The Table

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EDITORIAL

Regular readers will already have noticed that this edition of *The Table* is a slimmer, and, the Editor hopes, more elegant volume than its recent predecessors. The slimness is in large part thanks to the trimming of the "List of Members" from the Journal. The list will from now on be circulated separately. In addition, the formatting of the text has for the first time in some years been entrusted to the printers, rather than being executed "in-House". The result is a more professional and concisely presented Journal, which in format recalls editions of the 1970s and 80s, produced before the universal introduction of word-processing and camera-ready-copy.

Nevertheless, the content of this year's *Table* remains weighty. A dozen articles cover the usual range of unusual events and proceedings across the Commonwealth, from a sitting of the Queensland Parliament in a regional area to the impasse reached in Trinidad and Tobago when it proved impossible to elect a Speaker. And this takes no account of the wealth of fascinating incident described under the catch-all heading "Miscellaneous Notes". The Editor is extremely grateful to all contributors, but would draw particular attention to three articles, which stand out in length without sacrificing quality: François Côté and Charles A. Bogue write about the opportunities and challenges presented by new information technologies; Sarah Bachelard explores how fundamental issues of executive accountability to the Australian Parliament surfaced in the "children overboard" affair; and Michael Davies, one of the most loyal supporters of *The Table* since he first became Editor in 1968, describes recent administrative and procedural changes in the House of Lords.

Readers will also notice that a new name appears as Editor, replacing those of David Batt and Gavin Devine. David has left the House of Lords to work in Brussels. Gavin remains Treasurer of the Society of Clerks-at-the-Table, but in belated recognition of a division of labour that has prevailed for many years his name no longer appears as co-editor.

This is my first opportunity to edit *The Table*, and I look forward to helping to ensure that the journal remains a valuable reference work for Commonwealth Clerks. If it is to do so, it is vital that Members from across the Commonwealth contribute—not only that they respond to the questionnaire, but that they contribute articles and notes on events and subjects of interest in their Parliaments and Assemblies. I am enormously grateful to all those from the United Kingdom, Australia and Canada, in particular, who have been prominent in supporting *The Table* in recent years, and I look forward to continuing to work with them in future. However, the journal's interest and usefulness depend in large part on the diversity and breadth of experience brought by contributors to its pages. I hope therefore that all Members will be willing in the coming years to share their experience with colleagues by contributing articles and notes. I shall be encouraging them by making personal approaches!

Finally, the Editor offers unreserved apologies to all at the New South Wales Legislative Council for the omission of their contribution from the 2002 *Table*.

OBITUARIES

Gordon Coombe, CMG, former Clerk of the South Australia House of Assembly, passed away on 10 June 2002. Mr Coombe served as Clerk from 1953 to 1973 and on retirement from the Parliament was appointed the State's first Ombudsman. He had a distinguished military career during the Second World War and is the author of the invaluable reference work *Responsible Government in South Australia*. Mr Coombe was 85.

RETIREMENTS

Sir William McKay, KCB, Clerk of the House of Commons, retired on 31 December 2002. His successor as Clerk, Roger Sands, writes:

On 11 December the House held a short debate to mark Bill's retirement, opened by the Leader of the House; and at the end of the debate the House agreed to a resolution which referred among other things to his "wise contribution to the development of the procedure of the House" and his "scholarly research into the history of the House." These were well-chosen words. With such innovations as sittings in Westminster Hall, routine programming of Government legislation, and now the changes in sitting hours, not to mention the profound constitutional consequences of devolution and the

Human Rights Act, the House will probably come to be seen as having changed more radically during the five years when Bill was its Clerk than during the whole of the previous 36 years of his career. This was not, of course, at his instigation; but it was under his guidance and oversight.

As for his scholarship, Bill was first and foremost a historian. From humble origins in Leith he graduated from Edinburgh University with the top history degree in his year, and his historical perspective was at the centre of his approach to the job of Clerk. He had an unequalled expertise in the difficult field of parliamentary privilege, and had researched and catalogued every Commons Clerk since 1363, when the post of "Under-Clerk of the Parliaments" was first officially designated. He made his own mark on history by being the first Clerk of the House to be designated also as Chief Executive of the House service—a role which he took extremely seriously.

Despite 41 years working in the centre of London as a Clerk of the United Kingdom Parliament, Bill's first loyalty was to his native Scotland, and he always maintained a foothold there. For many years it was a converted croft on the island of Coll (converted largely by his own efforts). During his time as Clerk it was an old smithy in Banffshire to which he commuted most weekends and where his wife Margaret served until recently as the local priest. If devolution to Scotland had taken place in 1978 (as was originally planned) rather than twenty years later, he would probably have ended up as the first Clerk of the Scottish Parliament rather than as the first Scottish Clerk of the UK House of Commons. He ended his speech at the farewell dinner given for him in Speaker's House with the words: "I am glad to be going home"; and we all believed him.

Although I have referred to Bill as having "retired", the letter that he sent to the Speaker in fact referred to his intention to "resign". This was because he had another job to go to—a personal professorship in law at the University of Aberdeen, which was rightly a source of great satisfaction and pride for him. Also, to my great relief, he agreed to my request that he should continue as editor of the next edition of Erskine May's *Parliamentary Practice*, which had been set in train before his departure. This is now under active preparation and, all being well, should be sent to the press at about the same time as this volume of *The Table*. The new edition of "May" will be a fitting testimonial to the enormous contribution that Bill has made to the service and study of Parliament during his long career.

Sir Michael Davies, KCB, Clerk of the Parliaments, retired on 14 July 2003. His successor, Paul Hayter, writes:

While there will be other opportunities to record Michael's many achievements at Westminster, this is an occasion first of all to remember his work for the Society of Clerks at the Table in Commonwealth Parliaments. He joined the Parliament Office in the House of Lords in January 1964 and by 1968 his name was already on the opening page of *The Table* (1966 edition) as joint editor with Richard Lankester. Then volume XXXVI for 1967 appeared over his name alone, and his editorial said that "This is the third volume to be published in the space of one year … [and] this is the first volume in sixteen years to be edited by one Clerk." It was the beginning of a long period of activity by him which helped to revitalise the Society. Although the practice of having joint editors, one from the House of Commons and one from the House of Lords, revived, Michael stayed as editor till 1983, producing a total of 18 volumes.

But that was far from being his only contribution. When he took over, the Society was in severe danger of being closed down by the then Clerk of the House of Commons because of serious maladministration of its affairs. Sir Barnett Cocks had in fact circulated members to that effect. That this did not happen owed a great deal to Michael's efforts to restore the publication timetable. Michael became the Association's secretary and remained for the unusually long term of 15 years. He then retained his interest to the end, as is shown by his article in the current edition about recent changes in management and proceedings in the House of Lords.

Moreover he would have been a more frequent attendee at CPA conferences if the United Kingdom had not also been a member of the Inter Parliamentary Union. This produced competing demands on his time. Michael was justifiably proud of his election as President of the Association of Secretaries-General of Parliaments from 1997-2000, which made it necessary for him to choose between attendance at CPA conferences and attendance at IPU conferences. (Incidentally Michael's loss was my gain, because it often gave me the opportunity to attend CPA conferences as Clerk Assistant.)

All this provides evidence, as one would expect, of an industrious and dedicated Clerk. But I have on good authority accounts of more exciting participation in Commonwealth affairs. In particular the present Lord Chancellor is the proud possessor of a photograph which shows Michael dancing with a colourful and well-proportioned Trinidadian at a Commonwealth Speakers' Conference in Port of Spain—a photograph

which, to those with fertile imaginations, allegedly shows him dancing in a more abandoned fashion than befitted the great-grandson of an Archbishop of Canterbury. On the domestic front, Michael is a devotee of cricket and hockey and was still playing the latter, as a veteran, years after most colleagues would think it unwise to be running round a sports field.

At Westminster, Michael was a Table Clerk for 15 years out of his career of 39, and Clerk of the Parliaments since January 1997. As his article indicates, this has been a period of intense change and, although management was never a subject which appealed to him as much as proceedings in the Chamber, he initiated and presided over many of those changes with skill and energy. Though he was not explicitly described as Chief Executive, in the terms recently applied to his opposite number in the Commons, that was nevertheless his role, and he was chairman of the House of Lords Management Board which met for the first time in 2002. He was also active as a Trustee of both the Industry and Parliament Trust and the History of Parliament Trust.

Now that he is retiring from the House of Lords, he leaves with the affectionate best wishes of his colleagues and with the hope that his talents may be put to use in the international sphere to which he devoted so much of his energy.

Richard Prégent took his retirement from the Canadian House of Commons in October 2002 after over 30 years of service. He began his parliamentary career as a Clerk of Committees in 1970 and, since 1981, has served with distinction as a Table Officer and Deputy Principal Clerk in a number of branches within the House, including Committees, Parliamentary Associations, Journals, Private Members' Bills Office, Legislative Counsel Office and Committee Reporting Services.

Geof Mitchell, Clerk of the South Australia House of Assembly, retired on 11 July 2002 after thirty years' service. Mr Mitchell began his career with the House of Assembly in 1972 as Second Clerk Assistant. In February 1977 he became Deputy Clerk and Serjeant-at-Arms and on 30 June 1979 he was appointed Clerk.

Shri T K Doria, Secretary of the Gujarat Legislature Secretariat, retired on 31 May 2002. He was succeeded with effect from 29 October 2002 by Shri D M Patel.

Mr Ramesh Kambli, Principal Secretary of the Maharashtra Legislature Secretariat, retired on 30 November 2001. He is succeeded by Mr Vilas Patil.

Alh. Baba Geidam Mai, Clerk of the Borno State House of Assembly, retired on 21 May 2003 after 35 years' service.

Mr Ngo'na Mwelwa Chibesadunda retired as Clerk of the Zambian National Assembly on 25 September after a long career since his initial appointment in 1968.

APPOINTMENTS AND HONOURS

South Australia House of Assembly

The new Clerk is Mr David Bridges. Formerly Deputy Clerk and Serjeant-at-Arms, Mr Bridges was appointed Clerk on 2 September 2002. The Deputy Clerk and Serjeant-at-Arms is Mr Malcolm Lehman, appointed on 15 October 2002.

New South Wales Legislative Council

Mr John Evans, Clerk of the Parliaments, was awarded the Public Service Medal in the Australia Day 2002 Honours List for his outstanding service to the Parliament of New South Wales. Mr Evans provided technical assistance to the Eastern Cape Provincial Legislature, South Africa, for a period of two months from 5 October 2002. The project was an ausAID funded capacity building program provided by GRM International through UNSW Global, a business arm of the University of New South Wales. Ms Lynn Lovelock, Deputy Clerk, was appointed as Acting Clerk of the Parliaments and Clerk of the Legislative Council for the duration of Mr Evans' absence.

Queensland Parliament

Neil John Laurie LLB LLM (Hons) MBA was appointed the Clerk of the Parliament of the Queensland Parliament and Clerk of the Legislative Assembly on 22 February 2003. He served as Deputy Clerk and Clerk of Committees from 1998, and before that was Clerk Assistant and Clerk of committees of the Queensland Legislative Assembly. He has also been Research Director to a number of parliamentary committees including the Members' Ethics and Parliamentary Privileges Committee; Procedural

Review Committee; Parliamentary Criminal Justice Committee and Legal Constitutional and Administrative Review Committee. Prior to employment with the Queensland Parliament he worked for the Office of the Special Prosecutor. His interests are constitutional and criminal justice issues.

Canada House of Commons

Tributes were paid in the House on 30 October 2002, to Major-General Maurice Gaston (Gus) Cloutier, the Sergeant-at-Arms, for his 50 years of public service. Major-General Cloutier was appointed as Sergeant-at-Arms and Canadian Secretary to the Queen in 1978.

British Columbia Legislative Assembly

Kate Ryan-Lloyd was appointed Clerk Assistant and Committee Clerk by resolution of the House on 13 March 2002.

Ontario Legislative Assembly

The Queen's Golden Jubilee Medal was awarded to Claude L. DesRosiers, Deborah Deller, Todd Decker and Lisa Freedman.

India Rajya Sabha

Dr Yogendra Narain became Secretary-General on 1 September 2002. Born on 26 June 1942, he joined the Indian Administrative Service in 1965. He has held important administrative positions in the Government of Uttar Pradesh as well as in the Central Government. He is author of *The ABC of Public Relations for Civil Servant*, a book of poems entitled *Clouds and other Poems*, and has written several articles on topical issues and public administration. He has also edited several parliamentary publications. He is the President of the International Goodwill Society of India, President of the National Wushu Association, President of the IIPA Alumni Association, Indian Institute of Public Administration, New Delhi, and Patron of the Sheesh Mahal Cricket Club, Lucknow.

Kerala

Shri K. R. Udayabhanu has become Secretary of the Kerala Legislature in place of Dr N. K. Jayakumar.

Uttar Pradesh

Mr Rajendra Prasad Pandey was appointed Principal Secretary of the Legislative Assembly on 6 November 2002.

Singapore

P O Ram, Clerk of Parliament, was awarded the Public Service Star (BBM) and the Public Administration Medal (Silver) (PPA)(P).

South Africa

Mr Michael Coetzee, previously Secretary to the Gauteng Legislature, has been appointed Deputy Secretary of the National Parliament of South Africa. Ms Lucille Meyer is the new Assistant Secretary.

Zambia

Mrs Doris Katai Katebe Mwinga was appointed Clerk of the Zambian National Assembly on 30 October 2002.

EXECUTIVE ACCOUNTABILITY IN THE 'CHILDREN OVERBOARD' AFFAIR

DR SARAH BACHELARD
Principal Research Officer, Australian Senate

Introduction

The inquiry of the Australian Senate's Select Committee on a Certain Maritime Incident, known colloquially as the 'children overboard inquiry', was at its heart an inquiry into the accountability of the executive government to the Parliament and the people.

In October 2001 the government claimed that asylum seekers on a vessel intercepted by the Australian navy had thrown children overboard. The asylum seekers were accused of using their children to blackmail naval personnel into bringing them to Australian territory. By February 2002 the government stood accused of misleading the public, at best by failing to check advice it should have known was doubtful and at worst by withholding contrary advice and knowingly maintaining a falsehood. The select committee was charged by the Senate with the task of examining the facts of the original incident, 'the flow of information about the incident to the federal government, both at the time of the incident and subsequently', and 'federal government control of, and use of, information about the incident'.

This article outlines the response of the executive to the committee's inquiry. That response raised significant issues relating to the accountability of the executive to the Parliament and the powers of Senate committees.

Background

On Friday 5 October 2001 Prime Minister John Howard called a federal election to be held on 10 November. The election was announced and the campaign occurred against the background of serious security concerns arising on the one hand from the September 11 terrorist attacks in the United States and on the other from heightened domestic concern about border protection in the wake of the *Tampa* affair (a vessel of that name carrying rescued asylum seekers had been refused permission to land them on the mainland).

On Saturday 6 October, a vessel carrying asylum seekers from the Middle East was intercepted by the Australian navy. The vessel came to be known as Suspected Illegal Entry Vessel (SIEV) 4. On 7 October the Minister for Immigration, Mr Phillip Ruddock, informed the media that the asylum seekers on SIEV 4 had thrown "a number" of children overboard. On the following day, the Prime Minister made several statements concerning the alleged incident, saying that: "my reaction was I don't want in Australia people who would throw their own children into the sea."[1]

The Government was asked by various parties, including members of the press, refugee advocacy groups and the Australian Democrats, to provide evidence for its claim that the incident had occurred. On Wednesday 10 October the Minister for Defence, Mr Peter Reith, released two photographs of children in the water being rescued by naval personnel. The photographs were cited as proof of the report that children had been thrown overboard.

Although, in the last days of the election campaign, doubts were again raised in the media about the veracity of the claims that asylum seekers had thrown their children overboard, and in particular about whether the photographs were of that event, the Prime Minister and other ministers maintained that they had no reason to doubt the advice they had originally received from the Australian Defence Force. The government was returned in the election.

Immediately after the election, however, two inquiries into the incident were commissioned within government. On 13 November the Prime Minister wrote to the Secretary of the Department of the Prime Minister and Cabinet. He requested that the Department's People Smuggling Taskforce conduct an investigation into the nature of the advice provided to government ministers about the incident, and how it was transmitted.[2] On 20 November the Chief of Defence Force directed that a routine inquiry be conducted into the incident and the subsequent handling of information about it.[3]

The following findings were made by both inquiries:

- an initial report that children had been thrown overboard from SIEV 4 was conveyed to ministers;
- there was no conclusive evidence to support that initial report;

[1] Transcript of Interview with Phillip Clarke, 2GB, 8 October 2001.

[2] Jennifer Bryant, *Investigation into Advice Provided to Ministers on 'SIEV 4'*, 21 January 2002, p.i.

[3] Major General R.A. Powell, *The Report of the Routine Inquiry into Operation Relex: the Interception and Boarding of SIEV IV by HMAS Adelaide*, 14 December 2001, p.1.

- on 11 October 2001 written confirmation that there was no such evidence was sent up the chain of command at least as far as the Commander Australian Theatre;
- on 11 October the Office of the Minister for Defence was advised that the photographs depicting children in the water were taken when SIEV 4 was sinking on 8 October and not when it was intercepted on 7 October; in other words, the minister's office was advised that the photographs had been taken on the day after the alleged incident;
- it was 'unclear' what oral advice, if any, may have been provided to the minister or his office concerning the lack of evidence about a child having been thrown overboard; no written advice to this effect was provided to the minister.[4]

The reports prepared by the People Smuggling Taskforce (the Bryant Report) and the routine Australian Defence Force inquiry (the Powell Report) were tabled in Parliament on 13 February 2002.

During the Senate estimates process later in February, further evidence emerged which suggested that knowledge that children had not been thrown overboard may have been available to senior bureaucrats, military personnel, and ministers and their advisers prior to the election.

In particular, Air Marshal Angus Houston informed the Senate Foreign Affairs, Defence and Trade Committee that he had spoken to then Minister Reith on 7 November 2001 about the matter. Air Marshal Houston, who was then Acting Chief of Defence Force, testified that he had advised the minister that the photographs had been taken on the day following the alleged children overboard event, and that "fundamentally there was nothing to suggest that women and children had been thrown into the water."[5]

On 13 February the Senate referred the matter to the Select Committee on a Certain Maritime Incident. As noted earlier, the committee was charged, among other things, with inquiring into 'the flow of information about the incident to the federal government, both at the time of the incident and subsequently', and 'federal government control of, and use of, information about the incident'.

[4] Jennifer Bryant, *Investigation into Advice Provided to Ministers on 'SIEV 4'*, 21 January 2002, pp.ii-ix; Major General R.A. Powell, *The Report of the Routine Inquiry into Operation Relex: the Interception and Boarding of SIEV IV by HMAS Adelaide*, 14 December 2001, p.4.

[5] *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade Committee, 20 February 2002, p.76.

Executive response to the inquiry

In order to answer the questions relating to the 'flow of information' to the federal government, the committee needed to know who had possession of which information or advice and at what time. Three classes of witnesses were of primary importance in this regard. They were public servants (including Australian Defence Force personnel), ministerial advisers and the former Minister for Defence.

On 12 March 2002 Prime Minister Howard told the Parliament how the government intended to approach the inquiry. He said that "any public servant who is invited to attend will naturally go and answer questions truthfully."[6] In relation to ministerial advisers, he said that the government would follow "the convention and the convention is that ministerial staff do not appear."[7] That is because "ministerial staff are accountable to the minister and the minister is accountable to the parliament and, ultimately, the electors."[8] In relation to the former Minister for Defence, Mr Peter Reith, Mr Howard said that: "The question of whether the former minister appears is a matter for him. He is no longer a member of my government and he is not a member of the House."[9]

The Committee invited Mr Reith to lodge a submission with the inquiry. Mr Reith did not directly decline the invitation, but emailed the following note to the committee secretary:

> "I note your formal invitation to make a submission. You should know that I have sought and obtained clear and impartial advice from the Clerk of the House of Representatives and that he has independent and expert constitutional advice supporting his advice to me."[10]

The advice from the Clerk of the House of Representatives was that a Senate committee does not have the power to compel the appearance of a former member of the House of Representatives. Mr Reith did not make any reply to the committee's invitations that he give evidence at a public hearing.

[6] Hon. John Howard MP, *Hansard Transcript*, House of Representatives, 12 March 2002, p.995.

[7] Hon. John Howard MP, *Hansard Transcript*, House of Representatives, 12 March 2002, p.995.

[8] Hon. John Howard MP, *Hansard Transcript*, House of Representatives, 12 March 2002, p.995.

[9] Hon. John Howard MP, *Hansard Transcript*, House of Representatives, 12 March 2002, p.997.

[10] Email Correspondence, Peter Reith to Committee Secretary, 14 April 2002.

A number of further restrictions on the committee's evidence gathering processes were implemented by the government during the course of the inquiry. They were:

- all invitations to Defence personnel, whether civilian or military, were required to be delivered through the office of Senator Robert Hill, Minister for Defence;
- no person who had been employed in Mr Reith's office was allowed to give evidence; this prohibition applied to both public servants employed under the Public Service Act and staff engaged under the Members of Parliamentary (Staff) Act; and
- contrary to usual practice, Cabinet declared that government departments would not prepare written submissions to the inquiry. The committee received no formal notification of this decision, but learnt of it from media reports. Public service departments, some of which had begun preparing submissions, informed the Committee that they would not be supplying them to the inquiry.

There were three main consequences of these decisions by the executive. First, background information that would usually have been provided in departmental submissions had to be obtained from witnesses in oral proceedings. The public hearing process took proportionately longer and senior officials were detained by the inquiry for more time than they need otherwise have been.

Second, the requirement that invitations to give evidence to the committee be delivered to Defence personnel through the Minister for Defence allowed for significant interference by the executive in the inquiry process. For example, the minister refused to forward correspondence from the committee to certain individuals within the Department of Defence, with the result that those individuals could not be formally invited to tender evidence to the committee.[11] The minister refused to give certain witnesses permission to appear before the committee on the grounds that, in his view, the committee's terms of reference did not require it.[12] On one occasion, the minister anticipated what he thought the committee wished to ask a proposed witness. The minister's office contacted the individual directly and forwarded an answer to that issue, together with a refusal to allow the committee any further access to the witness concerned.[13]

[11] Correspondence, Minister Robert Hill to Committee Secretary, dated 5 April 2002.
[12] Correspondence, Minister Robert Hill to Committee Secretary, dated 7 June 2002.
[13] Correspondence, Minister Robert Hill to Committee Chair, dated 17 May 2002.

The cumulative consequence of the restrictions placed by the executive on the committee's inquiry processes was that the committee could not fully determine the nature of the federal government's 'control of, and use of, information' about the children overboard incident. In the chair's foreword to the committee's report, Senator Cook stated:

> "The inquiry was able to piece together quite effectively a reasonably clear picture of what happened about correcting the record up to ministerial and prime ministerial level. There was enough information to cause the inquiry to make the majority findings about Mr Reith's conduct that appear in the report but it was not possible to go further."[14]

In other words, the executive's decision to refuse the committee access to ministerial and prime ministerial staff and to public servants serving in ministerial offices meant that the committee could not fully determine the extent to which members of the federal government or their staff knew that there were problems or doubts surrounding the initial report that children had been thrown overboard from SIEV 4.

Challenges for the committee

The government's unwillingness to cooperate with the inquiry posed a number of administrative and procedural challenges for the committee. The most important of these were the questions of whether to compel the appearance of certain public service and ministerial staff, and whether to compel the appearance of Mr Reith, former Minister for Defence. These questions raised complex legal, ethical and practical issues.

Legal issue

The Committee had first to determine whether the Senate had the power to compel public service and ministerial staff, and a former member of the House of Representatives, to appear before it. It sought the advice of the Clerks of the Senate and of the House of Representatives on the matter.

In relation to the compellability of former members of the House of Representatives, the Clerk of the Senate advised that "a Senate Committee, given by the Senate the power to summon witnesses, could summon any person in the jurisdiction of Australia."[15] He stated that the only immunity

[14] Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.xiv.

[15] Correspondence, Clerk of the Senate to Senator the Hon. John Faulkner, dated 19 February 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

from this power is possessed by current members of the House of Representatives and current state office-holders. That immunity arises, the Clerk argued, from the principle of comity which precludes one House from disrupting the business of the other house, and the federal parliament from disrupting the business of the state parliaments. The immunity is, on this reading, granted on functional grounds: "it is a public duty (not a private interest) of every Member of a House to attend to his or her business in its Chamber, freed of extraneous pressures."[16] Since, however, a former member has no public business to attend the meetings of either House, "there is no functional rationale for any such immunity."[17]

The Clerk stated that this does not preclude a witness from making claims of immunity with regard to particular issues. For example, the fact that he is compelled to appear before the committee would not preclude a former minister from claiming immunity from answering certain questions on, say, public interest grounds. However, a claimed immunity does not become an immunity until the claim is accepted by the Senate. And, as the Clerk noted:

> "Current ministers are the ones to make any such claims relating to the public interest. A former minister could submit that he is bound by a claim made by the current ministry in relation to information about government operations in his possession … But such a submission cannot be made until the current ministry has made such a claim. If the government does not seek to conceal government information, a former minister can hardly do so."[18]

The Clerk pointed out that, in the case of Mr Reith's appearance before the select committee, "no claim has yet been made that there are grounds on which questions about the subject should not be answered because of apprehended damage to the public interest, such as by disclosure of secret operations of the Defence Force, or of internal government deliberations."[19]

On the issue of the compellability of ministerial staff or advisers, the Clerk

[16] Bret Walker SC, *Australian Senate Witnesses—Former Ministers and Ministerial Staff: Opinion*, 16 May 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[17] Bret Walker SC, *Australian Senate Witnesses—Former Ministers and Ministerial Staff: Opinion*, 16 May 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[18] Correspondence, Clerk of the Senate to Senator the Hon. John Faulkner, dated 19 February 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[19] Correspondence, Clerk of the Senate to Senator the Hon. John Faulkner, dated 19 February 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

of the Senate advised that "the Senate and comparable houses of legislatures have not recognised any immunity attaching to this category of office-holders." The Clerk noted that this applies without distinction to those employed under the Public Service Act and the Members of Parliament (Staff) Act.[20] The Clerk's advice on both these questions was supported by the Opinion of Mr Bret Walker SC.[21]

The Clerk of the House of Representatives, however, took a different view. He argued that the basis upon which current members of the House of Representatives possess immunity against being compelled to appear before the Senate serves to supply the same immunity for former members. That basis, he argued, was not the principle of comity but "a legal restriction based upon the Constitution": it flows from Sections 49 and 50 which provide for the "complete autonomy of the Houses from each other", such that neither House can claim or exercise authority over a member of the other.[22] The Clerk argued that former members enjoy immunity, on the grounds that:

> "The independence and equal authority of each House of Parliament to be the sole judge of the conduct of its own members could be undermined if the other House could postpone the exercise of that authority until the retirement of the member in question. This could prove to be a significant fetter on the freedom of action of both the member and the House concerned."[23]

On the compellability of ministerial advisers, the Clerk of the House of Representatives suggested that "a reasonable case" could be made for the immunity which applies to Ministers applying likewise to their staff. Although the Senate may not explicitly recognise such an immunity, the Clerk expressed the view that "if the immunity flows from the constitutional relationship between the Houses of Parliament, the failure of Senate rules to recognise immunity could not avail against the Constitution."[24]

[20] Correspondence, Clerk of the Senate to Senator the Hon. Peter Cook, dated 22 March 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[21] Bret Walker SC, *Australian Senate Witnesses—Former Ministers and Ministerial Staff: Opinion*, 16 May 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[22] Correspondence, Clerk of the House of Representatives to Committee Secretary, dated 3 April 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[23] Correspondence, Clerk of the House of Representatives to Committee Secretary, dated 3 April 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[24] Correspondence, Clerk of the House of Representatives to Committee Secretary, dated 3 April 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

The advice of the Clerk of the House of Representatives was supported in part by the opinions of Mr Alan Robertson QC and Professor Geoffrey Lindell. Mr Robertson held that the basis of the immunity of current members of the House of Representatives against being compelled to appear before the Senate or one of its committees is a legal immunity grounded in the Constitution. He considered that this immunity extends to former members also, although "less certainly."[25]

Professor Lindell advanced essentially the same view, although he noted in relation to the extension of immunity to former members that "in the absence of direct judicial or other authority on the matter … there can be no certainty that either the Senate or ultimately a court, will uphold that immunity." On the question of immunity applying to ministerial advisers, Professor Lindell held that there are "reasonable arguments" to support such a case, but "the position in relation to such persons is much more doubtful than that occupied by the Minister."[26] Professor Lindell concluded his comments, however, by emphasising that:

> "It is highly advisable for Mr Reith to obtain his own legal advice on the issues raised by this matter. This is because of the potentially penal consequences that would involve the exercise of the penal jurisdiction of the Senate and could result from a breach of a lawful direction by the Senate to appear and answer questions. Although the issue of the former Minister's liability to answer questions may be reviewed in a court of law to a limited extent, there can be no assurance that a court will recognise his possible immunity referred to in these comments."[27]

As the Clerk of the Senate pointed out also, the committee sought to question Mr Reith not in his capacity as a former *member* of the House of Representatives, but as a former *minister*. The Clerk argued that although the Senate cannot censure or impose penalties on a member of the House of Representatives as a *member*, that does not mean that ministers as *ministers*

[25] Alan Robertson, *Concerning the Obligation of a Former Member of the House of Representatives to Attend and Give Evidence before the Senate Committee on a Certain Maritime Incident: Opinion*, 26 June 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[26] Geoffrey Lindell, *Comments provided by Professor G.J. Lindell on advice given by the Clerks of both Houses of the Commonwealth Parliament*, 22 March 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[27] Geoffrey Lindell, *Comments provided by Professor G.J. Lindell on advice given by the Clerks of both Houses of the Commonwealth Parliament*, 22 March 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

are not accountable to the Senate. Indeed, ministers from the House of Representatives answer questions put by the Senate and Senate committees, including estimates committees, as a matter of routine. It follows that if there "is no immunity of House of Representatives ministers as *ministers* from accountability, [there is] therefore no reason why former ministers should not answer for their conduct as *ministers* in Senate forums."[28] For this reason, the Clerk argued, the principle that neither House inquires into the business of the other does not serve to confer immunity on a former member in relation to his activities as a minister.

The select committee was thus faced with conflicting opinions about its power to compel the appearance of Mr Reith and his former staff, and no ready means to establish with certainty its legal rights. As the Clerk of the Senate observed:

> "There is no law on the subject; there are no court judgments which remotely bear on this question of the powers of the legislature, and no certainty that the question would even be justiciable."[29]

The committee, by majority, adopted the views of the Clerk of the Senate.[30] No members of the committee adopted the contrary opinion of the Clerk of the House of Representatives; the minority, consisting of government party senators, did not make a finding on the issue. Nevertheless, in considering whether it would exercise what it viewed as its legitimate power to compel the appearance of witnesses, the committee was also mindful of the ethical and practical issues involved.

Ethical and practical considerations

In contemplating whether to compel the appearance before it of Mr Reith or his former staff, the committee had to consider the "likely train of events" if it summoned those persons. The possibilities were expressed in an advice provided by the Clerk of the Senate, as follows:

> "A summons by the committee, judging by the attitude of the government so far, is likely to be met with refusal to comply. In that circumstance, the committee can take no further action other than to report the default to the

[28] Correspondence, Clerk of the Senate to Senator the Hon. Peter Cook, dated 19 February 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[29] Correspondence, Clerk of the Senate to Senator the Hon. Peter Cook, dated 15 April 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[30] Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.xv.

> Senate. The Senate could then issue further summonses for those persons to appear. It is also likely that those summonses would be met with non-compliance. The only remedy then available to the Senate would be to impose penalties on the defaulters."[31]

The difficulty for the committee at this point was posed by a Senate resolution of 1994, that it would be unjust to impose a penalty on public servants or advisers who decline to provide evidence on the direction of a minister.[32] The committee endorsed that resolution, citing the report on the Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994, which stated that it was:

> "Well understood that any attempt by a House of the Parliament to impose the extreme penalties of either gaol or a fine upon a public servant who obeyed a ministerial instruction not to comply with an order of that House or a committee, while the minister concerned was immune from its contempt powers, was untenable."[33]

If the committee were to adhere to that principle, then, it could only seek to penalise Mr Reith for his failure to comply with any summons. The problem here was that, in the majority view of the committee:

> "Any summons to Mr Reith would be contested in the courts with the taxpayer having to foot the bill and with the inquiry having to mark time until the issue was settled."[34]

The committee was concerned that this "lengthy process would serve only as a distraction, probably a complete distraction, from the important issue of uncovering the truth behind the matter into which the committee has inquired."[35] Even if a penalty were successfully imposed on Mr Reith, a government indemnity would probably result in the burden falling on the taxpayer.

In response to these difficulties, then, the committee took "the unusual

[31] Correspondence, Clerk of the Senate to Senator the Hon. John Faulkner, dated 21 May 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[32] Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.183.

[33] Senate Committee of Privileges, *Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994 (49th Report)*, September 1994, p.5 cited in Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.182.

[34] Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.xv.

[35] Correspondence, Clerk of the Senate to Senator the Hon. John Faulkner, dated 21 May 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

step" of appointing an Independent Assessor, Mr Stephen Odgers SC. Mr Odgers' role was to examine the evidence obtained by the committee, to:

> "Determine what evidence should be obtained from …[former minister Reith and his advisers], and what questions they should answer, to enable the committee to report fully on its terms of reference; and formulate preliminary findings and conclusions which the committee could make in respect of the roles played by those persons with the evidence and documents so far obtained."[36]

In the Clerk of the Senate's words, the inquiry by the Independent Assessor "would bring the committee much closer to discovering the truth behind the subject matters of its inquiry than the alternative course of seeking to impose penalties."[37] Mr Odgers' report was tabled in the Senate together with the committee's own report.

Findings

In the absence of testimony from Mr Reith and members of his staff, the findings made by the committee and Mr Odgers in relation to their actions drew on two sources. These were, first, statements made by Mr Reith and his advisers, Mr Scrafton, Mr Hendy and Mr Hampton, to the Bryant and Powell inquiries, and second, evidence from officers of the Australian Defence Organisation concerning advice provided by them to the minister and his office. Evidence from this second source could not, of course, be directly tested against the recollections or records of Mr Reith and relevant advisers. Mr Odgers stated that, because of this limitation of the evidence available, "no firm conclusions should be drawn on factual issues relating to them where any possibility of controversy exists." Mr Odgers set out his approach to his brief then in the following terms:

> "For the most part, only factual conclusions which are entirely uncontroversial will be drawn. Where uncertainty or dispute exists and it is necessary for some factual determination to be made in order to comply with the brief, only tentative or provisional views will be expressed. The brief requires only 'preliminary findings and conclusions' and that requirement will be rigidly adhered to."[38]

[36] Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.183.

[37] Correspondence, Clerk of the Senate to Senator the Hon. John Faulkner, dated 21 May 2002. Published in Select Committee on a Certain Maritime Incident, *Report*, October 2002.

[38] S.J. Odgers SC, *Report of Independent Assessor to Senate Select Committee on a Certain Maritime Incident*, 21 August 2002, p.4.

The committee itself took the view that where credible evidence from members of the Australian Defence Organisation was available in relation to particular issues, the committee would not, on the basis of their silence, refrain from making findings critical of Mr Reith and members of his staff.

In relation to the misrepresentation of the photographs, Mr Odgers concurred with the Bryant Report that he could not make a finding about whether Mr Reith was provided with definitive advice that the photographs were from the sinking, not the overboard incident. Nevertheless, he concluded that it was clear that Mr Reith was aware on 11 October that there was considerable doubt that the photographs depicted children thrown overboard on 7 October. For this reason, Mr Odgers concluded that Mr Reith's public statement on 14 October justifying his decision to release the photographs "because there was a claim we were not telling the truth about what happened" was "misleading":

> "It is true that there is no explicit deception, because Mr Reith was referring to his state of mind on 10 October. However, in my opinion, the clear implication of what he said was that he continued to assert that the photographs showed that he was 'telling the truth about what happened', that is, that children had been thrown overboard … In my opinion, it was misleading of Mr Reith not to refer in the interview on 14 October to the doubt he knew existed in relation to the attribution of the photographs."[39]

On the issue of the photographs, the committee by majority found that Mr Reith had been definitively informed on 11 October by the Chief of Defence Force that the photographs were not of the alleged children overboard events of 7 October, but were of the foundering of SIEV 4 on 8 October.[40]

In relation to the correction of the mistaken report that children had been thrown overboard from SIEV 4, Mr Odgers noted that there was no evidence that Mr Reith received written advice of doubts about the incident.[41] He thought it "likely" that Mr Reith was advised by Admiral Barrie before 25 October 2001 "that there were serious doubts about whether children had ever been thrown into the water. However, I stress that this is only a preliminary conclusion and that Mr Reith has not to date given his account of this alleged conversation."

[39] S.J. Odgers SC, *Report of Independent Assessor to Senate Select Committee on a Certain Maritime Incident*, 21 August 2002, p.39.

[40] Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.xxiii.

[41] S.J. Odgers SC, *Report of Independent Assessor to Senate Select Committee on a Certain Maritime Incident*, 21 August 2002, p.39.

Mr Odgers continued:

> "On the assumption that Mr Reith was advised by Admiral Barrie before 25 October that there were serious doubts about whether children had ever been thrown into the water, the question arises as to why he made no public statement revealing this. He could simply have relied on the fact that Admiral Barrie stood by the initial advice until evidence was produced to show the initial report was wrong. However, if that was the reason it is surprising that, on the evidence available to me, Mr Reith did not make a request for formal and definitive advice from Defence on the issue."[42]

The committee by majority found that on or about 17 October Admiral Barrie informed Mr Reith that there were serious doubts about the veracity of the report that children had been thrown overboard from SIEV 4. It also found that on 7 November, the then Acting Chief of Defence Force informed Mr Reith that children had not been thrown overboard from SIEV 4.

The committee further found that, on 7 November, Mr Reith informed the Prime Minister that, at the least, there were doubts about whether the photographs represented the alleged children overboard incident. It noted that, despite direct media questioning on the issue, "no correction, retraction or communication about the existence of doubts in connection with either the alleged incident itself or the photographs as evidence for it was made by any member of the Federal Government before the election on 10 November 2001."[43] Therefore, the Committee concluded that:

> "Mr Reith deceived the Australian people during the 2001 Federal Election campaign concerning the state of the evidence for the claim that children had been thrown overboard from SIEV 4. It is not possible to make a finding on what the Prime Minister or other Ministers had communicated to them about this incident due to the limitations placed on this inquiry by the order of the Cabinet for ministerial staff not to give evidence."[44]

[42] S.J. Odgers SC, *Report of Independent Assessor to Senate Select Committee on a Certain Maritime Incident*, 21 August 2002, p.40.

[43] Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.xxiv.

[44] Select Committee on a Certain Maritime Incident, *Report*, October 2002, p.xxiii.

Conclusion

In certain respects, the response of the executive to the committee's inquiry showed the limits of the power of Senate committees to extract information from an uncooperative government.

The committee asserted its right to compel the appearance of witnesses withheld by the government, but the practical and ethical issues involved rendered it reluctant to exercise that right. The committee did not wish to penalise officials and advisers for the non-compliance of the executive, and nor did it wish to risk public funds in the pursuit of Mr Reith. In practice, this meant that the government was able to avoid scrutiny of some of its actions by the Parliament.

On the other hand, even without the appearance of these witnesses, the committee was able to make substantial findings about the extent to which advice correcting the initial report of children thrown overboard was provided to the minister's office.

The committee's inquiry also highlighted the whole issue of the accountability of staff employed under the Members of Parliament (Staff) Act. This issue is the subject of an inquiry to be referred to the Senate Finance and Public Administration Committee. Likewise, the relationship between public service departments and ministerial offices was exposed, with the result that some departments have adopted more stringent procedures surrounding the provision and recording of advice to ministers and their advisers.[45]

In this respect, the committee's inquiry has been a catalyst for improvements in public administration and accountability, the government's obstruction notwithstanding.

[45] Ms Jane Halton, *Transcript of Evidence: Select Committee on a Certain Maritime Incident*, 30 July 2002, pp.2152-2153.

HOUSE OF LORDS: NEW WAYS OF WORKING

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The year 2002 saw major changes in the administration and procedures of the House of Lords. These followed the seismic change in the membership of the House in 1999 when 90% of the hereditary members (some 640) lost their seats in the House, which is now largely composed of members appointed for life (see *The Table*, vol. 67). However, the changes in administration and procedure owed less to the departure of so many of the holders of historic peerages and more to changes in the House of Commons which, in the previous three years, had started the reforms which the Lords began to implement in 2002.

Administrative changes

The steps leading to the changes in the administration of the House began in 2000 when the House of Lords' Offices Committee (the main administrative Committee) considered a proposal to appoint a management consultant to advise on how the House and its officials should introduce modern management techniques into its administration. The same consultant had been previously employed by the Commons, where his proposals had been largely implemented. The Offices Committee twice recommended his appointment but twice the House rejected the recommendation.[2] Instead, it was agreed that a small informal group of members should consider what should be done. Their subsequent report[3] was short and made few proposals, but it rejected any idea of employing a management consultant; for a variety of reasons, the report was never considered. However, it was abundantly clear that matters could not be left as they were, notably because of the changes in the Commons which, in respect of areas of common interest such as the upkeep of the Houses of Parliament, required changes to be made in the Lords also.

[1] Retired 14 July 2003.

[2] See the 5th and 6th Reports of the Offices Committee (1999-2000, HL Papers 70 and 97), debated on 21 June and 27 July 2000 (HL Debs, cols 256-265 and 604-635).

[3] *Report by the Steering Group on Management and Services*, eventually published 24 July 2001 (2000-01, HL Paper 22).

Accordingly, shortly after the General Election in May 2001, the Chairman of Committees, the member principally responsible for the administration of the House, set up a second informal group of members under his own chairmanship to assess the problem and to make recommendations for the future. This Group went into the subject in much greater depth than the previous one; additionally, it heard the views of members and officials of the House.

The recommendations of the Group were presented to the House of Lords' Offices Committee in February 2002. The Committee published the recommendations in a Report to the House,[4] commenting that it would now allow a period when members of the House could reflect on them. Three months later the Offices Committee considered the Group's report in detail and largely endorsed it,[5] notwithstanding the irony that the first of the Group's recommendations was that the Offices Committee (a Committee dating from 1824) should be abolished and replaced by another Committee to be known as the House Committee!

The tenor of the Group's report, as endorsed by the Offices Committee, was that the administration of the House had to be tautened. A body as large as the Offices Committee (28 members), meeting infrequently and leaving much of its work to sub-committees, could not supply the strategic direction required. The Group recommended the appointment of a new strategy-setting Committee (the House Committee) with only nine members; this was later increased to eleven when the Offices Committee considered the matter. It was recommended that the House Committee should meet frequently (once a month during periods when the House is in session).

In place of the five sub-committees of the Offices Committee, four of them were to become Select Committees: Administration and Works, Refreshment, Information (formerly Library and Computers) and Works of Art. The fifth sub-committee, on Finance and Staff, was to be abolished since finance was to become one of the prime responsibilities of the new House Committee.

A Management Board was to be established, chaired by the Clerk of the Parliaments, supported by a strengthened office. Finance and business expertise was also to be strengthened, in view of the new requirements for business planning. The Management Board was to be given considerable devolved responsibility to ensure that the administration of the House was as

[4] Fourth Report of the Offices Committee (2001-02, HL Paper 79).
[5] Fifth Report of the Offices Committee (2001-02, HL Paper 105).

responsive and efficient as possible. It would both support the strategic role of the House Committee and respond to its directions.

Much emphasis was placed by the Group on the need for openness and accountability. The Group had heard of dissatisfaction among members of the House that they were neither consulted on, nor informed about, decisions concerning their working conditions or other facilities. The new Committees were asked to make their papers and decisions available to other members of the House via the Parliamentary Intranet.

The final recommendation of the Group was for the establishment of an Audit Committee to assist the Accounting Officer (the Clerk of the Parliaments) in his duties and to provide assurance that the financial affairs of the House were subject to proper control and that all services gave value for money. This Committee has already had an impact.

These new arrangements were implemented at the beginning of the parliamentary session in November 2002. Whilst, at the time of writing, it is too early to judge what improvements in service and administration will result, much is being achieved. A Strategic Plan for the next five financial years has been approved and business planning is well under way. The House Committee and the Management Board are meeting monthly; they are not yet entirely confident about their respective roles, but there has been significant progress towards developing a more corporate approach to administration.

In the case of the Management Board, there is a strong belief that the administration should not become over-bureaucratic. Senior staff are being trained in their new roles and are responding enthusiastically, despite the extra workload that the number of new initiatives has imposed.

Procedural changes

Just as the administration of the House is undergoing big changes, so are the working practices of the House. Here, however, there was (and still is) much more controversy. Once again, some of the pressure for change came from changes in the House of Commons, which in recent years appeared to be able to get through its business without sitting long hours, in contrast to the House of Lords, whose length of daily sittings was close to record levels—indeed, in terms of days sat, the Lords were sitting more than the Commons. Many of the Life Peers appointed since 1997, the majority of them Labour and who were therefore asked to remain late at night to support the Government in divisions, found the sitting hours of the House extremely irksome.

It was also the view of Lord Williams of Mostyn, the Leader of the House appointed following the 2001 General Election, that members could not be expected to consider details of legislation properly in the hours immediately before and after midnight! He decided to form a second small Group, this one on the Working Practices and Procedure of the House. The other members of the Group were the Leaders of the two Opposition parties, the Convenor of the Independent peers and two back-bench members. The Group met many times because of the lack of agreement on some of the proposals they were considering, and published its report in May 2002.[6]

The Leader of the House was determined to do something about the length of sittings. Since the legislative programme is always likely to remain at its present size, and since the House of Lords has not adopted Standing Orders which provide for the closure of business at certain hours (nor has it a guillotine procedure), the only practical way of shortening the length of time the House sits is to commit more bills for scrutiny by Committees off the Floor of the Chamber. While the House has, for a number of years, sent some uncontroversial bills to Grand Committees (a Committee comprising all members of the House who wish to attend), these have been the exception rather than the rule. The Leader wanted to achieve a situation where at least 50% of bills were considered off the Floor. However, the Conservative Leader, in particular, was unhappy to concede that more bills, including those which were controversial, should be considered in Grand Committee, mainly for two reasons: first, no votes are taken in Grand Committee (which means that controversial issues have to be settled at a later stage when debate is more restricted) and, second, the proceedings are conducted, by and large, away from the public gaze.

In the end, however, the outcome was that the Group agreed to recommend the greater use of Grand Committees, with a view to the House rising each night no later than 10.00 pm. Additionally, it was proposed that the House should begin its business at 11.00 am on Thursdays, with the aim of finishing not later than about 7.00 pm, so that members could return home for the weekend.

The Group proposed that the 10.00 pm and 7.00 pm conclusions of business should be achieved by the passing of a new Standing Order, which would prevent new business starting after those times. A debate which had already started would be able to continue after 10.00 pm, but, if the House

[6] *Report by the Group Appointed to Consider how the Working Practices of the House can be Improved, and to make Recommendations* (2001-02, HL Paper 111).

were considering amendments to a bill, no new amendment could be proposed after the cut-off time.

Another factor in persuading the more reluctant members of the Group of the merits of Grand Committees was the expectation that many more Government bills would be considered in draft (pre-legislative scrutiny). Allied to this, however, was the proposal that such bills might be "carried over" from one session to the next, something which traditionalists see as an erosion of one of the few weapons Oppositions have at their disposal, namely the pressure of time as a session draws to a close.

The Group also recommended that the House should consider sitting in September with a view to spreading out the parliamentary year. A similar proposal was being considered in the Commons; a positive decision there was clearly likely to influence the Lords' decision.

The Leader of the House was determined to gain agreement on all the above changes but he was keen also to increase the scrutiny role of the Lords. Accordingly, the Group recommended additional oral questions to the Government, a new Committee to examine the merits of delegated legislation, select committee scrutiny of the annual Finance Bill (being careful not to trespass on Commons financial privileges) and the desirability of holding more debates on general topics and on Select Committee Reports in prime time—in other words, not on Fridays or late at night!

These (the main recommendations) and a number of others were, in due course, considered by the Procedure Committee, the body responsible for making procedural changes in the Lords. The proposal for additional Grand Committees was subject to lengthy, some would say tedious, debate. The carry-over of bills was also resisted and fears were expressed that the proposed new Committee to consider the merits of delegated legislation was designed to deny members the right to debate such legislation in the Chamber.

The Procedure Committee declined to make a recommendation about September sittings, believing that this was an issue for the House to decide. It also recommended against the Group's proposal that a Standing Order should be adopted to forbid any new business being taken after 10.00 pm or 7.00 pm on Thursdays. The Procedure Committee felt that the advantageous flexibility of Lords procedure would be lost—instead, they recommended that these adjournment times should become "a firm convention."

The Procedure Committee's eventual report on the Group's proposal was agreed to in the House on the basis that the new arrangements would be on a trial basis for two parliamentary sessions. They were implemented from the beginning of the 2002-03 session. Shortly after the session began, the Leader

of the House tabled a motion to enable the House to decide whether it should sit in September for two weeks, with a correspondingly earlier adjournment in July. The House agreed by a narrow majority that it would sit in September in 2003.

It is perhaps too early to judge how successful the changes are. The 10.00 pm rule is regularly breached but, even so, it would appear that the Government's legislative programme is being delayed by the commitment to finish business at around that time. Fewer bills than the Government had hoped are being committed to Grand Committees. Pre-legislative scrutiny of draft bills remained almost non-existent in the Lords until the last few weeks of the session.

One aspect of the new arrangements which appears to be universally unpopular is the way in which business on Thursdays is now arranged. When the Procedure Committee considered the Group's recommendation that the House should sit in the mornings on Thursdays, it adapted it in three ways. It was pointed out that, in an unpaid House, many Opposition spokesmen had to earn their livings in the morning and so would be unable to speak on behalf of their parties at Question Time, if it were held at 11.00 am. Secondly, it was agreed that, in order to accommodate party meetings, which had always been held after lunch on Thursdays, the House would interrupt its business for one and a half hours between 1.30 pm and 3.00 pm. Question time would then take place at 3.00 pm, as before. The main cause of dissatisfaction with this arrangement is that business which begins at 11.00 am and is not finished by 1.30 pm, may not resume, in certain circumstances (for instance, if Government Statements follow Questions), until 5.00 pm! If the business is the Second Reading debate on an important bill, the interruption can be extremely disruptive for those taking part. Thirdly, the Committee agreed that in order to compensate for the lunchtime adjournment, the House should rise at 7.30 pm rather than 7.00 pm (or later if an Unstarred Question were tabled for debate at the end of business).

However, whilst there are many complaints about Thursday's business, there is no alternative agreed arrangement. Since all the arrangements recommended by the Group are for a two-session trial period, it is likely that members will leave Thursdays alone until the end of the trial period.

House of Lords' reform

At the beginning of this article, mention was made of the departure in 1999 of 90% of the hereditary peers. At that stage, it was confidently predicted that

further reform of the House of Lords (Stage 2) would follow rapidly. A Royal Commission on the future of the House of Lords was appointed early in 1999 and, after a year's work, made a Report[7] in which it proposed, *inter alia*, that a small percentage of the House (20%) should be elected while the rest should be appointed, with the Government party having a majority over the other political parties but not over the House as a whole, leaving the Independents holding the balance. The Royal Commission's recommendations did not enjoy much support; the small number of elected members was particularly criticised, notably in the House of Commons where an elected element as high as 80% commanded some support.

After many months of consideration within the Government, during which it seemed that no solution proposed by the Government would be supported in Parliament, the Government rather unexpectedly proposed the appointment of a Joint Committee of both Houses to come forward with a parliamentary solution to a century old problem, namely how can House of Lords reform be achieved without upsetting the present balance of power between the two Houses. The Joint Committee asked for an early decision from Parliament on which of seven options for the future composition of the Lords should be adopted. The options ranged from an all-elected, through five different percentages of elected/appointed members, to an all-appointed House. When the two Houses voted on the options (both Houses voted on the same day), the Commons rejected all seven options, while the Lords only supported an all-appointed House. In other words, no change!

No doubt the Government will now consider what to do next (there are likely to be some minor reforms), but it is unlikely that the House of Lords will undergo any fundamental change in composition in the foreseeable future. Nevertheless, as this article makes clear, the House has itself, despite a history and a peerage-based membership dating back some 700 years, made significant changes both to its procedures and to its administration in order to fit it for a significant parliamentary role in the 21st century.

[7] *A House for the Future*, Report of the Royal Commission on the Reform of the House of Lords, January 2000 (Cm 4534).

A v THE UK IN THE EUROPEAN COURT OF HUMAN RIGHTS [2002]

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Background

The case known as *A v the UK* was heard in the European Court of Human Rights at Strasbourg on 5 March 2002. It was recognised in advance, in both government and parliamentary circles, that the case was of considerable constitutional significance because it appeared to interfere with what Lord Woolf, as Master of the Rolls, once described as the courts' "self-denying ordinance in relation to interfering with the proceedings of Parliament."[1] Ben Emmerson QC represented both the United Kingdom government and the Houses. The UK case was supported by jurisdictions of other Member States of the European Union.[2] Judgment was delivered on 17 December 2002.

The case related to a half-hour adjournment debate in the House of Commons on 17 July 1996.[3] Mr Michael Stern (MP for Bristol North West) was discussing in his adjournment the behaviour of a certain McNeil family in the Solon Housing Association in his constituency. In his introductory remarks, he referred generally to their behaviour under the colloquial tag used by the press, of "neighbours from hell." He went on to accuse the McNeils of anti-social behaviour which included keeping their children away from school, allowing members of the family to lead gangs of local vandals and creating disturbance and litter in the neighbourhood. Mr Stern also released a press statement summarising his views in advance of the debate.

Ms McNeil (the applicant), supported by the civil liberties organisation Liberty, claimed, *inter alia*, that she was the subject of racial discrimination and that she had been forced to move residence and change her children's school after publicity following the MP's remarks in the House. McNeil claimed that she was denied the right to a fair hearing because of parliamentary privilege, and that such a denial was a contravention of Article 6(1) of

[1] *R v Parliamentary Commission for Standards ex-parte Al Fayed* (1998).

[2] They included the Austrian, Belgian, Dutch, French, Finnish, Irish and Italian Governments. The Norwegian Government also supported the UK case.

[3] See House of Commons Official Report, 17 July 1996 cc 1104 to 1111.

the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Hearing (5 March 2002)

The Court first reviewed the matter of proportionality with respect to the application of Article 6(1) and Article 8 (the right to respect for private and family life) of the Convention. The UK case rested on the following five pleas:

- that freedom of speech, conferring absolute privilege against legal proceedings in respect of words spoken in Parliament, is a fundamental cornerstone of the British Constitution which exists to preserve the very purpose of representative, democratic government;[4]
- that the concept of absolute privilege is part of a wider principle marking the boundary between the responsibilities of Parliament, on the one hand, and the Courts on the other and that without absolute privilege, there would be a headlong clash between Parliament and the Courts;[5]
- that privilege applies to the whole of Parliament—it does not relate to the content of a statement (and Counsel distanced his clients from Mr Stern's judgment in making the speech) or the status of the speaker and that a privileged occasion arises because of a parliamentary proceeding and does not extend beyond it (e.g. outside the precincts of Parliament);[6]
- that the case raised the matter of the proceedings of all Parliaments in

[4] May says where 'a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings or injurious to the character, of individuals' Erskine May Parliamentary Practice 22nd Edition 1997, p83 echoing the words of Lord Chief Justice Cockburn in the case of *Ex parte Watson (1869) QB573* at 576 where he said: "It is clear that statements made by Members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they might be to the interest of a third party."

[5] May puts it this way 'The courts have recognised the need for an exclusive parliamentary jurisdiction, as a necessary bulwark of the dignity and efficiency of either House. Erskine May Parliamentary Practice 22nd Edition, 1997, p153.

[6] On the matter of individual privileges May says 'it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members'. Erskine May Parliamentary Practice 22nd Edition 1997, p.65.

the EU, not only that of the UK, as well as representative international institutions (such as the Council of Europe); and

- that these principles have been supported by the Joint Committee on Parliamentary Privilege in a recent thorough-going report on privilege.[7]

Although Counsel had been thoroughly briefed on the parliamentary significance of Article IX of the Bill of Rights 1689,[8] he felt it better not to rest the case too strongly on what the Court would regard as an antique statute but to rely, instead, on arguments of principle in the modern context of the proper functioning of parliamentary democracy.

The Court then turned to the matter of privilege enjoyed by the press in connection with their reporting of parliamentary proceedings. The judges considered whether that privilege was proportionate in scope and what its application was for the purposes of Article 6(1) and Article 8 of the Convention.

Counsel for the UK Government and the Houses explained that parliamentary debates published in newspapers are subject to qualified privilege—i.e. the publisher is protected if the report is fair and accurate (protection is lost if published with a reckless indifference to its truth or from an improper motive). He argued that the rule on qualified privilege is a mechanism for ensuring that the public is kept informed about what their representatives say in Parliament.[9]

The case was then argued on the following grounds:

- under Article 10 of the Convention (right to freedom of expression and to receive and impart information) the public has the right to receive information about parliamentary proceedings;
- proportionality is satisfied because the level of protection (qualified privilege) matches the need for public discussion without entirely removing rights where malice or misinformation can be established;
- the applicant could have sued Mr Stern over his press release which had only qualified privilege. In *Reynolds v Times Newspapers Ltd*[10] it had been established that the defence of qualified privilege would depend on

[7] See Report of the Joint Committee on Parliamentary Privilege (Session 1998–99)HL Paper 43; HC214.

[8] Article IX states: "the freedome of speech and debates or proceedings in Parlyament ought not to be impeached or questioned in a court or place out of Parlyament."

[9] If newspaper reports are not taken from Hansard, they enjoy qualified privilege at common law. See *Watson v.Walter (1868-69) 4 QB 73.*

[10] *Reynolds v Times Newspapers Ltd [2001] 2 AC 127.*

whether the statement was in the public interest—i.e. contained information which the public had a right to know.[11] The applicant could have argued that Mr Stern's words were *not* matters of public interest.

The Court considered various matters within the responsibility of the UK Government, as well as the matter of legal aid, which were outside the area of parliamentary interest.

In considering the parliamentary aspects the Judges raised questions on the following points:

- malice on the part of Mr Stern;
- the order of the making of the speech and the release of the press statement and what the position would have been if there had been no speech;
- the question of public interest in naming the applicant; and
- if there had there been a breach of confidence in the issue of the press release.

The UK's responses were as follows:

- Mr Stern might have been found guilty if a defamation action had been undertaken and if found culpable, liable for *all* damage (including newspaper reports);
- the press release came first—if there had been no speech, the case against Mr Stern and the newspapers might have been stronger;
- there was no public interest in naming the applicant but there is a public interest in freedom of speech of MPs; and
- the applicant could have taken action supported by her present legal advisers (Liberty).

The Judges ruled against the UK's plea that the case was inadmissible and decided that it would be considered on its merits.

[11] The ten Reynolds criteria are the seriousness of the allegation—the extent to which it relates to a matter of genuine public concern—the reliability of the source—the steps taken to verify the accuracy of the information—the quality of the information—the urgency of the situation—whether the person concerned was given a fair opportunity to comment on the allegations—whether the statement was accompanied by at least the gist of the other persons's version of events—the tone of the publication—and its timing. *Reynolds v Times Newspapers Ltd [2001] 2 AC 127.*

The Judgment (17 December 2002)

Judgment was delivered on 17 December 2002 and it was a favourable outcome from the point of view of Parliament. The Court first considered the argument that Article 6(1) might not be applicable, since the substantive content of the right to a reputation under English law is delimited by the rules of Parliamentary privilege, though it added it would be inconsistent with the rule of law and the Convention "if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons."[12] However, the Court considered that it did not have to decide this point because even if Article 6(1) were not applicable, the same issues would arise on the applicant's complaint under Article 8. The Court considered that connection sufficient to proceed on the basis that Article 6(1) was applicable to the facts of the case.

The Court proceeded to consider the question of whether the restriction on the right of access to a court, which Parliamentary privilege entails, was compatible with Article 6(1) of the Convention. The Court first asked whether the limitation pursued a legitimate aim. The Court concluded, with very little further exposition, that "the Parliamentary immunity enjoyed by the MP in the present case pursued the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary.[13]

The Court then went on to assess the proportionality of the immunity. It noted that most, if not all, Council of Europe States had an immunity of a similar kind, and that, therefore, in principle such an immunity was proportionate. The Court also noted that the immunity afforded in the United Kingdom was in certain respects less extensive than in other member States because it only applied to statements made in the Houses.[14] This showed that the immunity was of benefit to Parliament as a whole rather than to individual MPs.[15] The Court also considered that a person about whom statements

[12] Case of *A v The United Kingdom (Application no. 35373/97)* Judgment para 63 (hereafter Judgment).

[13] Judgment para 77.

[14] A measure of the differences in application of the principle may be gleaned by reading the written submissions of the other Member States Judgment, paras 37 to 57. In almost all the submissions, considerable emphasis was placed on the importance of the constitutional principle of the freedom of speech in a parliamentary democracy.

[15] cf with May's words 'Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and the Members

are made in the House is not entirely without redress. Whilst obviously deprecating the way in which the MP had spoken, the Court nevertheless concluded that "the creation of exceptions to [Parliamentary] immunity, the application of which depended upon the individual facts of any particular case, would seriously undermine the legitimate aims pursued."[16] Accordingly, the Court found no breach of Article 6(1).

In his concurring opinion, the presiding judge, Judge Costa, sounded some reservation about the "sacrosanct principle" of free speech in Parliament not being tempered by some principle of reconciliation with individual rights. However he considered that such a balancing up was best achieved by the national parliaments themselves.[17]

There was also one dissenting opinion, that of Judge Loucaides who, in disagreeing with the majority opinion, said "I believe that, as in the case of the press, there should be a proper balance between the freedom of speech in Parliament and the protection of the reputation of individuals."[18] The judge made the point that the protection of individual rights had been greatly enhanced since the establishment of parliamentary privilege four hundred years earlier and that that enhancement needed to be reflected in modern parliamentary practice.

Nevertheless, despite this view and other references to desirable standards of conduct by Members in exercising privilege, the judgment is a significant precedent in defence of the protection afforded to parliamentary proceedings by Article IX of the Bill of Rights.

of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Erskine May Parliamentary Practice 22nd Edition, 1997, p.65.

[16] Judgment para 88.
[17] Judgment Concurring opinion of Judge Costa p.27.
[18] Judgment Dissenting Opinion of Judge Loucaides p.31.

UNUSUAL PROCEEDINGS OCCASIONED BY A LOSS OF MAJORITY IN THE YUKON LEGISLATIVE ASSEMBLY

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Introduction

Two days prior to the opening of the 2002 Spring Sitting of the Yukon Legislative Assembly three government private members—Wayne Jim (McIntyre-Takhini), Mike McLarnon (Whitehorse Centre), and Don Roberts (Porter Creek North)—left the government caucus (Liberal) to sit in opposition as independent members. This move carried certain political consequences, the most important being that the government was placed in a minority, now having only eight of the Assembly's 17 seats. The question of whether the government could maintain the confidence of the Assembly for the duration of the Sitting was a constant issue. However this move had procedural consequences as well. With the opposition in the majority it could exercise leverage, if not outright control, over the Assembly's agenda in ways it could not were the government in the majority.

This article will detail two unusual procedural events that occurred during the 2002 Spring Sitting, both directly related to the government's loss of a majority in the House. The first part details the events that occurred when the Chair of Committee of the Whole (Mr McLarnon) and the Deputy Chair of Committee of the Whole (Mr Roberts) absented themselves from the House during a recess in committee. The second describes a day when the government was forced to yield control of the agenda on a day designated for government business.

These events must be considered in the broader political context of the time in which they occurred—they did not happen just because the government was in a minority. Three other factors were integral to this context. The first was a power struggle over the Assembly's agenda. Two of the main items of business to be dealt with during this Sitting were the government's Operations and Maintenance appropriation act for 2002-03 and legislation to revise the territory's electoral boundaries. The lines were clearly drawn.

The government wanted the Assembly to approve its budget before dealing with the electoral boundaries bill. The opposition felt the electoral boundaries bill should be passed first.

One concludes from discussion at the time that the opposition did not trust the government to pass the electoral boundaries bill. One scenario had the government getting its appropriation act approved and then calling a snap election in a bid to restore its majority using the constituencies that proved successful in the 2000 general election. Another scenario had the electoral boundaries bill being passed first, then having the majority opposition defeat the government's budget thereby forcing a snap election using the new boundaries. This plan, had the opposition been tempted to use it, suffered from one fatal flaw—the new boundaries would only come into effect once the Chief Electoral Officer declared he was ready to conduct elections with the new constituencies. And the Chief Electoral Officer had six months to do so.

One opposition member, Peter Jenkins, the leader of the Yukon Party (the third party in the House) went so far as to introduce a private member's bill that was a duplicate of the electoral boundaries act. The practice of the Assembly is to allow two (or more) similar bills to remain on the Order Paper at the same time. However once a bill is dealt with any other similar bills are removed. Though it was a remote possibility, given that there are few opportunities to bring forward a private member's bill, the chance existed that the territory's electoral boundaries could be determined by a private member's bill. Since, as mentioned, Mr Jenkins' bill was a duplicate of the government's, adopting it rather than the government's bill would have no practical effect on the conduct of elections. It would, however, serve to embarrass the government.

The second factor that contributed to these events was the Opposition's ability—thanks to its majority and its control of the Chair—to impede the Committee of the Whole and thereby control the Assembly's agenda.

The third factor was the Standing Orders that limit the length of a legislative sitting.[1] Pursuant to a ruling by the Speaker on 16April 2002 the Sitting was to last 30 sitting days. As it turned out that thirtieth day would be 30 May. This was significant because it meant that any delaying tactics on behalf of the opposition would inevitably limit their ability to question the government. The rules ensured that all outstanding government business would come to a vote on the final day.

[1] These Standing Orders are described in Volume 70 of *The Table* at pages 161-163.

Absence of Presiding Officers

It is the normal practice of the Yukon Legislative Assembly to deal with bills in Committee of the Whole, rather than referring them to standing, special or select committees. As the first item under Orders of the Day on 9 May the Assembly resolved into Committee of the Whole to continue debate on the operations and maintenance budget for 2002-03. At approximately 3.45 pm the Committee Chair, Mike McLarnon, called for a 15-minute recess, indicating to members present that the committee would reconvene at 4.00 pm. Mr McLarnon called the recess at that time because he was leaving Whitehorse (the seat of government) for a conference on municipal issues in Dawson City. According to procedure the Deputy Chair would take the place of the Chair.

However, the Deputy Chair was also otherwise engaged at 4.00 pm and for some time afterward. The reasons for the absence of the Chair and Deputy Chair, and the fact that no contingency plan was made to deal with their absence, were the subject of some dispute among the members of the Assembly.[2] The independent members argued that they had informed the government house leader earlier in the day that the Chairs would be absent. In addition to Mr McLarnon's trip to Dawson City, Mr Roberts, formerly a health minister when a Liberal, said he would be attending a conference devoted to the study of foetal alcohol syndrome and foetal alcohol effects until 5.00 pm. As a result the independent members suggested it would be advisable to proceed with business that could be conducted with the Speaker in the Chair, like the electoral boundaries bill.

Individuals associated with the Liberal party argued that Mr Roberts did not attend the conference and was, in fact, in his office in the Legislative Assembly building. The Clerk of the Assembly noticed Mr Roberts in the building at 4.50 pm and began to ring the bells.

Politics aside, the House had procedural issues to deal with in the absence of presiding officers. Regardless of the reasons for their absences the lack of a presiding officer effectively stalled proceedings, as the committee could not reconvene. One issue was whether another member could be appointed to chair the committee. Had the Deputy Chair's unavailability been anticipated the Speaker could have assumed the chair before the recess and, pursuant to Standing Order 5(3), appointed another member as acting Chair of Committee of the Whole. However, without a presiding officer the committee

[2] See, for example, Chuck Tobin, "Sitting week ends in angry squabble", in *The Whitehorse Star*, May 10, 2002, page 6 (http://www.whitehorsestar.com/).

did not have the ability to reconvene, much less recall the Speaker to appoint an acting Chair.

Another issue was the procedure to be followed to close proceedings at the normal hour of adjournment, 6.00 pm. Standing Order 2(2) provides for the adjournment of the Assembly when the Speaker is in the Chair at 6.00 pm. Standing Order 2(4) provides for adjournment when the Assembly is in Committee of the Whole at 6.00 pm. However, that process requires that the Chair of Committee of the Whole (or the Deputy Chair, or an acting Chair) rise and report to the Assembly on the proceedings of the committee. Without a presiding officer the committee could neither reconvene, nor report to the Assembly.

In other words the Standing Orders did not provide direction for dealing with a situation where one presiding officer had vacated the Chair without another presiding officer assuming this responsibility.

The government had left itself vulnerable to this tactic by allowing two opposition members (both former Liberals) to be Chair and Deputy Chair of Committee of the Whole. The impact of the departure of Mr Jim, Mr McLarnon and Mr Roberts was in fact two-fold. First, it left the government in a minority position. Second, it left the governing party without private members as seven were in cabinet and the other occupied the Speaker's chair. To regain control of the committee Chair the government would have had to demote a cabinet minister. However, having a government member assume the Chair would have left the government in a minority position in committee. As such the opposition would have had a free hand to introduce and pass amendments to bills (which occurs in committee) as it saw fit.

The absence of a presiding officer occasioned some discussion between the Table Officers as to how proceedings might be brought to an orderly end should this situation continue until 6.00 pm. Options included having the Speaker assume the Chair at 6.00 pm to adjourn the House without explanation as to how he acquired the authority to do so. This might have solved the immediate problem but no doubt would have occasioned protests from the opposition that the Speaker was acting outside the Standing Orders. Another option was simply to leave at 6.00 pm and start up again the next sitting day at the regular hour as if the Assembly had adjourned properly the day before. Fortunately Mr Roberts took the chair at 5.35 pm. Committee business proceeded in the normal fashion for the rest of the day.

Controlling the Order of Business

Standing Order 13(1) stipulates,

> "After the Daily Routine, the order of business on Monday, Tuesday and Thursday shall be as follows:
> Government Designated Business
> Motions Respecting Committee Reports
> Motions other than Government Motions
> Bills other than Government Bills."

Standing Order 12(2) indicates, "When government business has precedence, that business may be called in such sequence as the government chooses."

On Tuesday 28 May Orders of the Day began with a government motion. The motion having been agreed to the Government House Leader, Hon. Jim McLachlan (Faro) rose to move the usual motion "that the Speaker do now leave the Chair and the House resolve into Committee of the Whole." In this way the Government House Leader indicates the business the Government has designated—whatever bill or bills are in committee.

Standing Order 41 says, "A motion for the Assembly to resolve into Committee of the Whole shall be put immediately without debate or amendment." While the motion is neither debatable nor amendable it is votable and on this occasion the opposition called for a division. This was not the first time the opposition had threatened the government's control of the agenda on a day designated for government business. The first time division was called on the motion, on 23 May, it was agreed to on a division of 11-5. The Government and Official Opposition (New Democratic Party) caucuses supported the motion while the Yukon Party caucus and the three independent members voted against it.

A second division was called on 28 May. This time the Official Opposition, the Yukon Party caucus and the independent members voted against the motion and it was defeated 9-7 on division. The Government therefore had to designate other business—debating government motions, dealing with bills at second or third reading—that could be conducted with the Speaker in the Chair. The government appeared unready for this possibility as there was much conferring among caucus members before each new piece of business was called.

Nonetheless, the government proceeded with Third Reading of seven bills. All seven received Third Reading. The electoral boundaries bill was not among them.

At this point Mr McLachlan requested a short recess so he could confer with the other house leaders to determine the business for the remainder of the day. The request was granted. After the recess Mr McLachlan informed the Speaker, Hon. Dennis Schneider, that the government did not wish to designate other business for that day. Therefore, pursuant to Standing Order 13(1), the Assembly proceeded to "Motions other than Government Motions" (there being no "Motions Respecting Committee Reports" to deal with). Since the government had no private members this effectively handed the agenda to the opposition.

As Tuesday was not a scheduled Private Members' Day (this occurs every Wednesday) there had not been any motions designated to be called. Therefore the Speaker proceeded to call motions in their numerical order from the beginning of that section of the Order Paper that enumerates Motions other than Government Motions. This list comprised all motions put on the Order Paper since the beginning of the Second Session of the Thirtieth Legislative Assembly (23 October 2000) and not dealt with. Since they had not designated particular motions to be called on this day opposition members were not obligated to debate the motions when they were called. They could, instead, "defer to the next sitting day." This is indeed what happened when the Speaker called the first 13 motions for debate.

Debate then turned to a motion that stood adjourned from 28 March 2001. Dennis Fentie (Watson Lake,Yukon Party) was offered the floor as he had been speaking to the motion when debate was previously adjourned. However, Mr Fentie did not wish to further debate the motion. This, then, afforded other members the opportunity to debate the motion and Hon. Sue Edelman (Riverdale South, Liberal) spoke to it. Subsequently the Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP) gained the floor and moved that debate be adjourned. This motion was unanimously approved on division.

This process repeated itself with 13 more motions being called and deferred, and two more motions being called, debated and having debate adjourned. During this process the Speaker ordered one motion withdrawn from the Order Paper, as it was outdated. Eventually the House reached the normal hour of adjournment and motions to adjourn debate, and the House, were moved and agreed to.

As the mandated end of the Sitting drew near members took a more disciplined approach to proceedings. Though Wednesday 29 May was a day scheduled for opposition private members' business the opposition allowed

government business to take precedence. This allowed the Sitting to come to a relatively uneventful end on the Thursday.

Consequences of these proceedings

Though the above events were highly disruptive, they did not have a lasting effect on the operation of the Assembly. The government got its way in the sense that the Assembly passed the budget before dealing with the electoral boundaries bill. Once this bill had passed the House the Speaker ordered Mr Jenkins' duplicate bill removed from the Order Paper. And despite the procedural difficulties encountered no proposals have been brought forward by Members to change the Standing Orders to prevent such events from occurring again. In that regard these events have not occasioned additional tasks for the Table Officers, other than some contingency planning on the off chance they should reoccur.

MONTSERRAT'S RESPONSE TO THE VOLCANO

MRS CLAUDETTE WEEKES
Clerk of Councils

Loss of Property

A new state of the art Parliament building was erected in Plymouth, the Capital of Montserrat, in 1995. However, this building, along with the Capital, was destroyed in August 1997 by hot pyroclastic flows from the Montserrat Soufriere Hills Volcano. This prompted a permanent relocation of the seat of government from Plymouth. The Legislative Council has since been meeting in temporary rented quarters at three different locations. A business case is being proposed for the construction of another parliament building in the Northern part of the island.

Demographic Changes

Internal and external migration occurred as a result of the devastation caused by the volcano. Montserrat therefore lost its skilled and unskilled labour force and notably youths of ages 18-25 who would have gone overseas to pursue tertiary education. The Legislative Council responded by debating and passing appropriate legislation to attract Montserratians back home and to slacken labour regulations to allow for the immigration of skilled labourers.

Change of Electoral System

The destruction and inaccessibility of one third of the island forced major changes in the electoral boundaries and the form that election would take on the island. A 1999 Electoral Commission headed by Professor Sir Howard Fergus resulted in significant constitutional changes. With three of the seven constituencies and part of a fourth depopulated or wasted by volcanic action, "voting at large" was introduced, replacing the multi-constituency first-past-the-post (FPP) electoral system, under a modified FPP arrangement. At the same time the elected membership in the House was increased from seven to nine and nominated membership abolished (Elections Commission Report, 1999).

The 2001 election held under the new electoral system was vigorously contested with 26 persons vying for nine seats. The New Peoples Liberation Movement (NPLM), led by Former Chief Minister Dr John Alfred Osborne, registered a resounding victory winning seven of the nine seats. The other two seats went to the National Progressive Pary (NPP) led by Mr Reuben T. Meade, Former Chief Minister (1991-1996).

Constitutional Changes

Her Majesty's Government made a landmark decision by asking its overseas territories to consult locally and make proposals for the review and modernisation of their respective Constitutions.

The recommendations of a Commission that was set up to execute this mandate were to be discussed in the March sitting of the Legislative Council. Once these recommendations are ratified by the Legislative Council, the new Constitutional provisions will be implemented. Certain recommendations that affected the Legislature included the following:

- Montserratians who had migrated overseas since the volcanic crisis and were registered, should be allowed to vote at the next general elections under certain stipulated conditions;
- There should be a Minister with portfolio for overseas Montserratians. (Montserrat being now a diaspora rather than a single state).

Legislative Changes

A number of laws were passed to deal with the ongoing volcanic crisis. These included:

Disaster Preparedness and Response Act 1999

This Act provides for the effective management and control of disaster and provides also for related or incidental matters.

Immigration and Passport (Economic Residence Permit) Regulations 1998

These regulations allow for granting Economic Residence Permits to applicants indicating their intention to make a commercial investment in Montserrat.

The Volcano Relief Fund Act 1997

This Act creates a Fund for the relief of persons affected by volcanic activity and for matters connected therewith.

The Physical Planning Act 1996

This Act makes provision for the orderly and progressive development of land, which became a scarce commodity as a result of the internal evacuation of some residents from sites near the volcano.

Statutory Rules and Orders—Duty and Consumption Tax Regulations—Tools of Trade and Replacement of Household

A range of regulations were tabled in Parliament to—

- deal with emergency situations throughout the crisis;
- allow resident Montserratians to import tools of trade and household items in an attempt to replace those lost as a result of the volcanic crisis;
- make provision for Montserratians relocated overseas to be repatriated.

MAINTAINING INSTITUTIONAL MEMORY IN THE NORTHERN IRELAND ASSEMBLY— HOW MUCH IS EXPERIENCE WORTH?

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Background

The Northern Ireland Assembly was elected following the historic deal brokered by the Governments of Ireland and the United Kingdom on Good Friday 1998. The Belfast (or Good Friday) Agreement consisted of three main strands—the establishment of a devolved Assembly in Northern Ireland; the establishment of new arrangements between the Assembly and the Government in Dublin (North-South links) i.e. a North South Ministerial Council, and links between all the parliamentary bodies in the British Isles (the East-West axis) under the broad heading of a British-Irish Council.

As with many international agreements little thought was given to the practical details of establishing the first of these elements—the Northern Ireland Assembly. After all, Northern Ireland had its own bicameral Parliament and was largely self-governing in the period between 1921 and 1972. More recently an Assembly had operated at Parliament Buildings between 1982 and 1986. However these facts disguise many issues about perceived neutrality impacting on the practicalities of delivering an Assembly. The location for its meetings, the source of its staff, its ability to be financed independently of Government intervention, were just a few of the obvious issues.

This paper deals with just one of those issues: the development and maintenance of a cadre of professional, politically impartial staff capable of supporting a legislature in a politically divided and exceptionally sensitive, sometimes heated, but generally stressful, environment.

The Origins of the Assembly Secretariat

At the first plenary meeting of the Assembly on 1 July 1998, the Secretariat consisted of seventeen staff, all loaned from the Northern Ireland Civil

Service, only two of whom had experience of an earlier experiment in devolution. The perceived political allegiance of the NICS meant that acceptance of even this loan arrangement was not without some apprehension on the part of some of the (especially nationalist) parties. Quickly the Secretariat grew to about 150 through additional 'time bound' secondments primarily from the Civil Service. However, legislative devolution did not arrive until December 1999 and the hiatus meant that the Assembly's new corporate body, the Assembly Commission, was unable to take forward its plans for staffing and recruitment. Upon devolution the Commission moved quickly to formulate a policy of open recruitment; every post in the Assembly was to be filled by open competition based on a competence-based assessment of candidates—the establishment of a meritocracy. This policy was intended to avoid the risk of any accusation of political manipulation or of the potential for 'the old guard' to maintain control.

Establishing a competent cadre of parliamentary staff

At first, realistically, the only source of staff for the fledgling Assembly was the Civil Service. A fairly hasty competition for clerks produced an initial corps of ten individuals from the Civil Service. Within a few months these staff had been distributed across the range of functions. One became responsible for arranging plenary meetings and developing Standing Orders; another for grappling with the requirements of passing legislation; others took responsibility for reading themselves into the functions and legislative responsibilities of the various departments of Government with a view to becoming the senior official (clerk) on each of the scrutiny committees which were seen as a fundamental part of the Agreement.

At first political progress was slow. Clerks began to develop their knowledge of the practices of parliaments. Boston College provided a crash course in awareness of political institutions. This was supplemented by visits to the legislatures in Connecticut and Massachussetts and week-long attachments to the House of Commons at Westminster. Along the way, every opportunity was taken to gain parliamentary experience from the relatively infrequent plenary meetings of the Assembly and the even less frequent *ad hoc* committee meetings. The Secretariat wrestled with the problem of trying to formulate a set of business objectives and plans to deliver on the expectations of Members. As those who work with politicians know, this is ordinarily difficult—priorities change, elastic timescales seem to stretch endlessly before snapping into urgent demands not just for action but results. All actions were

tested rigorously, often by public examination, and those found to have delivered less than the ideal were dealt with clinically. The prevailing political climate of Northern Ireland post-Agreement was a very testing environment.

It was extremely difficult to assess performance or judge on the advances of the NI Assembly as a professional body in such highly volatile circumstances. Some of the difficulties experienced included chairs of committees not calling fellow committee members by name or addressing them directly; Members openly accusing others of gun and grenade attacks on their homes; the inclusion in the Membership of the Assembly of people who had served prison sentences for serious crimes including murder. As a result, it was far from easy to maintain an accountable impartiality. Success was measured (perhaps inadequately) by the lack of failure. In this environment clerks supported 159 plenary sessions, 1,339 meetings of committees and processed 63 Bills in this fledgling body.

An indication of the problems being experienced was evidenced by the difficulty in attracting suitably qualified candidates through the open competitions. Northern Ireland is an area of relatively low wages, high educational qualification and unemployment levels comparable to (or higher than) anywhere else in the British Isles. However, it still proved difficult to attract strong candidates for parliamentary posts. Whilst there was public criticism of the salaries and allowances paid to Assembly staff, there was a lack of willingness to compete for these positions.

Impact on the Staff

In these circumstances it was easy to see why so many staff suffered considerable stress. The paucity of staff recruited for the Assembly, the high level of public scrutiny, the intense rivalry between the political parties, created a working environment in which every action, by every member of staff, ran the risk of endangering the wider political process. Or at least, so it appeared.

Staff working in this climate could not help but look over their shoulder at a rapidly growing civil service, moving steadily to fill the demand for a huge increase in middle and senior management posts needed to support the new political institutions. Career prospects for their erstwhile colleagues in the civil service appeared secure, comfortable and without the risks associated with operating so close to the political minefield. Moreover the growing specialism of parliamentary clerking scarcely appeared to be the careerist golden egg it was sometimes portrayed in the local media, especially during the various political crises. For those staff seconded from the Civil Service,

who made up the majority of the Secretariat, despite the adverse effect on their career prospects, their dedication and commitment to the success of the Assembly was very clear. It was the widely held view that any fatal breakdown in the political process would create a long period of Direct Rule from Westminster—for the parliamentary staff, the prospect of trying to resurrect administrative careers put on hold.

Internal Competition

Within the Secretariat there was a clear need to strike a balance between the needs and interests of those staff seconded from the Civil Service and those who were beginning to be directly recruited. On the one hand, there was a need to provide terms to secondees which were more attractive than those available to colleagues with apparently better career prospects in Civil Service Departments. On the other, the limited pressure from the wider employment market meant that there was little to drive up salaries and entitlements. And yet the Commission, with a political onus to demonstrate, as well as deliver, openness, could not allow for differentiation within its own staff. The Commission decided to enlist the help of a consultant to develop bespoke policies for its staff and to recommend tailored terms and conditions for the Secretariat. At the time of writing this exercise is nearing completion. However, as the Assembly enters its sixth year of operation, the current political difficulties (the Assembly was suspended indefinitely from 14 October 2002, dissolved on 28 April 2003 and elections to the new mandate have been postponed twice and will not happen before autumn 2003 at the earliest) mean that the results of this exercise cannot be introduced, much less bedded down.

This is a frustrating and difficult time for staff. Much of what they have learned, developed and experienced, represents a library of parliamentary knowledge specific to this institution. A tremendous amount has been achieved in a very short period of time and staff are proud of this. Many have given up other careers to join the Assembly, others have put their Civil Service careers ‘on hold’. Considerable pressure has been exerted on the health of staff and on personal relationships by the heavy workloads and excessive hours. All these sacrifices have been willingly made in the interests of a new political future for Northern Ireland. However, as the political crisis has continued and deepened, staff have begun to seek a more stable future for themselves and many have left either to return to the Civil Service or to take up other employment. However, for those that are left, the sense of

responsibility is palpable. They have supported elected politicians to establish the machinery of a democratic legislature. Not a common experience in civilised western Europe. They have developed procedures and practices as well as protocols between the Executive and the Assembly and its Committees. They have established networks with other clerks in the British Isles, across the Commonwealth and into mainland Europe. They have provided advice to emerging democracies especially those in the Eastern Bloc. They have developed links with academia and with local commerce. They have, in the face of enormous political adversity, developed credibility with elected members in terms of their professional competence, political objectivity and corporate integrity.

What next?

The Secretariat now faces a new hurdle. In the political maelstrom of Northern Ireland and in the context of political breakdown and recrimination, public sector paymasters are looking at the Secretariat as expensive and unsustainable. Plans are being finalised to return seconded officials, it is hoped, to the civil service. Staff who were recruited on a short-term basis will soon be released, again it is hoped to find work in the wider employment market and, in career terms, to leave the Assembly behind them. Before very much longer, public expenditure pressure will be directed towards those that remain. The unmentionable question in political circles is how to maintain a competent Secretariat capable of re-establishing the Assembly in the event of restoration without incurring ongoing expenditure for an indefinite period.

How is this being managed?

The problems facing the management of the Assembly appear obvious. An organisation which had never reached full complement—indeed at any time at least half its complement were short term temporary staff or those loaned from the civil service—now faces significant down-sizing. But this is Northern Ireland, this is politics. The management of the Secretariat must prepare for the restoration of the Assembly, including the expectation of its Members that the service they came to expect prior to suspension can be instantly restored, and indeed, that the ‘down-time’ will have been used to develop and improve services. These contradictory expectations need to be carefully managed.

Risks?

Through these challenges the Secretariat has continued to grow in experience. A number of its staff have gained experience through the development and training of staff in new democracies in eastern Europe, particularly Bosnia and Kosovo. Indeed it is instructive that so many emerging democracies visited Northern Ireland or sought advice from those with the experience of parliamentary midwifery—this at least suggests that we had, despite the difficulties, developed a positive reputation. Other staff have been on attachment to parliaments closer to home, indeed some have taken up permanent positions there. The practices and experience of developing fledgling legislatures is now a specialist area for the Secretariat. There are mixed emotions for staff who have tested themselves in such circumstances and succeeded only to see the success they worked so hard for at home denied to them. It would be understandable if they felt disheartened. If they were not there, what would be lost?

Elected politicians everywhere look for advice. They develop personal relationships with the staff they expect to serve an institution. Even where the number of institutional staff is small, like in the United States, those who work for the legislature take on a considerable significance. They are respected for their institutional knowledge. How and why is legislation made like that? What are the short cuts? Why are short cuts inappropriate in many circumstances? How do the procedures operate? What are the standards of conduct and who polices them? How do I get a tour of the building? What is the history of the institution? The Secretariat becomes the heartbeat of the unique animal which crawls around parliaments.

Protection of the institutional knowledge and memory

Assuming the political will remains committed to the restoration of devolved government for Northern Ireland, how much of and for how long can the core Secretariat be maintained? Clearly the routine house-keeping functions and ‘rainy day’ projects provide a limited agenda for these staff over the coming months. Longer term, the need to measure effectiveness against realistic objectives will call into question the wisdom of running a seemingly expensive bureaucracy. However, having attracted some excellent and committed staff first time round, it may be very difficult to get such people second time round. Nevertheless the question which the Secretariat asks itself is how much is its hard earned knowledge and experience worth?

SITTING OF PARLIAMENT IN A REGIONAL AREA

IAN THOMPSON
Clerk Assistant (Table) and Sergeant-at-Arms

ANNETTE HENERY
Parliamentary Officer (Votes)

The Queensland Parliament sat in north Queensland at the Townsville Entertainment and Convention Centre from 3 to 5 September 2002. It was the first time in its 142 year history that the Queensland Parliament had sat outside Brisbane.

The government's commitment to hold Parliament in a regional centre once every term was expressed in its pre-election policy document *Restoring Integrity—The Beattie Good Government Plan for Queensland*, released on 21 January 2001. The Plan pointed out that not everyone can travel easily to Parliament House and sit in the public gallery to observe their elected Members at work, or read *Hansard* reports of speeches.

Following the government's election, a working group was established in August 2001 to plan and implement the overall arrangements for the regional sitting. The group was chaired by Executive Services, Department of the Premier and Cabinet and comprised representatives from the Premier's Office, Speaker's Office, Parliamentary Service, Queensland Treasury, Ministerial Services and the Parliamentary Liaison Officer within the Department of the Premier and Cabinet.

A second working group was established to develop and deliver community engagement activities to support the regional sitting and comprised representatives from the Parliamentary Service, Commission for Children and Young People, Education Queensland and Events Coordination Unit, Community Engagement Division, Executive Services and Constitutional and Administrative Law Services within the Department of the Premier and Cabinet.

Selection of venue and legal requirements

The Premier and Speaker announced Townsville as the location of the sitting on 9 October 2001.

On 9 August 2002 the Governor, by constitutional instrument pursuant to the Constitution of Queensland Act 2001, changed the place of sittings of the Assembly to the Townsville Entertainment and Convention Centre for the three days. The Legislative Assembly subsequently passed a resolution recognising the change of venue and establishing a business program for the sittings.

The Parliamentary Services Amendment Bill 2002 was introduced and passed to extend the definition of Parliamentary precinct to enable a precinct to be established in another location by gazette notice. Such a notice was gazetted on 16 August.

The program for the sitting largely reflected the normal routine of business of the Parliament in Brisbane, with the exception of the program for Wednesday which commenced later and included the conduct of Question Time in the evening.

Logistical issues

The Townsville Entertainment and Convention Centre was temporarily modified to accommodate the operational requirements of the Parliamentary precinct. Factors considered in the decision included the size of the Chamber and public gallery, available space for offices and meeting rooms, infrastructure for information technology and audio/visual requirements, security, disability access and space for community engagement activities, as well as proximity to accommodation and function facilities (located adjacent to the Centre).

To create an authentic temporary Chamber in the Centre Auditorium and display part of the Parliament's history, the furniture from the former Legislative Council Chamber was transported to Townsville, including the President's Dais and bench seating.

The Chamber operations included the operation of the calling and division bell system, speech timer and display, and video and closed circuit television system (in which cameras focused on primary speakers). Centrally placed microphones to which Members had to move were used for the audio system in the Chamber.

The Library's full information and research service was made available. Clippings from the *Courier Mail* and *Townsville Bulletin* were available each morning, with regional newspapers available via the databases.

Full *Hansard* services were also available, with hard copy of *Daily Hansard* for Tuesday and Wednesday printed in Brisbane and delivered to Townsville

for distribution prior to commencement of proceedings the following day. The early electronic *Hansard* edition was available on the web site after 2 pm and the complete *Daily Hansard* available two hours after the rising of the House. Similarly, all normal services usually provided by the Clerk's Office and the Table Office were available at the regional sitting.

Security services for the sitting were provided through the local deployment of police officers and State Government Protective Security Service officers. A security plan was developed by the Parliamentary Service in consultation with the Queensland Police Service.

Community engagement

With the overall objective being improved access by the people, activities to encourage people to come to see the Parliament were going to be critical to its success and the need for some form of community engagement activities was identified in the original scoping work.

The final program of activities had essentially two components. The first was a number of activities run to improve people's understanding of Parliamentary, Executive Government and constitutional issues. These were:

- a poster competition for primary school students in north Queensland on the themes of the relevance of the State emblems to north Queensland (for years 4-5) and the impact of Parliament on young people (for years 6-7);
- sponsorship of the local schools' debating competition, with constitutional issues to be debated by students;
- the Government Active Citizenship Display by Community Engagement Division and the polling booths operated by the Commission for Children and Young People;
- a temporary exhibition of displays and artefacts relating to the Parliament and Executive Government in the Museum of Tropical Queensland;
- the invitation of VIPs to the commencement of proceedings on the first day of the sitting;
- the regional schools subsidy scheme, which provided financial assistance to year 7 students in schools over 200km from Townsville and north of the Tropic of Capricorn to travel to Townsville to see the Parliament;
- tours of the Parliament for school groups and the general public, which

included a briefing session and watching the Parliament in the public gallery—and the involvement of volunteers, predominantly teaching students from James Cook University, in running the tours; and
- a Youth Parliament for secondary school students from government and non-government schools in the Townsville Education Region.

The second component involved activities which provided the community with access to Members of Parliament. These were:

- the participation of the Parliamentary Bowls Team in a local bowls carnival;
- a joint State/Council reception on the evening before the sitting commenced;
- a free public barbecue at the Strand Park, at which Members assisted with the serving of food and drinks, with school bands providing the entertainment; and
- a breakfast organised by the Commission for Children and Young People, with breakfast cooked by TAFE students.

Preparations for the regional sitting offered unique opportunities to promote the sitting, in particular, the signing of the constitutional instrument. The signing of the constitutional instrument establishing the sitting was undertaken at an Executive Council meeting at Parliament House, with a media conference following. Moreover, a copy of the notice of its execution was formally handed to the Mayor of the Townsville City Council by the Speaker, attracting local media coverage.

Information strategies

The information strategy to Members comprised periodic correspondence from the Speaker and the production of a handbook for the sitting, which was distributed in the sitting week prior to the regional sitting. Additional copies were available in Townsville. A smaller information booklet, based on the Members' handbook was produced for government departmental officers travelling to Townsville and circulated at a briefing session conducted in the week prior to the sitting.

Twelve journalists from the Parliamentary Press Gallery and three television camera operators travelled to Townsville to cover the sitting. A small number of local reporters were also accredited for the week. While the Press Gallery was familiar with Parliamentary proceedings, the Parliamentary

Service conducted a one hour briefing session on the workings of the Parliament and arrangements for the regional sitting for local media representatives. In addition, ABC Radio Townsville set up an outdoor broadcasting unit on the lawn of the Centre for one day.

Evaluation

The overall objective of the government's commitment to support a regional sitting was to increase the community's access to the Parliament. Its success, therefore, has been measured in terms of estimated attendance figures. The total estimated figure for the sitting was 8,428. Over the three days, it is estimated that 3,450 members of the general public attended the sitting (the majority of attendance was recorded on the first day of proceedings and at the Wednesday evening session of Question Time).

In addition an estimated 4,665 students (including approximately 140 university students), accompanied by 313 teachers and parents, attended the sitting.

Similarly, participation rates in some other community engagement activities, where there were no attendance limits, were also higher than expected. For example, the Parliamentary Treasures Exhibition by the Museum of Tropical Queensland officially ran from 26 August to 15 September 2002. During this period, there were 3,548 visitors to the Museum, including 2,554 Queensland residents and 994 residents from interstate or overseas. In addition, the public barbecue attracted a larger crowd than expected by the sponsors on the basis of previous events, with an estimated crowd of over 2,000 attending the free event.

Attendance at other community engagement activities included:

- over 500 people attending the State/Civic reception;
- 100 students from 13 state and non-state secondary schools in the Townsville, Charters Towers and Ingham areas participated in the Youth Parliament, which attracted between 70 and 80 spectators including parents, teachers, principals, Members of Parliament and members of the general public;
- over 2,100 students booked into see the performance of *Citizen Jane* during the sitting period;
- 100 students and 38 Members attending the students' breakfast; and
- approximately 100 entries from years 4-5 and 150 entries from years 6-7 in the poster competition.

The government displays at both the shopping centres prior to the sitting and at the Parliamentary precinct also attracted good patronage. The Government Active Citizenship Display was considered effective in attracting the attention of the public, who through anecdotal evidence, expressed an interest in information about the regional sitting.

In conclusion, it is widely acknowledged that the first sitting of the Queensland Parliament in a regional centre met its overall objective of improving the access of people to the Parliament through the communities' attendance to view the proceedings of the Parliament and participation in other activities which accompanied the sitting. Also, arrangements implemented for the sitting provided for the effective operations of the Parliament, with no impact on its functioning in Brisbane. This no doubt augurs well for future sittings of parliament in regional areas.

SOME REFLECTIONS ON HARNESSING NEW TECHNOLOGIES IN THE SERVICE OF PARLIAMENTARY DEMOCRACY

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Introduction

To conduct their business, Members of Parliament must obtain, organize, and assimilate increasingly large quantities of often highly technical information on a vast array of subjects. This growing surfeit of information owes much of its virulence to the rapid evolution of advanced technologies used to create, manipulate, store, and communicate data of all kinds.

'Information overload', however, is neither the only nor the most fundamental challenge parliamentarians face today. The until recently undreamed-of possibilities for interactive communication now available, particularly the internet, are urging our society toward a qualitatively new relationship between the people and their elected representatives. The day in which citizens content themselves to remain passive 'consumers' of the chronicles of official doings has waned; another is dawning in which they insist on establishing and maintaining a dialogue with Members of Parliament that transcends the mere exchange of information to include direct participation, perhaps even an active partnership, in decision-making. While for practical reasons representative government is likely to remain the norm, its incarnation in five, ten, or fifty years may differ vastly from what we know today.

Fortunately, the very technologies that beget such challenges offer powerful tools for meeting them. If democratic Parliaments and their Members wish to prove their relevance to our public life, let alone to justify and preserve the central place that our constitutional regime assigns them, it is arguable that they will have no choice but to embrace these technologies actively. In this paper we shall accordingly outline some trends we see in the use of technology in the parliamentary field, note certain pitfalls that must be avoided, and state our view of where the relationship among Parliament, the people, and technology may be headed.

First Steps by New Technologies in Parliament

Their decidedly traditionalist bent notwithstanding, Parliaments do admit technological change. None of us today still drafts the Votes with a quill pen in a Chamber lit by candles or gas lanterns. Yet Parliaments are most permeable to technological innovation in areas that lie on the periphery of the decision-making process. Most of the technological advances that Parliaments have accepted thus far improve on the means by which they publish information about themselves or receive and digest information from or about those on whose behalf they legislate. Recent surveys of the ever-evolving practice in Canada and elsewhere confirm that the enthusiasm with which Assemblies adopt new technologies for purely administrative or support services does not yet extend to the more rarefied sanctum of the Assembly Chamber and committee meeting rooms.

That is not to say that new technologies are altogether banished from the Chamber, only that they are held largely at arm's length from the deliberative process and thus remain marginal to the real business of Parliament.[1] Assemblies in increasing numbers tolerate, for example, not only the use of laptop computers and electronic agendas by Members at their desks in the House and in committee but even the carrying of pagers and cellular telephones, provided that decorum is kept. Some Parliaments give Members direct access in meeting rooms to specialized databanks, the internet, and e-mail, although most still do not. Ministers at the National Assembly of Québec regularly use laptops during the oral question period to consult prerecorded briefing notes. Some Assemblies have even adopted bill-drafting or bill-processing systems and other information-management technology to accomplish a myriad of complex tasks. No one can doubt that these are valid uses of the tools in question, but they have, and are consciously intended to have, few direct consequences for the way the proceedings are conducted.

Technological Enhancements to Traditional Procedures

It is well that Members benefit from the latest technologies in their private work, but it is their participation in the collegial proceedings in the House and in committee that lies at the heart of their parliamentary duties. The

[1] Here we are speaking of technologies employed by the Members themselves. Clerks-at-the-Table increasingly use computers that not only facilitate their purely clerical duties but also allow online searches on the internet or in specialized databanks, tools that significantly augment their capacity to treat procedural and other questions arising from the proceedings.

weight and the enduring vitality of tradition in the Westminster parliamentary system virtually ordain that for new technologies to win acceptance therein, they must first prove themselves as enhancements to existing procedures.

There is evidence that that is happening. Most conspicuous among the technological enhancements at some Parliaments is the adoption of electronic voting to replace the traditional roll call. Although many Parliaments reject it, not least because the promised gains in efficacy alone rarely justify the cost, one can argue that it confers upon the taking of divisions in the Chamber a more modern, businesslike aura that renders it more palatable to an increasingly impatient and technologically sophisticated public.

A less conspicuous but more promising technological enhancement to a traditional, not to say an ancient procedure can be seen in the willingness of a few Parliaments to receive petitions drafted, signed, and submitted by electronic means. Electronic petitioning, unlike electronic voting, does not supplant the traditional practice, to which it provides an attractive alternative. The opportunity to petition Parliament is thereby extended to include, in particular, shut-ins and citizens living in remote or sparsely inhabited regions. By this means, moreover, large numbers of geographically dispersed citizens can address Parliament rapidly by way of a petition in respect of a matter requiring urgent action.

There are undeniable difficulties associated with electronic petitioning, of course—in particular that of authenticating the signatures—whose definitive solution awaits the further improvement of digital-signature technology.[2] It can also be argued that those who are most likely to profit from electronic petitioning will be precisely those who least need it: the young, the affluent, the well educated. Yet recall that the now ubiquitous telephone was at one time a luxury item enjoyed only by a wealthy few. The proliferation of internet cafés and public libraries that offer free or low-cost internet access already suggests that the internet need not remain the exclusive province of the privileged.

Parliamentary committees are the locus of some of the more ambitious and forward-looking applications of new technology, above all in the holding of public consultations. Sincere though the motivation for engaging in it may be, the traditional consultation process is often flawed. Here in Québec, for

[2] The electronic-petitioning software used in both Scotland and Queensland incorporates features designed to deter abuse. It should be noted that even when petitions are signed by hand, it is next to impossible to guarantee the authenticity of every signature; the most one can do is to ensure that they are originals.

example, committees rarely leave the capital to hear witnesses; citizens invited to participate in consultations must travel to the Parliament Building at their own expense. Not surprisingly, from one consultation to the next committees tend to hear the same groups and individuals over and over, generally the well organized and the well heeled, leaving many citizens who might both have much of value to tell parliamentarians and a pressing need to tell it with no effective means of doing so.

This situation must be corrected. Committees could, of course, travel to meet the public, but in so doing they would incur considerable expense, and their members would be hampered in the exercise of their other duties. Here is where technology can help. Through the use of videoconferencing and internet conferencing committees can, without leaving the precincts of Parliament, reach out at relatively little cost to citizens who remain chronically unheard.

A useful alternative is the taking of written submissions via the internet. Committees in a number of Parliaments have conducted public consultations wholly or partly in this way. A committee of the National Assembly of Québec supplemented two sets of public hearings, held in 2000 and in 2002, respectively, with opinions it received through specially designed electronic questionnaires lodged in the Assembly website. We understand that committees at a few Parliaments have also experimented with chat rooms and discussion forums.

Although the results of these exercises to date are hardly spectacular, they demonstrate a nascent recognition of the usefulness of the internet for parliamentarians that is likely to grow as time passes. A more generalized use of these techniques would likely both increase the comprehensiveness of the information received and reinforce the credibility of the consultation process itself.

Technology offers still other untapped possibilities. An obvious application of modern communications technology would be the electronic 'tabling' of official papers, at least those that are required by statute to be laid before Parliament. We are unaware of any Parliament that yet allows papers to be tabled electronically, and that is certainly understandable at this stage, given the watertight procedures needed not only to receive papers but also to archive them and to forward them to Members and others. Nevertheless, it would seem feasible as a first step for Parliaments to require that all such papers be transmitted electronically *in parallel with* their physical tabling. Once the necessary infrastructure was securely in place and had been tested, physical tabling could be done away with altogether, to great advantage in both speed of transmission and economies of paper.

In truth, most public agencies that are under statutory obligation to report to Parliament now routinely publish many of these same papers on the internet; an internaut halfway around the world may sometimes be able to consult them in electronic form before a parliamentary page has had the time to deliver the printed documents from the Table of the House to the Clerk's office or to the Members' private offices.[3] That is only one example of why Parliament must move actively, even aggressively, to embrace new technologies. If it is to assert and retain its primacy, it must be the first to know, not the last.

The Evolving Relationship between Parliament and the People

Non-Members of Parliament have traditionally been referred to as 'strangers.' The ethos of today's democracies dictates that we amend not only the term we use to speak of 'strangers' but also the relationship that prevails between them and their Parliament. They are, after all, the people, in whom true sovereignty is said to reside; and it is no secret that they are increasingly discontented with a form of democracy that relegates them largely to the role of passive onlookers who, having once spoken through the ballot box, must thereafter hold themselves at a deferential distance while Parliament goes about its work.

In Canada the pressure for greater civic involvement in public affairs predated the coming of the internet. Although referenda are uncommon here, national or provincial referenda have punctuated pivotal moments in our history. Popular reaction to referenda held on proposed constitutional amendments during the 1990s has deeply entrenched the belief that any new proposals must henceforth be submitted to the electorate prior to their ratification by Parliament. Today, it seems, there are matters that Parliament itself is no longer deemed competent to decide without the express consent of the governed. The longstanding popularity of plebiscites in the United States and Switzerland proves that this phenomenon is neither unique to Canada nor of recent origin.

Another major trend that has swept through many democratic societies in recent years is the increasingly exuberant pursuit of the politics of diversity. A myriad of ethnic and other groups in society have exerted enormous pres-

[3] That is true, at least, at the National Assembly of Québec, which still requires official papers to be tabled in the House. The electronic 'tabling' of documents would presumably be easier to implement in those Parliaments at which papers are already forwarded directly to the Clerk's office for notation in the Votes and subsequent distribution to the Members.

sure on decision-makers to guarantee them an active voice in formulating policies and programs that concern them. While that is a perfectly natural democratic impulse, when carried to its ultimate limit it often engenders a vision of democracy such that any given identifiable group can be properly represented only through its own members. Should Parliament fail to reflect the social mosaic faithfully in all its diversity, it is pronounced 'unrepresentative' and therefore compromised in its capacity to speak for all the people and to command their allegiance.

Clearly, a Parliament comprising a few dozen or, at most, a few hundred Members would require an electoral miracle to produce a result that could fully satisfy these demands. Given the impossibility of achieving acceptable 'representation' so narrowly defined, Parliaments may be compelled to turn to increased interactivity with citizens to compensate for this perceived 'deficit' in representativeness.

The internet is reinforcing these trends. A medium that genuinely empowers the individual, it is a potent antidote to elitism that equips internauts with a formidable tool for information gathering, communication, and organization. At the same time, it nourishes the expectation that they are entitled to direct, immediate, even interactive contact with decision-makers.

Parliaments today are unquestionably aware of the internet, and most endeavour gamely to make themselves accessible to internauts. Nevertheless, old habits of mind die hard, and despite the best of intentions they often persist in approaches that fail to quench the new thirst for interactivity. According to a recent report from the Hansard Society,[4] while Westminster and the newly devolved United Kingdom Parliaments are making laudable efforts to reach the public through their websites, they still place too much emphasis on describing Parliament and how it works and too little emphasis on how to help their citizens. The report notes, for example, that their websites do not allow internauts to register for automatic updates on the progress of bills or other subjects of interest. Similar observations would no doubt apply to most parliamentary websites around the world.

It is imperative that Parliaments revise their approach to view citizens as clients, perhaps even as partners, rather than simply as the governed. Citizens who approach Parliament often seek help with a concrete problem or precise information on matters of personal or professional interest. Accordingly, Parliament may in the future need to act more as a clearing-

[4] *Technology: Enhancing Representative Government in the UK? A report on the use of new communication technologies in Westminster and the devolved legislatures*, page 15. It may be consulted at www.hansard-society.org.uk.

house for information and a locus of problem-solving if it wishes to regain and to retain the attention and the respect, if not the deference, of the citizenry.[5]

Some Parliaments have already begun to shift toward a more citizen-oriented approach, with or without the use of internet technology. We understand that the Chilean Senate invites citizens to draft and submit proposed amendments to bills under consideration before it. In the United States the Arizona Legislature website (www.azleg.state.az.us) allows internauts to register for a free bill-tracking system, while the Minnesota e-democracy project (www.e-democracy.org) is an outstanding example of what can be achieved on a government-wide basis.

A remarkably telling experiment in a more citizen-oriented approach was carried out by a standing committee of the Canadian Parliament in March 1997. Hoping to encourage more direct, flexible, and organic interaction between committee members and citizens during an important series of cross-country hearings on privacy rights in the context of new technologies, the committee employed an innovative process that began with the discussion of case studies in small groups, each of which included at least one committee member and an expert on privacy matters in addition to members of the general public. These group discussions were followed by a plenary meeting conducted in a town-hall format in which participants from the floor interacted freely with experts and committee members.

The hearings were evidently a 'resounding success,' greeted with considerable satisfaction by both Members and participants.[6] This experiment made no use of new technologies, yet the small-group discussion and town-hall formats are clearly adaptable for use in an internet discussion forum or chat room, with committee members acting as moderators and rapporteurs.

A somewhat different approach, developed by a political scientist at the University of Texas,[7] is the organization of 'deliberative polls' held among large preselected juries of voters. These juries assemble, physically or through the internet, to question experts on selected issues, then debate the

[5] E-democracy expert Steven Clift makes this point about governments in general, but we believe it applies equally to Parliaments. See his paper entitled, *The E-Democracy E-Book: Democracy Is Online 2.0*. Mr. Clift's website, including this document, may be consulted at http://www.publicus.net.

[6] These consultations are described in detail by Valerie Steeves in 'The National Consultation on Privacy Rights and New Technologies: A Town Hall Format for Committee Meetings,' *Canadian Parliamentary Review*, Vol. 20, No. 3, 1997.

[7] James Fishkin. See 'Power to the People,' in *The Economist* (www.economist.com) of January 23, 2003, p. 4.

appropriate policy choices among themselves in moderated groups. According to this model such juries could advise the electorate before votes or even be empowered to decide certain issues themselves. A process not unlike this one has actually been launched by the province of British Columbia, Canada, which proposes to ask a citizens' assembly of 158 randomly chosen voters to submit a recommendation regarding a new electoral system for the province before a referendum on this question is held in May 2005.

Fundamental Trends with Long-Term Implications

We find it useful to classify these developments in three overarching tendencies.

Multiplying the centres of public debate and decision-making

Those concerned for the future of Parliament often lament its declining preeminence as a forum for debate and decision regarding the great issues before the nation. Like it or not, however, the increasing decentralization of the focal points of sociopolitical initiative is a fundamental characteristic of society that Parliaments can no more escape than can any other institution, public or private.

Some of this decentralization is actually being fostered at the official level. The recent devolution in the United Kingdom, which has seen the creation of Parliaments in Edinburgh, Cardiff, and Belfast, is a tangible response to the desire to bring the centre of governance closer to the governed and to allow the latter more direct involvement therein. Yet powerful centrifugal forces are at work in almost all strata of democratic society. The new communications technologies did not create all of these forces, but they certainly nourish them.

Parliaments today thus find themselves in intense competition with a rapidly growing panoply of new forums for debate and decision-making. To ensure their continuing presence and importance in the public mind, they must strive not only to extend their reach beyond the physical precincts to occupy these new locuses of public enterprise but also to be more comprehensive in the assistance they offer the citizenry, in particular by providing 'one-window service' and favouring a more user-friendly approach.

Dissolving the walls of Parliament

We have already spoken of the efforts that Parliaments are making to open their doors to the electorate. We believe that the future will bring the increas-

ing permeability of the walls of Parliament as that which takes place within them becomes ever more interdependent with that which takes place without. Further, this permeability may not restrict itself to communications between Parliament and the citizenry but may well extend to the very deliberative processes of Parliament as well.

Just how radical could this 'dissolution of the walls' become? Could parliamentary proceedings one day be conducted more or less entirely in cyberspace, not only in full view of the public but with their increased involvement? Technically we suppose that that will ultimately be feasible. The day is already foreseeable, though it is not yet here, when entire nations will be able to vote in formal elections through the internet. From a technological point of view, then, enabling the Members themselves to hold 'virtual deliberations' is surely only a matter of time. And once that comes to pass, it is not an unimaginably large step to granting the broader citizenry a place at the same virtual table.

At the human level, however, we suspect that the increasing viability of cyberspace is unlikely ever to condemn the physical precincts of Parliament to outright obsolescence. Face-to-face interaction among flesh-and-blood Members as well as with witnesses before committees will probably remain the way most parliamentary business will be done. Yet the increasing integration of social and political institutions within an ever more all-embracing electronic network leads us to foretell that a Member's or a citizen's physical presence in the precincts may in the future prove less and less essential to effective participation in the proceedings.

Creating a new hybrid between representative democracy and direct democracy

Almost everything that has been said thus far suggests an ineluctable bearing toward both a growing will and capacity on the part of citizens to participate in their own governance and a corresponding need for their elected representatives to accommodate a more active role for them in parliamentary processes.

However, let us be perfectly clear: we do not believe that citizens will ever appropriate to themselves the rightful place of Members of Parliament, nor do we expect Members to be reduced to the status of public-opinion pollsters or moderators for focus groups, internet chat rooms, and the like. The complexity of the issues facing any modern polity are such that government by plebiscite or chat room would scarcely be possible even if it were thought desirable; and there is little evidence that anyone seriously desires such government in its radical form.

Still, it is evident that democracy in the future will have to be practised not only with the consent of the governed but also, increasingly, in partnership with them. The challenge that lies before us is to develop an intelligent and practical-minded blend of direct and representative mechanisms that will provide citizens with meaningful opportunities to actualize this partnership while reserving for Parliament and its Members the ultimate decision-making and legitimizing role without which effective governance would be unthinkable. The right solution will surely not prove easy to find, nor will it be the same in every jurisdiction. Whatever choices are made, however, new communications technologies will almost certainly play a major role.

Pitfalls and Challenges

Some readers will greet much of what is advanced here with scepticism. They are right to do so.

Merely to place new gadgets at the service of Members of Parliament affords no guarantee whatever that substantive change of any kind, let alone beneficial change, will ensue. As the Hansard Society has wisely noted, "The political cultures which shape legislatures are more important than the technologies utilised by them."[8] Another author aptly warns: "No amount of fibre-optic cable can make up for an apathetic, ignorant political culture. The answer to our democratic malaise lies not in a broader distribution of technology; it lies in a revival of public spirit and communal responsibility."[9]

Exciting though the potential benefits of new technologies may be, their integration into a parliamentary context is not always unproblematic. Let us look briefly at some pitfalls and challenges inherent in the possibilities we have sketched above.

E-mail

E-mail is both a blessing and a scourge: a blessing when it enables rapid, virtually cost-free exchanges between Members and the public, a scourge when Members are beset with unmanageable masses of sendings with which they simply do not know how to cope.[10] Yet more and more citizens choose

[8] *Op. cit.*, p. 26.

[9] Heather MacIvor, 'Some Reflections On Technology and Politics,' *Canadian Parliamentary Review*, Vol. 19, No. 4, 1996.

[10] According to a document published by the United States Senate, in 2002 each Senator received, on average, some 55,000 e-mails per month. See 'E-Mail Overload in Congress: Managing a Communications Crisis.' Congress Online Project, http://www.congressonlineproject.org/email.html. To our knowledge Parliaments in Canada do not yet receive nearly that many, though the quantity is increasing.

to communicate by e-mail; Members must therefore learn to manage this tool effectively.

Fortunately, sophisticated software is available that filters and sorts e-mails and assists staff in replying to them. We believe that Parliaments have a duty to provide Members with more than just basic internet and e-mail access; they must also equip them with the tools necessary to get the best out of this uniquely convenient form of communication.

Online consultations and discussion forums

Our limited experience with online consultations in Québec[11] suggests that while they can be a useful adjunct to public hearings, great care must be taken to devise websites that are both user friendly and efficaceous in obtaining replies pertinent to the subject matter. In addition, although online consultations may one day become the preferred method of soliciting opinions and information from the public, in the near future, pending a clear manifestation of a sturdy appetite for them, we would be well advised to entertain modest expectations regarding their role.

Those who have tried interactive online consultations have apparently found that these too need to be carefully designed to elicit useful results, not just rants and abuse.[12] Rules need to be laid down and rigorously enforced. Parliamentarians who wish to organize exercises such as online discussion forums and 'town-hall' meetings may also need specific training or technical assistance in order to be able to perform effectively in these unaccustomed settings.

Parliamentary procedure and video- and internet conferencing

Whatever technical obstacles may exist to the effective use of video- and internet conferencing will no doubt soon find solutions. Somewhat more vexing are the procedural and legal complications that such conferences raise. Two problems spring immediately to mind: the determination of the quorum when a Member participates in the proceedings by video or internet

[11] Our experience consists of two online consultations held in 2000 and 2002, respectively. Both took the form of electronic questionnaires based on consultation papers relating to the matters under study and lodged in the Assembly website. In both cases the majority of submissions were nonetheless received in the form of traditional briefs, and these briefs as well as public hearings were the main source of the information furnished by the public.

[12] Steven Clift has had considerable experience in this field. For his advice see his paper entitled, *The E-Democracy E-Book: Democracy Is Online 2.0*, to be found in his website at http://www.publicus.net

and the application of parliamentary privilege to video- or internet participation by a Member or a witness.

It is hardly surprising that traditional procedure places considerable emphasis on the Members' physical presence: until recently Members who wished to exercise their parliamentary rights simply had no other way of doing so than to be physically present during the proceedings, and the rules continue to reflect that reality. Thus, Members must still be in the Chamber or committee to be counted in the quorum or to be allowed to vote. What is more, they may speak or vote in the House only from the places assigned to them.

How long such an approach can continue to justify itself is an open question. Today increasingly large amounts of business are being transacted via teleconferencing, videoconferencing, and the internet; though not all have yet embraced these methods, no one would seriously question the validity of transactions done in this way. We believe Parliament will sooner or later find it expedient to allow the full participation of its Members in parliamentary proceedings through video- and internet conferencing and, consequently, to count Members participating in this way in the quorum.

Still more complex is the question of defining the circumstances in which parliamentary privilege can be held to apply to such conferences. We cannot enter here into the many facets of this problem.[13] However, it is in principle not insurmountable, especially given the general power of Parliament to define the extent of its own privileges. Thought must nevertheless be given to these matters before regular use of video- and internet conferencing can be contemplated.

Interactive communications between Members and non-Members during parliamentary debates

In Parliaments that provide full e-mail and internet access to Members in the Chamber or in committee rooms Members can correspond directly with citizens while debate is in progress. Even where internet access is not provided, suitably equipped Members may pursue the same activities by wireless means. If the proceedings are also being broadcast live, citizens are thus enabled to conduct real-time exchanges with Members about the content of the debate in an effort to assist or even to influence them.

[13] For a useful discussion of these issues please see Charles Robert and Deborah Palumbo, 'Videoconferencing in the Parliamentary Setting,' *Canadian Parliamentary Review*, Vol. 22, No. 1, Spring 1999.

The potential advantages of interactive exchanges by Members engaged in parliamentary debate are obvious, but they are not unalloyed, as a ruling handed down by the Chair of the House of Commons in London in March 1997 suggests. A Member raising a point of order was using information transmitted to him from outside the Chamber, which he was receiving on the screen of a small hand-held device. The then Speaker, Mrs Boothroyd, strongly reproved such a practice: in her view it was 'totally unacceptable' for a Member to be prompted in this way during a speech by a group outside the Chamber.

Parliaments will need to trace clear but flexible guidelines for these situations. Every Member certainly has the right, not to say the moral and professional duty, to consult fully his or her constituents and advisers, experts, etc., to shed light on decisions that are to be taken; but these must be his or her own, arrived at after careful reflection safeguarded from external pressure. A Member who receives information electronically while actually speaking before the House or a committee may be acquiring valuable up-to-the-minute data, but he or she also incurs the risk of becoming literally the spokesman of an unelected individual or group. It will be in the interests of all to manage these interactive communications wisely, with the utmost regard not only for preserving decorum and the independence of Members but also for protecting their freedom of speech and the right to seek and obtain such information as they may see fit.

The 'Digital Divide'

Finally we must mention the so-called digital divide, one of the more insidious shortcomings of new technologies. Simply put, while more and more citizens avail themselves of the internet every day, many others do not and in some cases probably cannot. Moreover, the acceptance or refusal of new technologies is not evenly spread throughout the population: younger, better educated, and more affluent citizens are generally at greater ease with them than are those in other strata of the population. Public libraries and internet cafés can help, but they offer only a partial solution.

Parliamentarians alone cannot solve this problem, of course, but they must bear it firmly in mind. Thus, during what is likely to be a lengthy transitional period toward the universalization of electronic communications within society, Parliaments that rely upon new technologies to engage citizens will need to remain sensitive to technological disparities and vigilant that they not inadvertently favour some citizens while depriving others.

Conclusion

Neither the inexorably expanding power of high-speed communications technologies nor the growing disenchantment of citizens with the parliamentary status quo will quietly disappear. To confront them, Parliament must take full part in our electronic world, for that is increasingly where the new agora is to be found. If it fails to do so, it will risk finding itself relegated to the margins of public consciousness, its competence, its credibility, even its *raison d'être* thrown into question.

The greatest challenge facing Clerks-at-the-Table may thus consist in nudging our parliamentary system with its ancient roots into an evolution that is potentially radical yet probably inevitable. The current situation holds some peril for the survival of parliamentary democracy, but it offers marvellous possibilities as well. Some yearn for a new and better way of doing politics and hope that new technologies may lead us to it. Clerks-at-the-Table do not practise politics, but we may reasonably aspire to conceive a new way of conducting the business of Parliament, one that renews the relationship between it and the people. Therein may lie a key to the renaissance of parliamentary influence and prestige in the affairs of state. New technologies can be powerful allies in this quest.

CROSSING OF THE FLOOR LEGISLATION: THE JUDGMENT OF THE SOUTH AFRICAN CONSTITUTIONAL COURT IN *UNITED DEMOCRATIC MOVEMENT v PRESIDENT OF THE REPUBLIC SOUTH AFRICA AND OTHERS*

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Background

In June 1999 the Democratic Party (DP), the Federal Alliance (FA) and the New National Party (NNP) contested the national and provincial elections as separate parties. A month later, these parties formed a new party—the Democratic Alliance (DA). Because members of Parliament and the Provincial Legislatures were unable to change parties without losing their seats, the DP, FA and NNP representatives continued to represent their original parties in Parliament and the Provincial Legislatures though they operated in an alliance. In 2000 municipal (local government) elections were held. The DP, FA and NNP did not participate in these elections—instead the DA contested the elections as a single party.

Then in November 2001 a political realignment took place and the NNP withdrew from the DA, leaving the control of the DA predominantly in the hands of the former DP. However, local government representatives who wanted to leave the DA as a result of the split were unable to do so without losing their seats. This difficulty also affected other public representatives who wished to change parties as a result of the political realignment.

This situation led to Parliament passing four Acts in June 2002 that aimed to allow members of national, provincial and local government to change parties without losing their seats. The four Acts were:

- the Constitution of the Republic of South Africa Amendment Act 18 of 2002 ("the First Amendment Act")
- the Constitution of the Republic of south Africa Second Amendment Act 21 of 2002 ("the Second Amendment Act")
- the Local Government: Municipal Structures Amendment Act 20 of

2002 ("the Local Government Amendment Act")
- the Loss or Retention of Membership of National and Provincial Legislatures Act 22 of 2003 ("the Membership Act").

Overview of the Legislation

The First Amendment Act and the Local Government Amendment Act both relate to floor crossing in the local government sphere. The First Amendment Act establishes limited exceptions to the rule that a councillor that ceases to be a member of the party that nominated him or her, loses his or her seat. It provides for a fifteen–day period during the second and fourth year after an election, during which party allegiances may be changed without the councillors losing their seats. This is subject to certain requirements being met, primarily that at least 10 percent of the representatives of a party must leave if this is to apply. It also puts in place a once-off fifteen-day period immediately following the commencement of the legislation during which party allegiances may be changed without the councillors concerned losing their seats—even if less than 10 percent of a party's representatives leave.

The Local Government Amendment Act complements the First Amendment Act by removing references to the bar to floor crossing and by making provision for various aspects of local government to accommodate the new system of limited floor crossing.

The Second Amendment Act and the Membership Act relate to crossing the floor in provincial and national legislatures. The Membership Act removes the prohibition on floor crossing currently in place and provides for a limited system of floor crossing. Like the system in the local government sphere, this allows for a fifteen-day period during the second and fourth year after an election, during which party allegiances may be changed without the legislators concerned losing their seats, as well as a one-off fifteen-day period immediately following the commencement of the legislation. The requirement that at least 10 percent of a party must leave if this rule is to apply is again relevant only to the standard periods—not the one-off period.

The Second Amendment Act complements the Membership Act by allowing for the alteration of the composition of provincial delegations to the National Council of Provinces if the composition of a provincial legislature is changed due to floor crossing, party splits or party mergers allowed by the Membership Act.

The Court Challenge

The legislation was challenged on an urgent basis by the United Democratic Movement (UDM) in the Cape High Court. A full bench suspended the commencement and/or operation of the four Acts pending the decision of the Constitutional Court on the application of the UDM to have the Acts declared unconstitutional and invalid.

The Constitutional Background to the Court's Judgment

The Interim Constitution

The interim Constitution made provision for a system of proportional representation for elections to both the National Assembly and provincial legislatures. In the case of local government, it required the electoral system to include both proportional and ward representation. The details were to be determined by legislation. A transitional provision of the Interim Constitution provided that the first elections would be on the basis of 60 percent ward representation and 40 percent proportional representation. Details of the electoral system for the National Assembly and the provincial legislatures were set out in Schedule 2 to the interim Constitution.

The Final Constitution

Schedule 6 to the Constitution, which deals with transitional arrangements, provides in item 6(3) that,

> "Despite the repeal of the previous Constitution, Schedule 2 to that Constitution, as amended by Annexure A to this Schedule, applies—
>
> a. to the first election of the National Assembly under the new Constitution,
> b. to the loss of membership of the Assembly in circumstances other than those provided for in section 47(3) of the new Constitution, and
> c. to the filling of vacancies in the Assembly, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the Assembly under the new Constitution."

The relevant amendment dealing with loss of membership was inserted by item 23 of Annexure A to Schedule 6. The insertion is as follows:

"*Additional ground for loss of membership of legislatures*

23A(1) A person loses membership of a legislature to which this Schedule applies if that person ceases to be a member of the party which nominated that person as a member of the legislature.

(2) Despite subitem (1) any existing political party may at any time change its name.

(3) An Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed in accordance with section 76(1) of the new Constitution to amend this item and item 23 to provide for the manner in which it will be possible for a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature.

(4) An Act of Parliament referred to in subitem (3) may also provide for—

a. any existing party to merge with another party, or
b. any party to subdivide into more than one party."

Constitutionality of the Second Amendment Act and the Membership Act

Membership of the National Assembly and provincial legislatures is dealt with in the Second Amendment Act and the Membership Act. The Membership Act makes provision for the circumstances in which a member of the National Assembly or a provincial legislature can change party allegiance without losing membership of the Assembly or the provincial legislature.

Item 23 A of Annexure A, which contains the anti-defection provision, in effect makes provision for an additional ground for loss of membership of the legislature during the transitional period. In terms of item 23A(3), however, Parliament had the authority to pass legislation to make it "possible for a member of the legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature. Such legislation had to be passed "within a reasonable period after the Constitution took effect".

The Constitution took effect on 4 February 1997. Parliament immediately appointed a committee to consider whether or not to make provision for the floor crossing. This committee reported to Parliament in June 1998 that the anti-defection provision (item 23 A) not be amended. The matter only returned to the Parliamentary agenda during 2002 after the break-up of the DA occurred. The amendments were passed in June 2002. That was approximately five years after the new Constitution took effect.

Findings of the Constitutional Court

In its judgment[1] the Constitutional Court held that item 23A vested a special power in Parliament to amend the transitional provisions of the Constitution by an Act of Parliament, rather than by a constitutional amendment. That power was subject to a limitation that it be exercised within a reasonable period after the Constitution came into force.

In determining what is a reasonable period within which such legislation could be passed, it is necessary to have regard to all relevant facts and circumstances. The relevant considerations depended in the first instance upon the nature of the task that has to be performed, and in the second instance upon the object for which the time is given. The task to be performed was the passing of legislation to modify transitional provisions that had a limited life.

The Court held that although regard had to be had to the difficulties confronting a young Parliament faced with the need to transform many of the laws of the country and bring them into line with the political changes which have taken place since 1994, there was nothing to suggest that that was the reason for the delay in amending Item 23A. Having had regard to all the circumstances, the Court was unable to conclude that an amendment passed more than five years after the Constitution came into force, to change a provision which had only another two years to run, was passed within a reasonable time. Given that the prescribed time had expired, the special exemption ceased to be applicable. The only way in which Item 23A could be amended would be by way of a constitutional amendment.

The Court therefore found that the objection to the Membership Act must be upheld and the Act was declared to be unconstitutional and invalid. The remaining three Acts were held to be constitutional and valid.

The effect of the judgment was that at local government level, crossing of the floor could take place in terms of the legislation, but there could be no crossing of the floor at the level of the National Assembly or the provincial legislatures.

Conclusion

Following the decision of the Constitutional Court the Minister for Justice and Constitutional Development introduced into Parliament the *Constitution*

[1] *United Democratic Movement v President of the Republic South Africa and others* (1) 2002 (11) BCLR 1179 (CC).

of the Republic of South Africa Fourth Amendment Bill in order to provide for the amendment of Item 23A, and to allow for the consequent crossing of the floor at the level of the National Assembly and the provincial legislatures. The Bill was passed by the National Assembly on 25 February 2003, and is scheduled to be considered by the National Council of Provinces at its plenary on 18 March 2003.

CHANGING TIMES

GEORGE CUBIE
Clerk of Committees, House of Commons

If "reform" was the buzz-word in British public life in some previous eras, "modernisation" was the buzz-word of the latter part of the twentieth century. When the new Labour Government was elected with a large majority in May 1997 its plans for changing much of the institutional framework of the United Kingdom did not ignore Parliament itself. Reform of the House of Lords has been the theme of other features in *The Table* in recent years[1] and remains incomplete. For the Commons, the early setting up of a new Select Committee on the Modernisation of the House of Commons was a signal that the new Government intended to put its weight behind reform of the practices—frequently (and somewhat lazily) described in the media as "arcane"—of the House of Commons.

Early work on the legislative process, e.g. on encouraging more regular programming (new-speak for a friendly guillotine introduced earlier to avoid game-playing); on encouraging greater use of draft bills before the government of the day's credit was too closely associated with a particular text; on freshening the appearance of the House's daily Order Paper; on developing a "parallel Chamber" on the Australian "Main Committee" model—all this work gave rise to some controversy. Most notably programming of bills led to serious disagreements between the parties, with opposition members much exercised by what they saw as the accretion of power over the overall legislative programme for the year with few compensating advantages for non-governmental (or indeed dissident government) members.

But in terms of parliamentary excitement none of these changes, many of which remain to be further modified and refined, has aroused so much introspective controversy in the Palace of Westminster as the changes to the House's sitting hours introduced when the House met for the first time in January 2003 after an animated debate and closely fought series of votes held on 29 October 2002.

The background to these changes was the renewed impetus for parliamentary reform following the appointment of a new Leader of the House, Mr

[1] See *The Table*, vol. 67 (1999), pp. 68-72, and vol. 68 (2000), pp. 31-32.

Robin Cook, after the general election of June 2001. As had been the practice since 1997 he took over the Chair of the Modernisation Committee. After carrying out work to enhance the role of select committees the Modernisation Committee turned its attention to a series of issues raised in a memorandum submitted by Mr Cook himself. His paper dealt with such views as "connecting Parliament with the public", the more frequent use of draft bills, a possible breach of the normal sessional pattern by carrying over bills from one parliamentary session to the next, permitting, it was suggested, more flexibility in programming motions which regulate the amount of time to be spent on the various stages of bills. The Committee addressed these issues in its report "Modernisation of the House of Commons: a Reform Programme" published in September 2002.[2] The Committee's report covered these issues and dealt with speech limits in debates, and making permanent the previously experimental parallel Chamber off Westminster Hall. Following the lead given many years ago by the Canadian House of Commons the Committee proposed that a calendar of future sittings be announced a year in advance (although I understand that our Canadian colleagues are given a longer period of notice). For staff, at least as much as for Members, this has been a generally popular development, although doubts remain about whether, now that it has been implemented, it will be strictly adhered to, especially since a combination of conflict in Iraq and a late budget led to its being breached slightly at Easter 2003. Not everyone was convinced by the proposal for a two week sitting in September.

Relatively uncontroversial was the proposal that the House should meet on fewer Fridays—only on those on which Private Members' bills are taken, now thirteen per session. This built on the 1990s innovation of having ten "non-sitting Fridays" per annual session to allow Members to devote more time to constituency work.

The Leader of the House's memorandum of December 2001 suggested that on Wednesdays the House should meet, as it had done for some years on Thursdays (following an earlier Modernisation Committee recommendation), at 11.30 am with the normal moment of interruption of main business being at 7 pm rather than at the traditional time of 10 pm. This course was seen by many as being more "family friendly" for Members with young children and for those who might otherwise be put off seeking a parliamentary career because of the perception (entirely justified for most of the post-war decades) of a late night culture. In the event the Modernisation Committee

[2] Sessional Report, Session 2001-02 (HC1168).

proposed that the revised hours should also apply on Tuesdays, leaving only Mondays, when Members usually return from their constituencies, with the older 2.30 pm to 10.30 pm pattern of sitting.

In the build-up to the debate on implementing the Committee's proposals much the greatest attention focussed on the question of sitting hours. Earlier rising was seen by some as a test case for bringing the House into the twenty-first century. Others saw it as an attempt further to limit opportunities for parliamentary debate, although in reality the total sitting hours of the House would be little affected by the new proposals. Some argued that time would be less efficiently used by those Members who maintained their main homes far from Westminster and who could not get home on evenings when the House rose much earlier than in the past. It was predicted that the House would lose its vitality if Members regularly left the building much earlier.

In the course of a series of votes on 29 October 2002 on the various proposals in the Modernisation Committee's report an amendment to omit the proposal for earlier sittings on Wednesdays was defeated by only 23 votes, and the proposal for earlier sittings on Tuesdays was carried by only 7 votes (274 to 267).

It was on that basis that the new sitting hours were brought in when the House met in January. For both Members and staff the changes have had a considerable impact. While some were evidently delighted with a regular earlier end of proceedings others complained about the greater intensity of work, about diary clashes and the difficulties caused by meetings of select committees, standing committees and the Westminster Hall sitting overlapping and causing particular difficulty when votes in the House itself interrupted committee work.

Following the resignation of Mr Cook as Leader of the House the day before the House debated the impending conflict in Iraq, a new Leader of the House, Dr John Reid, was appointed after a gap of more than two weeks[3]. He was immediately put under pressure from those who had opposed the changes in sitting hours and from some who said they had changed their minds on the issue. It remains to be seen whether the new sitting hours which were proposed on an experimental basis until the end of the present Parliament, will remain unchanged for as long as that.

Some claim to have noticed real gains, apart from getting to their beds at an earlier hour. Ministerial statements in the House, previously given at 3.30 pm, are now made at 12.30 pm on Tuesdays and Wednesdays as well as on

[3] Dr Reid has since been replaced as Leader by Mr Peter Hain.

Thursdays and as a result seem to have received better media coverage. The weekly slot for Prime Minister's Questions now takes place between noon and 12.30 pm on Wednesdays. Others note the difficulties posed by much earlier sittings of legislative standing committees or, much more mundanely, note reduced takings in the evenings in the House's various catering outlets and a further reduction in the camaraderie among Members.

For the House's management, the changes pose challenges of adjusting allowances for staff and ensuring that staff are available to cover the various overlapping activities of the House, Westminster Hall and committees.

It is too soon to reach a considered verdict on the changes, but not too soon to judge that they will remain controversial for some time to come.

HEREDITARY PEERS' BY-ELECTION

ANNA MURPHY
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The House of Lords Act 1999 removed the direct connection between inheriting a peerage and having a seat in the House of Lords.[1] 654 hereditary peers lost their seats as a result of this Act. However, under the provisions of that Act, 92 hereditary peers retained their seats in the House of Lords. The Earl Marshal (the Duke of Norfolk) and the Lord Great Chamberlain (the Marquess of Cholmondeley) retained their seats because they are Royal Office Holders who are responsible for much of the ceremonial associated with the House of Lords. The remaining 90 were elected from amongst the other hereditary peers. 15 of these are office holders: they were elected by the whole House to serve as Deputy Speakers or other office holders. The other 75 were elected by the hereditary peers in their party or group.[2]

The terms of the 1999 Act ensure that any vacancies in the 92 must be filled. Prior to the end of the previous session of this Parliament on 7 November 2002, vacancies were filled by the nearest runner-up in the relevant 1999 election[3] (except in the case of the two hereditary Royal Office Holders[4]). However, vacancies that occur after that date have to be filled by means of a by-election. Any such by-election has to take place within three months of the death which has caused the vacancy and is the responsibility of the Clerk of the Parliaments. If the vacancy occurs among the 15 the whole House is entitled to vote, whereas if the vacancy is among the 75 only the excepted hereditary peers (including those elected among the 15) belonging to the relevant party or Crossbench grouping are entitled to vote.

The potential candidates for any such by-election are those hereditary

[1] For notes on the passage of the Act and the first hereditary peers' election, see *The Table*, vol. 67 (1999), pp. 68-72, and vol. 68 (2000), pp. 31-32.

[2] Broken down according to the numbers belonging to each of the party groups at the time of the passage of the Act: 42 Conservatives, 28 Crossbenchers, 3 Liberal Democrats and 2 Labour peers.

[3] The Lord Cobbold and the Lord Chorley filled the places vacated on the deaths of the Baroness Wharton and the Earl of Carnarvon.

[4] The Earl Marshal, the 17th Duke of Norfolk, died in June 2002, and was succeeded by his son the 18th Duke.

peers who have asked for their names to be on the register of hereditary peers which the Clerk of the Parliaments maintains under section 2(4) of the House of Lords Act 1999. Any hereditary peer is entitled to be included in the register, not just those who were previously Members of the House. Any hereditary peer who was not previously in receipt of a writ of summons who wishes to be included in the register petitions the House and any such petition is referred to the Lord Chancellor to consider and report upon whether such peer has established his right to be included in the register.

The Viscount of Oxfuird died on 3 January 2003. He was one of the 15 peers elected by the whole House to serve as Deputy Speakers or other office holders and therefore the electorate who would decide on his successor was the whole House. Accordingly, on 11 February, the Clerk of the Parliaments wrote to the Members of the House and to the hereditary peers on the register to explain to them the arrangements that would apply for the by-election to replace the late Viscount of Oxfuird. Those on the register were asked to indicate by Friday 7 March whether they wished to be a candidate in this particular by-election. This date was also the cut-off for joining the Register of Hereditary Peers for this by-election. Candidates were asked to return a form indicating whether they would like to stand and also to confirm that they were eligible to receive a writ of summons and therefore to sit in the House. The principal grounds of possible disqualification are nationality, as Members must be UK or other Commonwealth citizens or citizens of the Republic of Ireland, and bankruptcy, as anyone who is adjudged bankruptcy is disqualified for membership until the bankruptcy is terminated. It was explained that, as recommended by the Procedure Committee in 1999, any peer elected at a by-election such as this would not be expected to serve as a Deputy Speaker. Candidates were given the opportunity to indicate the party or group to which they would seek to belong if elected, and where this information was given it appeared on the ballot paper.

It was decided that, unlike for the elections in 1999, there would be no arrangements made by the House authorities for circulating statements in support of candidature but that individual candidates could circulate such statements if they wished. Several candidates did indeed produce manifestoes and circulate them to the electorate.

The list of candidates was published on Tuesday 11 March: there were 81 candidates (out of just over 120 on the register)! Fitting all their names onto one ballot paper was something of a challenge but our advisers at Electoral Reform Services, who assisted with this by-election as they did in 1999, managed to produce a ballot paper that exactly suited our requirements.

Peers were given the opportunity to obtain a postal vote for medical or incapacity reasons or for absence from the House on the polling days due to Select Committee or other official parliamentary business. Five peers availed themselves of this opportunity although only 3 postal ballot papers were returned.

Polling took place on 25 and 26 March from 10 am to 8 pm and was held in one of the committee rooms in the House of Lords. Ballot boxes and polling booths were borrowed from Westminster City Council, although most voters used the tables and chairs which were also provided rather than trying to mark their preferences in the tight confines of the booths. Electoral Reform Services staff were on hand at all times during polling to offer advice on the Alternative Vote System and also to ensure that the ballot was conducted in a fair and impartial manner. 423 valid votes were cast out of an electorate of 661. There were just 3 spoilt ballot papers.

The Alternative Vote System allowed voters to place a figure 1 in the box next to the name of the candidate they most strongly supported, the figure 2 against the next most favoured candidate and so on. Voters were allowed to express as many or as few preferences as they wished. In order to be elected, the successful candidate had to receive at least as many votes as all the other candidates put together. This did not happen after the first preference votes had been allocated and so the votes of the candidates receiving the lowest number of first preference votes were shared out according to the second preference marked on them and so on. In fact, after the first allocation, 15 candidates had received 1 first preference vote (a further 37 received no first preference votes). These were redistributed in alphabetical order.[5] The count, which was conducted by Electoral Reform Services and scrutinised by a representative of each of the party groups and the Crossbenchers, went into 42 rounds! However, all involved were pleased and surprised at the speed with which these redistributions were made. The eventual winner was the Viscount Ullswater, who had been a Member of the House prior to the 1999 Act, with 151 votes against 116 for the runner-up, Viscount Montgomery of Alamein. By that stage many ballots had been excluded because the preferences shown had been exhausted. As it turned out, Viscount Ullswater was also the candidate who received most first-preference votes (86) before any votes were transferred.

[5] The order of exclusion of candidates equal in all respects was a matter for the discretion of the Returning Officer. The decision to exclude first those nearest the start of the alphabet (which was of no practical consequence) was approved by the scrutineers.

The result of this by-election was announced in the Chamber of the House of Lords by the Returning Officer, the Clerk of the Parliaments, at 3 pm on Thursday 27 March. The Viscount Ullswater took the oath and his seat on the Conservative benches on Tuesday 1 April. The House once again has 92 hereditary members!

THE FAILED ATTEMPTS AT ELECTING A SPEAKER IN TRINIDAD AND TOBAGO

JACQUI SAMPSON JACENT
Clerk of the House, Trinidad and Tobago House of Representatives

Background

The General Election on 10 December 2001 in Trinidad and Tobago ended in a tie with 18 seats going to the ruling United National Congress (UNC) and 18 seats to the then opposition People National Movement (PNM).

The Constitution of Trinidad and Tobago provides in Section 76 (1) that:

> "76 (1). Where there is occasion for the appointment of a Prime Minister, the President shall appoint as Prime Minister—
>
> (a) a member of the House of Representatives who is the Leader in that House of the party which commands the support of the majority of members of that House; or
>
> (b) where it appears to him that that party does not have an undisputed leader in that House or that no party commands the support of such a majority, the member of the House of Representatives who, in his judgment, is most likely to command the support of the majority of members of that House;
>
> and who is willing to accept the office of Prime Minister."

Section 77(1) and (2) of the Constitution further states:

> "77(1). Where the House of Representatives passes a resolution supported by the votes of a majority of all the Members of the House declaring that it has no confidence in the Prime Minister and the Prime Minister does not within seven days of the passing of such a resolution either resign or advise the President to dissolve Parliament, the President shall revoke the appointment of the Prime Minister.
>
> (2). The Prime Minister shall also vacate his office when after any dissolution of Parliament, he is informed by the President that the President is about to re-appoint him as Prime Minister or to appoint another person as Prime Minister."

After discussions with both leaders, the President, on his own judgment, requested Mr Patrick Manning, Leader of the opposition PNM, to form the next Government. The UNC immediately called upon Mr Manning to convene Parliament so that he could demonstrate his ability to command the support of the House.

The First sitting of the House of Representatives following the General Election was set for 5 April 2002. In the meantime, by Presidential Instrument, Government Senators as well as independent Senators were appointed. No opposition Senators could be appointed as there was no Leader of the Opposition, as a result of the refusal of the Leader of the UNC to accept that office.

When the House was convened, the first item of business, in accordance with the Standing Orders as well as the Constitution, was the election of a Speaker. The election of a Speaker is more than just a procedural issue—it is a strict constitutional requirement.

Standing Order 3

Standing Order 3 provides that any number of qualified candidates may be nominated for the Speakership. The terms under which candidates qualify are specified in Section 50 of the Constitution: a candidate must either be a Member of the House of Representatives or he/she must be a citizen of Trinidad and Tobago and also qualify for election as a Member of the House of Representatives. Furthermore Members who are Ministers or Parliamentary Secretaries are specifically disqualified by the same constitutional prescription.

The procedure for electing the Speaker is also laid down in detail in the standing orders. Standing Order 3 reads:

> 3(1). At the first meeting of the House immediately after a general election and before the House proceeds to the despatch of any other business, or whenever it is necessary for the House to elect a Speaker by reason of a vacancy in the office occurring otherwise, the Clerk shall call upon the House to elect a Speaker.
> (2). A Member, having first ascertained that the Member, or other person to be proposed is willing to serve if elected, may, rising in his place and addressing the Clerk, propose any other Member (not being a Minister or a Parliamentary Secretary), or any other person who is not a Member of either chamber of the Legislature, to the House as Speaker of the House; and if that proposal be seconded, the Clerk, if no other such Member or

person be proposed for the office, shall declare the Member or the person so proposed and seconded to be Speaker of the House.

(3). If another such Member or person, willing to serve if elected, be proposed and seconded, the Clerk shall propose the question that the Member who was first proposed should be the Speaker. If that proposal be agreed to, the Member or other person so chosen shall be Speaker, but if the proposal be negatived, the Clerk shall propose a like question in respect of any other such Member or person, who has been proposed and seconded, until the question is carried in favour of one of the Members, or other person, so proposed.

(4). No debate shall be allowed upon proposals for filling the office of Speaker, but any member may call for a division after the decision on the proposal has been announced.

The Role of the Clerk

The role of the Clerk of the House is very limited during the Speaker's election. Standing Order 3, which requires the Clerk to "call upon the House to elect a Speaker", permits him/her to speak only in relation to the election process itself. Once an initial nominations slate fails to elect a Speaker, if further nominations emerge from the body the Clerk "shall propose a like question in respect of any other Member or person" until the question "is carried in favour of one of the Members, or other persons." Until a Speaker is declared elected, the Clerk must continue to propose questions to the House as long as nominations are forthcoming.

Unless otherwise directed by the House, the Clerk must perform his/her duties, in accordance with the Standing Orders and in keeping with established practice and precedent. In the absence of the latter, he/she will be in the hands of the House.

Length of time

I held the view that the length of time that a House takes to elect a Speaker is entirely up to that House. However, should the House choose, for whatever reason, to sit before a Speaker is elected—an unprecedented course of action—the Constitution is clear in stating that no substantive business could be transacted at that sitting. I was also of the view that until a Speaker is in the Chair, the House remains collectively responsible for the maintenance of proper order and the preservation its own dignity.

Proceedings on 5 April

Immediately after the reading of the Proclamation on 5 April I called upon the House to elect a Speaker. The Government immediately proposed a candidate and immediately thereafter the Opposition also proposed a candidate. Since no other nominations were forthcoming, I proposed the question that the person first proposed should be the Speaker. The votes were equally divided and the proposal was therefore declared lost. I then proposed a like question in respect of the second person. The result was that all 36 Members voted against that person since the opposition took the position that they were not voting for any nominee, even one proposed and seconded by them. Thus that proposal was negatived.

Since the election of a Speaker is a strict constitutional requirement and having regard to the express words of the Standing Orders that require the Clerk to propose a like question in respect of any other Member or person so proposed until one is carried in favour of one of the Members, or other persons, I repeated my call for the House to elect a Speaker. And so it continued, over and over again, without success, for some fifteen hours, with only small essential breaks in the proceedings by agreement between the sides. Finally that sitting came to an abrupt end with the prorogation of the Parliament by the President on the advice of the Prime Minister, in accordance with the Constitution.

Proceedings on 28 August

The Second Session of the Parliament was convened by Presidential Proclamation on 28 August 2002. Long before the day of the sitting, some legal 'experts' expressed the view that there can be no attempt to elect a Speaker following a General Election, other than at the first sitting after that election. However, I remained unconvinced that, as a matter of Constitutional Law, if a House is for whatever reason unable to elect a Speaker at its First Sitting, it cannot attempt to do so when it next meets.

Consequently, on 28 August, immediately after the reading of the proclamation, I called upon the House to elect a Speaker. Both sides proposed candidates. When the vote was taken on the first nominee, the votes were equally divided and the proposal was declared lost. Using the same procedural strategy followed on the last occasion, the Opposition voted against their own nominee to show that they had no intention to facilitate the election of a Speaker. Consequently, that nomination was negatived with not a single

Member voting for the nominee and all 36 Members voting against the proposal.

The House had once again failed to elect a Speaker. I again called upon the House to elect a Speaker. No proposals were forthcoming.

It was against that background that 13 minutes into the sitting, the Prime Minister rose and informed the House that he had requested the President to dissolve Parliament with effect from midnight. The sitting was discontinued.

Fresh Elections

The General Election on 7 October was our third in two years and resulted in 20 seats going to the PNM and 16 to the UNC. Parliament was convened on 17 October 2002 and a Speaker was finally elected, uncontested.

MISCELLANEOUS NOTES

AUSTRALIA

Senate

Iraq war—executive power

As in most so-called 'Westminster system' countries, the executive government in Australia has the power to commit the country to war without explicit approval of the legislature. Having decided to participate in the war in Iraq, the government moved motions in both Houses for retrospective endorsement of the decision. As expected, the motion was passed by the government majority in the House of Representatives, but was rejected by the Senate, which the government does not control, and replaced by a resolution disapproving of the action. The opposition Labor Party, which is also in a minority in the Senate, then indicated that it was considering an Australian version of the United States War Powers Act, whereby the government would not be able to undertake warlike action abroad without the approval of both Houses of the Parliament.

Anti-terrorism legislation

Among the many Senate committee reports presented, and among many reports from the heavily-burdened Legal and Constitutional Committee, perhaps the most significant was a report on the government's package of anti-terrorism legislation. The report was highly critical of the legislation, which had been passed by the House of Representatives but was attacked by many witnesses before the committee as draconian and highly dangerous. Particularly contentious were provisions allowing the detention of suspects without charges. The committee's report, which was unanimous apart from a dissent by the Australian Democrat member, made it certain that the legislation would be significantly amended before its passage. The bills were heavily amended in the Senate, and the amendments eventually accepted by the government.

Serious questions were also raised by the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, a subsequent part of the government's anti-terrorism package, which proposed to allow security officers to detain persons of interest. The bill was also referred to the

Legal and Constitutional Committee, which again recommended extensive amendments. Again the bill was amended in the Senate, but the government declined to accept some amendments, and the bill remained in dispute.

Delegated legislation

The May sittings began with an expectation that the Senate would disallow migration regulations made during the non-sitting period which removed certain islands from the migration zone in an attempt to control illegal immigrants. The regulations were not tabled on the first substantive day of the sittings, as would normally have been the case. It was not clear whether the government was deliberately delaying the tabling of the regulations in order to avoid disallowance of them by the Senate. Nothing could be gained by such a manoeuvre, because it is well established that regulations do not have to be tabled by the government before disallowance, but may be tabled by any senator. A motion calling on the government to table the regulations was passed, and the government tabled the regulations on the following day. A motion to disallow them was then moved without notice by leave and passed (although the statutory disallowance provisions refer to notice of disallowance motions, notice is not necessary). A notice of motion to disallow the regulations which was given before their tabling, however, was withdrawn later on the same day because the statutory provisions clearly require tabling before disallowance, and the notice, having been given before tabling, was not regarded as an effective disallowance notice.

Before a senator withdraws a notice of motion for disallowance of a piece of delegated legislation, other senators must be given the opportunity to take over the notice. This safeguard ensures that senators who may wish to support a disallowance motion do not have their rights negated by the withdrawal of a notice after the statutory time for giving notice has expired. On the other hand, if a senator who has given a notice does not move the motion when it is called on, the motion is taken to be withdrawn. If the latter situation arises in relation to a disallowance notice, the chair rules that the notice is not withdrawn until other senators have had a chance to take it over. An occasion for this process to operate occurred when a disallowance motion standing in the name of a senator, but not supported by any other senator, was called on while he was absent. If another senator had wished to support the motion, that senator could have taken it over or moved it on the absent senator's behalf.

Disability standards made under the Disability Discrimination Act are subject to unusual provisions for parliamentary control. If no notice is given

in the Senate to amend standards within 15 sitting days after they are tabled, they come into effect at the end of that period. If a notice is given to amend the standards, they do not come into effect until both Houses approve the standards with or without the amendment. These provisions were inserted into the Act by an amendment made by the Senate in 1992, one of several amendments whereby the Senate has imposed special provisions for parliamentary control on particular instruments of delegated legislation. A senator withdrew by leave a notice she had given to amend some disability standards. It was then necessary to move a motion to approve the standards without the amendment and to send a message to the House of Representatives for the approval of the standards there.

Contracts order

Another report by the Auditor-General was presented on 18 September about the Senate's order of 20 June 2001 requiring departments and agencies to list on the Internet their contracts of $100,000 or more (see *The Table*, 2002, pp 17-21). The Auditor-General reported that most agencies had fully complied with the order. Of 56 contracts claimed by agencies to be confidential, only nine were found to be appropriately classified as confidential. The report noted that most agencies had taken steps to alter their contracting arrangements to conform with accountability requirements, thereby confirming that the Senate's order has been one of the most valuable accountability exercises of recent times.

Orders for documents

An order relating to information on the financial situations of higher education institutions was met with a claim by the government of commercial confidentiality and a statement that revealing the information would undermine confidence in the higher education sector. It was pointed out that the latter excuse is virtually an admission that the information would disclose serious difficulties which have been kept secret. The mover of the motion responded with a notice of motion for an extensive committee inquiry into the subject. The notice was expressed to be contingent on the information not being provided before the motion was moved. Another government statement gave some ground by indicating that the vice chancellors of various institutions would be asked for their permission to release information gathered from them. This concession did not satisfy the majority of the Senate, and the motion for a committee inquiry into the matter was passed.

Bill divided

A government bill was divided by the Senate into two bills, one bill was passed and consideration of the other bill in committee of the whole was deferred. This arose from disagreement by the non-government parties with some parts of the bill. The same result could be achieved by amendments to strike out the parts of the bill not agreed to, but dividing the bill provided the option of more readily proceeding with the second bill.

The government in the House of Representatives refused to consider the division of the bill. This action arose from the view apparently taken by the government's advisers, and reflected in a statement by the Speaker, that there is something particularly evil about the Senate dividing a bill, although the basis of this view has never been explained. The Senate passed a resolution reiterating that division of a bill is not different in principle from any other form of amendment of a bill, and should be considered as such, and, while not insisting on its division of the bill, made further amendments to it. These amendments were in turn rejected by the government in the House, and some of them were insisted on by the Senate on the same day, leaving the bill unresolved at the end of the 2002 sittings.

Government votes against its own bills

On two occasions the government in the Senate voted against the third readings of its own bills, apparently to express disapproval of amendments made by the Senate to the bills. This course of action does not seem to have been well thought out. The bills as amended were passed by the majority of the Senate. Had they been rejected at the third reading, the government would have had some difficulty in claiming that this led to a deadlock between the Houses which might be resolved by the deadlock provisions in the Constitution. The government could not claim that there was a disagreement between the Houses over amendments, because the House of Representatives would not have considered the amendments. It would also be difficult to argue that the Senate had rejected or failed to pass the bills when the government had voted against them. This problem was pointed out to the government's advisers.

Amendments considered in advance

The Legal and Constitutional Committee received an unusual reference when the government tabled, and then moved to refer to the committee, amendments of bills to be moved by the government in the House of Representatives. This was a way of having the committee consider the details

of proposed government changes to the bills which were not then before the Senate.

Ministers and staff as witnesses

The report of the Select Committee on a Certain Maritime Incident led to vociferous debate about the majority's finding that the government deliberately misled the public about asylum-seekers during the last general election campaign (see "The 'Children Overboard' Affair" in this issue). The report included material supplied to the committee on the question of whether former ministers and ministerial staff may be summoned by the Senate. The Clerk of the House of Representatives claimed that a former Defence Minister and former and current ministerial staff have some kind of immunity, but this claim is refuted by other material supplied to the committee. In the past both ex-ministers and ministerial staff were summoned by the Senate and its committees without the supposed immunity being discovered. It was not adopted by any members of the committee, all of whom accepted that the power to summon such persons exists, but disagreed about its exercise in this case. In the event, the committee did not summon any witnesses, but took evidence from an array of public servants and Defence Force officers who appeared on invitation.

Government legal fees

The Legal and Constitutional Committee encountered a reluctance on the part of the Australian Government Solicitor's Office to provide details of the costs of services provided to government commissions of inquiry on the basis of client confidentiality. From time to time over many years governments have evinced a reluctance to disclose legal fees paid by or to the government, although on some occasions such information has been freely provided. The Senate has never accepted that this information ought to be withheld. The committee provided in its report a useful summary of the history of the matter, and pursued with some success the particular information concerned.

Scope of questions to ministers

Questions at question time relating to allegations that the Minister for Revenue and Assistant Treasurer, Senator Coonan, and her husband were engaged in tax avoidance through their property holdings were the subject of rulings by the President. The President distinguished between questions relating to Senator Coonan's pecuniary interests and activities, which were

permitted, and questions relating purely to her husband's activities, which were not permitted. The President reiterated the principle that questions must relate to a minister's ministerial responsibilities.

Language in debate

The President referred to an alleged case of unparliamentary language included in a committee report, and stated that this should not occur, and all senators had a responsibility to avoid it, but, should it occur, it would not be permissible to quote that language in debate, on the long-established principle that the prohibition of offensive language cannot be bypassed by quoting a document. This ruling arose from a complaint about the minority report of government members of the Select Committee on a Certain Maritime Incident (see the article in this issue).

ACT Legislative Assembly

Size of the Assembly

On 12 December 2001, during private members' business, the Assembly referred to the Standing Committee on Legal Affairs for inquiry and report the appropriateness of the size of the Legislative Assembly for the Australian Capital Territory and options for changing the number of members, electorates and any other related matter. Pursuant to resolution the Committee reported on 27 June 2002. The Committee recommended that the Assembly be increased to 21 (from the present number of 17), with the dissenting report proposing 23 members. The report, along with the dissenting report and the Government response, tabled on 26 September, created significant community comment ranging from the assertion that the present number is too many to the view that increases are justified. The dissenting report focused on the actual number of members and the consequential distribution of electorates.

On 25 September the Chief Minister placed a motion on the Notice Paper proposing that the number of members in the Assembly be increased from 17 to 25, together with the relevant requests to the Governor-General required under the Australian Capital Territory (Self Government) Act 1988. Debate on this motion was scheduled for 26 September and 14 November. On both occasions the debate was postponed. It is understood that the issue did not have sufficient community support to justify debate at this time. The notice is still on the Notice Paper.

NSW Legislative Assembly

Listing of the Parliamentary Precincts on the State Heritage Register

Following a review of advice received from the Crown Solicitor in December 2001 the Presiding Officers approved the listing of the Parliamentary Precincts on the Register. The formal announcement of the listing was made by the Deputy Premier and Minister for Planning, the Hon. Dr Andrew Refshauge MP, in the House on 7 May 2002, with the gazettal of the listing occurring during Heritage Week on 22 April.

The State Heritage Register is a comprehensive list of items of State significance in NSW that are to be conserved and protected including such items as the Sydney Harbour Bridge, Centennial Park and the Royal Botanic Gardens. The Register was created in April 1999 by amendments to the Heritage Act 1977. Only those items that are of State significance in NSW are listed on the Register.

The Parliamentary Precincts are an important heritage site in New South Wales as they are part of Sydney's oldest remaining complex of public buildings. The Parliament House and the Mint Museum are the two surviving wings of the triple wing general hospital that was commenced in 1811 and finished in 1816. Built just 20 years after first settlement, the hospital was part of Governor Macquarie's sweeping building campaign, which included schools, barracks, orphanages, churches and storehouses. As Governor Macquarie had been refused funding by London, he entered into agreement with three businessmen who proposed to build the hospital in exchange for three years' exclusive rights to the importation of rum, and the hospital became known as 'The Rum Hospital'.

Parliamentary Building Services, in conjunction with the State Heritage Office, drafted a protocol for the approval of works within the precincts that provides the Parliament with the means to ensure work within the precincts is conducted in an appropriate and timely manner taking into account the heritage value of the precincts. The protocol is an interim measure only—valid for 12 months until the Conservation Management Plan (CMP) is drafted and approved for the precincts. This is the next stage in the process and Treasury will be approached for funding as the cost to complete the CMP has been estimated at around $120,000.

Aboriginal and Torres Strait Islander cadetship

The Legislative Assembly took part in the Government's cadetship programme for people of Aboriginal and Torres Strait Islander descent. The

programme is sponsored by the Federal Government, implemented by the States, and provides an opportunity for indigenous students to receive financial support and on the job work experience for the duration of their academic degree. In addition cadets will have the guarantee of full-time employment upon finishing their degree.

New South Wales is trialling the programme with 12 other public sector agencies taking part. Following interviews, the Legislative Assembly selected Ms Lluwannee George as the successful cadet. Lluwannee has recently completed her first year of a Communication/Journalism course at the University of Canberra and commenced with the Assembly over the summer period 2002/03. She is attached full-time to the Committees Office where she will take up a full-time position as an Assistant Research Officer on completion of her degree in 2005. In this position she will play a vital role liaising with the Aboriginal community, particularly in relation to pertinent committee inquiries.

Censure of the Leader of the Opposition and referral of matter to the Independent Commission Against Corruption

On 13 November 2002 the *Sydney Morning Herald* published an article alleging that the Leader of the Opposition, John Brogden MP, was paid more than $110,000 in fees by the legal arm of the global consultancy PricewaterhouseCoopers (PwC) while he was a Member of Parliament and Opposition spokesperson for Planning. The article also implied that Mr Brogden had asked questions in Parliament relating to development projects in which PwC Legal was involved.

That same day a motion for urgent consideration was moved by the Deputy Premier, the Hon. Dr Andrew Refshauge MP, in relation to Mr Brogden's pecuniary interest disclosure. The motion which was subsequently passed by the House requested that the Leader of the Opposition present to the House all documents and papers concerning the income received from the consultancy work, details of the services performed by him and a full list of clients. The motion also requested that Mr Brogden table all other documents that relate to any other company to which he has received a fee for service whilst Shadow Minister for Planning or a Member of Parliament.

On 14 November, in accordance with the resolution of the House, Mr Brogden tabled papers regarding his pecuniary interest disclosures. Standing and Sessional Orders were later suspended to enable the House to consider a motion of censure of the Leader of the Opposition for his failure to explain

what he did to receive the $110,000 in consultancy fees. During the debate on the motion the Leader of the Opposition, by leave, tabled a letter regarding the consultancy work conducted by him. During the heated debate two Members of the Opposition were named and suspended from the service of the House. The motion was agreed to along party lines with the Independent Members of the House abstaining from the vote.

On 21 November a further motion for urgent consideration was moved by the Deputy Premier regarding the issues raised in the debate on the censure motion in the Legislative Assembly on 14 November and to subsequent questions relating to the conduct of the Leader of the Opposition. The motion passed by the House requested that the Independent Commission Against Corruption (ICAC) look into those matters and report to the Speaker as soon as practicable on what measures might be taken in respect of regulating or limiting the employment of Members of Parliament to provide advice on public affairs. In particular the House requested the ICAC to consider the adequacy of the provisions of the Code of Conduct for Members of the Legislative Assembly.

In respect of the above, the House considered that the ICAC should specifically consider provisions in a) the United Kingdom House of Commons Code of Conduct and Guide to the Rules Relating to the Conduct of Members, which:

- require the nature of any post held by a Member to be properly described, for example, as a 'legal adviser' or 'parliamentary and public affairs consultant';
- require a written contract of engagement to be disclosed, together with details of all clients to whom the Member provides advice, where the provision of services depends upon, or arises out of, the Member's position as a Member; and
- prohibit 'advocacy' whereby a Member receives a direct or indirect benefit to advocate or initiate any cause or matter in proceedings in Parliament specifically on behalf of an outside body, where such action would confer an exclusive benefit on that body;

b) the Code of Conduct for Members of the Scottish Parliament, which

- prohibit advocacy for a fee in proceedings in Parliament;
- direct that a Member should not accept any paid work which would involve the Member in lobbying on behalf of any person or organisation or any clients of a person or organisation; and

- direct that a Member should not accept any paid work to provide services as a parliamentary strategist, adviser or consultant, for example, in advising on parliamentary affairs or how to influence the Parliament and its Members;

and c) any other relevant provisions in other jurisdictions.

A Member of the Opposition attempted to amend the motion by including a reference for the ICAC to consider "whether persons who have served on the Premiers' or a Ministers' personal staff should be prohibited for a period of time from receiving payment for making representation to that Minister, the Premier or any other Minister." This was not agreed to by the House and the original motion as it stood was passed. The ICAC is yet to report on the matter.

Review of the Members' Code of Conduct

The Legislative Assembly first adopted a Code of Conduct in May 1998 and has re-adopted it three times in subsequent sessions since it was first developed. Under the Independent Commission Against Corruption Act 1988 the Legislative Assembly Standing Ethics Committee is required to review this Code at least once in each period of two years to ensure that it remains relevant to contemporary circumstances. The Committee is comprised of eight Members of the Legislative Assembly, namely those Members who are Members of the Assembly and who serve on the Joint Committee on the Independent Commission Against Corruption, and three community or lay members who are appointed following advertisement and interview. The three community members act to ensure that the standards which Members of the Legislative Assembly are expected to adhere to reflect the community's expectations.

In the last week of sittings in June the Chairman of the Committee, Mr John Price MP, tabled the Committee's Review of the Code of Conduct. Despite widespread advertising calling for submissions on the Code no responses were received. As such, the Committee concluded that the Code was not a controversial public issue and that either the public had little awareness of the Code or were generally satisfied with its requirements.

The Independent Commission Against Corruption made a number of recommendations about the scope of the Code and particular clauses. A number of these recommendations were considered to be unworkable or were likely to cause ambiguity where none currently exists. However, the Committee did recommended that the current scope of the Code of

Conduct in relation to bribery be broadened. If adopted this will ensure that Members who knowingly or improperly use their position to pursue an agenda to benefit family or friends should be regarded as culpable as those who pursued it for personal gain.

Concerns about the continuing effect of the Code of Conduct on Members following prorogation of the House were also addressed. The Premier suggested that the Code should be amended to explicitly state that it applies at all times to Members, including during any prorogation. Alternatively, it was suggested that the Code could be adopted as a Standing Order. Advice on the matter was received form the Crown Solicitor which argued that the resolution adopting the Code of Conduct must use terms which state that it is to have a continuing and binding effect if it is to be clear that the Code applies to Members post prorogation. Given this, the Committee has recommended that the Code of Conduct be amended to specifically acknowledge that it is intended to apply during prorogation.

The Committee also considered a number of other issues related to the Code such as the statutory requirement to review the Code once every two years. The Committee considered that this requirement was impractical and concluded that it would be more appropriate to review the Code once every Parliament, given that New South Wales has fixed four year parliamentary terms. The Committee was also of the view that it was unnecessary to have permanent community members. There was clear consensus, however, that community representatives should remain part of any review of the Code to ensure scrutiny by non-parliamentarian representatives.

In summary, the review of the Code of Conduct found that it continues to be relevant to contemporary circumstances and should not be substantially changed. The Legislative Council Standing Committee on Privileges and Ethics tabled its review of the Code adopted by the Legislative Council, which is the same as that adopted by the Assembly, in December 2002. The Council Committee recommended that no changes be made to the Code as it currently stands. Given that the Assembly Committee has recommended amendments be made to the Code it will be interesting to see whether in the 53rd Parliament commencing in 2003 both Houses adopt an identically worded Code of Conduct.

Legislation Review Amendment Bill and the Legislation Review Committee

Legislation was passed by the Parliament in September 2002 which amended the Regulation Review Act 1987 and conferred the additional

function of scrutiny of legislation to the Regulation Review Committee. Accordingly, from the 53rd Parliament commencing in 2003 the Committee will be known as the Legislation Review Committee and will have the function of considering any bill introduced into Parliament and reporting to both Houses on the bill.

The legislation was introduced following an inquiry by the Legislative Council Standing Committee on Law and Justice that looked at the merits of a Bill of Rights for New South Wales. The Committee on Law and Justice concluded that it is not in the best interests of the State for New South Wales to have a Bill of Rights as it would undermine parliamentary sovereignty, and the independence of the judiciary. However, the Committee was of the view that a Parliamentary Committee of both Houses should have a role to scrutinise legislation to ensure it does not unduly trespass on personal rights and liberties.

In addition to this, the Legislation Review Committee will also be required to report on whether a bill makes rights, liberties or obligations unduly dependent upon non-reviewable decisions; inappropriately delegates legislative powers; or insufficiently subjects the exercise of legislative power to parliamentary scrutiny. This function is similar to that performed by the Senate Scrutiny of Bills Committee.

The work of the Committee is not intended to interfere with the legislative programme of the Government of the day nor will its decisions be final or binding on the Parliament. Rather, the Committee will be responsible for providing timely advice to Members on matters within its jurisdiction by noting issues that should be brought to the attention of Members and not duplicating parliamentary debate. It is envisaged that the Committee will not hold inquiries or invite submissions and that it will be able to report on bills that have been introduced within one week. This quick turn-around time will mean that Members have the benefit of the Committee's report on a bill in time for debate in the week after the bill was introduced. The Government has allocated additional funding to the Committee to ensure that it is resourced properly and so that it is able to obtain timely academic and legal advice in relation to bills and report quickly to the Parliament.

NSW Legislative Council

Procedure for dealing with multiple bills

Toward the end of the Parliamentary session a procedure was employed whereby certain bills were considered together at second reading stage and

then dealt with separately in the subsequent stages. In most cases, bills dealing with related subject matter were dealt with together.

For example, on 4 December 2002, using a contingent notice to suspend standing and sessional orders to vary the conduct of business, a member moved that the Workers Compensation Legislation Amendment Bill, the Pay-roll Tax Legislation Amendment (Avoidance) Bill and the Industrial Relations Amendment (Industrial Agents) Bill be considered together at the second reading stage and that the question on the motions for the second reading of these bills and subsequent stages be dealt with separately in respect of the separate bills. Leave was given for the mover's second reading speeches to be incorporated in Hansard and the second reading debate on the bills ensued. At the completion of the second reading debate, the question was put that the first bill, the Workers Compensation Legislation Amendment Bill, be read a second time. The motion was agreed to, and the House sat as a Committee of the Whole for consideration of the Bill. The Bill was read a third time and returned to the Legislative Assembly with amendments. The remaining bills were similarly dealt with in turn and both returned to the Legislative Assembly without amendment.

Changes to the requirements for the registration of political parties

In 1999 the public of New South Wales was presented with the largest ballot paper ever for a Legislative Council election. Known as the 'table cloth' ballot paper, it included 264 candidates in 81 groups contesting the election and was approximately one metre across and 70 centimetres down. Concerns that the voting system then in place permitted manipulation of preference flows, especially by micro and front parties, prompted the Government to introduce significant changes to the 'above the line' method of voting and the registration requirements of parties.

The Parliamentary Electorates and Elections Amendment Act 1999 amended the Parliamentary Electorates and Elections Act 1912 to provide that in order to be registered, a party must firstly be able to demonstrate that it has 750 eligible members and then be registered for 12 months before contesting an election.

To ensure that the minimum 750 members identified by parties were in fact members, the Electoral Commissioner established a practice whereby he wrote to 300 of the 750 minimum members submitted by the party applying to be registered seeking confirmation of membership. If the Electoral Commissioner received confirmation from 225 of the 300 members, being a 75 per cent response rate, the registration process would proceed.

Because of the requirements that parties be registered for at least 12 months before they can contest an election, it became critical by early 2002 that parties satisfy the Electoral Commissioner's test quickly. If they did not do so, they would not be registered in time to contest the 2003 election. Following the Electoral Commissioner's test, the Save Our Suburbs party was denied registration as only 215 members responded to the Commissioner. The party commenced proceedings in the Supreme Court with the judge concluding that the Commissioner was not entitled to apply a test to verify membership involving direct contact with individual members and consequently ordered that the party be registered (see *Save our Suburbs (SOS) NSW Inc v Electoral Commissioner of NSW [2002] NSWSC 785*).

The Parliamentary Electorates and Elections Amendment (Party Registration) Bill was introduced to expressly authorise the Electoral Commissioner to conduct such preliminary tests and inquiries to determine if a party is eligible for registration under the Act, to adopt any other test for verifying membership of the party, and to ensure that any necessary steps to establish whether persons nominated as members are really members can be taken. The Bill also allowed for the Electoral Commissioner to establish if a party is entitled to ongoing registration to ensure that the register of parties is kept under active and ongoing scrutiny. In addition, the Bill specifically provided that it would not affect the order of the Supreme Court to register Save Our Suburbs so that it could contest the 2003 election.

The Bill was passed without amendment.

Northern Territory Legislative Assembly

The Estimates Committee process was introduced into the Northern Territory Parliament for the first time. On 20 August 2002 the Northern Territory Government moved a motion to establish an Estimates Committee, along with the Terms of Reference. The motion was agreed to. The Estimates Committee met on 17–19 September.

Queensland Legislative Assembly

Citizen's right of reply—supplementary guidelines

The citizen's right of reply resolution adopted by the Legislative Assembly on 18 October 1995 establishes the framework for the right of reply procedure in the Queensland Parliament. In its Report No. 56, the Members' Ethics and Parliamentary Privileges Committee set out the following supple-

mentary guidelines adopted by the committee, designed to ensure that all submissions for a right of reply are dealt with consistently:

- An application must be received within the term of the parliament within which the statements to which the person or corporation wishes to respond were made.
- A time limit of 3 months applies to any request for further submission from the person or corporation by the committee. Should the person or corporation not respond to the committee's communication within 3 months, the committee will consider the matter to be closed.
- Public servants seeking a right of reply must do so as private citizens. Submissions made on departmental letterhead will not be considered.
- Citizens making their submission through a representative must personally sign the agreed response.

South Australia House of Assembly

The First Session of the Fiftieth Parliament was the shortest in South Australian Parliamentary history, being only one day (5 March 2002). A General Election held on 9 February 2002 resulted in neither of the major parties achieving an absolute majority. The Australian Labor Party won 23 seats, the Liberal Party of Australia 20, the Nationals 1 and the Independents 3.

Following the election there was speculation that the Liberal Party would be able to form Government with the support of the three Independent Members and the lone National Party Member. The three Independents were all former members of the Liberal Party and the Nationals Member had supported the previous minority Liberal Government. However, after negotiations with both the Liberal and Labor Parties, the Independent Member for Hammond announced his intention to support the Labor Party. That vote provided the Labor Party with the support of an absolute majority of the Members of the House of Assembly.

In accordance with a precedent set in 1968, the Liberal Party decided to test the numbers on the floor of the House. The Parliament finally sat on Tuesday 5 March with Liberal Party Members on the Government benches and Labor Party Members on the Opposition benches. However, the Liberal Government failed to carry a vote of confidence in itself and resigned overnight.

The Member for Hammond has taken the role of Speaker and since then the Independent Member for Fisher has agreed to support the Labor

Government and is Deputy Speaker. The remaining Independent, the Member for Mount Gambier, has been recently sworn in as a Minister in the Labor Government.

Victoria Legislative Assembly

Request for Legislative Assembly Ministers to appear before a Legislative Council Committee

A Select Committee of the Legislative Council on the Urban and Regional Land Corporation Managing Director was established in response to allegations made in the Parliament about the appointment of Mr J E Reeves as Managing Director of the Urban and Regional Land Corporation. The Urban and Regional Land Corporation is a State-owned Government Business Enterprise and is responsible for undertaking urban and regional development in Victoria.

Mr Reeves' appointment to the position was announced in October 2001. From 22 November 2001 Questions Without Notice on the matter were asked in both the Legislative Assembly and Legislative Council, with the Opposition alleging that Mr Reeves had been appointed to the position as a consequence of his friendship with the Premier. Commentary about the appointment also began to mount in the media and in late November Mr Reeves withdrew from the position.

The motion for the appointment of the Select Committee was moved by the Leader of the Opposition in the Legislative Council on 5 December. The terms of reference for the Committee are to enquire into and report upon the selection, appointment and resignation of the Urban and Regional Land Corporation Managing Director. As the Opposition have a commanding majority in the Legislative Council the motion was passed and the Select Committee commenced its deliberations.

On 20 March 2002 the Committee tabled its first interim report in the Legislative Council. The Committee, in its conclusion in the report, advised the House that Legislative Assembly ministers (the Premier, Deputy Premier and the Treasurer) had refused to provide documents that had been summonsed by the Committee. The Committee noted that the refusal of the ministers to provide these documents was on the advice of the Attorney-General.

The Legislative Council moved an immediate 'take note' motion and then resolved to request that the Legislative Assembly grant leave for these ministers to appear before the committee.

The Assembly received the message later that day and debate occurred immediately. The Government opposed the message with the Attorney-General moving a motion to refuse leave. The Opposition opposed the Attorney-General's motion and moved an amendment to grant leave. After considerable debate, the Opposition's amendment was defeated; the Government's motion was passed.

The Legislative Assembly, like all other Houses, imposes limitations on the attendance of members to the call of other bodies other than the Assembly. This limitation is based on the House of Commons' ancient claim of the paramount right of the House to the attendance and service of its members and the independence of the House. Whilst refusal of the Assembly is not automatic there have been only three instances in the history of the Assembly where such leave has been granted.

Visit by His Excellency Constantinos Stephanopoulos, President of the Hellenic Republic

Melbourne is home to the largest population of Greeks outside of Greece itself. Therefore it was most fitting that the Greek President visited the Victorian Parliament as the first leg of his official visit to Australia.

In recognition of this event the President was invited onto the Floor of the Legislative Assembly to address all Members, including invited members of the Legislative Council.

In the morning the President arrived early for a short private welcome by the Presiding Officers. This was then followed by a speech to the combined Houses of the Parliament. In the evening, he was formally welcomed by the Victorian Premier to Victoria, with a reception at the Parliament in Queen's Hall.

The Parliamentary proceedings surrounding the Presidents address to the assembled members were as follows. Immediately after the Presiding Officers' welcome, the President was escorted onto the floor of the House and took a seat to the right of the Speaker. Interestingly, the President chose to address the House in Greek so an interpreter was also granted permission to be on the floor. The event commenced with the Speaker welcoming the President in both Greek and English. This was then followed by speeches from the Premier, Leader of the Opposition, and Leader of the Third Party. All were translated simultaneously. The President spoke last, formally thanking Victoria for such a warm welcome. With all speeches finished (approximately 20 minutes) the President departed and the House adjourned for a short recess before resuming the normal sitting.

Victorian State Election

The Governor of Victoria, John Landy, issued a proclamation on 5 November 2002 (coincidentally Melbourne Cup Day) dissolving the Legislative Assembly and proroguing the Legislative Council. He also issued writs for the holding of a State Election on 30 November. Speculation had been rife for most of 2002 that the minority Labor Government would be seeking to call an election as soon as the minimum requirement under section 8(2) of the Constitution Act 1975 had been met, namely that "a period of three years had elapsed since the day of its first meeting after a general election" (54th Parliament opened on 3 November 1999).

The result of the election was a massive swing to the Labor Party, which increased its numbers in the 88 seat Legislative Assembly from 44 to 62, the Liberal Party (Opposition) having its numbers reduced from 35 to 17, the National Party (Third Party) increasing its numbers from 6 to 7 and two Independents being returned, whilst one Independent lost her seat.

The new Parliament opened on 25 February 2003 with the Government having a large majority compared to the last Parliament, where it relied on having the support of at least one Independent Member to govern. In addition, in the previous Parliament the Liberal Opposition controlled the Upper House, but in the new Parliament the Government has control of the Legislative Council and therefore passing its legislative program will be a lot easier.

Bali bombing condolence

All Australians were deeply dismayed by the terrorist bombing in Bali on 12 October 2002. The country was numbed by the horror and the ghastly loss of life—especially the death of so many Australians.

The Legislative Assembly sat on Tuesday 15 October, and according to Sessional Orders as soon as the Speaker took the Chair the first item of business would be Question Time. The Government however wished to move at the first instance a resolution offering condolences to the victims and their families.

A motion was prepared and as soon as the Speaker had concluded the prayer the Premier moved, by leave, that so much of standing and sessional orders be suspended for the day to allow precedence to be given to a motion of condolence followed by question time and other business of the house. This was agreed to and the Premier then moved the condolence motion. The Premier, Leader of the Opposition, Leader of the National Party and one of the three independents then spoke to the motion. The mood of the House was sombre and reflected the community's disbelief at this tragedy. The

Premier, in his speech, acknowledged the presence in the public gallery of a 26-year old wounded survivor and her family. Following the speeches the House agreed to the motion by members standing in silence in their places.

The Government subsequently announced that it would hold an ecumenical service for the Bali victims at the Myer Music Bowl on Tuesday 29 October commencing at 12.30 pm. The issue for the House was that under Sessional Orders the House must sit at 2.00 pm when question without notice will be called (other than on a Tuesday when a condolence motion may take precedence). As a significant number of members would be attending the service, including the Premier and Leader of the Opposition, there would be few members in the Chamber at the start of the day's sitting. Further, as the House would not be sitting before the day of the service it would be impossible for the House to suspend Sessional Orders to delay the sitting of that day. To overcome this dilemma an informal arrangement was agreed to between the Speaker and the Government and non Government parties for the Speaker to take the Chair at 2.00 pm as specified, read the prayer and then leave the Chair until 3.00 pm. As it happened the House was to consider a condolence motion that day. The condolence motion took precedence over other business including question time and fortunately provided the Speaker with the flexibility to suspend the sitting until the later time.

Western Australia Legislative Assembly

Electoral reform

Further to our response in the 2002 *Table* (vol. 70, pp. 208-11), the Full Court of the Supreme Court of Western Australia handed down its judgment in relation to the government's electoral reform bills in October 2002. In summary, the court declared that it would not be lawful for the Clerk of the Parliaments to present the bills to the Governor for Her Majesty's assent. The government is currently pursuing an appeal against this decision in the High Court of Australia.

Carrying over of bills from one session to the next

A disagreement arose between the Houses concerning three bills passed by the Assembly and transmitted to the Council prior to the prorogation of the first session. A fuller description of this matter is provided under the Comparative Study.

CANADA

House of Commons

Procedural matters

On 13 March 2002, following Question Period, the Speaker invited the Right Hon. Herb Gray to sit inside the Bar of the House of Commons. Mr Gray is a former Cabinet Minister and was the Member of Parliament for the riding of Windsor West for nearly forty years. Following statements of tribute by the Prime Minister and representatives of the other officially recognized parties in the House, the Speaker invited Mr Gray to address the House, after which the Speaker made a short statement. This was the first time that an individual who did not hold a seat in the House at the time was invited to sit just inside the Bar on the floor of the House.

Following the Canadian Alliance leadership convention on 20 March five of the seven (dissident) Democratic Representative Caucus Members opted to leave their coalition with the Progressive Conservatives and were accepted back into the fold of the Alliance Party; of the remaining two (dissident) Members, one (Inky Mark) sits as a Progressive Conservative, and another (Jim Pankiw) sits as an Independent. (See pp. 177-78 of Volume 70 of *The Table* for previous note on this matter.)

On 15 April the House resolved itself into Committee of the Whole to receive, introduce and pay tribute to athletes who had represented Canada at the Olympics and the Paralympics on the floor of the Chamber.

On 7 May a Committee of the Whole considered the Estimates for the Department of National Defence, marking the first time that departmental Estimates were considered in this manner pursuant to the changes made to the Standing Orders adopted 4 October 2001.

The (new) leader of the Canadian Alliance (Stephen Harper) was elected to the House of Commons in a by-election as the Member for Calgary Southwest on 13 May, and took his seat in the House as Leader of the Official Opposition on 21 May 21. On 5 June Alexa McDonough, Leader of the New Democratic Party, announced she was stepping down as leader. On 6 August the Right Hon. Joe Clark, a former Prime Minister, announced his intention to resign as party leader of the Progressive Conservative Party.

On the opening day of the second session of the Thirty-Seventh Parliament (30 September) the traditional motions to appoint the Deputy Chairman of Committees of the Whole and the Assistant Deputy Chairman of Committees of the Whole gave rise to objections from the Official Opposition. A recorded division was requested on the first of the two

motions. By unanimous consent, the motion was agreed to on division, and the second motion was adopted in the usual fashion.

Following adoption of a Supply Day motion amending the Standing Orders to provide for secret ballot elections of Chairs and Vice-Chairs, under specific circumstances, such elections were subsequently held for the position of Chair in three of the eighteen Standing Committees. Several committees held elections for Vice-Chair positions. Three of the Vice-Chairs so elected were members of the Canadian Alliance (Official Opposition), one was a Bloc Québécois member, and one was a Progressive Conservative member. In addition, the Standing Committee on Public Accounts, which has an Official Opposition chair and two government vice-chairs, elected both its vice-chairs by secret ballot.

On 23 October the Deputy Prime Minister tabled the government's ethics package including a proposal to establish an independent ethics commissioner reporting directly to Parliament, a draft code of conduct for parliamentarians and proposed changes to the Lobbyists Registration Act.

The House held take-note debates on the deployment of Canadian Forces personnel in Afghanistan (28 January), the review of the Canadian health care system (June 11), the situation in Iraq (1-3 October), on the Canadian Coast Guard (6 November), and on the modernization of the procedures of the House (20-22 November), as well as an emergency debate on agriculture (7 October).

The founding conference of the Global Organization of Parliamentarians Against Corruption (GOPAC) took place in Ottawa from 13 to 16 October; and the second annual Canadian Commonwealth Parliamentary Seminar of the Commonwealth Parliamentary Association was held in Ottawa from 3 to 9 November. Two Canadian Parliamentary Cooperation Seminars for senior parliamentary officials were held at the Parliament of Canada in early May and in late September/early October respectively.

Following an incident which occurred on 19 November during the unveiling of a portrait of former Prime Minister Brian Mulroney, the Procedure and House Affairs Committee turned its attention to an enquiry into security on Parliament Hill.

Government Bill C-10 (An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act) was passed by the House of Commons on 9 October. On 4 December the Senate sent a message informing the House that it had divided the bill into Bills C-10A (which passed in the Senate without amendment) and C-10B (still under consideration). Procedural arguments ensued regarding the Senate's right to divide a bill

passed by the House. A motion proposing that the House agree to waive its privileges in this specific case (not to be regarded as a precedent) was moved on 6 December but has not yet been decided.

Changes in Members' allocations, staff remunerations, House of Commons premises: decisions of the Board of Internal Economy in these matters

Effective 1 April 2002, within the 64-point travel system, the Board agreed to an increase of 'special' trips from 20 to 25. The Board also approved an increase, from two to six, in the number of 'special' points permitted for staff travel when accompanying a Member. The Board also approved an increase of 8.21 percent ($5,189) to the current maximum rate of remuneration for Members' staff, bringing the new maximum annual salary from $63,211 to $68,400.

On 8 May the Board approved one-time funding of $700,000 in fiscal year 2002-03 for the purchase of eight camera systems to replace those currently used to televise House of Commons proceedings; the Board also approved the installation of the camera systems in a prototype committee room, to allow for the testing of these systems and the adoption of a common technical standard for committee rooms and the Chamber.

Senate

On 4 June 2002 Bill S-34, 'An Act respecting Royal Assent to bills presented by the Houses of Parliament', became law. Canada had been the only Commonwealth country that still used on a regular basis the traditional ceremony whereby the Governor General or her deputy would exercise the royal prerogative of assent in Parliament assembled, with the ceremony taking place in the Senate Chamber. Modernizing the procedure for royal assent had long been a matter of discussion among Senators and Members of the House of Commons. Many had asked for an alternate procedure which would remove the frequent interruption of parliamentary business to give royal assent. There was also the wish to reduce the burden that the traditional ceremony placed on the Governor General and the Supreme Court Justices who act as her deputy. Finally, it was important to address the challenges posed by the renovation to the Centre Block in the coming years when the Houses of Parliament meet in different buildings.

Bill S-34 was a Government Senate Bill and was sponsored by the Leader of the Government in the Senate, the Honourable Sharon Carstairs. It

followed many of the same features of earlier private senators' legislation that had been debated in previous sessions, particularly those presented by the Leader of the Opposition, Senator John Lynch-Staunton.

The most significant features of Bill S-34 are as follows. Royal Assent can now be signified in two ways: in Parliament assembled, or by written declaration. The traditional ceremony of royal assent in Parliament assembled is to take place at least twice in each calendar year, and always in the case of the first appropriation bill of the session. Where royal assent is signified by written declaration, the act is deemed to be assented to on the day on which the two Houses of Parliament have been notified by their respective Speakers of the declaration. Bill S-34 provided that the signification of royal assent by written declaration may be witnessed by more than one member from each House of Parliament. The Royal Assent Act also allows for a public written process for royal assent which can be held outside of Ottawa, with attendance by interested parliamentarians, interested members of the public and the media.

British Columbia Legislative Assembly

Public written questions

As reported last year, the Legislative Assembly of British Columbia approved a motion on 2 August 2001 to allow elected officers of extra-parliamentary provincial or local public bodies to submit written questions to a cabinet minister, through the Office of the Speaker. Once a week, the Speaker draws, by lot, five questions relating to current provincial issues and public affairs. The questions are then printed as an addendum to the Orders of the Day and on the Legislative Assembly web site for two consecutive weeks. A cabinet minister may answer these questions orally or in writing.

On 27 February 2002 the Speaker clarified the guidelines regarding the role of legislators in the new process. His ruling established that during the first week the public written question is published, the Member representing the constituency where the question originated has 'first refusal' to put the question to the appropriate minister. During the second week any private Member may ask the same question, unless previously answered. The written responses of ministers are posted on the Assembly's web site and published in the Votes and Proceedings.

Citizens' Assembly on Electoral Reform

The Government has begun planning for a Citizens' Assembly on Electoral Reform, which will be established to examine and hold public consultations on alternative electoral systems for use in British Columbia, including preferential ballots, proportional representation, and the existing first-past-the-post system. A former Member of the Legislative Assembly, Gordon Gibson, is working to develop recommendations on a design for the mandate and structure of the Citizens' Assembly, including many of the administrative details such as budget, timeline, staffing and Membership.

Office of Public Education and Outreach

In August 2001 the Legislative Assembly of British Columbia created a new Office of Public Education and Outreach Office, reporting to the Office of the Clerk. The mandate of the Public Education and Outreach Office is to provide informative and educational tools to the public to promote a better understanding of the parliamentary system in British Columbia.

In September 2002 the Office released a new educational CD titled 'Discover Your Legislature'. This multimedia resource, designed for teachers, students and the general public, features a virtual reality tour of the Parliament Buildings, and extensive information about the history and role of the Legislative Assembly in the democratic governance of our province.

The Public Education and Outreach Office also oversees the production of informational brochures, visitor tours of the Parliament Buildings, and manages the B.C. Legislative Internship Program.

Manitoba Legislative Assembly

Restoring a Manitoba symbol

For the first time in 82 years the Manitoba Golden Boy came face to face with the Manitoba public, having been restored and then returned to his home atop the Legislative Building. On 8 October 2002 the Queen had a 20-hour stop in Manitoba and lit up the torch of the re-gilded Golden Boy and then had dinner with 300 Manitobans at the legislature.

The Golden Boy stands 5.25 meters tall (17.2 feet) from his toes to the tip of his torch; his estimated weight is 1,650 kilograms (3,637.7 pounds); and the top of his torch is 77 meters (255 feet) above ground.

He was sculpted by Georges Gardet of Paris and cast in 1918 at the Barbidienne Foundry in France. Although the foundry was partially destroyed by bombs during the First World War, the Golden Boy was undamaged.

The ship carrying the Golden Boy to North America was used as a troop ship, and he travelled back and forth across the Atlantic Ocean until the war ended. He finally landed in Halifax and was shipped by rail to Winnipeg where he was placed atop the Legislative Building on 21 November1919.

Originally cast in bronze, he was painted gold in the 1940s before being gilded with 24 carat gold in 1951. The light on his torch was first lit on 31 December 1966 to mark Canada's centennial.

Facing North, he sees the province's bright future as linked to Manitoba's bountiful resources, mining, fishing and hydroelectricity. The sheaf of wheat in his left arm represents the well-earned fruits of labour while the torch in his right hand represents a call to youth to join his eternal pursuit of a more prosperous future.

Québec National Assembly

Chair

On 12 March 2002 the National Assembly elected its Speaker by secret ballot, as this office had become vacant. Mrs Louise Harel thus became the first woman to hold this position.

Lobbying

On 13 June 2002 the National Assembly passed Bill 80, the Lobbying Transparency and Ethics Act.

The purpose of this bill is to foster transparency in the lobbying of public office holders and to ensure that lobbying activities are conducted properly. The bill provides that certain information concerning lobbyists and their activities will be entered and kept up to date in a public registry, notably information as to the subject-matter of lobbying activities. The bill also establishes the office of Lobbyists Commissioner, who is appointed on the proposal of the Premier and with the approval of two thirds of the Members of the National Assembly. He is responsible for monitoring and controlling the lobbying of public office holders and, more particularly, for drafting a code of conduct for lobbyists. Before its adoption, this code will be examined by a committee of the Assembly. The annual report on the Commissioner's activities will also be examined by the appropriate parliamentary committee, as will be the report from the Minister of Justice on the implementation of the code of conduct, which must be laid before the Assembly within five years of 13 June 2002.

Independent Members

As from the beginning of the 36th Legislature, only one Independent Member was present in the National Assembly. Following the by-elections held in spring 2002, the composition of the Assembly changed: the number of Independent Members quintupled, modifying the composition of the Assembly in a way that had not been seen in ten years. The Chair was therefore required to render several decisions based on precedents in similar situations. It should be noted that the situation of the Independent Members is unusual. Although these Members were elected as members of a political party, they are considered for parliamentary purposes to be Independent Members, since they do not meet the criteria enabling them to be officially recognized as a parliamentary group with the advantages stemming therefrom.

Two important rulings were given during the first sitting upon the resumption of parliamentary proceedings in autumn 2002. The first specified the role that these Members would be able to play during Oral Questions and Answers. On the basis of previous jurisprudence and statistics, the Chair granted them two main questions per five sittings instead of one question per three sittings. Two major principles guided the Chair in this ruling: first, that any Member may ask a question; and second, that the oral question period is a preferred means for the legislature to exercise control over the executive and that, consequently, it is reserved mainly for the opposition. The recognition of parliamentary groups is a principle that must be taken into account in conjunction with the first two.

The other ruling involved the allocation of business standing in the name of Members in Opposition. The rules of procedure explicitly state that the Chair must take into consideration the presence of Independent Members in determining the order in which this business will be taken. It was decided that, generally speaking, one item of business standing in the name of an Independent Member could be debated in the course of a session. However, as the Official Opposition must enjoy a preponderant role in the exercise of parliamentary control, the first motion of the parliamentary session was granted to a Member of the Official Opposition.

It should be noted that these rulings were given first in private, then read to the parliamentarians and tabled in the House.

DOMINICA

One noteworthy event in the Dominica Parliament in 2002 was the crossing of the floor by a Member on the side of the coalition Government to the Opposition side.

INDIA

Lok Sabha

Second Report of Committee on Ethics

On 20 November 2002 Shri V. M. Sudheeran, a member of the Committee on Ethics, presented to the House the Second Report of the Committee on 'Further course of action to be taken on the recommendations made by the Committee on Ethics in their First Report and on other ethics related matters'.

The Committee in their Report recommended *inter alia* that the Rules regarding the constitution of the Committee on Ethics, its functions and procedure to be followed by the Committee, be incorporated in the Rules of Procedure and Conduct of Business in Lok Sabha. The Committee also recommended that appropriate rules be incorporated in the Rules of Procedure laying down the procedure for making ethics complaints; and that a Code of Conduct for members (as appended to the Resolution which was adopted at the Conference of Presiding Officers, Chief Ministers etc. on 25.11.2002) be suitably incorporated in the Rules.

Report of ad-hoc Committee to inquire into an incident of assault on a member

During Eleventh Session, on 10 December 2002, Speaker, Lok Sabha constituted a Committee of 15 members to inquire into the incident of assault on a member on 9 December 2002 in New Delhi.

While constituting the Committee, Speaker desired that the Committee submit their Report during the Eleventh Session itself. On 12 December the Chairman read out the interim Report of the Committee in the House, recommending that in order to ensure a transparent and impartial inquiry into the matter, it would be in the fitness of things that the senior police officer concerned be placed under suspension till the inquiry by the Committee was completed. The Committee, however, emphasized that the above recommendation of the Committee should not be construed to mean that the police officer concerned had been found guilty by them.

In their final Report, presented to the House on 20 December, the Committee were of the opinion that the police did not use excessive force. The Committee recommended that "the order placing (the police officer concerned) under suspension issued by the Government in pursuance of the recommendations made by the Committee in their Preliminary Report be revoked."

The Committee also recommended that no adverse action be taken against the police officer concerned on account of his suspension on the recommendation of the Committee contained in their interim Report. The Committee also recommended that the organizers, police and Government should be careful during public demonstrations.

Amendments to the Constitution

With the enactment of the Eighty-fourth Amendment to the Constitution of India in February 2002, the current freeze on undertaking fresh delimitation of constituencies has been extended up to the year 2026. Provision has been made for readjustment and rationalisation of territorial constituencies in the States, without altering the number of seats allotted to each State in the House of the People (Lok Sabha) and Legislative Assemblies of the States, including the Scheduled Castes and the Scheduled Tribes constituencies, on the basis of the population ascertained at the census for the year 1991.

The Eighty-fifth Amendment to the Constitution, enacted in January 2002 provided consequential seniority to government servants belonging to Scheduled Castes and Scheduled Tribes in the case of promotion by virtue of the rule of reservation.

The Eighty-sixth Amendment to the Constitution, enacted in December 2002, provided that the State shall endeavour to provide for free and compulsory education to all children in the age group of six to fourteen years, thus making right to education a fundamental right. It also provided that the State shall endeavour to provide early childhood care and education to all children until they complete the age of six years. Besides, it provided that it shall be the obligation of the parents to provide opportunities for education to their children between the age of six and fourteen years.

Pensionary benefits

In May 2002 the Vice-President's Pension Act 1997 was amended to make provision for the payment of a family pension, at the rate of fifty per cent of the pension admissible to a retiring Vice-President, along with use of an unfurnished residence without payment of licence fee, for the surviving

spouse of a Vice-President who dies while holding office or after retirement for the remainder of her life.

In May 2002 the Salaries and Allowances of Officers of Parliament Act 1953 was amended to provide for a family pension of Rs. 6000/- per month, the facilities of unfurnished residential accommodation without payment of licence fee, and of medical attendance and treatment, for the spouse of a Speaker who dies in office for the remainder of her life. The minor children of such Speaker are also now entitled to free medical attendance and treatment.

An amendment to the Salary, Allowances and Pension of Members of Parliament Act 1954 was enacted in June 2002 to raise the minimum pension of former members of Parliament who had served as members of the Lok Sabha twice but in aggregate less than four years and those of the members of Provisional Parliament from Rs. 2500/- per month to Rs. 3000/- per month with effect from 14 September 2001.

In May 2002 the Salaries and Allowances of Officers of Parliament and Leaders of Opposition in Parliament (Amendment) Act 2002 was enacted, providing with effect from 17 September 2001 for Rs. 2000/- per month as sumptuary allowance to the Speaker of Lok Sabha and each Leader of the Opposition in Lok Sabha and Rajya Sabha, on a par with that of a Cabinet Minister. Similarly, the Deputy Chairman of Rajya Sabha and the Deputy Speaker of Lok Sabha will be entitled to a sumptuary allowance of Rs. 1000/- per month, on a par with that of a Minister of State. In December 2002 the Salaries and Allowances of Officers of Parliament Act 1953 and the Salaries and Allowances of Leaders of Opposition in Parliament Act 1977 were amended to increase with effect from 17 September 2001, providing that the travelling allowance for Officers of Parliament and Leaders of the Opposition in the two Houses and their family members (whether travelling together or separately) be increased from six return journeys to twelve during a year within India, subject to the overall entitlement of forty-eight single journeys each year.

Delimitation of Lok Sabha and Legislative Assembly constituencies

The Delimitation Act of June 2002, *inter alia*, sought to effect delimitation of Lok Sabha and State Legislative Assembly constituencies on the basis of the population as ascertained at the census of 1991, so as to correct the distortion in the sizes of electoral constituencies which are based on the population figures for the 1971 census. The Act provides for the setting up of the Delimitation Commission for carrying out the task of delimitation of the

constituencies within a period of two years. The Act also provides for re-fixing of the number of seats for the Scheduled Castes and the Scheduled Tribes on the basis of the 1991 census, without affecting the total number of seats based on the census of 1971.

Amendments to the Representation of the People Act

Following an amendment to the Representation of the People Act 1951 a candidate contesting an election for Parliament will have to disclose if he is accused of any offence punishable with imprisonment for two years or more in a pending case, in which charges have been framed. In addition, a candidate will also have to disclose if he has been convicted of any offence, for which he has served in prison for one year or more. The Act also requires a candidate elected to Parliament to declare his assets and liabilities before the Presiding Officer.

The Representation of the People Act 1951 was further amended to provide that a person convicted of an offence would be disqualified from contesting an election for a period of six years from the date of conviction where the punishment is only a fine and for the period of imprisonment and a further period of six years from the date of his release where the punishment is imprisonment.

The Freedom of Information Act 2002

Legislation has been enacted to provide freedom to every citizen to secure access to information under the control of public authorities, consistent with public interests, in order to promote openness, transparency and accountability in the administration.

Joint sitting of the Houses of Parliament

On 24 October 2001 the President of India promulgated the Prevention of Terrorism Ordinance 2001 (POTO) to combat terrorism. POTO was re-promulgated by the President on 30 December 2001. The Prevention of Terrorism Bill 2002 was subsequently introduced in the Lok Sabha on 8 March 2002. After it was passed by the Lok Sabha on 18 March, with 264 members supporting and 148 members opposing it, the Bill was taken up in the Rajya Sabha on 21 March, when the Motion to consider the Bill was defeated by 15 votes with 98 members voting in favour and 113 against it. Thus it was established that the two Houses were not in agreement on the Bill and the deadlock could only be resolved through a joint sitting of the members of both Houses of Parliament as per article 108(1) of the Constitution.

On 26 March, at the joint sitting so convened, the Home Minister, Shri L.K. Advani moved the Prevention of Terrorism Bill as passed by the Lok Sabha and rejected by the Rajya Sabha, to make provisions for the prevention of, and for dealing with, terrorist activities and matters connected therewith. The Deputy Speaker, Shri P.M. Sayeed, who was discharging the functions of the Speaker, presided over the sitting. At the end of the discussion, a division took place on the motion and the motion was adopted with 425 members voting in favour and 294 against it. The Bill was passed.

During the last fifty years of the Indian Parliament, this is only the third occasion when a joint sitting of the two Houses has been held to resolve a legislative deadlock, the earlier occasions being in May 1961 on the Dowry Prohibition Bill 1959, and in May 1978 on the Banking Service Commission (Repeal) Bill 1977.

Election to the Office of the President of India

The election to the Office of the President of India was held on 15 July 2002. On 18 July Dr. A.P.J. Abdul Kalam was declared elected as the President of India and was sworn in on 25 July 2002 in succession to Shri K.R. Narayanan.

Election to the Office of the Vice-President of India

The election to the Office of the Vice-President of India took place on 12 August 2002. Shri Bhairon Singh Shekhawat was declared elected as the Vice-President of India and was administered the oath of office by the President, Dr. A.P.J. Abdul Kalam on 19 August. He succeeds Shri Krishan Kant who passed away on 27 July 2002.

Election of new Speaker of Lok Sabha

On 3 March 2002 the Lok Sabha Speaker, Shri G.M.C. Balayogi, was killed in a helicopter crash at Kaikalur in the Krishna District of Andhra Pradesh. Following the sudden demise of Shri Balayogi, the duties of the Office of the Speaker were performed by the Deputy Speaker, Shri P.M. Sayeed from 3 March till the election of the new Speaker. On 10 May 2002 Shri Manohar Joshi was unanimously elected as the new Speaker.

Golden Jubilee of Indian Parliament

Members of the two Houses of Parliament met for the first time after the First General Elections in independent India on 13 May 1952. On the Golden Jubilee of the first sitting, the Lok Sabha Speaker, Shri Manohar

Joshi, made a reference in Parliament on 13 May 2002. To commemorate this day, a function was organised on 13 May 2002. A commemorative postage stamp, a First Day Cover and a commemorative Inland Letter Card were released on the occasion. The function was graced among others by the presence of the then Vice-President of India, Shri Krishan Kant; the Prime Minister, Shri Atal Bihari Vajpayee; the Speaker of Lok Sabha, Shri Manohar Joshi; the Minister of Parliamentary Affairs and Communications and Information Technology, Shri Pramod Mahajan; the Leader of the House in the Rajya Sabha, Shri Jaswant Singh; the Leaders of Opposition in the Rajya Sabha and Lok Sabha, Dr. Manmohan Singh and Smt. Sonia Gandhi, respectively; and the Deputy Speaker of Lok Sabha, Shri P.M. Sayeed.

A three-day International Parliamentary Conference was also organised from 22 to 24 January 2003 in the Central Hall of Parliament House to mark the Golden Jubilee of Parliament. The President of India, Dr. A.P.J. Abdul Kalam, inaugurated the Conference which was attended by 185 delegates from 77 countries, besides members of Parliament and Presiding Officers of State Legislatures in India and others. Four themes were discussed at the Conference: Combating Terrorism; Parliamentary Practices and Procedures: Need for Reforms to Secure Greater Executive Accountability; Parliament as a Vehicle of Social Change; and Parliament in the Era of Globalization and Liberalization.

Inauguration of the new Parliament Library Building

The new Parliament Library Building, Sansadiya Gyanpeeth, was inaugurated by the then President of India, Shri K.R. Narayanan, in the Parliament House Estate on 7 May 2002. The new Library is a modular, ideal, intelligent, utilitarian and centrally air conditioned building. It is fully computerized and has optical fibre-based Local Area Network (LAN) with high speed Wide Area Network (WAN) connectivity to provide linkage with other State Legislatures, foreign Parliaments and various international organisations.

Till May 2002 the Parliament Library functioned from the Parliament House. With time the Library service expanded into what is now familiarly known as LARRDIS (Library & Reference, Research, Documentation & Information Service). The accommodation available to the Parliament Library and its allied services in the Parliament building was too limited to cope with the volume of literature being acquired by it. Besides, there had been a growing demand for making available to the members of Parliament a more effective, efficient and modern Research, Reference and Information

Service. In order to satisfy this requirement the new Parliament Library Building (Sansadiya Gyanpeeth) was conceived. The foundation stone was laid by Shri Rajiv Gandhi, the then Hon. Prime Minister, on 15 August 1987 and the Bhoomi Poojan was performed by Shri Shivraj V. Patil, the then Hon. Speaker, on 17 April 1994.

This fully air-conditioned massive building was constructed by Central PWD. M/s Raj Rewal Associates were the Consulting Architects.

Externally the Library building is related to the Parliament House and uses similar materials of red and beige sandstone. The general height is restricted to the podium of the Parliament, below the circular colonnade. The roof of the Library building has a series of low profile bubble domes sitting on steel structures complementing the existing domes of masonry on the Rashtrapati Bhavan.

The main entrance of the library is directly linked to one of the gates of the Parliament. It leads to an atrium covered with a circular roof lightly placed above a stainless steel ring, allowing muted light.

The focal center of the complex is built with sun reflecting, state-of-the-art, structural glass and stainless steel. It is composed of four petals. These petals are tied together with delicate tension rods. The upper part of the glass dome has a symbol of circle representing the Ashok Chakra.

A reading room for Members of Parliament is located in the central core of the library complex and faces and internal courtyard. It is a two storey high space (in part) with an internal atrium, covered with a circular dome supported on four columns. The primary structure of white painted steel is raised above the roof level and admits translucent light through glass blocks creating a serene ambience within a hall of noble proportions.

The large hall of the main library and the audio-visual museum at the two ends of a cross axis have a similar configuration. They have a large span of 35 metres. This large volume is lit from the top with glass blocks inserted within the concrete bubbles. The primary steel structure is kept low and illuminated with natural light on the periphery.

The auditorium is equipped with the sate-of-the-art digital Dolby surround sound system for 35 mm film projection; a wireless simultaneous interpretation system for ground plus four language interpretation; a video projection system with high power xenon illumination system with an output of 10,000 ANSI lumens; and a stage light system with scanner-controlled FOH lights.

There are ten committee rooms/lecture halls out of which seven have been provided with state-of-the-art conferencing system and three (out of these

seven) with simultaneous interpretation system.

The other facilities housed in the building are:

- Library with stack area for housing three million volumes;
- Research and Reference Division;
- Computer Centre;
- Press and Public Relations Division;
- Media Centre;
- Press Briefing Room;
- Bureau of Parliamentary Studies and Training;
- Audio Visual Library;
- Parliamentary Museum and Archives;
- Auditorium with a capacity of 1,067 persons;
- Committee and Conference rooms;
- Banquet Hall;
- Parking for 212 cars.

The basic structure for the building is conceived as a Reinforced Cement Concrete framed structure with column spacings generally of 5 metres. The intermediate floors are of coffer unit construction while the roof is partly of coffer units and partly with steel-and-concrete domes.

The design and construction of the domes is the first of its kind in the country. Some of the novel features involved in the construction of the Domes are:

- Use of stainless steel of grade AISI 304 L in two of the 12 domes. The steel is finished to a satin finish. All other domes are in Carbon Steel finished with epoxy paint.
- All joints in the frame work were precast in foundries and connected to the tubes by a combination of HSFG bolts and welding under controlled conditions. Consequently the joints appear sleek even where 12 members meet at one joint.
- Geometric precision was achieved in the manufacture and assembling of the various element of the Dome, viz. the cast joints, the cured tubes and the precast concrete bubbles seated over the steel frame work.

Some E&M services provided are:

- Central air-conditioning of 45,000 sq. m. of the building, with 5X550 TR centrifugal chilling machines including winter heating and dehumidification.

- Automatic, intelligent fire alarm systems, duly integrated with AHUs, PA system and Fire Check Doors, for co-ordinated functioning in case of fire.
- Non-wet fire-fighting system with NAFS-III gas in computer center and micro filming store & CO2 for Switch Rooms.
- CCTV for surveillance, library operations and display of proceedings in Parliament.
- PA system in most parts of the building.
- Video projection system, Digital conferencing systems and Simultaneous Interpretation system in Committee Rooms.
- Car-control system for the parking area.

The building has a total area of 60,460 sq. m., and has been constructed at a cost of Rs.200 crores. The construction was completed over a period of seven years and nine months. The Parliament Library Building was inaugurated on 7 May 2002 by Shri K.R. Narayanan the Hon. President of India, in the presence of S/Shri Krishan Kant, Hon. Vice-President; Atal Behari Vajpayee, Hon. Prime Minister; P.M. Sayeed, Hon. Deputy Speaker, Lok Sabha (discharging the functions of Speaker); Smt. Sonia Gandhi, Leader of the Opposition; Pramod Mahajan, Hon. Minister of Parliamentary Affairs; Ananth Kumar, Hon. Minister of Urban Development & Poverty Alleviation.

Rajya Sabha

Question Hour

On 25 November 2002, during the Question Hour, the Chairman, Rajya Sabha (Council of States), observed that henceforth not more than two Members may be allowed to ask supplementaries on a Starred Question, apart from the Member(s) against whose name the question is listed. In this way the maximum number of questions could be covered for oral answer.

On 26 November 2002, immediately after the Question Hour was over, the Chairman observed that since a lot of time and effort is involved in the preparation of the answer to a question, a Member in whose name a Question is listed for oral answer shall remain present in the House during Question Hour, or, in case of his/her inability to do so, he/she must either give prior intimation to the Chairman in writing or seek his prior permission to authorise some other Member to ask the Question on his/her behalf.

Webcasting of parliamentary proceedings

The proceedings of Rajya Sabha are telecast live through a low power transmitter within a radius of 15 kms from Parliament House. In order to make live parliamentary proceedings available across the globe through internet, the audio of Rajya Sabha proceedings are being webcast live from July 2002 (196th Session) onwards. The live audio webcast can be heard at the following address: http://rajyasabha.nic.in/liveaudio/liveaudiospeech.htm.

Maharashtra Legislature

Introduction of Standing Committee system

A departmentally related Standing Committee system was introduced for the first time in the March-April session. Under this system 11 Standing Committees were constituted, covering all departments of the Government of Maharashtra. After the presentation of the annual budget both the Houses were adjourned and during this 'inter-regnum' the Standing Committees held their meetings and considered the demands for grants. When the Houses were reassembled the Committees submitted their reports.

Information technology

On 30 July 2002 the Legislature launched its web-site in the presence of prominent dignitaries. On the same day the computer training centre for Members of the Legislature was commenced. The web address is www.maharashtravidhanmandal.org.

To assist in the speedy and effective working of Members it was decided to allot a personal computer (either laptop or desktop) to each Member for the length of their tenure. The scheme received a good response from Members, and by December 2002 173 Members had collected laptops and 21 members opted for desktop machines.

LESOTHO

Lesotho's electoral system has changed from the first past the post model to the mixed member proportional model. Though the process was technically completed in the 2002 General Election the transformation began in the years preceding the election.

The composition of Parliament has changed dramatically in recent years in terms of party and gender representation. In the resurgence of democracy

in 1993 the Third Parliament was composed of one party, and this *status quo* was maintained in the Fourth Parliament. However, in the Fifth Parliament the situation changed. The Ruling Party won 79 of the 80 parliamentary seats, and the same Parliamentary term there was a split within the Ruling Party, resulting in the formation of an Official Opposition. Although in the current Sixth Parliament there is no Official Opposition, there are nonetheless nine opposition parties represented.

With regard to gender, there has been a dramatic improvement since 1993, when the Third Parliament had only two women Members. In the Sixth Parliament this number has risen to 12. Though this does not form the one third figure desired by the international community it is nonetheless a positive move in the right direction.

MALAYSIA PARLIAMENT

The Election (Amendment) Act 2002 was passed on 8 April 2002 in the House of Representatives and in the Senate on 22 April. There was a rise in the deposit payable by candidates from 5,000 ringgit to 20,000 ringgit.

The Members of Parliament Remuneration (Amendment) Act 2002 was passed on 24 June 2002 in the House of Representatives and in the Senate on 3 July. There was an increase in the remuneration of the members of parliament, Leader of the Opposition, President and Deputy President of the Senate and the Speaker and the Deputy Speaker of the House of Representatives and Members of the Administration.

NEW ZEALAND HOUSE OF REPRESENTATIVES

First member of Muslim faith community

The forty-seventh Parliament opened on Monday 26 August 2002, following return of the writ for the general election held on 27 July.

History was made with the election of a member of the Muslim faith (Dr Ashraf Choudhary, QSO) to the House of Representatives. As permitted by section 3(c) of the Oaths and Declarations Act 1957, for the first time in New Zealand a member was sworn in on the Koran. The relevant legislative provision allows an oath to be administered and taken in any manner that the person taking it declares to be binding on that person.

The possibility of a person taking an oath on the Koran in the courts, and adherents of other faiths taking an oath on their appropriate sacred book,

was specifically mentioned in the second reading speech of the Minister of Justice of the time, Hon Jack (later Sir John) Marshall, when shepherding the Oaths and Declarations Bill through the House over forty-five years ago.

Trespass and BORA

In the latest development in what started out in 1997 as a seemingly unexceptional case involving a prosecution for trespass on Parliament grounds, the Court of Appeal, on 21 August 2002, dismissed an application by the Crown for clarification of a question of law in relation to the application to the Speaker of the House of Representatives of the New Zealand Bill of Rights Act 1990 ('BORA') when exercising trespass powers under the Trespass Act 1980 (*Attorney-General and Speaker of the House of Representatives v. Beggs*).

In 1999 the High Court ruled that action by the Police, exercising trespass powers under the authority of the Speaker of the House as occupier of Parliament grounds, to break up a student protest in the grounds against proposed educational reforms, some two years earlier, had not been taken in full compliance with the requirements of the Trespass Act 1980. The High Court also ruled that those powers must be exercised in a manner that is consistent with the rights conferred by BORA and that is reasonable in the circumstances, in particular so that the rights and freedoms in BORA are limited only to the extent reasonably necessary. The prosecutions were ordered permanently stayed by the High Court and the effect of this decision was to bring to an end a Police prosecution of the students for offences under the Trespass Act.

The students have since been seeking damages from the Police and the Speaker in respect of the violation of their rights under BORA. It was in the course of those proceedings that the question of law was referred to the Court of Appeal.

However, the Court has dismissed that application, with its five-page judgment making the following points:

- the Crown was seeking to revisit the same issue that was resolved against it by the full High Court on the case stated to that Court at the Crown's request in an appeal by the Police against dismissal of the charges by a District Court in 1998;
- as section 27(3) of BORA (right to justice) makes plain, the Crown should be in exactly the same position as any other litigant with respect to appeals and seeking to revisit earlier decisions;

- the Crown could have appealed against the judgment of the High Court but it did not (notwithstanding, as the Court acknowledged, that the Speaker was not party to the earlier proceedings, which were also of a criminal, not civil, kind);
- the question raised important substantive issues of a constitutional kind concerning Parliament grounds that ran beyond the arguments counsel had prepared for the hearing; and
- the Court was not comfortable with the prospect of the respondents being drawn into such a large set of issues, given the result of the earlier proceedings.

This is not the end of the saga, as the compensation issue has yet to be settled. The Court of Appeal left open the possibility that the issues raised by the question could appropriately go back to the Court in the context of such further proceedings.

NIGERIA

Borno State House of Assembly

There was a change in leadership of the House. The former Speaker Hon. Bulama Fugu Ibrahim was replaced by his Deputy Hon. Musa Inuwa Kubo as the Speaker on 14 August 2002. Hon. Ibrahim Lawan replaced Hon. Musa Inuwa Kubo as the new Deputy Speaker.

SOUTH AFRICA

National Assembly

New approach to putting questions for decision

The Constitution (Act 108 of 1996) and other laws require the National Assembly to take decisions on certain matters other than bills. An example would be the ratification of international agreements and protocols. The practice has been for such matters to come before the House by way of a committee report containing relevant recommendations. The House then limited itself to adopting the committee report, and the House decision was recorded in the Minutes as adoption of the committee report.

However, in taking decisions on matters in terms of legal requirements, it is important that the House should have the specific matter before it, and not just the adoption of a committee report. Under the direction of the Speaker,

a new approach to putting such questions for decision by the House has accordingly been agreed. In terms of this new approach, Order Paper entries now reflect the actual decision required and not just 'consideration of committee report'. The actual question is then put to the House by the Presiding Officer and the decision is minuted accordingly. In the event that the committee in its report does not limit itself to recommending approval of a particular decision but makes additional recommendations flowing from its consideration of the particular matter, the committee report will be put on the Order Paper as a separate item for consideration/adoption by the House. This new approach was communicated to all parties in writing, and was put in practice from the beginning of the third term (August 2002).

International agreements before National Assembly published on Order Paper

A new monitoring system for international agreements/conventions was agreed to in the Programme Committee meeting held on 31 October 2002. In terms of the decision, all international agreements/conventions tabled in Parliament for ratification in terms of section 231(2) of the Constitution would now appear as an appendix on the Order Paper and remain there until adopted by both Houses.

Introduction of members' statements

National Assembly Rule 105 provides for members to make statements in the House on any matter and for Ministers to respond to such statements. However, this Rule, which was adopted in March 1999, had not been operationalised. Instead, the practice had developed for members to make use of the daily opportunity provided by Notices of Motion to air their views on topical issues, formulating those views as a draft resolution. They were subsequently printed on the Order Paper (and in Hansard), but there was no real expectation that they would be scheduled for debate and decision. In order to mange this process, time for notices of motion had been limited to 15 minutes daily and members were given an opportunity in an agreed order of rotation by party.

At a meeting of the National Assembly Rules Committee on 5 February 2002 it was agreed in principle to activate the Rule on members' statements and to use notices of motion only for their specific purpose of enabling members to initiate business for consideration or decision by the House where that was the express intention. The implications for House proceedings of operationalising members' statements were reported on at the Rules

Committee meeting of 14 August. The Committee decided that the Chief Whips' Forum, on which all parties are represented, should agree the wording of an appropriately amended Rule for subsequent adoption by the House and should produce guidelines and criteria to govern members' statements and notices of motion. The Programme Committee would then decide on the date on which members' statements would be introduced.

The Chief Whips' Forum appointed a Task Team to consider the matter in detail and it reported to the Programme Committee on 14 November. The Chief Whips' Forum in its report presented guidelines for members' statements and for notices of motion, and proposed that members' statements be introduced for a trial period commencing with the first term of 2003.

The process would be monitored by a small committee of the Chief Whips' Forum and, following a final review at the end of the first term, the Rule would be appropriately adjusted and put to the House for adoption. These proposals were approved by the Programme Committee and the guidelines were to be published in the daily parliamentary paper 'Announcements, Tablings and Committee Reports' (effectively an appendix to the Minutes of Proceedings) for members' information.

The main features of the system as it is to be introduced, are:

- Statements will be regularly taken on Tuesdays and Thursdays, and on Fridays when the House sits on a Friday.
- 14 members' statements will be accommodated on each scheduled day, members to be limited to 1½ minutes per statement.
- Ministers will be permitted to respond to statements directed to them or made in respect of their portfolios, a response being limited to 2 minutes, with a total of 5 ministerial responses.
- Statements will be slotted in at the beginning of the day's business after motions without notice. The process on those days will take approximately 30 minutes.

Implementation of Rome Statute of the International Criminal Court Bill

On 17 July 1998 the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, at which South Africa was represented, adopted the Rome Statute on the International Criminal Court ('the Statute'). This was an important step towards the establishment of a permanent international criminal justice system which will complement national laws of States in the prosecution of individuals for crimes of international concern, namely genocide, crimes

against humanity and war crimes. South Africa has already signed the Statute and ratified it on 10 November 2000.

The Implementation of Rome Statute of the International Criminal Court Bill, passed by the National Assembly with National Council of Provinces amendments on 26 June, provides that any person who commits one of the crimes referred to above in the Republic of South Africa is liable on conviction thereof to a fine or imprisonment, including imprisonment for life. A person who commits such a crime outside the Republic is deemed to have committed that crime inside the Republic if he or she is a South African citizen or is ordinarily resident in the Republic, if he or she is in the Republic after the commission of the crime or if the crime has been committed against a South African citizen or resident.

Article 103 of the Statute envisages that States should indicate their willingness to accept sentenced prisoners to serve their terms of imprisonment in their prisons. States which are willing to accept sentenced prisoners will be placed on a list by the International Criminal Court. In order to give effect to this arrangement in the Statute, clauses 31 and 32 of the Bill provide *inter alia* that the Minister for Correctional Services must, in consultation with the Cabinet and with the approval of Parliament, decide whether South Africa should be placed on the list of States willing to accept sentenced prisoners and determine the conditions pertaining to such acceptance.

Clause 27(1) of the Implementation of the Rome Statute of the International Criminal Court Bill makes official capacity irrelevant to criminal responsibility or reduction of sentence in relation to a crime of international concern. Official capacity refers to persons serving as Head of State or Government, a member of Parliament or an elected representative or a government official. Under no circumstances shall such a person be exempt from criminal responsibility under this Statute. Further, Clause 27(2) clearly states that "immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person".

It follows therefore that members of the South African Parliament cannot invoke our national (or international) laws with regard to immunity in cases involving criminal liability in relation to crimes of international concern. They are now subject to the rules, procedures and provisions of the International Criminal Court, that take precedence in such matters.

ZAMBIA NATIONAL ASSEMBLY

New Clerk

On 30 October 2002 the House ratified the appointment of Mrs Doris Katai Katebe Mwinga as Clerk of the National Assembly. In accordance with the practice of the House, the new Clerk of the National Assembly was required to take and subscribe the Oath of Office before the House, before taking her place at the Table of the House.

New composition of Third National Assembly

The new composition of the Third National Assembly was as follows: Movement for Multi-Party Democracy (MMD) 69 seats; United Party for National Development (UPND) 49; United National Independence Party (UNIP) 13; Forum for Democracy and Development (FDD) 12; Heritage Party (HP) 4; Zambia Republican Party (ZRP) 1; Patriotic Front (PF) 1; Independents (IND) 1 (Total) 150.

Mr Speaker announced to the House on Tuesday 26 February 2002 that the Movement for Multi-Party Democracy (MMD) had appointed Hon V J Mwaanga, MP, Minister of Information and Broadcasting Services, as Chief Whip of the House and Mr R K Chulumanda, MP, Member of Parliament for Luanshya, as Deputy Chief Whip. Mr Speaker further informed the House that any parliamentary groupings with ten or more Members in the House could also advise him on their appointees. He informed the House on the same day that he had received communication to the effect that the following Members had been appointed as Whips of their respective parties in the House: Mr K M Shepande, MP, for the United Party for National Development (UPND); Mr D K A Patel, MP for the Forum for Democracy and Development (FDD). He further informed the House that the Movement for Multi-Party Democracy (MMD) had appointed the newly Minister of Information and Broadcasting Services Hon N L Zimba, MP as the Chief Whip of the House. On 19 March Mr Speaker informed the House that United National Independence Party (UNIP) had appointed Mr Lucas L Phiri, MP as their Party Whip in the House.

Elections for the Speaker of the National assembly and the Deputy Speaker, on Friday 25 January 2002, were put on hold after Opposition members of Parliament refused to vote by secret ballot. Clerk of the national assembly N M Chibesakunda, who presided over the heated closed session, adjourned business after the Opposition MPs insisted on the traditional vote by acclamation or by division.

The elections were subsequently held on Tuesday 5 February, and the incumbent Speaker Hon. Amusaa Mwanamwambwa was re-elected as speaker of the National Assembly using Parliament's characteristic open-vote system.

Ruling by Mr Speaker

Mr Speaker informed the House that he had received a written request from Mr A K Mazoka, President of the United party for National Development (UPND), to recognise UPND as the official Opposition Political Party in the National Assembly of Zambia. Mr Speaker ruled that after having looked at the provisions of Article 84 (4) of the Constitution and considered the rules of parliamentary practice in the Zambian Parliament, no party could be recognized as the opposition as none of them satisfied the quorum of the House which is at least 53 members.

ANNUAL COMPARATIVE STUDY: THE TIMING OF BUSINESS AND CARRY-OVER

The questionnaire for 2002 asked:

- *Does your House have a bureau or a system of rules which regulates the timing of all or most of the House's business; if so, how does the system work?*
- *Does your House still have annual sessions; and do your rules allow the carrying over of bills from one session to the next?*

AUSTRALIA

Senate

Question 1: Senate standing order 57 sets out the routine of business for the Senate—that is, the times when the Senate will sit, what business it will consider and in what order it will be considered. The routine of business may vary according to whether the Senate sits before or after 2.00 pm, the usual time at which question time occurs.

There are three categories of business:

1) Business of the Senate is defined in standing order 58. Business of the Senate items take precedence over Government Business and General Business items.
2) Government business is any business initiated by ministers. Standing order 65 enables ministers to arrange the order of government business from day to day as they see wish. Ministers may also move rearrangement motions on a sitting day so that Government business is considered in the order required by the government in the Senate.

   Standing order 57 gives precedence to general business over government business for 2.5 hours on Thursday afternoons. Towards the end of a parliamentary session the government often moves a motion so that general business does not proceed on Thursday afternoons. Agreement by the Senate to this motion enables the government to gain additional time to pursue its program in the chamber.
3) General business is all other business initiated by senators who are not ministers or parliamentary secretaries and which does not fall into any

other category. As mentioned above, general business has priority on Thursday afternoons. The consideration of government documents also occurs during the time set aside for general business.

A fourth category of business relates to matters of privilege. This category specifically applies to proposals to refer matters to the Senate Committee of Privileges. If the President determines that a matter referred to him should have precedence and becomes a matter of privilege, that matter has priority over all other business until it is resolved.

An illustration of the ordinary routine of business as it occurs in the Senate is given in the table on page 138.

Question 2: Section 6 of the Australian Constitution provides:

> "There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session."

The Australian Parliament complies with the intent of section 6 of the Constitution by sitting each year for two or three periods of several months duration. In 2003 the Parliament is scheduled to meet for three sitting periods: Autumn (4 February to 27 March); Winter (13 May to 26 June); and Spring (11 August to 4 December). However, it has not been the practice in recent decades to divide a parliamentary term into annual sessions by the annual use of prorogation, and consequently a session will normally last for the duration of the term of the House of Representatives. This term usually continues for three years after the first date of the first sitting of the Houses, unless it is ended earlier by the dissolution of the House of Representatives.

Prorogation has the effect of terminating all business before both chambers. Senate standing order 136 allows lapsed bills to be revived in the following session, subject to certain limitations. The overriding limitation is that the Senate standing order allows restoration of bills only "if a periodical election for the Senate or general election for either House has not taken place between the 2 sessions". However, a successful motion to suspend this particular standing order does enable bills to be revived after elections, provided that both Houses as then constituted agree.

After a prorogation a bill which:

- has been referred to a committee empowered to meet after a prorogation—the committee may report on the bill, but the bill has to be restored by the Senate before it can proceed;

Routine of business in the Senate as set out in standing order 57 and related orders

Monday		Tuesday		Wednesday		Thursday	
12.30 pm	Prayers	**2 pm**	Prayers	**9.30 am**	Prayers	**9.30 am**	Prayers
	Government business only		Government documents (*Presented pursuant to order*)		Government documents (*Presented pursuant to order*)		Petitions
2 pm	Questions		Questions		Government business only		Notices of motion
	Motions to take note of answers (*Time limit: 30 mins*)		Motions to take note of answers (*Time limit: 30 mins*)	12.45 pm	Discussion of matters of public interest (*SO 57(2)*)		Placing of business
	Petitions		Petitions	2 pm	Questions		Discovery of formal business
	Notices of motion		Notices of motion		Motions to take note of answers (*Time limit: 30 mins*)		Tabling and consideration of committee reports (*SO 62(4)—Time limit: 1 hr*)
	Placing of business		Placing of business		Petitions		Committee memberships
	Discovery of formal business		Discovery of formal business		Notices of motion		Messages from House of Representatives
	MPI or urgency motion (*Time limit: 1 hr, or if no motions to take note, 90 mins*)		MPI or urgency motion (*SO 75—Time limit: 1 hr, or if no motions to take note, 90 mins*)		Placing of business		Order of business
	Ministerial statements		Ministerial statements		Discovery of formal business	12.45 pm	If agreed to, 'non-controversial' legislation
	Tabling of documents		Tabling of documents		MPI or urgency motion (*SO 75—Time limit: 1 hr, or if no motions to take note, 90 mins*)	2 pm	Questions
	Committee memberships		Committee memberships		Tabling and consideration of committee reports (*SO 62(4)—Time limit: 1 hr*)		Motions to take note of answers (*Time limit: 30 mins*)
	Messages from House of Representatives		Messages from House of Representatives		Ministerial statements		MPI or urgency motion (*Time limit: 1 hr, or if no motions to take note, 90 mins*)
	Order of business		Order of business		Tabling of documents		Ministerial statements
6.30 to 7.30 pm	Sitting suspended—(DINNER BREAK)	6.50 pm	Consideration of government documents tabled earlier in the day (*SO 61—Time limit: 30 mins*)		Committee memberships		Government responses to parliamentary committee reports
7.30 pm	Order of business continued	7.20 pm	Adjournment proposed (*No time limit*)		Messages from House of Representatives		Tabling of documents
9.50 pm	Adjournment proposed (*Time limit: 40 mins*)				Order of business	Not later than 4.30 pm	**General business** (*Notices of motion and orders of the day*)
				6.50 pm	Consideration of government documents tabled earlier in the day (*SO 61—Time limit: 30 mins*)	Not later than 6 pm	**General business, cont.** (*SO 61(3)—Consideration of government documents. Time limit: 1 hr*)
				7.20 pm	Adjournment proposed (*Time limit: 40 mins*)	Not later than 7 pm	Consideration of committee reports and government responses and Auditor-General's reports (*SO 62—Time limit: 1 hr*)
						8 pm	Adjournment proposed (*Time limit: 40 mins*)

- originated in the Senate and was still in the Senate or a Senate committee—may be restored and consideration resumed at the stage it had reached when Parliament was prorogued; if the bill had been sent to the House of Representatives, the Senate may resolve to send a message to the House asking the House to resume consideration of the bill;
- originated in the House of Representatives—may be restored if the Senate agrees to a request from the House, by message, that the Senate resume consideration of the bill.

If a motion to restore a bill is not agreed to by the Senate, the bill may still be introduced afresh.

ACT Legislative Assembly

Question 1: Standing Order 69 details the maximum period for which a Member may speak on any subject and in some instances, such as Matters of Public Importance (1 hour) adjournment debate (30 minutes) and the suspension of standing orders (15 minutes).

A countdown digital time-clock, operated by the Clerks, is used with a warning given at two minutes remaining. The basic rules are that on Bills 20 minutes first and second speakers, 15 minutes others; detail stage member in charge unspecified, other speakers 10 minutes; and most other debates 15 minutes first and second speakers 15 minutes, other speakers 10 minutes.

In relation to the ordering of the business of the Assembly, Standing Order 74 prescribes the routine of the ordinary business of the Assembly for each sitting day. Standing Order 77 provides some detail on the precedence of business in particular circumstances. The order of consideration of Private members' business and Assembly business is determined by the Standing Committee on Administration and Procedure (established under SO 16). The membership of the Committee, by convention, reflects the proportional representation of the membership of the Assembly.

Question 2: The Legislative Assembly for the Australian Capital Territory is always 'in session' except for the period from the day of an election until the first sitting day of the new Assembly. In fact, the Assembly has never been dissolved and there is no provision for it to be prorogued. There is no facility for the carry forward of any business from one Assembly to the next.

The one exception is that if, under the Legislation Act 2001, a notice of motion to disallow or amend an subordinate law or disallowable instrument is given in the Assembly with 6 sitting days after the instrument is presented

to the Assembly, and the motion is not disposed of within 6 sitting days after the notice is given and the Assembly is dissolved or expires, the subordinate law or disallowable instrument is taken to have been presented to the Assembly of the first sitting day of the Assembly after the next general election is held.

NSW Legislative Assembly

Question 1: Standing Order 110, as amended by Sessional Order, provides for the routine of business before the House. Essentially, it outlines the times and order that the House deals with its business. It provides:

"That, during the current session, unless otherwise ordered, Standing Order 110 shall read as follows:

Tuesdays

1 At 2.15 p.m. (Speaker takes Chair)
2 Ministerial Statements
3 Notices of Motions
4 Papers (if the first sitting day of each week)
5 Petitions
6 Placing or Disposal of Business
7 Formal Business
8 Committee Reports – tabling
9 Call for Notices of Urgent Motions
10 Announcement of Matters of Public Importance
11 Questions
12 Ministerial Statements
13 Motions for Urgent Consideration
14 Matters of Public Importance
15 Business with Precedence
16 Government Business

Other Government Business Days

1 At 10.00 a.m. (Speaker takes Chair)
2 Government Business
3 At 2.15 p.m. (Speaker resumes Chair)
4 Ministerial Statements
5 Notices of Motions
6 Papers (If the first sitting day of each week)
7 Petitions

8 Placing or Disposal of Business (including the re-ordering of General Business Orders of the Day (for Bills) and General Business Notices of Motions)
9 Formal Business
10 Committee Reports – tabling
11 Call for Notices of Urgent Motions
12 Announcement of Matters of Public Importance
13 Questions
14 Ministerial Statements
15 Motions for Urgent Consideration
16 Matters of Public Importance
17 Business with Precedence
18 Government Business

General Business Days

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

16 Ministerial Statements
17 Motions for Urgent Consideration
18 Matters of Public Importance
19 Business with Precedence
20 Government Business"

In 2002 a new sessional order was adopted by the House that provided for Friday sittings. It stated:

"That during the current session, unless otherwise ordered, on any Friday upon which the House sits, whether as a continuation of the sitting of the previous day or as a separate sitting day:

1 Government Business shall have precedence of all other business, including the Routine of Business;
2 No quorums shall be called and any divisions called shall be deferred, set down as Orders of the Day for the next sitting day and determined after Question without Notice; and
3 Private Members Statements shall be called at the conclusion of Government Business, after which the House shall adjourn without motion until the next sitting day."

The Routine of Business can be changed by suspending Standing and Sessional Orders. For instance, it may suit the House to give precedence to a particular debate over other proceedings in the routine or to delay an event in the routine such as private members' statements. For example, the House has suspended standing and sessional orders to permit the normal routine of business to be interrupted to allow strangers to address the House (see for example, Legislative Assembly Votes & Proceedings 26/10/1999 p. 160 and 6/6/2002, p. 272).

Business before the House has also been arranged to accommodate Members. For instance, the Standing and Sessional Orders have been suspended to arrange the routine of business on a particular day in order for Members to attend a State Funeral (see for example, Legislative Assembly Votes & Proceedings 27/2/2002, p. 47).

Question 2: A session of Parliament begins when the Governor issues a proclamation summoning Parliament and ends when the Governor issues a proclamation proroguing the Parliament or when the Assembly is dissolved as provided for under section 10 of the Constitution Act 1902 (NSW).

It is mandatory for a session to be held once at least in every year so that a

period of 12 months does not intervene between sittings. (See section 11 of the Constitution Act 1902). The Government of the day essentially determines the length of a session of Parliament and there is no definitive timeframe for determining when a session should end as recent sessions of Parliament have been both short (less than 12 months) and long (2 years or more). The following tables list the sessions from the 51st and 52nd Parliament.

51st Parliament

Session 1	2 May 1995 – 27 January 1996
Session 2	16 April 1996 – 30 July 1997
Session 3	16 September 1997 – 3 February 1999

52nd Parliament

Session 1	11 May 1999 – 11 August 1999
Session 2	7 September 1999 – 20 February 2002
Session 3	26 February 2002 – 31 January 2003

Whilst there is no definitive timeframe set down for sessions of Parliament there are usually two distinct sitting periods during the course of the year. The Autumn or Budget sittings are usually held between April and June and the Spring sittings from September to December.

Standing Order 259 of the Legislative Assembly provides that a bill which has lapsed because of prorogation before it has passed can be restored to the Business Paper and proceeded with from the point of interruption as if its passage had not been so interrupted. If a motion for restoration is not agreed to by the House in which the bill originated, the bill may be re-introduced as a new bill.

Under the Standing Orders bills can only be restored to the Business Paper by motion on notice moved by the Member in charge of the bill. An Assembly bill in the possession of the Assembly at prorogation, including consideration of Council amendments, may be proceeded with by the Member in charge moving a motion on notice restoring it to the Business Paper after receipt of a message from the Council requesting the same (see for example, Legislative Assembly Votes & Proceedings 13/3/2002, pp. 69 and 72 and 14/3/2002, p. 81). If the motion for restoration is not agreed to, a message is sent to the Council accordingly.

In respect of a Council bill, the Standing Orders prior to those approved by the Governor on 12 December 1994 made provision for a motion for

restoration to be moved without notice immediately upon the reporting of the Council's message. The current Standing Orders require a notice of motion to be given, ostensibly to enable the House to decide when the matter will go forward and who will have carriage of the bill if this is in doubt. If an Assembly bill is in the possession of the Council, a message may be sent to the Council requesting that the bill be restored to the Council's Business Paper.

In regard to actual practice in the House, the day after the third session of the 52nd Parliament was opened on 26 February 2002, a motion was agreed to that allowed Members, or the Leader of the House or Shadow Leader of the House on their behalf, to submit to the Clerk before the close of business on 8 March 2002, written notification of any lapsed General Business Notice of Motion or Order of the Day standing in their name that they wished to restore to the Business paper.

The motion passed by the House specified that any notices received on or after 27 February 2002 would take precedence over the restored business. Furthermore, as there was little chance that the restored motions would be debated in the normal course of events, the procedure also provided for the restored motions to be listed in a supplement to the Business Paper which was published on the intranet. A separate arrangement was made for the restoration of General Business Notices and Orders for Bills which are listed separately on the Business Paper and dealt with separately to general notices.

NSW Legislative Council

Question 1: There is no time limit for a Member speaking or for the overall debate during consideration of Government Business.

Each session the House adopts sessional orders which regulate the timing of other business in the House as follows:

- Question time: commences at 4.00 pm on Monday and Tuesday, and at 12.00 noon on Wednesday, Thursday and Friday. Normally one hour is allowed for Question Time.
- General Business: under Sessional Order Private Member's Business has precedence of Government Business until 5.00 pm on Thursdays each week.
- Private Members' motions: Time limit of three hours; mover 30 minutes; other speakers 20 minutes; mover in reply 10 minutes.
- Private Members' Bills: No overall time limit other than a one hour time

limit on the motion for leave to bring in a Bill. For both the second and third readings, the mover has 30 minutes, other speakers including the mover in reply 20 minutes.

- Matter of Public Interest: Time limit of 90 minutes. Member proposing the matter, the Minister first speaking and the Leader of the Opposition or nominee have 15 minutes. Other speakers and the mover in reply have 10 minutes.
- Motion for disallowance of a statutory rule: Time limit of 90 minutes. The Member moving and the Minister first speaking have 15 minutes; other members and the mover in reply have 10 minutes.
- Matter of urgent public importance under Standing Order 13: no time limit for debate. The mover and the Minister first speaking have 30 minutes and other speakers and the mover in reply have 15 minutes.
- Ministerial Statement: A member nominated by the Leader of the Opposition may speak to a Ministerial Statement not exceeding the time taken by the Minister in making the statement.
- Committee reports: Debate on committee reports has precedence after question time on Wednesday for one hour. Each speaker limited to 20 minutes.
- Adjournment: The question to adjourn the house is to be put no later than 30 minutes after the motion for adjournment. Each speaker limited to 5 minutes.
- Committee of the Whole: Each speaker may speak more than once and without a time limit.

The Legislative Council recently installed an electronic timing system which can be operated from any of the three laptops used by the Clerks at the table.

Question 2: The Legislative Council does not have annual sessions. Clause 10 of the Constitution Act 1902 states that the Governor may fix the time and place for holding every Session of the Legislative Council and Assembly as may be judged advisable and may also prorogue the Legislative Council and Assembly by proclamation or otherwise whenever deemed expedient.

Clause 11 provides that one session of Parliament is to be held each year so that a period of twelve months shall not intervene between the last sitting of the Legislative Council and Assembly in one Session and the first sitting of the Legislative Council and Assembly in the next Session. In practice, sessions can vary markedly in length.

Prorogation has the effect of immediately terminating the business of the

House, at least with respect to Orders and Notices on the Business Paper. This occurrence and its consequences for bills in the Legislative Council is recognised in Standing Orders 200 and 201.

The Standing Orders explicitly provide for the restoration of a Bill in a subsequent session but do not provide for the restoration of a bill in a subsequent Parliament.

In the case of Council Bills which were still in the Council at the close of the session (but not the close of the Parliament) notice of motion is given under Standing Order 200 to restore the Bill to the stage it had reached at prorogation. Where a Council Bill has been sent to and interrupted by the close of the session in the Assembly, a notice of motion for a Message to the Assembly forwarding the Bill again for concurrence is all that is required.

In recent times the beginning of each new session has been accompanied by a number of notices of motion under Standing Order 200. These are mainly with respect to Private Members' business interrupted by the close of the session, some of which have been restored in consecutive sessions.

Standing Order 201 allows the Council, upon receipt of a Message from the Assembly relating to interrupted proceedings on an Assembly Bill, to determine that the stage which it had reached previously be an Order of the Day for a future day.

Northern Territory Legislative Assembly

The timing of business of the Northern Territory Legislative Assembly is set out in the Standing Order 90 as amended by a resolution of the Assembly dated 16 October 2001:

"*Ninth Assembly Sessional Orders*
Routine of Business
That, unless otherwise ordered, and notwithstanding anything contained in the Standing Orders, the Assembly shall proceed each day with its ordinary business in the following routine:–

1 Prayers
2 Petitions
3 Ministerial Reports
4 Government Business – Notices and Orders of the Day
5 At 2 p.m. Notices
6 Questions
7 Government Business – Notices and Orders of the Day

8 Papers
9 Ministerial Statements
10 Discussion pursuant to standing order 94 (Matter of Public Importance)
11 Adjournment."

During the sittings of the Parliament the Assembly meets from Tuesday to Thursday commencing at 10.00 am. There is no specified time for the adjournment of the Assembly.

Question 2: The Northern Territory Parliament does not have Annual Sessions. In respect of Bills which lapse by reason of prorogation, Standing Order 203 provides as follows:

"*203. RESTORATION OF LAPSED BILLS*
(1) Any bill which lapses by reason of a prorogation may be proceeded with in the next ensuing session, at the stage it had reached in the preceding session, if a general election has not taken place between such 2 sessions, by resolution of the Assembly restoring it to the Notice Paper.
(2) Any bill so restored to the Notice Paper shall be proceeded with in the Assembly as if its passage had not been interrupted by prorogation and, if passed to be a proposed law, shall be presented to the Administrator for his assent, in the normal manner.
(3) Should a motion for restoration to the Notice Paper be not agreed to by the Assembly, the bill may be re-introduced and proceeded with in the ordinary manner."

Queensland Legislative Assembly

Question 1: A system which regulates the times and order of most of the Assembly's business has been in place since 1996. The system is regulated by sessional orders and, as an example, the program for a Wednesday is as follows:

9.30am-10.30am—Prayers; Messages from the Governor; Matters of Privilege; Speakers Statements; Motions of Condolence; Petitions; Notification and tabling of papers by the Clerk; Ministerial Papers; Ministerial Notices of Motion; Government Business Notices of Motion; Ministerial Statements; any other Government Business; Personal Explanations; Reports; Notice of Motion for debate from 6.00pm to

7.00pm on Wednesday; Introduction of Private Members' Bills; Private Members' Statements, during which Members may speak on any subject for 2 minutes.
10.30am–11.30am—Question Time
11.30am–1.00pm—Government Business
1.00pm–2.30pm—Sitting suspended for lunch
2.30pm–6.00pm—Government Business
6.00pm–7.00pm—Debate of Private Members' Motion
7.00pm–7.30pm—Adjournment Debate

Question 2: Since 1992 it has been the practice of Queensland Premiers to have only one session during each Parliament. The only exception was in the 48th Parliament (September 1995 to May 1998) in which there were two sessions owing to a change of Government in February 1996.

There is a Standing Order which permits bills to be carried over from one session to the next.

South Australia House of Assembly

Question 1: The House of Assembly Standing Orders provide for the conduct of certain categories of business at particular times in a sitting day and/or sitting week. Routine Business; the tabling of papers, written answers to questions, committee reports, the giving of notices of motion, Ministerial statements and questions without notice, is scheduled for 2.00 pm every sitting day (questions without notice is for one hour). Grievance debate for half an hour follows on every sitting day. Private Members Business is set down for every Wednesday for two hours following the Grievance debate and from 10.30 am to 1.00 pm on Thursdays of every sitting week. There are time limits on all debates except for the mover of the second reading of a Government Bill and the lead speaker in reply for the Opposition.

All times are monitored by a count-down clock displayed at both ends of the Chamber.

Question 2: Currently the South Australian Parliament has annual sessions. A Bill may be carried over from one session to the next (restored to the Notice Paper) provided an election has not intervened by virtue of s57 of the Constitution Act. If it has passed its second reading in either House it can be restored to the stage reached in the previous session as if prorogation had not intervened.

South Australia Legislative Council

Question 1: In general, the Legislative Council of South Australia does not have specific time limits in respect of the conduct of business. However, Standing Orders provide for Private Members' Business to take precedence over Government Business on Wednesdays, but on all other sitting days Government Business takes precedence.

The only other specified time is in regard to Statements on Matters of Interest, when up to seven Members may speak for no longer than five minutes on Wednesdays immediately after Question Time, the total time allowed being 35 minutes.

Question 2: Section 7 of the Constitution Act 1934 (SA) requires that "There shall be a Session of Parliament once at least in every year; so that a period of 12 calendar months shall not intervene between the last sitting of the Parliament in one Session and the first sitting of the Parliament in the next Session."

Section 57 of the Constitution Act 1934 (SA) provides: "When any Bill has passed its second reading in either House of Parliament, but has not been finally disposed of at the close of the Session, the Bill shall not necessarily lapse by Prorogation, but may, in the next Session of the same Parliament, be restored to the stage reached in the previous Session, and thereinafter proceeded with as if no Prorogation had intervened."

Tasmania Legislative Council

Question 1: The Legislative Council does not have a bureau or a system of rules regulating the timing of the Houses' business.

Question 2: Until the present Labor Government was elected in 1998 the Parliament had annual sessions with formal openings by His Excellency the Governor. Sessions, other than the first session, are now opened by Commissioners with the Parliament being prorogued as and when the Government should so decide.

Bills on the Notice Paper at the time of prorogation may be reinstated in the new session at the stage they had reached in the previous session. Bills on the Notice Paper at the time of dissolution are not capable of reinstatement.

Victoria Legislative Assembly

Question 1: The Victorian Legislative Assembly has a set of sessional orders that set out the order of business for the House. At the beginning of each week the leader of Government Business moves a motion in the House setting out the Government Business Program for the week. This motion sets out the bills or other items of business to be considered during the week and the time by which these items will be completed. At the completion time, the Chair puts what ever questions are necessary to bring those items to fruition. Full details can be found on the Parliament of Victoria web site at www.parliament.vic.gov.au.

Question 2: The duration of a session in the Legislative Assembly is dictated by the Government of the day. In Victorian parliamentary terminology, a session is a parliamentary period that commences on the first sitting day following a general election or prorogation and terminates when the Parliament is either prorogued or dissolved. All legislation before the house at the time of prorogation or dissolution lapses and must be re-introduced the subsequent session.

Western Australia Legislative Assembly

Question 1: No.
Question 2: The Assembly still has annual sessions. The Standing Orders of both Houses provide for the reinstatement of Bills at the stage they reached in the previous session.

However, a related disagreement between the Houses arose at the commencement of the current (second) session of the 36th Parliament. Three bills were sent by message from the Assembly to the Council at the conclusion of the first session in June 2002. One bill was sent by Assembly message (Yallingup Foreshore Land Bill 2002) and received by the Council prior to the Council finally rising for the session. However, despite this the message was not reported by the Council.

Similarly, the other two bills were delivered by message to the Clerk's office in the Legislative Council, as is standard practice, after the Council had risen but prior to prorogation.

At the commencement of the second session, these three bills were included in a list of 42 bills that the Assembly requested by message that the Council reinstate to their Notice Paper and resume consideration at the stage they reached at the end of the previous session. In response, the Council advised

by message that all bills would be reinstated, excluding these three bills.

In response to this message, the Assembly forwarded three further messages. The first message, in relation to the Yallingup Foreshore Land Bill 2002, reiterated the fact that the message forwarding that bill was received by the Council three sitting days prior to the Council finally rising before prorogation, and requesting that the Council "instate the bill by requiring the report of the message and bill for the Legislative Council's consideration". The second message advised the Council that the other two bills were sent by message to the Council prior to prorogation, and forwarded a further copy of the bills for the Council's consideration. The third message requested the Legislative Council "to amend its procedures to ensure that they reflect the intention of both Houses of Parliament that all Bills which have been partially considered by the Parliament in one Session are capable of restoration to that point in the next Session of the same Parliament".

In response to the first two of these three messages, the Council invited the Assembly "by return message to state that it has passed the Bills and, on receipt of such message, will deal with those Bills appropriately". This 'invitation' was reluctantly accepted, with the Assembly returning a message confirming that the bills had indeed been passed by the Assembly. In response to the third message, the Council sent a message to the Assembly, stating:

> "the Legislative Council—
> (1) does not agree that the difficulties associated with the three Bills can be rectified by altering internal practice and procedure. The Bills lapsed on prorogation by operation of law;
> (2) recommends that the Government reconsider the necessity for annual prorogations said to arise from section 4 of the Constitution Act 1889 and notes the divergence of interpretation and practice despite a provision identical to section 4 appearing in the Constitution of the Commonwealth and each of the States;
> (3) reminds the Legislative Assembly that a Bill must have been on the Notice Paper in the previous session if it is to be restored, that is, the Bill must have been in the possession of the House. Possession cannot occur until a Bill is introduced and given a first reading. On that basis, the House never had possession of the three Bills and had nothing to restore;
> (4) rejects the assertion that transmission of a Bill between the Houses is a 'stage' in passage. Parliamentary authorities are in agreement on the meaning of 'stage' and no mention is made of transmission in that context; and

(5) requests the Legislative Assembly to cite a reference to the written law that expressly or impliedly amended section 46(5) of the Constitution Acts Amendment Act 1899 so as to enable the Legislative Assembly to 'require' this House to comply with the Assembly's demands relating to the passage of legislation."

The order of the day for considering this Council message remains at the bottom of the Assembly notice paper.

The Assembly remains adamant that the three bills should have been reinstated by the Council (with the other 39 bills requested) at the commencement of the second session. The Council had received the messages prior to prorogation, and the Assembly rejects the claim that these bills should simply 'disappear into a vacuum' because these messages were not reported by the Council. The Assembly remains hopeful that, in the future, this situation may be resolved in a more satisfactory manner, in order that this technical and pedantic dispute does not arise again.

CANADA

House of Commons

Question 1

Written Rules

Standing Orders 24, 27 and 28 set out—in general terms—a 'parliamentary calendar', designating the days and hours of sittings; the possibility of 'extended' hours in June of each year; and periods when the House will stand adjourned. Standing Order 28(2)(b) instructs that the Speaker of the House, after consultation with the House Leaders, shall—by September 30 of each year—table in the House a calendar for the following year setting out the sitting and non-sitting weeks of a specific period (between the last Monday in January and the Monday following Easter Monday). With respect to the consideration of specific bills and motions, a number of Standing Orders can be triggered which impact on timing of debates; for example, there are Standing Orders on closure (S.O. 57), time allocation (S.O. 78), proceedings on Private Members Business items (S.O.s 86-99), the length of debate on borrowing authority bills (S.O. 73(5)), the number of days' debate on the Address in Reply to the Speech from the Throne (S.O. 50) and the Budget Debate (S.O. 84), time limits on length of speeches (S.O. 43), etc.

However, there is no bureau charged with responsibility to regulate the

overall debate on a specific item, nor any system of written rules to that effect.

Informal Mechanisms (i.e. the usual channels)

Although not formalised in the written rules, the House Leaders of each of the recognized parties meet often to discuss House business, and—following agreement—seek House Orders (by unanimous consent in many cases) to effect such 'understandings'. There is no formal requirement for these consultations to take place.

Question 2: There is no requirement for annual sessions. A session of Parliament can last over a number of years. Prorogation of a session is the prerogative of the government of the day.

Part I (Canadian Charter of Rights and Freedoms), Section 5 of the Constitution Act 1982 reads as follows: "There shall be a sitting of Parliament and of each legislature at least once every twelve months."

A 'sitting' in the House of Commons context means a meeting of the House within a session.

Upon prorogation of a session, all items of business on the Order Paper 'die'. With respect to government public bills, should the government wish to reinstate bills from the previous session, it must do so by way of substantive motion.

With respect to private Members' public bills, a provision exists in the Standing Orders for the reinstatement of such bills (S.O. 86.1). During the first thirty sitting days of the second or subsequent session of a Parliament, a private Member may, when proposing a motion for first reading of his or her public bill, state that the bill is in the same form as a bill that he or she introduced in the previous session. If the Speaker is satisfied that the bill is in the same form as at prorogation, the bill is deemed to have been considered and approved at all stages completed at the time of prorogation.

Senate

Question 1: There is no system of rules in the Senate of Canada to regulate the timing of all or most of its business. There are two rules which deal with allotting time to specific items of business: Rule 38 (if there is an agreement to allot time) and Rule 39 (if the parties have failed to agree to allocate time).
Question 2: No.

Alberta Legislative Assembly

Question 1: Alberta's Standing Orders 7 to 9 set out the order of business of the Assembly following the Daily Routine on each day of the week. Standing Order 7 lists the order of the Routine items of business; Standing Order 8 lists the order of business for consideration following the Routine items; and Standing Order 9 is the rule governing the precedence of business.

The Assembly sits from 1:30 p.m. to 5:30 pm, Monday to Thursday and 8:00 pm to adjournment on Monday, Tuesday and Wednesday evenings.

The following chart outlines the daily order of business in the Alberta Legislature:

HOURS	MONDAY	TUESDAY	WEDNESDAY	THURSDAY
1:30 pm to 2:30 pm (approx)	Prayers Routine proceedings including Recognitions	Prayers Routine proceedings including Members' Statements	Prayers Routine proceedings including Recognitions	Prayers Routine proceedings including Members' statements and Projected Government Business
(approx) 2:30 pm to 5:30 pm	Private Members' Business Written Questions Motions for Returns Public Bills and Orders other than Government Bills and Orders	Government Business Address in Reply Government Motions Government Bills and Orders Committee of Supply Private Bills	Government Business Address in Reply Government Motions Government Bills and Orders Committee of Supply Private Bills	Government Business Address in Reply Government Motions Government Bills and Orders Committee of Supply Private Bills
8:00 pm to adjournment	Private Members' Business and Government Business (8:00 pm to 9:00 pm) Motions other than Government Motions Government Business Address in Reply Government Motions Government Bills and Orders Committee of Supply Private Bills	Government Business Address in Reply Government Motions Government Bills and Orders Committee of Supply Private Bills	Government Business Address in Reply Government Motions Government Bills and Orders Committee of Supply Private Bills	Assembly adjourns on or before 5:30 pm on Thursday afternoon until Monday afternoon

Question 2: Section 4 of the Legislative Assembly Act states that "There shall be a sitting of the Legislature at least once every 12 months."

The Legislative Assembly of Alberta does not have a set legislative calendar. However, it has been the practice of our Assembly to have both a fall sitting and a spring sitting per calendar year. Generally the fall sitting occurs in late November and lasts approximately 3 weeks. The spring sitting usually begins in late February and lasts until late May or early June. The last time the Assembly sat outside of the above-mentioned dates was in August 1996.

Substantial changes were made to Alberta's Standing Orders in 2001. One of the key changes was to add a provision which would allow a member of Executive Council to bring forward a non-debatable motion to reinstate a Government Bill from a previous session of the current Legislature to the same stage that the Bill stood at the time of prorogation (Standing Order 48.1). To date, this Standing Order has not been utilized.

British Columbia Legislative Assembly

Question 1: Various provisions within the Standing Orders of the Legislative Assembly of British Columbia contribute to the efficient operation of the House and ensure the timely passage of parliamentary business.

Time limits on speeches and debates are primarily prescribed for each Order of the Day by Standing Order 45A. This Standing Order specifies the time allotments for various proceedings such as, Address in Reply, Budget Debate, Proceedings on Bills and within Committees of the Whole. Time allotments for each Member may vary according to their role in each proceeding, i.e. movers, leaders of recognized parties or designated Members may be provided extended time allotments. However, in each case, a Member may not exceed the specified time in Standing Order 45A for each proceeding. During debates in the Chamber, the Speaker is assisted in monitoring the progress of Members' speaking time by an electronic timer unit operated by Hansard staff.

The timely passage of business may also be achieved through implementation of provisions for time allocation, which are outlined in Practice Recommendation 3, as well as the new Standing Order 81.1, approved in August 2001. It reads:

> "81.1 (1) When a Minister of the Crown, from his or her place in the House, states that there is agreement among the representatives of all parties to allot a specified number of days or hours to the proceedings at

one or more stages of any public bill, the Minister may propose a motion, without notice, setting forth the terms of such agreed allocation; and the motion shall be decided forthwith, without debate or amendment.

(2) A Minister of the Crown who from his or her place in the House, has stated that an agreement could not be reached under the provisions of section (1) of this Standing Order in respect of proceedings at one or more stages of a public bill, may propose without notice a motion for the purpose of allotting a specified number of days or hours for the consideration and disposal of proceedings at one or more stages of a public bill. The motion shall be decided forthwith, without debate or amendment. Any proceedings interrupted pursuant to this section of this Standing Order shall be deemed adjourned."

This new Standing Order was employed by the Government for the first time on 27 May 2002 for the purpose of concluding parliamentary business prior to the conclusion of the spring legislative sitting.

Question 2: The Constitution Act, R.S.B.C. 1996, c.66, s. 22 requires that there be a yearly session of the Legislative Assembly so that 12 months must not intervene between the last sitting of the House in one session and the first sitting of the House in the next session.

In practice, the Legislative Assembly of British Columbia has, since 2001, attempted to fulfil this requirement through the adoption of a parliamentary calendar. This innovation brings British Columbia in step with several other jurisdictions across Canada. The calendar sets dates for the opening of each new session, comprised of a spring sitting (February-May) and a fall sitting (October-November) each year. It also specifies the timing of the Throne Speech (second Tuesday in February each year) and the Budget Speech (third Tuesday in February).

Pursuant to Standing Order 91, any Bills before the House upon which proceedings have not been completed are dropped and proceedings must be commenced anew at any subsequent session. Generally, all business pending on the Order Paper is quashed at prorogation, and if desired, may be renewed at the next session as if introduced for the first time. However, a prorogation of the House does not nullify an order or address of the House for returns or papers after prorogation, such as an order for a parliamentary committee report.

Of course, while prorogation has the effect of suspending all business before the House, an adjournment does not affect proceedings designated for consideration on the Order Paper.

Manitoba Legislative Assembly

Question 1: No.

Question 2: With effect from January 2003 the Manitoba Legislature has had scheduled annual sessions, according to the following sessional calendar:

> "*Sessional Calendar*
>
> 2(1) During a Legislature, the House may meet at any time
> (a) from the first Monday in February to Thursday of the second full week in June, except during the week designated under The Public Schools Act as a spring break or vacation; and
> (b) from the first Monday after Labour Day to Thursday of the first full week of December.
>
> Within these periods, the House is to begin to meet on a day fixed by the Speaker at the government's request and, unless adjourned earlier by order of the House, is to be adjourned by the Speaker, without a motion for adjournment, on the applicable Thursday. The House then stands adjourned to the call of the Speaker.
>
> *Recall of House*
>
> 2(2) If the government advises the Speaker that the public interest requires the House to meet at any other time because of an emergency or extraordinary circumstances, the Speaker must advise the Members that the House is to meet at the time specified by the government. The House must begin to meet at the specified time.
>
> *If no Speaker*
>
> 2(3) If there is no Speaker, the Clerk is to act in the Speaker's place under this Rule."

Normally, a Bill cannot be carried over from one session to the next. However, agreement was made at the end of the last session (3rd Session, 37th Legislature) to carry over Bill No. 200 *The Smoke-Free Places Act (Non-Smokers Health Protection Act Amended)*, a Private Members' Bill.

Ontario Legislative Assembly

Question 1: The Ontario Legislative Assembly does not have any sort of timetabling system or set of rules that regulates the timing of House business,

with the exception of a dedicated weekly meeting for consideration of Private Members' Public Business. Two items of private members' business are considered (for one hour each) on Thursday mornings, and the order of items to be considered is established by a ballot conducted by the Clerk of the House at the beginning of each Session and/or as required.

Some aspects of the financial cycle are fixed, i.e. Estimates must be tabled no more than 12 days after the presentation of a budget, debate on which must be completed before the Estimates may be presented. If there is no budget before Victoria Day (24 May) in a year, then Estimates must be tabled on the next available sitting day. Estimates are referred to the Standing Committee on Estimates which has until the third Thursday in November to report them back to the House.

With these exceptions, virtually all other House business is conducted at the direction of the Government House Leader.

Question 2: Ontario's Sessions are not fixed to calendar years and often span more than one year. Once prorogued, it is entirely the government's call as to when the House will resume sitting in a new Session, and it is the government's call as to when the Session will be prorogued.

No rule exists in our Standing Orders to permit the carry-over of bills from one Session to the next, though this has been done many times and is now an accepted practice. It is accomplished by the passage of a (debatable) government motion which sets out the bills and other items of business standing on the Order Paper at prorogation that are to be continued into the next ensuing Session.

Québec National Assembly

Question 1: The rules of procedure of the Assembly state that sittings are divided into two parts: the Routine Proceedings and the Orders of the Day. The Routine Proceedings are generally set aside for information the Government gives to the Assembly. They consist of nine headings, including Oral Questions and Answers, which are taken in order by the Assembly.

The Orders of the Day are devoted mainly to the debates that take place in the Assembly. This part requires detailed organization and consists of five headings that must be taken according to a predetermined order of precedence. The Orders of the Day can vary considerably from one sitting to the next. At certain times, the Assembly is required to examine an item of business that, under the Standing Orders, must be given precedence by the

Assembly. In other cases, the Government has complete initiative in indicating to the Assembly which item of business will be discussed.

Question 2: The duration of a session is not predetermined. It is the Lieutenant Governor, at the request of the Government, who summons the Assembly and prorogues the sessions.

Pursuant to our Standing Orders, the prorogation of a session causes any bill that has not been adopted to lapse. However, the effects of a prorogation are not irreparable. Before the prorogation of a session, the Assembly may carry a motion with a view to countering the aforementioned effect. Another measure that is less binding is contained in the Standing Orders to avoid the lapsing of bills introduced before the prorogation of a session. Before the third sitting following the end of the debate on the opening speech of the session, on motion without notice by the Government House Leader, the Assembly may decide to continue the consideration of bills introduced at the previous session, at the stage at which this consideration had been interrupted.

Saskatchewan Legislative Assembly

The Rules of the Assembly do establish regular sitting hours and the order of business under the daily Routine Proceedings and Private Members' Day. Business falling under Government Orders, while recorded on the Order Paper in accordance with the Rules, is called at the direction of the Government. On a practical level, the business of the House is determined by the Government's House Business Office, usually in consultation with representatives of the Opposition parties. This approach permits the parties to negotiate the calling of business at a time when the players involved (Ministers, departmental staff, opposition critics, etc.) are available.

The success of this approach is contingent upon the players maintaining open lines of communication. When this fails or if the personalities of key players such as the House Leaders clash, the system can grind to a halt. The Government will then resort to preparing an agenda that suits their needs while ignoring the wishes or concerns of the opposition parties. Inevitably, the opposition parties will resort to the procedural alternatives available to them to impede the timely conduct of proceedings.

The Saskatchewan Assembly does not follow a sessional calendar and accordingly sitting dates are at the discretion of the Government and Opposition Members. Traditionally there has an annual Spring session,

starting sometime between February–March and continuing until June. The start and finish dates vary from year to year. In recent years, there has often been a short Fall session, lasting five to ten days in the month before Christmas. On occasion, the House has been recalled much earlier in the Fall to deal with back to work legislation.

The Rules do not permit the carrying over of bills from one session to the next. Any bill that has not passed through all stages before prorogation is dropped from the Order Paper. However, if the situation does arise, the Assembly might be inclined to follow the practice of several other jurisdictions and permit the reinstatement of bills at a specified stage if unanimous consent is granted.

Yukon Legislative Assembly

Question 1: The rules that regulate the timing of House business are found in the Standing Orders. Chapter 2 of the Standing Orders deals with 'Business of the Assembly' and, among other things, lays out when Government or private Members' business takes precedence. Generally, Government business takes precedence during Orders of the Day on Monday, Tuesday, and Thursday. Private Members' business takes precedence during Orders of the Day on Wednesdays; with Opposition private Member's business, and government private Member's business taking precedence on alternating Wednesdays.

When Government business has precedence the government may call whatever items it has on the Order Paper in the order it sees fit. Private Members must, on Tuesday, identify the business to be called on Wednesday. While it is not required by the Standing Orders, opposition parties are often informed of the agenda for government business at the daily house leaders' meeting.

Certain other issues regarding timing are found in Chapter 14—Sittings of the Assembly. These rules stipulate that the Assembly will sit for a maximum of 60 sitting days per year, divided between a Spring and Fall Sitting. All bills to be dealt with during a Sitting must be introduced and given first reading by the fifth sitting day. By the seventh sitting day the house leaders will decide how many sitting days will be allocated to that sitting (minimum of 20, maximum of 40). If the house leaders cannot reach an agreement, both the Spring and Fall Sittings are 30 days maximum.

Chapter 14 also contains rules dealing with the termination of business on the final day of a Sitting. The normal hour of adjournment is 6.00 pm. If the

Assembly is in Committee of the Whole at 5.00 pm on the final sitting day the Chair will interrupt proceedings and put all questions before the Committee to a vote, without debate or amendment. The Chair then reports to the Speaker who will then put the question on all bills before the House that have had debate adjourned on them at second reading and are designated to be called by the government house leader. If the Assembly is not in Committee of the Whole the Speaker will begin accelerating the process at 5.30 pm.

Question 2: In response to the first part of the question: Section 13 of the Yukon Act says, "The Legislative Assembly shall sit at least once every 12 months." Note that the Act deems it sufficient for the Assembly to convene once a year and that it is not necessary to have a session prorogued and a new one called every 12 months.

When a session is prorogued all items of business are dropped from the Order Paper. Nor is there a procedure to reinstate items of business to their pre-prorogation standing once the Assembly reconvenes. All business must be reintroduced.

DOMINICA HOUSE OF ASSEMBLY

Question 1:Yes.
Question 2: No.

INDIA

Lok Sabha

Question 1: At the commencement of the House or from time to time, as the case may be, the Speaker may nominate a Committee called the Business Advisory Committee, consisting of not more than fifteen members including the Speaker who shall be the Chairman of the Committee. In view of the limited membership of the Committee and the large number of opposition Parties in the House, it is not possible to nominate members from each and every Party. In order to make it as broad-based as possible so that its recommendations could be acceptable to all sections of the House, certain prominent members from parties which do not find representation on the Committee are invited to attend its sittings as special invitees.

The function of the Committee is to recommend time for the discussion of various stages of Government Bills and other business which the Speaker, in

consultation with the Leader of the House, may direct to be referred to the Committee. However, in practice the Committee also recommends allocation of time for discussion of financial business, namely: general discussion on the Budget; Demands for Grants in respect of various Ministries; Finance Bill; and discussion on the Motion of Thanks on the Address by the President. However, the power to allot time to such items is vested in the Speaker in consultation with the Leader of the House. In appropriate cases, the Committee may recommend that a Bill should be referred to a Select or Joint Committee instead of being taken up into consideration and passed directly.

The Committee also selects for discussion 'No-Day-Yet-Named Motions' and 'Short Duration Discussions' given notice of by private members and admitted by the Speaker. Besides this, all proposals for late sittings of the House, dispensing with the question hour or lunch hour, extension of sittings of the House beyond normal hours of adjournment and fixing of additional sittings/cancellation of sittings are generally placed before the Committee for its recommendation.

The priority in respect of Government business is determined by the Government. In certain cases, the Committee has, however, recommended priority to individual items of business or suggested the hour and date on which an item of business be taken up or recommended postponement of certain items of business if sufficient time was not available during the session for disposal of business placed before the Committee for allocation of time.

The Committee has at times *suo motu* recommended to the Government to bring forward a particular subject for discussion in the House and also recommended allocation of time for such discussion.

At times, the Committee may even recommend that any item of business may be disposed of by the House without discussion. The Committee may also re-examine the allocation of time already approved by the House in respect of a Bill in the light of subsequent developments and recommend that the time be increased or reduced.

The Committee may also reconsider the time allotted for discussion and voting on Demands for Grants (General) to various Ministries and Departments to accommodate the views expressed by members on the floor of the House.

Where the subject matter of two or more items of business so warrants, the Committee recommends combined discussion of those items in the House.

On occasion the Committee has considered certain procedural matters

or certain special matters which do not lie within the scope of its normal duties.

The recommendations of the Committee are presented to the House in the form of a report, after it is approved by the Honourable Speaker. After the report is agreed to by the House, the allocation of time in respect of Bills and other business as approved by the House takes effect as if it were an order of the House and is notified in the Bulletin for the information of members.

Question 2: Normally, three sessions of Lok Sabha are held a year: Budget, Autumn and Winter Session.

Under the provisions of article 107 of the Constitution of India, a Bill which, after introduction in either House, (i) is pending in that House; or (ii) has remained part-discussed; or (iii) has been passed by that House and is pending in other House, may be taken up for consideration and passing in any subsequent session. However, a Bill which is pending in House of People, or which having been passed by the House of People is pending in Council of States lapses on dissolution of the House of People. But a Bill pending in Council of States which has not been passed by the House of people does not lapse on the dissolution of House of People and may be taken up for consideration and passing in any subsequent session of the Council of States.

Also under rule 335 of the Rules of Procedure and Conduct of Business in Lok Sabha notice of intention to move for leave to introduce a Bill does not lapse on prorogation of the House and such notice is valid for the next session.

Rajya Sabha

Question 1: The Constitution of India empowers each House of Parliament to make rules for regulating its procedures and the conduct of its business. Accordingly, Rajya Sabha adopted its 'Rules of Procedure and Conduct of Business'. In accordance with these rules, the sitting of the Rajya Sabha commences at 11.00 am and the first hour is earmarked for asking and answering questions, unless the Chairman otherwise directs (Rule 38). Thereafter, Ministers lay various reports, papers and documents on the Table of the House under relevant provisions of the Constitution of India or Acts or any other law, rule or regulation or convention or practice of the House or Rules of Procedure of the House. The purpose of laying such

papers/documents is to supply authentic information or facts to the House.

A Member may, with the previous permission of the Chairman, call the attention of a Minister to any matter of urgent public importance and the Minister may make a brief statement (Rule 180). Such matter, called 'Calling Attention' is raised after the 'Question Hour' and the laying of papers, if any, on the Table of the House. When there is no 'Calling Attention', Members may, with prior permission of the Chairman, mention matters of public importance known as 'Special Mentions' (Rule 180 A to 180 E) after the laying of papers/documents on the Table of the House. Thereafter, other items of business such as Motion of Thanks on the President's Address (Rule 14 to l8), Short Duration Discussions on matters of urgent public importance (Rules 176 to 179), Government legislative business, Statutory Motions for amending rules, regulations, bye-laws, etc. framed in pursuance of the Constitution of India or an Act of Parliament, Motions on matters of general public interest (Rules 167 to 174) and Statutory Resolutions are taken up in the House.

The House generally sits up to 5.00 pm, unless otherwise notified. A Member may raise a discussion called 'Half-an-Hour Discussion' with prior permission of the Chairman, on a matter of sufficient public importance which has been the subject of a recent question in the Council, the answer to which needs elucidation on a matter of fact (Rule 60). Such discussion is taken up at 5.00 pm or as soon as the preceding items of business are disposed of, whichever is earlier. A Minister may also make a statement on a matter of public importance with the consent of the Chairman and such a statement generally happens to be the last item of the day and is taken up before the House rises for the day (Rule 251). The Bills and Resolutions of Private Members are discussed for two and a half hours on every Friday or on such day as the Chairman may allot (Rule 24). The Chairman may allot different Fridays for the disposal of different classes of such business which normally commences at 2.30 pm.

The Business Advisory Committee of the Rajya Sabha also functions under the ambit of these rules, and consists of eleven Members including the Chairman and Deputy Chairman of the Rajya Sabha, with the former being its Chairman (Rule 30). The Committee recommends the time that should be allocated for the discussion of stage or stages of Government Bills and other business to be taken up by the Rajya Sabha. As per rules, the Committee can also allot time for the discussion of stage or stages of Private Members' Bills and Resolutions. Proposals for late sittings of the House, fixing of additional sittings, cancellation of sittings or fixation of a sitting on

a holiday are also placed before the Committee for its consideration and decision.

Question 2: Both the Houses of Parliament normally meet thrice in a year, namely Budget session, Monsoon session and Winter session. Each session of the Parliament is summoned by the President of India under the powers conferred on him by the Constitution of India. The Budget Session commences with the President's address to both the Houses of Parliament assembled together. Monsoon Session and Winter Session each follows after an interval of about two months. Budget session or the first sitting of Parliament in a year generally starts during the third week of February and concludes around the middle of May. The Monsoon Session begins in July and concludes in August. Similarly, the Winter Session being normally of one month's duration is summoned in November and prorogued in December.

On the question of carrying over Bills from one session to another session, there is no explicit mention in the rules. However, article 107 of the Constitution elucidates the position with regard to the legislative procedure followed in Parliament. Clause (3) of article 107 lays down that a Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses. Clause (4) of the article provides that a Bill pending in the Council of States (Rajya Sabha), which has not been passed by the House of the People (Lok Sabha), shall not lapse on dissolution of the House of the People. Thus it is clear that prorogation of the Houses of Parliament does not terminate legislative business pending therein and Bills can be continued in the next session. Clause (2) of article 107 makes it mandatory for a Bill to be passed by both the Houses of Parliament and this scheme of the Constitution generally creates a situation in which a Bill is carried over from one session to the another for the reason that sometimes Bills introduced in and passed by one House in one session are not taken up by the other House in the same session. A Bill can also be carried over to another session if it is referred to Joint/Select Committee of the House/Houses.

Maharashtra Legislative Assembly

Question 1: Rule 4 of the Maharashtra Legislative Assembly states that from the commencement of a session, the House shall, subject to the direction of the Speaker, meet from Monday to Friday, and that the sitting of the House shall ordinarily commence at 1.00 pm and conclude at 6.00 pm. On Friday the sitting shall commence at 11.00 am and conclude at 4.00 pm. However,

the House can revise or extend the timing according to the necessity and importance of the unfinished business.

Sittings of the Legislative Council shall commence at 2.00 pm and conclude at 6.00 pm, with a recess of half an hour from 4.00 until 4.30. On Friday the sittings shall commence at 12.00 noon and conclude at 4.00 pm with a recess of half an hour from 2.00 until 2.30.

Question 2: Article 174(1) of the Constitution of India states: "The Governor shall from time to time summon the House or each House of the Legislature of the state at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session." In practice, the Maharashtra Legislature normally holds three sessions per year.

Rule 20 of the Maharashtra Legislative Assembly and Maharashtra Legislative Council Rules states that Bills which have been introduced shall be carried over to the list of business for the next session from the stage reached by them in the expiring session.

Nagaland Legislative Assembly

Question 1: The Business Advisory Committee of the Houses recommends the allotment of time for various items of business before the House, which when approved by the House becomes an order of the House. Such an order can be varied with the general agreement of the House when proposed by the Leader of the House; otherwise the Speaker guillotines discussion on an item at the end of the time ordered by the House and puts all questions necessary to dispose of the item of business forthwith.

Question 2: The Nagaland Legislative Assembly does not have annual sessions. Normally three sessions are held in a calendar year. From the date of constitution of the Assembly until its dissolution at the end of five years or sooner, a session can be held at any time with the limitation that six months shall not intervene between the last sitting of one session and the first sitting of the next (Article 174 of the Constitution of India). Sessions are convened by issue of summons to members and terminated by prorogation. On prorogation all notices, except the notice for leave to introduce Bills, do not lapse. A motion, resolution or amendment, which has been moved and is pending in the House, does not lapse on prorogation.

Sikkim Legislative Assembly

Question 1: The Rules of Procedure and Conduct of Business in the House regulate the timing and the business of the House.

Question 2: The House has an annual session. Pursuant to Rule 109 of the Rules of Procedure if the Governor returns a Bill passed by the Assembly with a message such Bill can be laid on the table of the House with the message and the appropriate Minister may move that the amendment moved by the Governor be taken into consideration.

Uttar Pradesh Legislative Assembly

Question 1: The Business Advisory Committee of the House regulates the timing of the House's business as provided for under rules 223-228 of the Rules of Procedure and Conduct of Business of the Uttar Pradesh Legislative Assembly 1958.

Question 2: In accordance with rule 14 of the Rules of Procedure three meetings (sessions) are ordinarily convened each year. Bills which have been introduced in the House and are pending for consideration stand carried over to the next session.

NEW ZEALAND

House of Representatives

Question 1: The timing of the House's business is directly governed by Standing Orders, but there is a Business Committee that can, and sometimes does, affect the timing of items of business. This Committee, chaired by the Speaker, consists of representatives of parties in the House (in practice, the Leader of the House and whips) and reaches decisions on the basis of unanimity or, if this is not possible, near-unanimity having regard to the numbers in the House represented by each of the members of the Committee.

Standing Orders prescribe the order in which general business is taken and also the arrangement of non-Government business (private and local orders of the day and Members' orders of the day). On the other hand, the Standing Orders allow the Government (effectively, the Leader of the House) to decide the order in which Government orders of the day are arranged on the Order Paper.

Debates on bills, except at the committee of the whole House stage, are fixed-time debates.

Something that particularly affects the timing of business from time to time is the acceptance by the Speaker of an application for a debate on a matter of urgent public importance. This urgent debate, when allowed by the Speaker, takes place after question time and lasts 1½ hours.

However, Standing Orders provide that the Business Committee of the House may determine the order of business to be transacted in the House, the time to be spent on an item of business, how time on an item of business is to be allocated among the parties, and the speaking times of individual members on an item of business. A determination applies despite any Standing Order to the contrary.

In relation to oral questions, Business Committee decisions affect the timing of the individual ones asked during question time. The Committee allocates the slots for the twelve questions to be addressed to ministers for oral answer each sitting day on a basis that is proportional to party membership in the House. It also decides the weekly allocation and rotation of questions.

The Business Committee is required to recommend to the House a programme of sittings for each calendar year.

Question 2: Annual sessions are no longer the norm in New Zealand. Sessions of Parliament are now, typically, co-terminous with the life of a Parliament.

Until 1984 there was usually one session of Parliament held in each calendar year during the course of each Parliament, although on special sessions an extra session could be held (as in 1977, when the Queen visited). Since the 1984 session was brought to an end for a snap election, sessions have been more variable, with two sessions in each of the three complete succeeding Parliaments and then one session in each of the last three complete Parliaments. The ability since a change to the Standing Orders in 1992 for the House to be reassembled during an adjournment at an earlier time than the date to which it has been adjourned, has rendered extra sessions unnecessary. The Standing Order for an accelerated meeting was adopted to cater for the situation which arose at the time of the Gulf War in 1991, when the only way for the House to meet early during a lengthy adjournment was for Parliament to be prorogued and a new session called.

Standing Orders reflect the newer pattern by providing that the House's sittings in the second and third year of a term of Parliament are to commence

with a Prime Minister's statement and 14 hours' debate on it. The Speech from the Throne continues to be delivered at the State opening of a new Parliament, followed by a 19 hours' debate on the Address in Reply.

Standing Orders provide that a motion carrying business forward to the next session of Parliament (effectively, from one Parliament to the next) pursuant to any statute may be moved by a Minister without notice. The current statutory authority for carrying over parliamentary business is section 20 of the Constitution Act 1986. The motion is the last item of business before the adjournment debate preceding the dissolution of Parliament.

NIGERIA

Borno State House of Assembly

Question 1: Yes, the Hon. House has Standing Orders that regulate general business. There is also a House standing committee known as House Standing committee on Rules and Business, which directly schedules the business of the House on weekly, monthly and at times for yearly basis. The same committee occasionally schedules timing of debates on matters brought before the Hon. House.

Question 2: Yes, the House has annual sessions with a minimum of 181 sitting days. Bills can be carried over from one session to the next.

SINGAPORE

Question 1: Targets are set for the completion of work by the Secretariat in the Workplan. However, there is no timing for the actual business taking place in the House.

Question 2: We do have sessions and we follow the practice of the House of Commons.

SOUTH AFRICA PARLIAMENT

Question 1: The business of the National Assembly is programmed in terms of the Standing Rules of the House which regulate the timing of all or most of the House's business.

The National Assembly rules make provision for a Programme Committee consisting of:

- The Speaker and Deputy Speaker;
- The Leader of Government Business;
- The Chairperson of Committees and the Deputy Chairperson of Committees;
- The Chief Whip of the majority party in the Assembly and his Deputy;
- The whips of the majority party responsible for programming;
- One whip and one additional representative of the second largest minority party in the Assembly designated by that party;
- One whip and one additional representative of the second largest minority party in the Assembly designated by that party;
- One whip of each of the other minority parties in the Assembly designated by the party concerned.

The Speaker chairs the Programme Committee and, in her absence, the Deputy Speaker presides at the meeting of the committee.

The Programme committee must prepare, and if necessary, from time to time adjust the annual programme of the Assembly, subject to any relevant decisions of the Joint Programme Committee; it must monitor and oversee the implementation of Parliament's annual programme in the Assembly, including the legislative programme; it must implement the Rules regarding the scheduling or programming of the business of the Assembly, and the functioning of Assembly committees and subcommittees; it may make recommendations to the Joint Programme Committee (see below) on any matter falling within the functions and powers of that Committee; and it may take decisions and issue directives and guidelines to prioritise or postpone any government business in the Assembly, acting with the concurrence of the Leader of Government Business.

The Joint Rules of Parliament make provision for a Joint Programme Committee. The Committee is composed of the Programme Committees of both Houses, and is chaired by the Speaker of the National Assembly and the Chairperson of the National Council of Provinces.

The functions of the Joint Programme Committee with regard to Parliament as a whole are similar to those of the National Assembly Programme Committee with regard to the Assembly. In addition, it may take decisions and issue directives and guidelines to prioritise any joint business of the Houses; it may set limits for completing any steps in the legislative process or extend any such limits; it may take such steps as are necessary for the fast-tracking of a Bill.

A question before the Joint Programme Committee is decided when there

is agreement on the question between the majority of the members of the Assembly component and the majority of the provinces represented in the Council component.

The Joint Programme Committee usually meets at least twice year to finalise the annual programme. The Programme Committees of each House meet at least once every week to consider their individual programmes on a week-by-week basis.

Question 2: Our Parliament still follows a system of annual sessions and, in 2002, we were in the Fourth Session of the Second Parliament.

Rule 298(1) of the National Assembly provide that all bills introduced in the National Assembly and which, on the last sitting day of an annual session of the Assembly, appear on the Order Paper for First or Second Reading, lapse at the end of that day unless the Assembly decides otherwise. These bills are, however, routinely revived and kept alive on the Order Paper by resolution of the House.

All bills before the National Assembly or any Assembly committee on the last sitting day of a term of the Assembly or when the Assembly is dissolved, lapse at the end of that day.

Rule 230(1) of the National Council of Provinces provides that "All Bills introduced in the Council and which have not yet been passed by the Council, when it rises on the last sitting day in any annual session, lapses, but may be reinstated on the Order Paper during the next session by resolution of the Council." Rule 230(2) provides that "The approval or rejection of a draft resolution for the resumption of proceedings on a Bill does not prohibit the introduction of a Bill of the same substance during the same or an ensuing session or during an ensuing recess."

UNITED KINGDOM

House of Commons

Question 1: No. Apart from various time limits in Standing Orders (e.g. 1.5 hours for statutory instrument debates), amount of time is discussed between party whips or (in the case of legislation) specified in programming motions moved by the Government.

Question 2: Yes. A temporary standing order is in force to allow Commons bills still in the Commons at the end of a session to be carried over (by being taken formally up to the point which they have already reached). Existing

practice for private bills allows for carry-over even if a bill has been passed by one House and is pending in the other.

House of Lords

Question 1: The timing of the House's business is largely regulated by custom. Changes may be made with little formality subject to agreement between the Government and opposition parties through the 'usual channels'. There is no formal bureau—the Government Chief Whip consults his Opposition opposite number and sometimes the Liberal Democrats and the Convenor of the Crossbench peers. Changes could be challenged in the House if not generally agreed, but this is rare. There are few rules and nothing which could be called a 'system'. In principle any member has an equal right to table items of business but there is a general understanding that priority is given to Government business most of the time. Question time is limited to 30 or 40 minutes, debatable questions are limited to 60 or 90 minutes, and debates are often made subject to a time limit (though in practice second readings of bills are not time-limited). There is no set rising time. It has recently been agreed by the House that, for a two-year trial period from November 2002, sittings should normally end by 10 pm on Mondays, Tuesdays and Wednesdays (and earlier on Thursdays), but in practice the House often sits later.

Question 2: There are normally annual sessions usually beginning in November. When there is a dissolution of Parliament at a different time of year there is a shorter session followed by a longer session. Bills may in certain circumstances be carried over by agreement but in practice, except in relation to private legislation, this has not happened in recent years in relation to bills in the Lords. It takes the form of reintroduction of the bill but with all stages up to that previously reached being taken formally. Thus the Lords need have no formal cognisance of the carry-over of a Commons bill which had not left the Commons at the end of the first session.

ZAMBIA

National Assembly

Question 1: The rules that regulate the timing of the House's business are found under standings Orders 14 to 18 which deal with the Sitting of the Assembly.

Question 2:Yes, the Zambian National Assembly still has Annual Sessions. However, the Rules of the House do not allow the carrying over of bills or any other business from one session to the next. All the unfinished business in one session lapses at the close of that session. Bills left over from a previous session have to be renumbered and presented as new bills in the new session.

PRIVILEGE CASES

AUSTRALIA

Senate

Party deselection

The Privileges Committee reported on the case of the senator who lost his party endorsement as a result of his not following a party direction about how to vote on a bill (see *The Table,* 2002, p. 103). This was the first occasion on which the committee considered an attempt by a political party to impose party discipline on a senator as a possible contempt of the Senate. The committee found that the party had imposed a penalty on the senator in consequence of his vote in the Senate, and that the actions of the party were reckless and ill-judged, but, given that the senator had subsequently reached a settlement of a court action against his party, the committee recommended that a contempt not be found.

Search warrants

The report of the Privileges Committee on the execution of search warrants in the offices of a senator (see *The Table,* 2002, p. 102) found that the Queensland State Police had appropriately given the senator the opportunity to claim that any of the documents were protected from seizure by parliamentary privilege. Subsequently, the committee reported that the senator was unable to reach agreement with the police about identifying the documents protected by parliamentary privilege. The committee therefore adopted the procedure which had been applied by the Senate in a previous case (see *The Table,* 2000, pp. 86-87 and *The Table,* 2001, p. 98), namely, the appointment of an independent third party to go through the documents and determine which documents were protected and return them to the senator. The senator and the police agreed to the adoption of this procedure.

Interference with witnesses

The Privileges Committee received a reference on an alleged interference with a witness before the Select Committee on a Certain Maritime Incident (see the article in this issue). The select committee discovered that a witness, a naval officer, had been summoned to a meeting by officers of the

Department of Prime Minister and Cabinet apparently to check on the evidence he would be giving to the committee. The select committee indicated that, as required by the Senate, it had conducted a preliminary investigation into the matter before asking that it be referred to the Privileges Committee. That committee, after exhaustive inquiry, found no evidence of interference with the witness. This finding was adopted by the Senate.

Audit documents and parliamentary privilege

The Auditor-General's Office notified the Senate that in a pending court case the Office would claim that working documents associated with Audit reports are immune from the discovery process because they were compiled for the purpose of a proceeding in Parliament, namely, the submission of Audit reports to Parliament. This claim is well based because, unlike other bodies which only incidentally have their reports presented to Parliament, the Audit Office has reporting to Parliament as its essential purpose.

ACT Legislative Assembly

IT security and breach of privilege

On 6 March 2002 the Speaker wrote to all Members to advise them that there was a police investigation underway into an alleged breach of IT security. Two search warrants had been executed on the Assembly building by the Australian Federal Police. This action was taken after allegations were brought to the Clerk's attention that emails directed to a Minister's electronic mail box had been diverted to the electronic mail box of a person on the staff of an opposition member.

The police subsequently investigated the matter, during which time they observed various conditions that had been put in place in relation to the privileges and immunities of the Assembly. The police seized a number of documents in the course of their investigation, and stored them in the Clerk's office. The Assembly then passed a resolution based on a similar Senate resolution which provided that the seized documents be examined and an assessment made as to whether any were immune from seizure under warrant by virtue of parliamentary privilege. Following agreement by the party leaders, The Deputy Clerk and Serjeant-at-Arms was appointed to examine the documents and provided a report to the Speaker for tabling on that examination. Of the 27 documents received, one was considered immune from seizure. That document was returned to the Opposition member, and the remainder given to the police.

On 6 June 2002 the Director of Public Prosecutions issued a press release announcing that in his opinion no criminal offence was disclosed by the evidence. Later that day the Assembly appointed a select committee on privileges to examine whether the unauthorised receipt of emails from the Minister's office was a breach of privilege or whether a contempt had been committed. The Committee was due to report on 20 August 2002; however, given the complex nature of the inquiry, the Assembly granted an extension until 14 November 2002 when the report was tabled. A dissenting report was also presented.

The committee held four public hearings, and also heard witnesses in-camera. The committee also had access to the brief prepared by the Australian Federal Police (AFP) and the statements taken by it during the course of its inquiry. The public hearings conducted by the Committee raised significant of community and press interest. Witnesses to the hearings used the opportunity to raise matters not strictly within the terms of reference which was an issue of some concern to the Committee.

The Committee's report, tabled in the Assembly on 14 November 2002, found that, being unable to identify a perpetrator for the diversion of the Minister's email, no contempt could be found. On the matter of possible actions amounting to impropriety, seriousness and intent directly relating to the Minister's duties as a member, the Committee found that an individual on the staff of a member was guilty of a contempt of the Assembly. The Committee recommended that a prompt and unreserved apology be made to the Legislative Assembly through the Speaker. No apology was made though it is understood that the individual has resigned.

The Committee made no further recommendations in relation to an imposition of a penalty due to the adverse affect that the finding of contempt would have on the individual's professional reputation.

Privilege—use of report in Supreme Court proceedings

On Christmas Eve 2001, four ACT public servants took out an injunction in the ACT Supreme Court to prevent the Chief Minister from tabling in the Legislative Assembly the report of the Board of Inquiry (similar to a Royal Commission) into Disability Services. Upon receiving advice and writing to all members, the Speaker briefed counsel to seek leave to be heard in the case to raise matters in relation to parliamentary privilege.

In the event the Speaker's action was not required as the order preventing tabling by the Chief Minister was vacated by consent. However, the four public servants then continued to take further action in the court concern-

ing the question of whether they were granted procedural fairness during the course of the Board of Inquiry. To continue this action they appeared to be relying on the copy of the report that had been presented to the Legislative Assembly. The question arose as to whether the report was a 'proceeding in parliament' and to whether the court was questioning that proceeding.

The Speaker again briefed counsel, and the Court subsequently granted leave for the Speaker's counsel to appear as an *amicus curiae* to assist the Court in discussing the issue of parliamentary privilege. The Judge ruled that privilege had not been established, and that a copy of the report could be admitted into evidence.

NSW Legislative Assembly

Whilst there were no significant cases of breaches of privilege or contempt established in the Legislative Assembly of New South Wales in 2002, the following privilege issues concerning the security of the House are worthy of note.

On 20 November 2002 a Member rose on a matter of privilege relating to security at Parliament House following an incident in the public gallery which disrupted proceedings. The Speaker did not accept the matter of privilege as there was no threat to Members. He then outlined recent security initiatives taken at Parliament House.

On 21 November 2002 a Member rose on a matter of privilege relating to security in Parliament following an incident where a member of the public gained entry to the bar and was then escorted from the Chamber. The Speaker did not rule on the matter but said he had received a verbal report of the incident.

NSW Legislative Council

There were no significant cases of breach of privilege or contempt of the House during 2002. However, on 25 September 2002 the House referred the matter of the pecuniary interests register to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report. In particular the committee was to consider whether, under the Constitution Act 1902, the Minister for Mineral Resources and Minister for Fisheries had wilfully contravened the requirements of clause 12 of the Constitution (Disclosures by Members) Regulation 1983 by failing to disclose any pecuniary interest

as required under the Regulation and what, if any, sanctions should be enforced in relation to the Minister's conduct.

The Committee found that while the Minister had made errors in his pecuniary interest returns between 1991 and 1999 these errors were not wilful contraventions of the Constitution (Disclosures by Members) Regulation 1983, and that no sanction could be recommended.

Queensland Legislative Assembly

Allegation of a member deliberately misleading the House in a question without notice

On 8 March 2002 a member asked a question without notice concerning state financial assistance. The question contained an imputation against a stranger (the Premier's brother) and considerable media attention was given to the matter. The House referred the matter to the Members' Ethics and Parliamentary Privileges Committee (MEPPC) on 9 April 2002 to determine whether the member had deliberately misled the House.

In its Report No. 52, the MEPPC found that there was insufficient evidence to conclude that the member concerned deliberately misled the House. The committee determined that no finding of contempt be made.

However, the MEPPC noted that an imputation on reputation—even if not deliberately or knowingly misleading—was made by the member and did as a matter of fact mislead the House, and even after the answer the imputation was left in the public arena. The committee suggested that the member "consider his duty, the statements made, and what appropriate response he should take upon himself to ensure the accuracy of the parliamentary record, and the reputation of the House."

Matter arising from MEPPC Report No. 52

Following the tabling of Report No. 52, the media reported comments attributed to the member concerned in Report 52. The comments contained improper reflections on the MEPPC regarding the timing of the tabling of the committee's report, and the deliberations and findings of the committee.

In its Report No. 53, the MEPPC recommended that the House provide the member with an opportunity to explain his attributed statements to the House to enable the House to determine what action, if any, should be taken in regard to the matter.

The member was subsequently provided with an opportunity to explain

his actions to the House. During his explanation, the member apologised unreservedly to the MEPPC for any offence his statements had caused the committee, and withdrew his statements regarding the MEPPC.

Matter relating to improper reflections by a member about the impartiality of the Speaker

In August 2002 the MEPPC reported on a matter relating to improper reflections by a member about the impartiality of the Speaker (Report No. 54). The matter arose following the naming of the member by the Speaker on 30 July 2002, under Standing Orders. Following his withdrawal from the House, the member gave a media interview. A subsequent media article on the matter contained improper reflections on the impartiality of the Speaker, attributed to the member during the media interview.

On 31 July 2002 the Speaker made a statement in the House regarding the matter and invited the member to "repudiate those reported statements or apologise to the chair and the parliament". The member offered an apology, but in terms which the Speaker refused to accept on the basis that he considered the apology was a qualified apology. The Speaker then referred the matter to the MEPPC.

The MEPPC noted in its report that there was no standing rule or order governing the form of apologies in the House. The committee further noted that the only standing order of potential relevance (Standing Order 120) provides that "all personal reflections shall be deemed highly disorderly". The committee noted that the established practice of the Assembly was that, if a member objected to certain words used by another member, those words must be withdrawn. The unqualified form of words used for such a withdrawal is generally "I withdraw" The MEPPC noted that a practice had developed of allowing retractions under the standing order to be given in qualified form such as "I withdraw whatever the member finds offensive."

The committee recognised that the lack of guidelines for members in relation to the form and content of apologies in the House creates difficulties. In its report, the committee recommended that the Standing Orders Committee consider adopting a new standing order that makes it clear that an apology or retraction required under standing orders, order of the House or the Chair shall not be qualified.

Taking the current state of the standing orders into account, the committee recommended that the Assembly take no further action in regard to the matter of the member's apology.

CANADA

House of Commons

The Speaker found two *prima facie* cases of privilege in the Canadian House of Commons in 2002, which for ease of reference will be referred to as the 'Eggleton question of privilege' and the 'Mace incident'.

Eggleton question of privilege

On 31 January 2002 a question of privilege was raised by Brian Pallister (Canadian Alliance), who alleged that Art Eggleton, the Minister of National Defence, deliberately misled the House as to when he knew that prisoners taken by Canadian JTF2 troops in Afghanistan had been handed over to American forces. In support of that allegation, he cited the Minister's responses in Question Period on two successive days and alluded to a number of statements made to the media by the Minister.

In his ruling on the matter on 1 February 2002, the Speaker stated that there appeared to be no dispute as to the facts. While accepting the Minister's assertion that he had no intention to mislead the House, the Speaker emphasized that it was clear that two versions of events had been presented to the House. He concluded that the fact that the House had been provided with two versions of events was one that merited further consideration by an appropriate committee, if only to clear the air.

Mr Pallister immediately moved a motion that the matter be referred to the Standing Committee on Procedure and House Affairs, and the House agreed to the motion on division on 7 February.

Following extensive study, the Standing Committee reported back to the House on 22 March that the Minister had made a mistake, but that, in its judgment, there had been no intent to confuse or mislead and therefore concluded that no contempt of the House had been committed by Mr Eggleton.

During the course of the Committee's study a second question of privilege was raised by Joe Jordan (Lib.), Parliamentary Secretary to the Prime Minister, on 28 February. He charged that the Canadian Alliance Party had breached parliamentary privilege by publishing statements on its website and through comments made to the media to the effect that the Minister of National Defence and the Prime Minister had deliberately misled the House and concealed important information through false statements made in the House.

In his ruling on the matter on 16 April 2002 the Speaker stated that while

he could not find that a *prima facie* case of privilege existed, in his opinion, the various statements and communications were intemperate and ill-advised. He added that he was troubled by the fact that the language that had been the basis for the complaint appeared again in the text of the dissenting opinion from the Alliance that was appended to the report of the Standing Committee on Procedure and House Affairs. The Speaker stated that he was not commenting on the substance of dissenting opinions or on the content of Committee reports themselves, but instead was urging Members and Chairs of Committees to ensure that the parliamentary practice with regard to language and form is fully respected.

The Mace incident

On 17 April 2002 the adoption of an amendment moved by Steve Mahoney (Lib.) to Canadian Alliance Member Keith Martin's Private Members' Bill C-344 resulted in the withdrawal of the Bill and the referral of the subject-matter to the Special Committee on Non-Medical Use of Drugs. In an act of defiance and in anger, Mr Martin immediately walked up the centre aisle of the Chamber to the Table, picked up the five-foot long Mace and proclaimed, "We don't live in a democracy anymore." The Leader of the Government in the House (Ralph Goodale) raised his objections to the actions of the Member. Following an intervention by the Chief Government Whip Marlene Catterall, Mr Martin rose and apologized to both the Chair and the House for touching the Mace.

A question of privilege was subsequently raised by the Government House Leader on 22 April, and was deemed a *prima facie* case by the Speaker. Mr Goodale then moved a motion that Mr Martin be suspended from the service of the House until such time as he appeared at the Bar of the House to apologize, in a manner found to be satisfactory to the Speaker. The motion was adopted on division on 23 April . Mr Martin appeared at the Bar of the House on 24 April to apologize for his actions.

Senate

Although there were no findings of breach of privilege or contempt of the Senate in 2002, the following questions of privilege were raised.

On 5 June 2002 Senator Gerry St Germain complained that a press release issued by a Member of the House of Commons implied that a deal had been made with the Justice Minister to accept a Senate amendment to Bill C-15B, a Criminal Code amendment dealing with cruelty to animals.

The Speaker did not find any basis for a *prima facie* question of privilege although he did note his concern with the press release and the false impression given to the public that a House of Parliament could be manipulated by a minister.

On 8 October Senator Anne Cools claimed that certain remarks made about the monarchy by the Deputy Prime Minister and Minister of Finance impeded her ability to perform her parliamentary duties since she could not support a government that expressed such views. The Speaker ruled that the personal nature of the Minister's comments did not suggest that they were intended to reflect the position of the government and for that reason he failed to find a *prima facie* case of privilege.

On 23 October Senator Lowell Murray objected to the intention of the Social Affairs, Science and Technology Committee to deposit a report with the Clerk of the Senate on a day when the Senate was not sitting. In his ruling the Speaker noted that by granting permission to the committee to deposit any report with the Clerk of the Senate without qualification, the Senate had in fact waived its right to receive the report first and found no *prima facie* question of privilege.

On 12 December Senator Leo Kolber asked the Speaker to find there was a *prima facie* breach of the Senate's privileges with respect to the premature disclosure of the Banking, Trade and Commerce's report on the public interest implications of large bank mergers. The day before the report was tabled in the Senate an article was published and distributed by the Reuters News Agency on the Committee's report and its conclusions. In his ruling, the Speaker found that in accordance with past practices of the Senate, the leak of a document such as this constitutes a *prima facie* case of privilege. In accordance with Appendix IV of the Senate Rules, it would be up to the Banking Committee to do a fact-finding investigation to determine the source and implications of the leak and to present a report. Senators would then be asked to make a decision as to whether to refer it to the Rules Committee.

Alberta Legislative Assembly

14 and 18 March 2002

On 14 March the Member for Edmonton-Highlands raised a question of privilege under Standing Order 15 regarding the membership of the Electoral Boundaries Commission announced that day. He indicated that, pursuant to the Electoral Boundaries Commission Act, consultations should have been held between the Official Opposition Leader and the Leader of

the Third Party concerning membership, but were not held. The Chair suggested that discussions should be held between the two parties to find out all the facts and that if the required consultations did indeed not happen, then the Member should raise the point of privilege on the next sitting day.

On 18 March 2002 the Member for Edmonton-Highlands indicated that after discussing the situation, the Official Opposition Leader agreed that no consultation had taken place with the Leader of the Third Party and took full responsibility for this error. The Member for Edmonton-Highlands then asked the Chair how to rectify the situation. The Leader of the Official Opposition also made a statement setting out the process he had gone through in making the nominations to the Commission.

The Chair reviewed the situation and indicated that it needed to be determined whether the objection should fall within the scope of parliamentary privilege—would the Leader of the Official Opposition's statutory duty to consult before nominating individuals to the Speaker fall within the accepted categories of privilege or would it constitute a contempt?

The Chair stated as follows:

> "The Assembly is not involved in the appointment process. That responsibility falls with the Speaker, who appoints people on the recommendation of the Premier and the Leader of the Official Opposition. A condition precedent for the nominations of the Leader of the Official Opposition is that they must be done 'in consultation' with the opposition parties represented in the Assembly. This, as has been identified today by the Leader of Her Majesty's Official Opposition, was not done.
>
> Given that the Assembly is not involved in the appointment process, it is difficult to see how this would constitute a *prima facie* question of privilege. However, it is something that is appropriate to be brought to the attention of the Speaker."

The Chair ruled that this was not a *prima facie* case of privilege but he rescinded the appointments that were made based on nominations by the Official Opposition Leader and instructed that new nominations be submitted once consultations had been held with the Leader of the Third Party.

15 April 2002

On 15 April the Member for Edmonton-Gold Bar raised a question of privilege under Standing Order 15 regarding his being denied access to audio recordings of Assembly proceedings and the accuracy of written transcripts

from Alberta Hansard. The purported question of privilege related to certain comments that were allegedly made on 11 April, which do not appear in Alberta Hansard.

First, the Chair dealt with the question of access to audio recordings. He stated that the responsibility to produce Hansard had been delegated by the Assembly to the Speaker. He then reviewed the policy regarding access to recordings used in the production of Hansard. The Chair indicated that attempts by Members to seek second opinions regarding this issue from officers of the Assembly or employees of the Legislative Assembly Office would not be tolerated. The Chair stated that the purported question of privilege raised a matter of the administration of the Assembly and was not a *prima facie* question of privilege.

Second, the Chair dealt with the question of accuracy of written transcripts. If interjections are made by a Member not recognized to speak, the Chair cannot comment on or deal with the interjections unless they elicit a response from the recognized Member or unless the Chair actually hears the words used in the interjection. The Chair ruled that this was not a *prima facie* question of privilege.

26 November 2002

A question of privilege was raised concerning alleged partisan activities participated in by the Speaker (i.e. writing letters of support for government policies, but not including opposition policies and participating in governing party caucus meetings). The Chair indicated that the actions of the Speaker may not be criticized in debate except by way of substantive motion (i.e. a non-confidence motion). The Member indicated she did not want to proceed with a non-confidence motion but instead requested the Chair deliver a statement clarifying his role as the Speaker with respect to parliamentary, political and electoral activities. The Chair agreed to make a statement at a future date.

British Columbia Legislative Assembly

On 27 March 2002 Reni Masi (Delta North) raised a matter of privilege regarding the premature disclosure of contents of the draft report from the Select Standing Committee on Education, based on an article that appeared in the *Vancouver Sun* on 18 March. On the same day, Jenny Kwan (Vancouver-Mount Pleasant) rose and advised the House that she had shared the draft report with a working group of education stakeholders on a

'confidential basis' in the process of drafting the opposition's own report. The Member expressed regret and apologized to the House but emphasized that her intention was not to release the information publicly.

On 2 April the Speaker found that the materials submitted, combined with the admission of the Member, established a *prima facie* case of breach of privilege. The matter was subsequently referred by the House to the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills for further investigation.

On 1 May the Committee received a briefing from E. George MacMinn, QC, Clerk of the Legislative Assembly, on the law of privilege and its relationship to contempt of the House. After summarizing the current parliamentary law concerning the premature publication or disclosure of committee proceedings, the Clerk of the House suggested two questions for the committee Members to consider—whether the purported leak, once the source was discovered, amounted to a substantial interference with the work of the committee or the functions of the House, and whether it constituted an offence against Parliament.

In light of her admission to the House on 27 March the Member for Vancouver-Mount Pleasant was asked to appear before the Committee as the first witness. However, as her legal counsel was unavailable on the scheduled date, the Member submitted a written response to the Committee's three questions:

- Was the Member aware of the rules and practice regarding privilege and confidentiality of draft reports?
- With whom specifically did the Member share the confidential draft report?
- Why did the Member feel it was necessary to disclose the confidential draft report?

After considering her response, the Committee recommended that the Member for Vancouver-Mount Pleasant make an unqualified apology in a form satisfactory to the Speaker from her place in the House, as soon as was practicable; and that, following such an apology, no further action be taken against the Member. It also recommended that, in the future, the Committee Chair or the Clerk to the Committee remind all Members serving on legislative committees of the rules pertaining to confidentiality of draft reports and other committee proceedings. The House approved the report on 30 May 2002, the final day of the spring sitting.

Manitoba Legislative Assembly

On 30 April 2002 the Member for Lakeside rose on a matter of privilege stating that the Premier and Minister of Finance were in contempt of the House because budget documents, advertising and press releases issued by the Government failed to note the requirement for enabling legislation in order to transfer money from Manitoba Hydro to the general operating fund of the Province of Manitoba.

On 21 May Mr Speaker Hickes indicated that although members may have had a grievance because the press releases and government ads did not clearly specify that enabling legislation was required, the privileges of the House were not violated nor did a contempt of the House occur.

On 26 July the Member for Russell rose on a matter of privilege asserting that the Minister of Transportation and Government Services had deliberately mislead the House regarding the Dakota Tipi Gaming Com-mission being in compliance with gaming regulations.

On 6 August Mr Speaker Hickes ruled that although the Member for Russell cited that the Minister of Transportation and Government Services provided different information to the House on several occasions, he did not provide proof that the minister had purposefully intended to mislead the House, nor did the minister admit that he set out to deliberately mislead the House. The matter was therefore ruled out of order as a *prima facie* case of privilege.

Québec National Assembly

In a ruling given on 16 October 2002 the Speaker concluded that the facts adduced by a Member of the Official Opposition against the Minister of State for Health and Social Services did not constitute a *prima facie* contempt of Parliament.

The Member alleged that a regional health board had availed itself of legislative provisions that had not yet been adopted by arranging for the transfer of a regional emergency calls centre to a health communications centre, whereas the Assembly had not yet completed the consideration of the bill providing for the establishment of health communications centres and authorizing the transfer of emergency services. The Member also alleged that the Minister was responsible for this contempt of Parliament, since the Government appointed the regional board members pursuant to a statute for whose implementation the Minister was responsible.

The Speaker ruled that the question of privilege was based not on an announcement made by the board but simply on a third-party press release (by the regional chairman of the ambulance owners' corporation) announcing a transfer of the emergency calls service to what he referred to as the Québec health communications centre. Furthermore, even if the board had actually authorized such a transfer, that did not necessarily mean it had acted as if the bill were in force, since such a transfer had already been discussed long before the introduction of the bill, and the organization to which the service was transferred was not created by the bill but existed beforehand. Madam Speaker added that even if she had come to the conclusion that the board had availed itself of a legislative provision that had not yet been adopted, the link between this act committed by the board and the Minister would be too tenuous to affirm that the latter had been in contempt of Parliament.

Yukon Legislative Assembly

A question of Privilege was raised by Mike McLarnon (Whitehorse Centre, Independent) on 8 April 2002 on behalf of himself, Wayne Jim (McIntyre-Takhini, Independent) and Don Roberts (Porter Creek North, Independent). At issue was the possession of, and access to, computer files and equipment belonging to the members which they alleged was improperly accessed by government staff after they left the Liberal Party caucus to sit as independents. Further, Mr McLarnon alleged government staff improperly kept these files and equipment from the now-independent members. Mr McLarnon noted that the files contained information the members had gathered as private members saying, "The right to confidentiality with constituents is necessary to ensure fair representation. When that confidentiality is breached, it seriously affects the ability of the elected members to do their duty in a position of trust." (Hansard, 3011). As a remedy Mr McLarnon asked for, "an immediate apology from the Premier on behalf of the government and an all-party disciplinary committee to find ways to ensure that this never occurs again and to bring to account the perpetrators of this very serious and grave crime." (Hansard, 3012)

Speaker Schneider took Mr McLarnon's presentation under advisement and delivered his ruling on 15 April. The Speaker did not find there to be a *prima facie* breach of privilege. He stated, in part

> "The freedom of speech enjoyed by members may be characterized as deep but narrow. It is deep in that members are allowed to say almost

> anything they wish while participating in parliamentary proceedings, such as debates in the Assembly and work in committees. Members are bound only by the conventions of parliamentary language and the Standing Orders. That privilege is narrow in that it applies solely to a member's participation in parliamentary proceedings and does not cover communications between members and their constituents. Further, it is clear that the members in question have been able to fully exercise freedom of speech while participating in the proceedings of this Assembly despite the fact that their files were withheld from them." (Hansard, 3146)

The Speaker also considered whether the actions of government staff constituted a contempt of the Assembly. He concluded that

> "What occurred, and the manner in which it occurred, was unacceptable. However, the Chair is prepared to give the benefit of the doubt to the persons associated with this event and to find, at this time, that their actions may have been attributable to a lack of proper direction and a lack of appreciation of the independence of private members, even those in the government caucus." (Hansard, 3147)

In prescribing a remedy the Speaker informed the Assembly that he had directed the Clerk to develop a draft protocol covering the issues that have been brought to light by this event. The Chair further directs that the Clerk is to provide an opportunity for all members to offer their advice on the contents of the protocol and, in due course, to present it to the Members' Services Board for review and adoption. (Hansard, 3147)

Mr Jim raised a second question of privilege on 18 April 2002. The question arose from a comment made by the Minister of Health and Social Services, Hon. Sue Edelman (Riverdale South, Liberal) and a letter the Minister sent to the Chief of the Kwanlin Dun First Nation.

During Question Period on 17 April Mr Jim asked Mrs Edelman questions regarding First Nation's children in government care. In doing so he suggested the Minister "meet with the chief and council (of the Kwanlin Dun First Nation) at the earliest possible time to rebuild … trust." (Hansard, 3208) In response Mrs Edelman said, "First of all, I didn't realize that the member opposite is suddenly representing the Kwanlin Dun First Nation." (Hansard, 3208) Later that day the Minister sent a letter to Chief Rick O'Brien of the Kwanlin Dun First Nation in which she wrote, "I accept that Wayne Jim represents his constituents, however, I am unclear as to whether or not he speaks for the Kwanlin Dun First Nation government."

In raising the question of privilege Mr Jim said

> "The minister has directly attacked my right to ask questions in the House by asking if I had permission from my First Nation government to bring forward questions on behalf of constituents who also happen to be Kwanlin Dun. The member is also implying through this letter that I am solely representing the view of the Kwanlin Dun government on these issues, instead of my sworn duties to all Yukoners and to this Legislature... It is raising a direct question of my rights to represent constituents in my riding, who are individuals that are affected by this government's policies, regardless of ancestry." (Hansard, 3240-1)

This, he argued, was "an attempt to intimidate members of my constituency and silence me" (Hansard, 3241) and constituted a contempt of the Assembly. As a remedy he asked, "that this House take action by asking the Minister of Health and Social Services to take a cultural sensitivity course and offer an apology to the House for her poor and inappropriate choice of tactics." (Hansard, 3241)

Speaker Schneider delivered his ruling on April 23, 2002. He concluded

> "After due consideration, that the minister's words and actions do not constitute a *prima facie* breach of privilege or a contempt of the Assembly. The Member for McIntyre-Takhini is correct to be concerned about safeguarding his rights, and those of other members of the Assembly. However, the Chair is not convinced that the words and actions of the Minister of Health and Social Services have, directly or indirectly, had the effect of obstructing or impeding the member in the discharge of his duties.
>
> The Chair notes, for example, that though it may be felt by the Member for McIntyre-Takhini that the minister questioned his right to ask the questions he did, the minister had already answered a main question and a supplementary question on the issue. The minister then answered the member's second supplementary question. Also, the minister had answered questions on a similar issue the previous day. Further, on April 18, the minister tabled a legislative return that expanded upon the answers she had already provided. The Chair must conclude, therefore, that the member has been able to fully exercise freedom of speech while participating in the proceedings of this Assembly." (Hansard, 3303)

At the same time the Speaker said statements that suggest a member is representing someone other than his or her constituents are not in order as they

are an imputation of false or unavowed motive, in contravention of Standing Order 19(g). The Speaker suggested that, in future, members who are concerned about such statements raise them as a point of order when they are made.

INDIA

Lok Sabha

On 9 May 2002 a member gave a notice of a question of privilege against the Prime Minister for allegedly misleading the House. The member, in his notice of question of privilege, alleged that the Prime Minister had misled the House on 1 May while intervening in the discussion on the motion under rule 184 regarding violence in Gujarat. He stated that the Prime Minister, while seeking to clarify misgivings about part of a public speech which he made at Goa, stated on the floor of the House that "Whatever I said about Islam is as follows … Wherever such muslims live, they tend not to live in co-existence with others, not to mingle with others, instead of propagating their ideas in a peaceful manner, they want to spread their faith by resorting to terror and threats". The member contended that in the video recording of the speech of the Prime Minister made by him at Goa, the word 'such' had not been used before 'muslims', and by this interpolation an attempt was made to alter the meaning of the sentence. The member alleged that this amounted to misleading of the House by the Prime Minister. On 16 May when the member sought to raise the matter in the House the Speaker, while informing the House that he had disallowed the notice of question of privilege, observed *inter alia* as follows:

> "The Prime Minister, while admitting that the video tape of his speech made at Goa does not contain the words 'such', has stated that 'no one who reads my entire speech, and takes note of the tribute I have paid to the tolerant and compassionate teachings of Islam, can be in any doubt that my reference in the second paragraph is only to followers of militant Islam.' A clarificatory statement to this effect was issued by the Prime Minister on 14 April, 2002 and the Prime Minister's Office also released the entire text of his speech to the media with necessary correction. The Prime Minister has also stated that 'It is this corrected version from which I read out the relevant paragraphs while speaking on the Gujarat situation in the early hours of May 1 2002.'"

Another member gave notice of question of privilege against the Ministries of Personnel, Public Grievances & Pensions and Home Affairs for having furnished misleading information to the Central Administrative Tribunal, Hyderabad regarding cadre change of Indian Administrative Service/Indian Police Service officers. The member in her further notice of question of privilege alleged that the Minister of State in the Ministry of Personnel, Public Grievance & Pensions gave incomplete information, in response to an Unstarred Question on the subject of cadre change of IAS/IPS officers.

While disallowing the member's notices of question of privilege the Speaker, in his ruling given on 17 December 2002 during Eleventh Session of Thirteenth Lok Sabha, observed as follows:

> "The notices of question of privilege given by Smt. Renuka Chowdhury are not specific inasmuch as the notices do not state as to how a breach of privilege or contempt of the House has been occasioned and by whom … Missing of Government records or furnishing of misleading information to Central Administrative Tribunal, Hyderabad does not amount to a breach of privilege or contempt of the House … The member in her notice of question of privilege dated 16 April 2002 contended that the Minister of State in the Ministry of Personnel, PG and Pensions gave incomplete information in response to USQ Nos.1490 and 1603 on 13 March 2002 on the subject of cadre change of IAS / IPS officers. Such matters can appropriately be raised through other parliamentary devices such as by way of notice under Direction 115 which provides for the procedure for pointing out mistake or inaccuracy in the Statements made by Ministers."

On 18 December 2002 the Chairman of the Committee of Privileges presented to the House the Third Report of the Committee regarding question of privilege given notice of by Shri Jaswant Singh Bishnoi, MP against railway officials for having cancelled his confirmed 1st class A/c railway reservation in 2461 Mandore Express from Delhi to Jodhpur on 11 August 2000.

The Committee recommended that in view of unconditional apologies tendered by the Chairman, Railway Board and other senior officers of Railway Board as well as a revised circular issued by Railway Board regarding allotment of Emergency Quota to VIPs, no further action need be taken in the matter and it may be treated as closed.

UNITED KINGDOM HOUSE OF COMMONS

See Article on *A v the UK*.

ZAMBIA NATIONAL ASSEMBLY

On 5 March 2002 Mr Speaker referred to an earlier ruling in which he stopped the Hon. Member of Parliament for Lusaka Central Constituency, Mr Dipak Patel, from laying documents of a confidential nature on the Table, because Commonwealth practice and procedure did not allow for tabling of confidential or secret information on Government operations that had not been cleared by Government itself.

As a follow-up to his ruling, Mr Speaker directed that all remarks made by the Hon. Member for Lusaka Central Constituency in relation to the financial statements of the Zambia State Intelligence Service be expunged from the record of the day's parliamentary debates. Further, he advised all Members of the House not to abuse the rights that protect them from civil and criminal proceedings with regard to their actions in the House, as the same rights do not protect them if such actions are repeated outside the precincts of Parliament. Finally, Mr Speaker emphasised that Parliament had also powers to punish offenders who abused the powers, privileges and immunities provided for in the Constitution and other relevant Acts of Parliament.

On 9 August 2002 Mr Speaker made immediate remarks during the voting on a motion to adopt a Committee report on the ratification of the Attorney-General, prompted by some members of the Select Committee voting against their report. Mr Speaker subsequently informed the House that after having seriously considered the matter he wished to guide the House as follows:

- The procedures and practices of the House did not allow Members of a Select or Sessional Committee to vote against their own Report;
- The National Assembly (Powers and Privileges) Act Cap 12 of the Laws of Zambia protected Members of Parliament against external pressure in the performance of their parliamentary duties.
- Any Member who, in future, conducted himself or herself in the same manner some of the Members of the Select Committee did would have breached the Members' privileges, procedures and practices of the House.

On 5 November 2002 Mr Speaker made an announcement on three motions which were supposed to be moved that day by three Hon. Members to pave the way for three Private Members' Bills (namely the Broadcasting Bill, NAB NO, 12 of 2002; the Independent Broadcasting Authority Bill, NAB No. 13 of 2002; and the Freedom of Information Bill, NAB No 14 of 2002).

Mr Speaker drew the attention of the House to the provisions of Article 81 of the Constitution of Zambia, Cap I of the Laws of Zambia, and Standing Order 76 of the National Assembly Standing Orders, which clearly provided that a Bill or Motion which, in the opinion of the Presiding Officer, made provision for payment or issue, or withdrawal of money from the general revenues of the Republic or the alteration of taxation, required a recommendation of the President signified by the Vice-President or a Minister. This requirement applied to both Private Members' and Government Bills. Mr Speaker concluded that, in this regard, the House would not proceed with the three Private Members' Bills until the Members concerned indicated to the Hon. Mr Speaker that the recommendation had been so granted.

On 7 November 2002 Mr Speaker referred to a point of order raised by the Hon. Member for Kafue, Mr R K K Sichinga, MP, on 5 November, in which he wanted to know whether it was in order for the Government, among other things:

- To start undertaking the responsibility of allocating land in various areas where it has no jurisdiction, for example in Chief Chiawa's areas in Kafue;
- To allocate to a Dr Naidoo large tracts of the land in Chiawa; and
- To deny and disown the project in Chiawa.

Mr Speaker informed the House that the point of order raised issues of a current political nature being discussed outside the House, which were consequently outside the ambit of the House. He therefore had no substantive ruling to make. However, he advised the interested parties to settle the matter amicably outside the House.

AMENDMENTS TO STANDING ORDERS

AUSTRALIA

Senate

Bills in committee

The Senate adopted an order, recommended by the Procedure Committee, whereby the committee of the whole stage on bills is passed over unless any senator circulates amendments or requires that the committee stage occur. Although this proposal contains seemingly foolproof safeguards to ensure that any senator can require that the committee stage occur, it was considered very carefully before its adoption, indicating the importance attached to proper scrutiny of legislation.

Committees: chairs and quorums

On the recommendation of the Procedure Committee, the Senate adopted a set of changes of the standing orders relating to chairs and quorums in standing committees:

- If both the chair and deputy chair are temporarily absent from a meeting, the chair or deputy chair presiding will be able to appoint another member of the committee to take the chair temporarily. Hitherto in the absence of both the chair and the deputy chair a committee wishing to meet had no option other than to remove either the chair or the deputy chair from office and elect another for a period; this provision arose from 1994 arrangements for sharing chairs proportionally among the parties.
- A participating member of a committee will count towards a quorum if there is not a majority of the committee present at a meeting (participating members are extra members appointed to committees, with all the rights of full members except the right to vote).
- The chair of a committee will not be obliged to suspend a meeting in the temporary absence of a quorum unless a senator draws attention to the lack of a quorum (this places committees on the same footing as the Senate itself).

ACT Legislative Assembly

Only one amendment was made to Standing Orders in 2002. On 28 August a member moved the adoption of a temporary order of the Assembly to permit a member of a committee to participate in deliberative meetings of standing committees from outside the ACT only when face-to-face meetings are impossible. The Assembly adopted the temporary order which has a requirement that a quorum be maintained and the standing orders of the Assembly be observed.

New South Wales Parliament

The Legislative Council adopted a Sessional Order in March 2002 which had the potential to affect the Government's legislative program by specifying cut off dates for consideration of Government Bills received from the Legislative Assembly. It provided:

> "That, during the present session and notwithstanding anything contained in the Standing and Sessional Orders, and unless otherwise ordered, the following procedures apply to the passage of Government Bills:
> 1. Where a Bill is introduced by a Minister, or is received from the Legislative Assembly:
>
> a) after 18 June 2002 (Budget Session), debate on the motion for the second reading is to be adjourned at the conclusion of the speech of the Minister moving the motion, and the resumption of the debate is to be made an Order of the Day for the first sitting in September 2002;
>
> b) after 19 November 2002 (Spring Session) debate on the motion for the second reading is to be adjourned at the conclusion of the speech of the Minster moving the motion, and the resumption of the debate is to be made an Order of the Day for the first sitting day in 2003.
>
> 2. However, if after the first reading, a Minister declares a Bill to be an 'urgent Bill' and copies have been circulated to Members, the Question 'That the Bill be considered an urgent Bill' is to be decided without amendment or debate, except a statement not exceeding 10 minutes each by a Minister and the Leader of the Opposition, or a Member nominated by the Leader of the Opposition, and one cross-bench Member. If that Question is agreed to, the second reading debate and subsequent stages may proceed forthwith or at any time during any siting of the House." (Minutes of Proceedings, 20 March 2002, pp. 72–74)

The Government's legislative program in the Assembly was not unduly affected by this sessional order as motions were passed by the Legislative Council to enable it to deal with Government Bills forthwith, at a later hour of the sitting or through all stages in any one sitting. This meant that any amendments made by the Council to Government bills were returned to the Assembly in a timely fashion with little delay. In addition the Government introduced a number of bills into the Legislative Council which meant that the Sessional Order did not apply.

South Australia House of Assembly

In July 2001 the Select Committee on Parliamentary Procedures and Practices tabled an Interim Report. The Committee's recommendations related largely to procedural matters, and set out proposals for change to initiate a debate. No further formal consideration has been given to the recommendations. As part of the compact between the Speaker and the current Government (see Miscellaneous Notes) a Constitutional Convention has been convened for early in 2003. The Convention will consider amongst other things the procedures of both Houses with the possibility of recommending both constitutional and procedural reforms.

Sessional Orders are currently in place to provide for an additional sitting day in each sitting week (Monday) and greater time for the consideration of Private Members Business (now 4.5 hours per week—not including 2 hours Grievances per week).

CANADA

House of Commons

The following amendments to the Standing Orders of the Canadian House of Commons were adopted in 2002:

- The designation of Vice-Chairs of standing and standing joint committees as 'associate members' of the Liaison Committee (S.O. 107(5)), adopted 24 May 2002 (adoption of 59th Report of the Standing Committee on Procedure and House Affairs);
- The division of the Standing Committee on Transport and Government Operations into a Standing Committee on Transport and a Standing Committee on Government Operations and Estimates, and a listing of the 'permanent mandate' of the latter committee (S.O.s 104 and 108),

adopted 27 May 2002 (unanimous consent motion in the House);

- A new procedure with respect to 'written notification' of Royal Assent and publication of the notification in the Journals of the House (S.O.s 28 and 32.1), adopted 13 June 2002 (unanimous consent motion in the House) (Note: see Miscellaneous Notes above for note on Bill S-34, The Royal Assent Act);
- Stipulation that the Chair and one of the two Vice-Chairs on each standing or special committee must be members of the governing party, and the other Vice-Chair must be a member of an opposition party, except in the case of the Standing Committee on Public Accounts and the Standing Joint Committee on Scrutiny of Regulations, where the Chair of Public Accounts and the Co-Chair of Scrutiny of Regulations must be members of the Official Opposition (S.O. 106(2)), adopted 5 November 2002 (Supply Day motion);
- A provision for the election by secret ballot of Chairs and Vice-Chairs of Committees, in cases where more than one candidate is nominated for the respective positions; also, an enumeration of the procedures to be used in such secret ballot elections (S.O. 106(3)), adopted 5 November 2002 (Supply Day motion);
- Change in a particular Committee (Official Languages) from being a Standing Joint Committee to a Standing Committee (S.O.s 104 and 108) together with the committee's permanent mandate, adopted 7 November 2002 (unanimous consent motion in the House).

A special committee was appointed on 28 November 2002, mandated to consider and make recommendations on the modernization and improvement of the procedures of the House, and to make recommendations for changes to relevant statutes. The Committee is chaired by the Deputy Speaker, with the Government House Leader and Opposition House Leader designated as Vice-Chairs. The House Leaders and Caucus Chairs of each of the officially recognized parties comprise the membership of the committee. All reports of the Committee are to be unanimous, and the reporting date is no later than 13 June 2003. The Special Committee tabled significant amendments to the Standing Orders concerning Private Members' Business on Friday, 28 February 2003, in response to an earlier decision of the House that those procedures be updated. The changes were adopted on a provisional basis on 17 March, to remain in effect for one year or until the current session is prorogued, whichever comes first.

Senate

On 11 June 2002 the Twelfth Report of the Standing Senate Committee on Rules, Procedures and the Rights of Parliament was adopted. This report recommended rule changes concerning the official recognition of third parties in the Senate. The new rules are based on the principle that third party recognition in the Senate would mean a party that initially has five or more Senators, is a registered party under the Canada Elections Act, and continues without interruption to have five or more members in the Senate whether or not it ceases to be a registered party under the Canada Elections Act.

A consequential rule change was that each leader of a recognized third party shall be permitted no more than forty-five minutes for debate. Previous to the adoption of these new rules, there was no provision for the official recognition of a third party in the Senate.

On 10 October, on a motion proposed by Senator Jean-Robert Gauthier, the Senate agreed to withdraw from the Standing Joint Committee of the Senate and the House of Commons on Official Languages and to establish its own Standing Senate Committee on Official Languages, composed of nine members. Senators believed they could more effectively address the issues concerning official languages by having their own standing committee.

On 5 December the Sixth Report of the Standing Senate Committee on Rules, Procedure and the Rights of Parliament was agreed to. The report recommended changing the name of the Senate Committee on Fisheries to the 'Senate Committee on Fisheries and Oceans'. The rule change brought the mandate of the Committee in line with the name of the department the Committee deals with.

On 10 December the Fifth Report of the Standing Senate Committee on Rules, Procedures and the Right of Parliament was adopted. Rule 93(3), which had stated "By order of the Senate any select committee may meet during an adjournment of the Senate which exceeds a week", was amended to read: "A select committee may meet during an adjournment of the Senate which exceeds a week by: (a) an order of the Senate; or (b) the signed consent of the Government and Opposition Leaders, or any Senators named by such Leaders to a written request made by the Chair and the Deputy Chair."

British Columbia Legislative Assembly

On 13 February 2002 minor amendments to the Sessional order, previously passed on 27 August 2001, were made for the duration of the Third Session of the 37th Parliament in respect to the timing of daily sittings of daily sittings, daily routine business of the House, and private Members' statements.

The same day the Standing Orders of the House were amended to adopt Standing Order 25B, a new provision for daily Statements by Members. Three private Members are now permitted to make two-minute statements immediately prior to the daily Oral Question Period. The guidelines stipulate that Members must give their Whip 24-hour notice of their intention to speak on a particular subject. Party Whips confer to decide on the names of the three Members who will be recognized for statements the next sitting day and then inform the Speaker by noon of the day in question as to who has been selected and what the topic of the statement is. Statements under this Standing Order are subject to the ordinary parliamentary rules of decorum and debate.

Manitoba Legislative Assembly

Two rounds of rule changes occurred in the Manitoba Legislative Assembly in 2002.

The first series of changes was adopted on 23 April. As part of this package of changes, the requirement for the Chairperson of Supply to report each day's proceedings to the House was eliminated. Instead, the Chairperson is now required to report only once, at the conclusion of the entire estimates process.

Changes were also made to the process for replacing and substituting Members on Standing Committees during legislative sessions. Instead of requiring such changes to be done by motion in the House, the caucus whips can now make membership changes by filing changes with the Clerk's Office up to 30 minutes prior to the start of a Committee meeting.

Appendices to the Rule Book, including model petitions, notice of petitions for private bills, notice of a vacancy in the Legislative Assembly, and resignation of a Member of the Legislative Assembly, were redone into 'plain language' versions. In addition, the wording used for royal assent scripts, and for the motions to resolve into Committee of Supply and Committee of Ways and Means were put into plain language versions.

A more substantial round of Rule changes was adopted on 4 December to take effect on 1 January 2003. These changes incorporate a number of significant revisions, in many cases revamping and modernizing procedures, as well as deleting procedures no longer followed. The procedural changes are as follows:

Procedure in unprovided cases

The rule will now provide that the parliamentary traditions of other Legislative Assemblies in Canada may also be consulted, in addition to the Canadian House of Commons.

Definition section

A definition of 'supply Bill' has been added to the Rules.

Sessional calendar

A legislative calendar has been added to identify the time frames during the year when the House can meet:

- The House can meet from the first Monday in February to Thursday of the second full week in June; and
- From the first Monday after Labour Day to Thursday of the first full week of December;
- The House is not to meet during the week designated as spring break under The Public Schools Act; and
- The House is not to meet on holidays designated under The Civil Service Act.

The government will advise the Speaker when sessions are to start within the periods identified above. The House can meet at any other time because of emergency or extraordinary circumstances if the government advises the Speaker that the public interest requires it. If there is no Speaker, the government can inform the Clerk in place of the Speaker.

Usual adjournment hour

The House will now adjourn at 5.30 on Monday to Thursdays instead of 6.00 pm. If the Committee of Supply is sitting on a Friday, the House will adjourn at 12.30.

Deputy Speaker

If both the Speaker and Deputy Speaker are absent, a Deputy Chairperson may act as the Speaker.

General decorum

Members are to adhere to rules regarding bowing when entering or moving around the Chamber, and are not to cross between the Chair and the Mace and the Chair and the Member speaking. Members can use laptops and electronic devices except during Question Period. Members may not have telephone conversations in the House or in committee. Reading newspapers in the Chamber is no longer prohibited.

Daily routine

Several of the Routine Proceeding categories have been renamed. Petitions have been combined into one-step, and the category 'Notices of Motions' has been deleted.

Order after daily routine

The Committee of Supply has been added to the list of items outlining the Orders of the Day.

Private Members' business

Private Members' Business will now be held on Thursday mornings from 10.00 am to 12 noon, instead of 5.00 to 6.00 pm daily.

In cases where a division is deferred during Private Members' Hour, or if a vote is held, the House will only go on to the next item of business if all Members agree, or if there are more than 30 minutes remaining in Private Members' Hour.

Resolving into Committee of Supply

Instead of requiring a motion to be moved when the Committee of Supply is called, the House will now automatically resolve into Committee when Supply is called as an order of government business.

Tabling documents

Annual reports of departments or crown corporations that are released when the House is not in session will no longer have to be tabled in the House. Instead, they will be deposited with the Clerk and recorded in the House official record. Any reports released while the House is in session must be tabled by the Minister in the House.

Statements by Ministers

A Minister must now provide fourteen copies of a statement before making a statement or announcement in the House. It is now specified in the rules that an Opposition response to a Ministerial statement is restricted to the same time length as the Minister used in making the statement.

Opposition Day motions

On up to three days in each session, a motion may be put forward by the Opposition for debate. The new rules make it clear that the subject matter of a motion must come within the administrative responsibilities of the provincial government. The new rules also prohibit any amendment of an opposition day motion and provide that a vote occur on the motion at the end of the day.

Private Member's resolutions

A new process has been created for the submission and review of Private Members' resolutions:

- Resolutions are now to be submitted for procedural review within 14 days after the Throne Speech is read;
- Each Private Member may submit one resolution to the Clerk;
- The House Leaders are to meet as a Committee within 7 days after the submission of resolutions, in order to review and select resolutions designated as priorized for votes, and to determine the numerical order of the priorized resolutions;
- The resolutions not selected as priorized are then entered in a draw to determine numerical order, with the numbering to start where the numbering of priorized resolutions left off;
- Additional resolutions may be filed following the draw and are assigned the next available number.

There is also a new process for debate on Private Member's resolutions:

- The priorized resolutions will retain their position on the Order Paper until disposed of, and cannot be amended;
- The non-priorized resolutions are dropped to the bottom of the list on the Order Paper if not disposed of within one hour or if the Member is absent or does not proceed with it;
- The non-priorized resolutions are removed from the list if the Member is absent or does not proceed with it a second time;

- The Speaker is to put the question after 3 hours of debate;
- Resolutions cannot be 'adjourned' or allowed to 'stand' in a member's name.

Interrupting Budget Debate for government business

The Budget Debate can now be interrupted by the Government House Leader for up to three days in order to call government business. Any day that the Budget debate is interrupted for more than 30 minutes does not count against the eight days allowed for consideration of the Budget Debate.

Speeches by Members in the House

The time allotted for speeches by Members in the House has been reduced from 40 minutes to 30 minutes. The speaking time on items debated during Private Members Hour, or Private Members Business when called for debate under Government Business, remains at 15 minutes.

A general rule on rotation has been added to the rules. When a Member from one party has concluded speaking in a debate, the Speaker must not recognize another Member from the same party to speak until an opportunity has been provided for a Member from another party to speak in the same debate.

A new concept in debate has also been included. Members may now divide their speaking time with other Members from the same party. The general rule on rotation does not apply when a Member splits the speaking time. When the speaking time is split, the Member must advise the Speaker and all speeches comprising that 30-minute time slot must be given consecutively.

Interrupting Throne Speech debate for government business

The Throne Speech can now be interrupted for up to three days in order to call government business. Any day that the Throne Speech debate is interrupted for more than 30 minutes does not count against the eight days allowed for consideration of the Speech from the Throne.

Time allocation

This is a new procedure for Manitoba. It can be applied to either Bills or motions.

For Bills the time allocation rule can come into effect a minimum of two weeks after a Bill has been distributed and if the Bill has been called for second reading debate three times. Once these two requirements have been

met, the government can propose a motion that sets out a schedule for passing the remaining stages of the bill. The time allocation motion can cover any or all of these stages: when second reading will be concluded, how long the committee will have to consider the bill, how long will be allocated for report stage, and how much time will be provided for debate at third reading.

For motions once debate of a motion has begun in the Assembly, the government can move a motion to allocate time for debate of that motion.

Time allocation cannot be used on a bill which would privatize a crown corporation; on bill that would amend, repeal or override the referendum requirements of the Balanced Budget legislation, the Manitoba Hydro Act or any other law that requires a referendum before a Crown corporation is privatized; and time allocation cannot be used to reduce the time allotted to consider estimates and supply bills.

Notice provisions

The old rules required that motions appear on the Notice Paper two days after filing with the Clerk, and then appear on the Order Paper two days later. This provision has been shortened to one day instead of two. Previously the Members were not allowed to have more than two notices of motion on the Notice Paper. This provision has been removed.

Additional provisions have been added to take into account filing of items during and between sessions.

During a Legislative Session:

- One-day notice is required for filing a motion;
- When a motion, other than a Supply Bill motion, is filed with the Clerk before the usual adjournment hour, it will appear on the Notice Paper on the next sitting day and placed on the Order Paper for the next sitting day after that.

Between a Legislative Session:

- Motions can now be filed intersessionally. Notice is to be filed with the Clerk before 12:00 noon on the last working day before the sessional period begins.

Message of the Lieutenant Governor

The requirement for a Royal Recommendation (Message) from the Lieutenant Governor to be tabled in the Assembly by the Minister when introducing a vote, resolution, address or Bill to the House has been

removed. Instead, the royal recommendation must be tabled before the vote, resolution or address is considered by the House.

Committee of the Whole House

The quorum for a Committee of the Whole House is 10 Members.

Committee of Supply—consideration of Departmental Estimates

- A definition for the 'business of supply' has been added.
- When estimates are tabled, they are now automatically referred to the Committee of Supply instead of requiring a motion to refer them to the Committee of Supply.
- Under the new rules, departmental estimates stand referred to Committee of Supply and will be called as an Order of the Day in the House. This means that the Government House Leader will no longer have to move the Supply motion on Estimates days but will instead announce Supply as an order of government business. The Speaker will then announce that the House is resolving into the Committee of Supply.
- The maximum time allowed each year for the Consideration of Departmental Estimates has been reduced from 240 hours to 100 hours. As under the previous rules, the number of hours and minutes remaining in the 100-hour Estimates 'clock' will be printed on the Order Paper.
- In addition to regular sittings from Monday to Thursday, during the estimates process the House will also sit Friday mornings from 10.00 am to 12.30 pm in the Committee of Supply. During these Friday sittings, no quorum will be required for the Committee of Supply and all recorded votes will be deferred until the next sitting. This will include count-out votes on all motions, resolutions, or challenges to rulings of the Chair.
- Lines items no longer need to be passed in the Committee of Supply—only resolutions need to be passed.
- There continues to be no time limit for debate on the concurrence motion (which follows the conclusion of the consideration of departmental estimates). There is a new provision for this debate requiring the tabling of a list of Ministers who may be called for questioning. The Official Opposition House Leader must table this list at least 24 hours in advance and Ministers may only appear twice on the list.

Standing Committees

A provision has been added to the rules to specify that no Standing Committee may consist of more than 11 members. In addition a number of provisions have been added regarding public presentations in Standing Committees:

- Each presenter will be allowed ten minutes to make a presentation and an additional five minutes for questions from Committee Members. Exceptions are allowed to this rule by unanimous consent of the Committee.
- If a registered presenter does not appear when called at the committee, that name is dropped to the bottom of the list. If the presenter does not appear when called a second time, the name is dropped from the list for good. Exceptions are allowed to this rule by unanimous consent of the Committee.
- Meetings of committees to hear presentations in the evening must commence at 6.30 (unless it is a continuation of an afternoon meeting, in which case the meeting will commence at 7.00).
- Committees may not sit past midnight to hear presentations unless the committee has already met on two previous evenings hearing presentations on the same bill, or if fewer than 20 presenters are registered to speak to all bills when the committee meets at 6.30. If presentations are completed, Committees may sit past midnight for clause-by-clause consideration of Bills. Exceptions are allowed to this rule by unanimous consent of the Committee.
- At midnight on the third or any subsequent evening that a Committee meets to consider a Bill the Chairperson shall decide, without debate, whether the Committee shall sit past midnight.
- After midnight on the third evening, that a Committee meets to consider a Bill no further presenters may be registered.
- Two days notice must be given of any Committee meeting considering bills where there are presenters registered to speak to the bills.

Petitions

The process for 'Presenting Petitions' and 'Reading and Receiving Petitions' has been combined into a one-step process called PETITIONS on the Order Paper. A petition must be in a set form. The names and addresses of the first three petitioners must be legible, and the signature of the Member must also appear at the top of the original petition. Each petition filed is

examined by the Speaker to ensure that it complies with the Rules and conforms to the practices and privileges of the House.

Twenty-four hours after filing the petition with the Clerk, the Member's name will appear under the item of PETITIONS on the Order Paper. When the Speaker calls the name of the Member submitting the petition, the Member must read the full text of the petition and the names of the first three petitioners (previously the petition was read by the Clerk during Reading and Receiving Petitions). When the Member reads the petition, it is deemed to be received by the House. There is no debate on a petition, and a Member may present only one petition each day to the House. A person wishing to have a petition presented to the House must do so through a Member.

First Reading Motion

The requirement for 'leave' is no longer required for a Member to introduce a Bill listed on the Order Paper under Introduction of Bills. The motion will only specify the title of the Bill.

Report Stage, Concurrence and Third Reading

If Report Stage amendments are filed, a Report Stage is held. Otherwise, there is no Report Stage. Members will now have to give advance notice of report stage amendments by filing a report stage amendment with the Clerk on the day a bill is reported back to the House by a committee. The amendment has to be distributed in the House on the next day. Debate on Report Stage amendments is being reduced to 30 minutes for leaders of recognized parties, and 15 minutes for all other Members.

After Report Stage, or if no Report Stage amendments are filled, a combined Concurrence and Third Reading motion is moved. These two stages have been combined into one motion which is debatable.

Financial Procedure Guide

The processes followed for the consideration of the Budget Address, for the Interim Supply procedure, and for the Main and Capital Supply procedure have been added to the Rules as an appendix.

Guidelines for the Public Accounts Committee

During the Third Session of the Thirty-Seventh Legislature, significant changes were made to the way in which the Standing Committee on Public Accounts operates. The following are some of the more significant changes:

- A mandate for this committee was established.
- Cabinet Ministers (with the exception of the Minister of Finance) and Leaders of recognized parties are ineligible to be Members of the Committee.
- The Chairperson of the Committee shall be a Member of the Official Opposition and the Vice-Chairperson shall be a Member of the Government (this has always been done in practice).
- The Government House Leader shall call at least 4 meetings per year.
- The Public Accounts Committee shall have the ability to access all financial information and other documents necessary for its reviews in accordance with The Freedom of Information and Protection of Privacy Act.
- The Chairperson, when presenting a report to the House from the Standing Committee on Public Accounts, may make a brief statement to the House concerning the content of the report.

To access the motion adopted in the Assembly outlining the specific changes, or to access the revised rule book, please click on the Manitoba Legislative Assembly home page at http://www.gov.mb.ca/leg-asmb/rulebook.html.

Québec National Assembly

Provisional rules

On 6 December 2001 the Assembly had adopted provisional rules of procedure replacing the motion to suspend certain rules of procedure with the motion to introduce an exceptional procedure. At the same time, it had also adopted new provisional rules relating to the conduct of extraordinary sittings, the presentation of petitions, and the time frame for the passage of bills. These modifications were renewed on 5 June and on 19 December 2002. They were to remain in force until 23 June 2003, notwithstanding the prorogation of the session.

On 12 March 2002, when the office of Speaker became vacant, the National Assembly elected its Speaker by secret ballot, in compliance with the rules of procedure adopted for the occasion pursuant to a special order of the Assembly, as it had done for the first time in its history at the opening sitting of the First Session of the 36th Legislature, on 2 March 1999. On 5 June 2002 the Assembly adopted these modifications concerning the election of the President by secret ballot and incorporated them into its Standing Orders on a temporary basis. They were to remain in force for the duration of the 36th Legislature.

FALKLAND ISLANDS

Amendments to the Standing Orders of the Legislative Council were moved on 28 March 2002, regarding the procedure for the election of Speaker and other matters.

NEW ZEALAND HOUSE OF REPRESENTATIVES

The Standing Orders were not themselves amended in 2002 but a number of sessional orders were made modifying their application.

Various sessional orders from the previous Parliament have been renewed. In addition, following an interim report of the Standing Orders Committee, *Review of Standing Orders: The publication of legislation and parliamentary information* (parliamentary paper I.18A), further orders modifying Standing Orders were made by the House on 17 December 2002. These relate particularly to the implementation of outcomes from the Public Access to Legislation (PAL) project and the printing of parliamentary information. For instance, from 2003 questions for written answer by members to Ministers are lodged, and replied to, only electronically. The notice paper is discontinued but the Parliamentary Bulletin endorsed as published under the authority of the House and the bulletin includes the Journals of the House and contents formerly in the notice paper.

The sessional and other orders of continuing effect may be viewed at http://www.clerk.parliament.govt.nz/publications/other/SessOrders.pdf. It is expected that the Standing Orders Committee's broad review of the operation of Standing Orders will be completed in 2003.

SINGAPORE PARLIAMENT

A committee has been formed to review the Standing Orders.

SOUTH AFRICA

National Assembly

Amendments to questions procedure

At the beginning of 2000 new guidelines for Questions to the Executive were introduced on a trial basis, and the relevant Assembly Rules were suspended. The following reasons were cited for the review:

- Interpellations (15-minute mini-debates) were not seen as an effective form for interaction between Ministers and members;

- There was insufficient time to answer the large majority of oral questions on the Question Paper each week;
- Very few Ministers had the opportunity to answer questions verbally; and
- The 'first come, first served' basis of tabling questions did not always allow for a fair spread of the opportunity among all parties (between 1994 to 1999 there were 13 parties and since April 2003 the Assembly has had 17 parties).

The changes included dropping interpellation debates, extending Question Time from 30 minutes to two hours, and grouping Ministers into three 'clusters' (Economics, Peace and Security, Social services and Governance) for purposes of answering questions. The House adopted new Rules on 26 June 2002. In terms of the new Rules, except for urgent questions, questions during a particular day (usually on Wednesday) can only be put to a particular cluster. The President answers six questions once every parliamentary term while the Deputy President answers four questions every second week.

The new Rules introduced a few changes to the 'guideline' procedures used during the trial period. The most notable are the following:

- The number of questions that may be put to an individual Minister on any one Question Day is increased from 8 to 10.
- In the past, Questions for oral reply that could not be placed owing to quotas, were moved forward to the next Questions Day for the relevant cluster. Such questions are now submitted for written reply.
- If an oral Question stands over more than once, the Question Paper is endorsed to the effect that it has not been replied to.

In addition, the practice has developed that the order of rotation in which parties gain the opportunity to put Questions in a particular cluster, carries on without interruption from one Question Day for a particular cluster, to the next Question Day for that cluster. The order in which questions are asked is based on the numerical strength of a party.

Rules regarding quorum

Previously the Rules of the Assembly provided for quorums for debates as well as decision-taking. However, on 12 September 2002 the House agreed to amendments which necessitate the presence of a quorum in the House only when voting on a Bill or deciding any other question.

The amended rules read as follows:

"*Quorum*

(a) The Assembly may proceed with its business irrespective of the number of members present, but may vote on a bill or decide on any question only if a quorum is present.

(b) Except where the Constitution provides otherwise—

- A majority of the members of the National Assembly must be present before a vote may be taken on a bill or an amendment to a bill;
- At least one third of the members must be present before a vote may be taken on any other question before the Assembly.

Absence of quorum

If the attention of the presiding officer is called to the absence of the prescribed quorum when a question is put for decision and if after an interval of five minutes, during which time the bells must be rung, there is still no quorum, the presiding officer may suspend the proceedings or postpone the decision of the question."

The rule which provided for the option to adjourn the House owing to absence of a quorum has been deleted.

Reduction of size of Joint committee on Ethics and Members' Interests (joint rules)

Previously the Joint Committee of the two Houses consisted of 27 National Assembly members and 13 National Council of Provinces' members. A need was identified for a process to be put in place to reduce the size of the Joint Committee as it had not been possible for the Committee to obtain a quorum on many occasions to take important decisions. There was agreement that the rule amendment necessary to give effect to the reduction of the size of the Committee would be by way of resolution in the two Houses.

On 14 November 2002 both the National Assembly and the National Council of Provinces adopted resolutions to amend the Joint Rules so that the Joint Committee consists of 18 National Assembly members and 9 National Council of Provinces' members.

National Council of Provinces

The National Council of Provinces has a Sub-committee on Review of Council Rules, which does an annual review of the Standing Orders. In addition the committee makes recommendations to the Rules Committee of the NCOP on proceedings, rules, orders and practices of the Council.

During 2002 several rules were amended in order to bring them in line with the Constitution, and to discard conventions and practices which are not practical to apply and inconsistent with the Constitution.

UNITED KINGDOM

House of Commons

On 14 May 2002 the First Report of the Modernisation Committee (*Select committees*) was approved, providing for:

- A term limit for select committee chairmen of two Parliaments or eight years, whichever is the greater period.
- Power for the Liaison Committee to take evidence from the Prime Minister on matters of public policy.
- Power for select committees to transmit evidence to the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

A proposal to change the method of nomination of select committees was defeated.

On 29 October 2002 recommendations from the Second Report of the Modernisation Committee (*A reform programme*) and the Report of the Procedure Committee on Parliamentary Questions were approved:

- 'Inspired' written questions have been replaced by written statements by ministers.
- Minimum notice for oral questions has been reduced to three days
- Temporary (until the end of this Parliament) provision has been made for Tuesday and Wednesday sittings to begin at 11.30 am and to be interrupted at 7 pm and for Thursday sittings to be interrupted at 6 pm. The existing temporary Thursday start time of 11.30 am has been made permanent.
- The House is to sit on Fridays only for Private Members' Bills.
- Temporary provision has been made for the carry-over of bills (until the end of the current Parliament).
- The existing order regarding deferred divisions and programming has been continued till end of Session 2002-03.
- The Speaker is to have leave of absence on any Friday without announcement.
- Short speeches: an extra minute is allowed speakers for reply for each of the first two interventions per speech.

SITTING TIMES

(see pages 214 and 215)

Lines in Roman show figures for 2002; lines in Italic show a previous year. An asterisk indicates that sittings have been interrupted by an election in the course of the year.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Aus ACT	0	3	3	3	6	6	0	6	3	0	6	3	39
Aus N Terr	0	3	3	0	6	3	0	6	3	6	3	0	33
Aus NSW LA	0	3	8	4	8	12	0	0	10	6	8	1	60
Aus NSW LC	0	1	6	3	3	13	0	3	9	6	6	3	53
Aus Queens LA	0	3	3	6	6	4	2	7	2	6	7	3	49
*Aus Reps**	*0*	*6*	*9*	*4*	*5*	*13*	*0*	*12*	*8*	*0*	*0*	*0*	*57*
Aus S Aus HA	0	0	1	0	11	4	8	11	0	8	7	4	54
Aus S Aus LC	0	0	1	0	11	4	8	8	0	8	10	4	54
Aus Sen	0	8	7	0	8	14	0	8	8	8	10	8	79
Aus Tasm HA	*0*	*0*	*9*	*2*	*5*	*9*	*0*	*6*	*3*	*7*	*7*	*1*	*49*
Aus Tasm LC*	0	0	4	1	6	5	0	0	3	4	7	0	30
Aus Vict LA	0	3	6	5	9	3	0	0	3	9	0	0	38
Aus Vict LC	*0*	*0*	*3*	*2*	*8*	*8*	*0*	*1*	*5*	*8*	*6*	*3*	*44*
Aus W Aus LA	0	3	9	6	9	10	0	6	9	6	9	3	70
Aus W Aus LC	*0*	*0*	*0*	*0*	*9*	*9*	*1*	*11*	*6*	*3*	*9*	*10*	*58*
Berm House	*0*	*4*	*7*	*1*	*2*	*5*	*4*	*2*	*0*	*1*	*4*	*2*	*32*
Berm Sen	*0*	*1*	*7*	*0*	*1*	*2*	*4*	*4*	*0*	*1*	*2*	*2*	*24*
Botswana	*0*	*16*	*23*	*0*	*0*	*9*	*18*	*0*	*0*	*0*	*17*	*13*	*96*
Canada Alberta	0	3	12	14	8	0	0	0	0	0	7	3	47
Canada Br Col	0	10	12	13	14	0	0	0	0	12	10	0	71
Canada HC	4	15	11	17	17	15	0	0	1	18	16	10	124
Canada Man	0	0	0	7	17	16	18	4	0	0	3	9	74
Canada N Bruns	*8*	*15*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*5*	*12*	*40*
Canada Newf	*0*	*0*	*10*	*8*	*14*	*0*	*0*	*0*	*0*	*0*	*9*	*8*	*49*
Canada NWT	*0*	*0*	*7*	*11*	*4*	*0*	*5*	*0*	*4*	*0*	*0*	*0*	*31*
Canada Ontario	0	0	0	0	12	16	1	0	5	18	12	8	72
Canada Pr Ed I	*0*	*0*	*2*	*14*	*9*	*0*	*0*	*0*	*0*	*0*	*9*	*10*	*44*
Canada Québec	0	0	9	10	15	8	1	0	0	9	10	11	73
Canada Sask	0	0	11	21	20	19	7	0	0	0	0	8	86
Canada Sen	0	6	12	7	8	6	0	0	1	13	9	7	69
Canada Yukon*	0	0	0	15	15	0	0	0	0	0	0	0	30
Cayman Islands	*0*	*0*	*13*	*0*	*0*	*7*	*0*	*0*	*10*	*0*	*15*	*0*	*45*
Cook Islands													*78*
Cyprus	*5*	*1*	*4*	*3*	*4*	*5*	*2*	*1*	*0*	*5*	*4*	*3*	*37*
Dominica	2	0	0	4	0	3	2	0	3	0	0	2	16
Falklands	1	0	1	0	5	0	1	0	1	1	1	0	11
Ghana	*13*	*16*	*13*	*0*	*13*	*18*	*16*	*4*	*0*	*18*	*18*	*11*	*140*
Gibraltar	0	3	2	1	4	4	1	0	0	4	1	1	21
Grenada Reps	*4*	*4*	*1*	*0*	*2*	*1*	*1*	*1*	*2*	*0*	*1*	*1*	*18*
Grenada Sen	*1*	*1*	*0*	*1*	*1*	*2*	*1*	*0*	*0*	*1*	*1*	*1*	*10*
Guernsey	*2*	*1*	*1*	*2*	*2*	*1*	*4*	*2*	*2*	*2*	*2*	*4*	*25*
India Gujarat	0	3	19	1	0	0	0	0	0	0	0	2	25

India Haryana	*2*	*8*	*0*	*0*	*0*	*1*	*3*	*0*	*0*	*0*	*2*	*0*	*16*
India Him Pr	*0*	*6*	*15*	*0*	*0*	*0*	*3*	*0*	*0*	*0*	*0*	*0*	*24*
*India Kerala**	*0*	*1*	*12*	*0*	*2*	*0*	*12*	*0*	*19*	*0*	*7*	*0*	*53*
India LS	0	3	14	11	12	0	13	8	0	0	9	14	84
India Maharash													33
India Nagaland	0	0	4	2	0	0	0	0	0	0	0	0	6
India Orissa	*0*	*0*	*12*	*0*	*0*	*0*	*12*	*3*	*0*	*0*	*0*	*7*	*34*
India Punjab	*0*	*0*	*13*	*0*	*0*	*0*	*0*	*0*	*2*	*0*	*0*	*0*	*15*
India Rajasthan	*0*	*5*	*19*	*6*	*0*	*0*	*0*	*0*	*10*	*0*	*0*	*0*	*40*
India RS	0	3	13	10	12	0	13	8	0	0	9	14	82
India Sikkim													10
India Tamil Nadu	*0*	*6*	*11*	*18*	*12*	*0*	*0*	*0*	*0*	*0*	*6*	*0*	*53*
India Uttar P	0	0	0	0	8	0	0	16	6	0	0	0	30
IoM Keys	*1*	*3*	*4*	*1*	*3*	*2*	*0*	*0*	*0*	*1*	*5*	*1*	*21*
IoM LC	*1*	*3*	*4*	*1*	*1*	*2*	*0*	*0*	*0*	*1*	*5*	*1*	*19*
IoM Tynwald	*1*	*3*	*1*	*2*	*1*	*1*	*3*	*0*	*0*	*2*	*1*	*1*	*16*
Jersey	*3*	*1*	*2*	*1*	*4*	*3*	*5*	*1*	*6*	*3*	*3*	*5*	*37*
Kenya	*0*	*0*	*6*	*12*	*5*	*12*	*13*	*7*	*0*	*13*	*13*	*5*	*86*
Malaysia Reps	0	0	12	6	0	8	0	0	14	19	5	0	64
Malaysia Sab	0	0	0	0	2	0	0	0	0	7	0	0	9
Malaysia Sara	*0*	*0*	*0*	*7*	*0*	*0*	*0*	*0*	*0*	*0*	*1*	*6*	*14*
Malaysia Sen	0	0	0	11	0	0	6	0	0	0	12	0	29
Montserrat	*0*	*0*	*0*	*2*	*0*	*0*	*1*	*0*	*1*	*1*	*1*	*1*	*7*
NZ Reps	0	9	6	6	11	4	0	4	9	10	10	4	73
Nigeria Borno	20	19	24	10	10	20	25	18	28	20	6	2	202
Pak MWFP	*0*	*5*	*0*	*0*	*0*	*25*	*3*	*0*	*10*	*0*	*0*	*0*	*43*
Pak Pun	*15*	*0*	*0*	*11*	*0*	*12*	*0*	*11*	*10*	*0*	*0*	*0*	*59*
St Lucia	*0*	*1*	*1*	*3*	*1*	*0*	*1*	*1*	*1*	*0*	*1*	*1*	*11*
St V & G	*1*	*0*	*0*	*1*	*1*	*1*	*0*	*2*	*0*	*0*	*0*	*4*	*10*
Samoa	*10*	*0*	*0*	*4*	*1*	*12*	*0*	*0*	*0*	*1*	*0*	*2*	*30*
Seychelles	*0*	*2*	*5*	*2*	*0*	*3*	*4*	*0*	*3*	*4*	*8*	*2*	*33*
Singapore*	0	0	1	5	12	0	5	2	0	3	3	1	32
S Africa NA													80
S Africa NCOP	0	5	3	0	7	11	0	5	5	6	6	0	48
*Sri Lanka**	*1*	*8*	*1*	*5*	*3*	*6*	*8*	*8*	*8*	*8*	*4*	*2*	*62*
*Trin and Tob HR**	*4*	*4*	*4*	*2*	*8*	*4*	*3*	*5*	*8*	*9*	*0*	*0*	*51*
*Trin and Tob Sen**	*3*	*5*	*3*	*3*	*5*	*3*	*5*	*6*	*6*	*8*	*0*	*0*	*47*
UK Commons	18	14	17	16	15	13	18	0	1	11	15	12	150
UK Lords	17	12	18	13	19	13	19	0	1	17	15	12	156
UK Scotland	8	6	8	5	9	6	0	0	8	6	8	6	70
UK Wales	*6*	*6*	*9*	*2*	*8*	*8*	*6*	*0*	*0*	*5*	*9*	*4*	*63*
W Samoa	*0*	*0*	*4*	*0*	*1*	*13*	*14*	*0*	*0*	*1*	*15*	*2*	*50*
Zambia	4	16	15	2	0	0	7	5	0	3	17	10	79

UNPARLIAMENTARY EXPRESSIONS IN 2002

Straightforward accusations of dishonesty or falsehood have been omitted, as they are universally unacceptable, as have simple expletives or terms of abuse. The editor has also omitted expressions whose offensive implications depend wholly upon context. Expressions in languages other than English have been given with translation, but the editor regrets that where expressions have been submitted without translation it has not been possible to include them.

AUSTRALIA

ACT Legislative Assembly	
"When will you deal with them in good faith"	15 May
"Disingenuous claims of honesty"	17 June
"Government not prepared to be honest"	27 August
"They are not being honest"	27 August
"Handiwork of a schoolboy socialist"	26 September
NSW Legislative Assembly	
"Mental health problem"	20 June
"The star of Mental Health Week"	19 September
"Old swamp fox"	14 November
"Total harlot … political prostitute"	21 November
NSW Legislative Council	
"Riffraff"	12 June
Northern Territory Legislative Assembly	
"You are a grub"	27 February
"This is your call, darling"	14 August
"Your lying mate"	22 August
"You grubby little capitalist"	27 November
Queensland Legislative Assembly	
"Before members opposite go running around repeating the lies of the member for Maroochydore"	6 March
"The Health Minister has done nothing but lie to the constituents of my electorate"	11 April
"I hope you have had a good heart-starter for the beginning of the week"	18 June
"Shut up"	6 November
"He stoops to the gutter to put up lies like this in the parliament"	28 November
Victoria Legislative Assembly	
"There is a two-bit crook over here"	26 February
"A place that has become a retirement village for village idiots"	20 March
"Apparent deliberate misuse of parliamentary privilege"	27 March
"Hypocritical pig"	13 May

"You should learn a lesson, you goat"	28 May
"These people were aiding and abetting the criminals of this state"	11 September
"Really, it says bugger-all"	12 September
"In fact you, Madam Acting Speaker, did not even speak on the Bill … yet you voted against it"	16 October
"A member of the Fourth Reich"	17 October
"This Minister is the first Minister in my experience who is briefing journalists the night before the bill was second read in the House"	30 October

CANADA

House of Commons

"Chihuahua"	1 March
"The Trade Minister's stupid remark"	6 May
"MPs … who, because they hide behind politically correct rhetoric instead of a white sheet, are nothing more than modern day Klansmen"	19 November
"Will the Minister have the guts"	22 November

Alberta Legislative Assembly

"Henchmen"	26 November

British Columbia Legislative Assembly

"The seals are barking"	14 March
"If this minister stands up one more time and suggests the government in the 1990s did nothing and his government is good, he's a phoney"	18 November

Manitoba Legislative Assembly

"Are you off your meds again?"	2 May
"scooter rider from Kirkfield Park"	8 May
"Honest"	29 May
"Deceive"	4 June
"Are you a rat or a mouse?"	6 June
"Neanderthal"	11 June
"Dictator"	13 June
"Doom and gloom MLAs"	18 June
"Scurrilous"	24 June
"Stinks"	3 July

Québec National Assembly

"Une chance que le ridicule ne tue pas, parce qu'il y aurait une députée de moins ici, à l'Assemblée nationale" (Luckily ridicule never killed anyone, for there would be one less Member here, at the National Assembly)	24 April
"Tricher" (To cheat)	16 May
"Déformer la vérité" (Distorting the truth)	20 November
"Aveuglément volontaire" (Blindly voluntary)	11 December
"Inflation verbale" (Verbal inflation)	11 December
"Faire honte à la population de son comté" (To embarrass the population of one's electoral district)	12 December
"Soupçon de sincérité" (A hint of sincerity)	18 December
"Discours insignificant" (Trivial speech)	19 December

Saskatchewan Legislative Assembly

"Hurricane Maynard" [name of Minister]	9 April

Yukon Legislative Assembly

"That kind of tactic … can only be called blackmail"	25 April
"The *Education Act* review was a farce … all hell broke loose"	1 May
"I smell a set-up"	6 May
"Why does this minister want … to destroy another Yukoner's livelihood and destroy him financially?"	7 May
"They have a clear contempt for their role as legislators"	8 May
"[The Minister's] news release … was a complete and utter sham"	15 May
"This could actually be … downright illegal"	16 May
"We see the minister for the environment … hiding all sorts of land grabs … there are land grabs … that this government has authorized." (May 16)	16 May
"Why is the … government buying votes at a time when they are claiming poverty?"	28 May
"This Premier should know better than to stand in this House and relay such misleading information"	20 May

INDIA

Lok Sabha

"Aap ishare per kam karte hain" (You work at others' instance)	11 March
"Hamein bahar karne ke liye aap yeh chaplusi kar rahe hain" (You are doing this flattering to throw us out)	11 March
"The Chief Minister has a criminal mentality"	11 March
"Rakshas hain" (He is a demon)	11 March
"Aap ke double stand per hum kya Karen? (What should we do about your double stand?)	14 March
"Kye ye Bhed-Bakriyan hain?" (Are they sheep and goats?)	14 March
"A humongous fraud"	14 March
"Khud atankvadi hote hue" (He himself being a terrorist)	18 March
"Jaise ek jeev, jise andhere mein sub kuchh dikhai parta hai" (Just like a creature which can see clearly in the dark)	30 April
"Sub se bada Jhutha aur choryeh hai" (He is the greatest liar and thief)	30 April
"Napunsak" (Impotent)	30 April
"His answer is quite disgraceful"	15 May
"Disgraceful attitude. He has always been behaving in a disgraceful manner"	15 May
"Aap besharm hokar baithe rahe" (You sat there shamlessly)	15 May
"Aap unpadh ho. Aap mat padho aap ko vidya nahin aati, padhna nahin aata hai" (You are illiterate. You do not read, you do not have any education. You cannot read it)	23 July
"Can he speak anything and go scot-free?"	23 July
"Pocket mar ko mantri dene se yahi hota hai" (It happens so when a pickpocket becomes a Minister)	20 November
"They are nincompoops"	25 November
"Yeh kis tareh ki baiemani hai. Aap unko kuchh tamiz sikhaiye) (What is this dishonesty. You teach them some manners)	26 November

"The image of Parliament is going down because of these frivolous people"	10 December
Rajya Sabha	
"Joker"	2 May
"Hitler"	23 July
"Fudge"	25 July
"Obnoxious Bill"	3 December
Gujarat Legislature	
"Grace chairs and seats like showpieces"	14 March
"He is beating about the bush"	19 March
"[The ruling party] wishes to make political gains by contesting the election on the carcasses"	19 March
"Stop making political mileage"	20 March
"Fascist party"	20 March
"Don't be overenthusiastic"	20 March
"The standards of Government are different"	21 March
Nagaland Legislative Assembly	
"We call ourselves leaders"	15 March
"Parts of Dimapur fall in Assam"	21 March
"Candidates had paid money"	22 March
"Such question should not have been admitted in the Assembly"	22 March

NEW ZEALAND HOUSE OF REPRESENTATIVES

"Ruthanasia"	12 February
"Buffoon"	21 February
"Playing the race card"	27 February
"Intestinal fortitude"	20 March
"Big tough thug of Parliament"	27 March
"Teenage dirtbags"	16 April
"Bribe"	16 April
"Too busy to be honest"	16 April
"Axis of evil"	17 April
"Fraudster"	30 April
"Duplicity and double standards"	15 May
"Kowtowing"	22 May
"Bully boy"	24 May
"Gangster"	24 May
"Lazy, gullible, stupid and a fool"	24 May
"Porkies"	24 May
"Thuggish"	24 May
"Tricky Trevor"	29 May
"Manic comments"	11 June
"Bigotry"	11 September
"Doormats"	12 September
"Useless nutcase"	18 September
"Gutlessly"	8 October
"Jackboots"	16 October

“Judas”	16 October
“Spineless”	5 November
“You lying sod”	5 November
“Pulling strings”	19 November

SOUTH AFRICA

National Assembly [Expressions used in 2001]

“Fabricating facts”	14 February
“False information”	14 February
“Jungle justice”	13 March
“Racists”	14 March
“[ANC leadership is] silent on farm murders”	5 April
“Selling out at a low price”	16 May
“Low life”	31 May
“Spy”	31 May
“Lock him up somewhere and leave him there”	5 June
“We will be dealing with him”	5 June
“Bugger all”	6 June
“He is also part of the gravy train”	6 June
“Not an expert on issues of truth and honesty”	20 June
“Sexist”	13 September
“We will kill you”	20 September
“Members sometimes try to be too white”	3 October
“Unfit to hold office”	3 October

National Council of Provinces

“You people”	12 June
“This lady in front of me”	12 June
“An exploited crowd who are going to be offered a ‘dop’”	13 June

BOOKS AND VIDEOS ON PARLIAMENT

AUSTRALIA

A handbook of Australian government and politics 1985-1999, by Colin A. Hughes, Federation Press, 2002, $A49.50, ISBN 1862874344

A hundred years of women's politics, by Marian Simms, Academy of the Social Sciences in Australia, 2002

A new constitution for Australia, by Bede Harris, Cavendish Publishing, 2002, $A60.00, ISBN 1876905069

Australia's democracy: a short history, by John Hirst, Allen & Unwin, 2002, $A45.00, ISBN 1865088455

Australian constitutional law and theory: commentary and materials, by Tony Blackshield and George Williams, Federation Press, 2002, ISBN 1862874220

Australian constitutional law: foundations and theory, by Suri Ratnapala, Oxford University Press, 2002, ISBN 0195510054

Don't tell the prime minister, by Patrick Weller, Scribe Publications, 2002, $A14.95, ISBN 0908022768

Government, politics, power and policy in Australia, by Andrew Parkin, John Summers and Dennis Woodward, Pearsons Education Australia, 2002, ISBN 07339990X

Power and freedom in modern politics, by Jeremy Moon and Bruce Stone, University of Western Australia Press, 2002, ISBN 1876268794

The Australian political almanac, edited by Peter Wilson, Hardie Grant Books, 2002, $A45.00, ISBN 1740640578

The citizens' bargain: a documentary history of Australian views since 1890, by James Walter and Margaret MacLeod, University of New South Wales Press, 2002, ISBN 0868405140

The prince's new clothes: why do Australians dislike their politicians?, by David Burchell and Andrew Leigh, University of New South Wales Press, 2002, ISBN 086840604X

Constitutional Politics: The Republic Referendum and the Future, by John Warhurst and Malcolm Mackerras, University of Queensland Press, 2002, ISBN 0702233412

CANADA

The Canadian regime: an introduction to parliamentary government in Canada, 2nd edition, by Patrick Malcolmson and Richard Myers, Broadview Press, $27.95; ISBN 1551114658

"Round table on private members' business", by Peter Adams, M.P. *et al.*, Canadian Parliamentary Review, Volume 25, Autumn 2002; ISSN 0229-2548

Droit constitutionnel, 4th edition, by Henri Brun and Guy Tremblay, Éditions Yvon Blais, 2002, $95.95, ISBN: 2-89451-587-1

This book takes a detailed look at the major themes developed in Canadian constitutional law. In particular, it contains chapters concerning legislative bodies, the federal regime, the parliamentary regime, and the legal status of Parliament. This fourth edition contains jurisprudential and legislative developments up to 1 May 2002. Among the important issues dealt with in this edition are the *Reference on the remuneration of judges* and the *Reference on the secession of Québec*. The work describes the implicit or underlying principles of the Constitution and, more particularly, those of judicial independence. It also closely examines human rights and freedoms, the field of constitutional law that is currently undergoing the most rapid expansion. Included in the appendices are the main constitutional and quasi-constitutional texts as well as the Meech Lake Accord and an excerpt from the Charlottetown Accord.

Building for the Future—A Photo Journal of Saskatchewan's Legislative Building, by Gordon L. Barnhart, Canadian Plains Research Center, 2002, $30.00, ISBN 0-88977-145-6

The jacket cover of *Building for the Future* describes the book as "a photo journal chronicling the construction of Saskatchewan's Legislative Building and its role in the life of the province and in the lives of the province's citizens". The author, Dr. Gordon Barnhart, is a former Clerk of both the Saskatchewan Assembly (1969-1989) and the Canadian Senate (1989-1994).

INDIA

Who's Who: Ninth Jammu and Kashmir Legislative Assembly, Jammu and Kashmir Legislative Assembly Secretariat, Srinagar, 1996

Decision of the Hon'ble Speaker, Legislative Assembly, Uttar Pradesh, 23 March, 1998 under the Tenth Schedule to the Constitution of India and the Members of

Uttar Pradesh Legislative Assembly (Disqualification on the Grounds of Defection) Rules, 1987 in Bahujan Samaj Party Members Case, Legislative Assembly Secretariat, Uttar Pradesh, 1998

Speaker Rules, edited by P.D.T. Achary, Jainco Art, New Delhi, 2001, Rs. 350/-

Parliamentary Privileges: Digest of Cases 1950-2000, edited by G.C. Malhotra, Lok Sabha Secretariat, New Delhi, 2001

Article 356 of the Constitution of India: Promise and Performance, by K. Suryaprasad, Kanishka Publishers, New Delhi, 2001, Rs. 650/-, ISBN 81-7391-443-5

Motions and Resolutions in Parliament, Lok Sabha Secretariat, New Delhi, 2001, Rs. 16/-

Sixth CPA Parliamentary Seminar, Lok Sabha Secretariat, New Delhi, 2002

Second Chambers: Bicameralism Today, edited by R.C. Tripathi, Rajya Sabha Secretariat, New Delhi, 2002, Rs. 300/-

Emergence of Second Chamber in India, Rajya Sabha Secretariat, New Delhi, Rs. 550/-

Parliament of India, edited by G.C. Malhotra, Lok Sabha Secretariat, New Delhi, 2002, Rs. 1400/-

Fifty Years of Indian Parliament, edited by G.C. Malhotra, Lok Sabha Secretariat, Metropolitan Book Co., New Delhi, 2002, Rs. 1500/-, ISBN 81-200-0385-3

Rajya Sabha and its Secretariat: A Performance Profile 2001, Rajya Sabha Secretariat, New Delhi, 2002, Rs. 25/-

Attack on Parliament: Challenges Before the Nation, by K. Bhushan and G. Katyal, A.P.H. Publishing Corporation, 2002, Rs. 2000/-, ISBN 81-7648-331-1

Rules of Procedure and Conduct of Business in Lok Sabha (10th edition), Lok Sabha Secretariat, New Delhi, 2002

Privilege of the Legislators: Its use and Misuse, by Parveen Q. Khan, Originals, Delhi, 2002, Rs. 350/-, ISBN 81-7536-264-2

Ideas and Men Behind the Indian Constitution: Selections from the Constituent Assembly Debates (1946-49), edited by Bimal Prasad, Konark Publishers, New Delhi, 2001, Rs. 400/-, ISBN 81-220-0608-6

The Success of India's Democracy, edited by Atul Kohli, Cambridge University Press, Cambridge, 2001, Rs. 695/-, ISBN 0-521-80530-9

Rulings and Observations from the Chair (1952-2000), Rajya Sabha Secretariat, New Delhi, 2001, Rs. 600/-

Democracy in India, edited by Niraja Gopal Jayal, Oxford University Press,

New Delhi, 2001, Rs. 795/-

Governor's Addresses to Kerala Legislative Assembly (1954-1998), Kerala Legislative Assembly, Thiruvananthapuram, 1999

President in Indian Political System, by Veena Sharma, Rawat Publications, Jaipur, 2001, Rs. 450/-, ISBN 81-7033-664-3

Constitutional Nation Building: Half a Century of India's Success, by Akhtar Majeed, Centre for Federal Studies, New Delhi, 2001, Rs. 625/-, ISBN 81-7827-01-7

Elections in India: Nehru to Vajpayee, by Arun Kumar, Gyan Publishing House, New Delhi, 2001, Rs. 550/-, ISBN 81-212-0768-1

Select Speeches, Rulings and Observations (August 1997-July 2002) of the late Shri Krishan Kant, Rajya Sabha Secretariat, New Delhi

Parliament of India: an Introduction, Rajya Sabha Secretariat, New Delhi, Rs. 30/-

NEW ZEALAND

Constitutional Conversations : Geoffrey Palmer talks to Kim Hill on National Radio 1994 – 2001, Geoffrey Palmer with Kim Hill, Victoria University of Wellington Press in association with Radio New Zealand, 2002, NZ$39.99, ISBN 0 86473 445 X

Supplement to Speakers' Rulings : Containing speakers' rulings given between December 1999 and June 2002, compiled by D.G. McGee, House of Representatives, Wellington, New Zealand, July 2002 http://www.clerk.parliament.govt.nz/Publications/Other/SpeakSupp.pdf

The New Zealand Electoral Compendium, 3rd edition, Electoral Commission, Wellington, New Zealand, 2002, NZ$15.95, ISBN 0 478 10674 2

The Overseers : Public Accounts Committees and Public Spending, by David G. McGee, Commonwealth Parliamentary Association in association with Pluto Press, 2002, NZ$135.95, £15, ISBN 0 7453 1986 6

SOUTH AFRICA

Building Representative Democracy: South Africa's Legislatures and the Constitution, by Christina Murray and Lia Nijzink, Parliamentary Support Programme, ISBN 0-620-28969-4

The Public Education Office of the Parliament of South Africa published the following booklets, which are freely available without charge: *Your Guide to Parliament*, *In Session*, and *Spotlight on Parliament*. Information on

publications by the Public Education Office can be found on the website of the Parliament of South Africa: http://www.parliament.gov.za.

SRI LANKA

Parliamentary Practice in Sri Lanka, by Priyanee Wijesekera, Department of Government Printing, Colombo, 2002, Rs. 200/-, ISBN 955-8412-05-8

Parliament of Sri Lanka Sri Jayewardenepura Kotte, edited by C. Kuruppu, Department of Government Printing, Colombo, 2001, ISBN 955-8412-03-1

UNITED KINGDOM

Griffith and Ryle on Parliament: Functions, Practice and Procedures, 2nd edition, edited by R. Blackburn and A. Kennon, Sweet and Maxwell, 2002, £70, ISBN 0421609109

The first edition of this work appeared in 1989, and as the original authors, J. A. G. Griffiths and Michael Ryle, acknowledge in a foreword to this new edition, its limitations as a "current authority" were becoming increasingly apparent. The second edition has been edited by Robert Blackburn, Professor of Constitutional Law at King's College, and Andrew Kennon, Deputy Principal Clerk in the House of Commons. Sir Michael Wheeler-Booth, formerly Clerk of the Parliaments, remains responsible for the chapter on the House of Lords. As one would expect, their labours have produced an up-to-date and authoritative account of the British Parliament, its functions, practice and procedures.

The book brings a wide perspective to bear on its subject-matter. While it draws heavily on *Erskine May* in its description of procedure, it places this procedure in context, showing how Government and Opposition, front-benchers and back-benchers, work to achieve their various goals. The authors have conducted an in-depth analysis of the workings of the 1992-97 and 1997-2001 Parliaments, and there is a wealth of statistical data and examples to support the general arguments. More recent developments, including the work of the House of Commons Modernisation Committee, changes in sitting times, administration and procedure affecting both Houses up until the autumn of 2002, are considered.

The only caveat concerns the patchy quality of the proof-reading. For example, successive Leaders of the House of Lords in the 1980s were Lord Soames and Lady Young, not "Lady Soames and Lord Young" (page

650), while "see page ??" is not very useful as a cross-reference (page 680).

Nonetheless, this is the most up-to-date and comprehensive account of the working of the Westminster Parliament, and will be a useful source for parliamentary staff across the Commonwealth.

Politico's Guide to Parliament, by S. Child, Politico's, 2002, £25, ISBN 190230182X

Revolts and Rebellions: Parliamentary Voting under Blair, by P. Cowley, Politico's, 2002, £20, ISBN 1842750291

Dod's Parliamentary Companion 2003, Vacher Dod Publishing, 2002, £140, ISBN 0905702360

The Story of Parliament, by J. Field, Politico's and James and James Publishers, 2002, £25, ISBN 1842750313

House of Commons 1690–1715, by D. W Hayton, Cambridge University Press, 2002, £248.33, ISBN 0521783186

Playing to the Gallery: Parliamentary Sketches from Blair Year Zero, by S. Hoggart, Atlantic Books, 2002, £7.99, ISBN 1903809665

The Ombudsman, The Citizen and Parliament, by R. Gregory, Politico's, 2002, £40, ISBN 1842750542

Parliament at Work: Parliamentary Committees, Political Power and Public Access in Early Modern England, edited by C. R. Kyle and J. Peacey, Boydell Press, 2002, £50, ISBN 0851158749

Parliaments and Citizens in Western Europe, by P. Norton, Frank Cass, 2002, £16.50, ISBN 0714643874

ZAMBIA

The Parliament of Zambia, by Ngo'na Mwelwa Chibesakunda, National assembly of Zambia, Kwacha 40,000, ISBN 9982-47-000-0

This book is a much concretized effort to put in proper perspective the evolution of the parliamentary process in Zambia since 1924 when the first legislative organs were established in the then British protectorate of Northern Rhodesia. The book goes on to describe in great detail the evolutionary process that the legislature in Zambia has passed through to its present stage.

The approach to the book is scholarly, providing a wide array of parliamentary practice, procedure and tradition. Almost all aspects or manifestations of the legislative process including a historical background have been looked into. In easy to understand language, the author has provided

a thought provoking portrayal of the legislative process. The material covers less than 100 pages, which makes it a 'quick read', while its references and footnotes qualify it as good reference material.

However, some of the chapters have received fuller attention than others with a lot of information and in particular more specific examples provided than in other chapters. Perhaps this could be attributed to lack of attention to certain important factors. Public views have not been highlighted strongly. It appears as if no ground work was done to find out or determine what the general public or ordinary person perceives Parliament to be.

The book is useful as far as parliamentary procedure and tradition is concerned in the Zambian Parliament. However there is a notable lack of practical anecdotes concerning actual facts or happenings in the House that could have established this procedure and tradition—such as Speaker's Rulings, Breaches of Privileges or the mention of court proceedings.

Nonetheless, the book is worth having as it offers a wide portrayal of the Parliament of Zambia, and gives an airing to topical issues concerning the way Parliament operates. Officers and Members as well as the public will benefit from the book, which can help create a better understanding of Parliament and its importance within our society and in the country as a whole.

CONSOLIDATED INDEX
TO VOLUMES 67 (1999) – 71 (2003)

This index is in three parts: a geographical index; an index of subjects; and finally lists, of members of the Society specially noted, of privilege cases, of the topics of the annual Questionnaire and of books reviewed.

The following regular features are not indexed: books (unless reviewed), lists of members of the Society (other than those specially noted), sitting days, unparliamentary expressions. Miscellaneous notes and amendments to Standing Orders are not indexed in detail.

ABBREVIATIONS

ACT	Australian Capital Territory	NSW	New South Wales
Austr.	Australia	N. Terr.	Northern Territory
BC	British Columbia	NZ	New Zealand
HA	House of Assembly	Reps	House of Representatives
HC	House of Commons	RS	Rajya Sabha
HL	House of Lords	SA	South Africa
LA	Legislative Assembly	Sask.	Saskatchewan
LC	Legislative Council	Sen.	Senate
LS	Lok Sabha	WA	Western Australia.
NI	Northern Ireland		

GEOGRAPHICAL INDEX

For replies to the annual Questionnaire, privilege cases and reviews see the separate lists.

SUBJECT INDEX

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