographical index; an index of subjects; and lists of members of the Society who have died or retired, of privilege cases, of the topics of the annual questionnaire and of books reviewed.
The following regular features are not indexed: books (unless substantially reviewed), sitting days, amendments to standing orders and unparliamentary expressions. Miscellaneous notes are not indexed in detail.

ABBREVIATIONS

ACT	Australian Capital Territory;	NI	Northern Ireland;
		NSW	New South Wales;
Austr.	Australia;	N. Terr.	Northern Territory;
BC	British Columbia;	NZ	New Zealand;
Can	Canada;	PEI	Prince Edward Island;
HA	House of Assembly;	Reps	House of Representatives;
HC	House of Commons;		
HL	House of Lords;	RS	Rajya Sabha;
LA	Legislative Assembly;	SA	South Africa;
LC	Legislative Council;	S Austr.	South Australia;
LS	Lok Sabha;	Sask.	Saskatchewan;
Man	Manitoba;	Sen.	Senate;
NA	National Assembly;	Vict.	Victoria
NF and LB	Newfoundland and Labrador;	WA	Western Australia.

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* Marks cases when the House in question took substantive action.

Announcements outside Parliament
85 162 (Can. HC); 85 163 (Alberta LA); 85 169 (Sask. LA); 86 151 (Ontario LA); 88 194 (Man. LA); 88 198 (Québec NA); 88 202 (Sask. LA); 89 231 (Can. *HC)*

Arrest (of a member)
86 154 (Québec NA)

Broadcasting
87 183* (Queensland LA)

Committees
Evidence: 87 182 (ACT LA); 88 186 (Austr. HC)
Powers: 86 157 (UK HC)
Proceedings: 87 181 (ACT LA)
Reports: 85 172* (UK HC); 89 237 (Québec NA)
Unauthorised disclosure of proceedings: 85 156* (Queensland LA)

Conduct of members
86 150 (NF and LB HA)

Confidentiality
Committee proceedings: 86 146 (ACT LA); 86 147 (Victoria LC); 86 157 (India RS); 87 186 (Can. Sen.); 88 194 (Can. HC)

Documents
85 77 (Jersey); 86 157 (UK HC); 87 180* (Austr. Sen.); 87 185 (Can. HC); 88 188 (ACT LA); 88 191 (W. Austr. LC), 89 227* (NSW LC), 89 228* (NSW LC)

Freedom of speech
87 187 (Manitoba LA)

Health
89 230 (Vict. LC)

Independence (members')
86 148 (Can. Sen)

Interests (members')
86 144* (Austr. Reps); 86 149* (Alberta LA)

Inter-parliamentary bodies
87 186 (Can. Sen.)

Intimidation of members
85 162 (Can. HC); 87 181 (Austr. Sen.); 88 186 (Austr. Sen.); 88 187 (Austr. Sen); 88 188*(Queensland LA)

Legislation
Acting in anticipation of: 88 196 (Québec NA)
Acting in the absence of: 87 188* (Québec NA)

Media
Comments to: 87 190 (Québec NA); 87 194 (India LS)