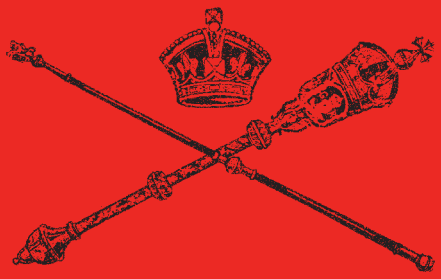

The Table

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

VOLUME 88
2020

£15.00

The Table

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

EDITED BY
LUKE HUSSEY

VOLUME 88
2020

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

The Table 2020

ISBN 0 904979 45 8
ISSN 0264-7133

CONTENTS

EDITORIAL

This year's edition of *The Table* is an unusual one given it has been produced in the midst of a global pandemic and at a time when everyone has been focusing on supporting their institutions at a time of immense change. As such, although there are fewer articles than usual, I am most grateful to those who have found the time to make a contribution.

The first article sees Colin Lee, a Principal Clerk in the UK House of Commons, bring to life the the development of the closure motion in the Commons from the perspective of Archibald Milman. Considered to be one of the most significant procedural developments of the late nineteenth century, Colin takes us through not only how the closure was introduced, but the alternatives which were considered and the debates—both private and public—which informed the development of the procedural changes.

Colin Lee has provided a further article—this time in conjunction with Michael Berry, a clerk in the Legislation Office of the House of Lords at the time of the events—about the passage of non-Government legislation in the UK Parliament. Two bills in particular, which became respectively the European Union (Withdrawal) Act 2019 and European Union (Withdrawal) (No. 2) Act 2019, serve as a demonstration of Westminster taking back control from the Executive. Colin and Michael take us through the passage of both bills in both the House of Commons and the House of Lords, and the varying procedural hurdles that were overcome in the passage of these controversial and highly unusual pieces of legislation. The article also brings to bear the role of the closure motion in the Lords—defined in Standing Orders as "a most exceptional procedure"—had only successfully been passed seven times since 1900 until 4 April 2019, whereby six such motions were passed by the House in (moderately) quick succession in one sitting. On 4 September, a further six such motions were passed and added to the tally. The House has since agreed to remove the word exceptional from the Standing Orders.

Penny Hart, Acting Editor of Debates in the Northern Territory Legislative Assembly, discusses the interpretation of languages other than English in the Legislative Assembly. The changes to the Standing Orders eventually enabled a member to be able to address the Chamber in his first language, and to be interpreted live. Penny walks us through this interesting development and the work involved in achieving this challenging feat.

As ever, this edition also includes the usual interesting updates from

jurisdictions and the comparative study on the regulation of the behaviour of members of Parliaments and assemblies towards staff, committee witnesses and others, and the processes for assessing complaints made about the behaviour of members.

Once more, I am grateful to all those who have contributed articles, updates and reviews from the Commonwealth and hope it is as of much interest to you as it has been to me while compiling this edition.

MEMBERS OF THE SOCIETY

Australia

House of Representatives

David Elder retired in August 2019 as Clerk of the House of Representatives. On Mr Elder's last day in the Chamber as Clerk, the Prime Minister moved a motion to place on record the House's appreciation of his service to the Parliament. The question was debated and carried, with all Members standing in their places in support.

The Deputy Clerk, **Claressa Surtees**, was appointed Clerk with effect from 12 August 2019. Ms Surtees is the first female Clerk of the House.

New South Wales Legislative Assembly

In March 2019 **Carly Maxwell** was appointed to the position of Clerk-Assistant, Table.

In October 2019 the Clerk-Assistant, Committees and Corporate, **Catherine Watson**, finished work at the Legislative Assembly after 30 years of service to the Parliament of New South Wales.

Victoria Legislative Assembly

Bridget Noonan formally became Clerk of the Legislative Assembly on 4 January 2019. Bridget was sworn in December 2018 after she had previously been appointed Acting Clerk in September 2017 while **Ray Purdey** went on accumulated leave prior to his formal retirement date in January 2019.

Victoria Legislative Council

In July 2019 the Legislative Council decided to split the role of Assistant Clerk Procedure and Usher of the Black Rod into two separate roles. Consequently, **Sally West** joined the Victoria Legislative Council as the new Usher of the Black Rod. **Richard Willis** continues as the Assistant Clerk Procedure.

Western Australia Legislative Council

Suzanne Veletta resigned as Clerk Assistant (Procedure) in August 2019.

Sam Hastings was appointed as Clerk Assistant (House) in November 2019.

Canada

House of Commons

Danielle Labonté and **Scott Lemoine**, both Deputy Principal Clerks, were appointed as Table Officers on 31 May 2019 on an acting basis for one year.

Julie Geoffrion was promoted to the role of Acting Deputy Principal Clerk, and is currently assigned to the Committees and Legislative Services Directorate.

Senate

Phillippe Hallée was appointed as the tenth Law Clerk and Parliamentary Counsel of the Senate on 21 March 2019.

British Columbia Legislative Assembly

After being placed on administrative leave with pay on 20 November 2018, **Craig James**, Clerk of the Legislative Assembly, retired on 16 May 2019.

Québec National Assembly

Siegfried Peters, previously Director of Legal and Legislative Affairs and Parliamentary Procedure, was appointed Secretary General of the National Assembly of Québec on 22 October 2019.

Mr. Peters replaced **Michel Bonsaint**, who left the National Assembly to act as Québec's representative within Canada's UNESCO delegation.

Ariane Beauregard was appointed Director of Sittings and Parliamentary Procedure.

Yukon Legislative Assembly

Dr Floyd McCormick, Clerk of the Yukon Legislative Assembly since 31 March 2007 (and Deputy Clerk from 15 August 2001 until his appointment as Clerk), retired on 3 May 2019.

Dan Cable was selected by the Members' Services Board (a Standing Committee chaired *ex officio* by the Speaker) to be the new Clerk of the Yukon Legislative Assembly, as announced in a 5 March 2019 news release by Speaker Nils Clarke. Mr. Cable, who had worked in Yukon's Department of Justice for 17 years, had served the last 13 of those years as the Department's Director of Policy and Communications.

After a brief period of overlap beginning 1 April 2019 with the outgoing Clerk, Mr. Cable officially assumed the responsibilities of Clerk of the Yukon Legislative Assembly on 4 May 2019.

St Helena Legislative Council

Connie C Johnson took up the role of Clerk of Councils on 11 November 2019, succeeding **Anthea Moyce**.

United Kingdom

House of Commons

Sir David Natzler retired as Clerk of the House in March 2019 and was replaced by **John Benger**, previously Clerk Assistant. **Sarah Davies** was appointed as the new Clerk Assistant in April 2019.

Paul Evans retired as Clerk of Committees with effect from September 2019 but continues to be involved in special projects. He was awarded a CBE in the Birthday honours list in June 2019. Paul was replaced by **Tom Goldsmith**, previously Clerk of the Foreign Affairs Committee.

Philippa Helme retired as Clerk of the Table Office in May 2019. She was awarded a CB in the New Year's honours list in December 2019. Philippa was replaced by **Colin Lee**, previously Clerk of Bills.

Matthew Hamlyn, previously Clerk of the Overseas Office, was promoted to Strategic Director, Chamber Business Team.

ARCHIBALD MILMAN AND THE EVOLUTION OF THE CLOSURE—PART 1: ORIGINS TO 1881

COLIN LEE
Principal Clerk, UK House of Commons[1]

Introduction

Writing at the start of the twentieth century, Archibald Milman, then the clerk of the House of Commons, noted how the closure—a method for the House to terminate a debate once underway by decision on a motion—"originally brought into being to defeat the tactics of obstruction in special emergencies, has now become a part of parliamentary routine".[2] The closure has long been seen as perhaps the single most important procedural reform in the last two decades of the nineteenth century, but accounts have tended to concentrate on the proposals made to, and debated in, the House. Less attention has been paid to the detailed consideration that took place before measures were placed before the House and to the impact of the successive rules following their adoption.

This article traces the origins of the closure, examining relevant practice in the House as well as the barriers to the introduction of the closure. It examines the public discussions of the closure up to 1880, as well as the private exchanges that took place between Sir Stafford Northcote, leader of the House of Commons from 1877, and both Henry Brand, Speaker of the House of Commons from 1872, and Sir Thomas Erskine May, Clerk of the House of Commons from 1871. The article then shows how far the introduction of a closure rule and alternatives to it, including so-called urgency provisions, were hotly debated both within the government of William Gladstone, Prime Minister from April 1880, and between Brand, Gladstone and the Conservative opposition. The permanent closure rule introduced in 1882, its successor in 1887 and the experience of their implementation will be examined subsequently.

The sitting of the House of Commons of 31 January 1881, which climaxed on the morning of 2 February with the Speaker using his own authority to conclude a debate and put successively the questions on an amendment and then on the main question, was perhaps the most procedurally significant event of the Victorian era. Milman referred to those proceedings, and the urgency provisions including the first closure rule for the House of Commons which

1 The author is grateful to Dr Paul Seaward for comments on an earlier draft of this article.

2 *The New Volumes of the Encyclopædia Britannica constituting in combination with the existing volumes of the Ninth Edition the Tenth Edition … Volume 31* (London, 1902) (hereafter *Encyclopædia Britannica*), entry for Parliament written by Milman, pp 477–483, at p 479.

were introduced thereafter, as "the Gettysburg of the parliamentary rebellion", after which "the tide of successful obstruction began to ebb".[3] This article offers a fresh account of those events, and a re-interpretation of them, by considering them in the context of the private deliberations and exchanges on a possible closure rule.

The early historiography of the closure is dominated by a French law student and an Austrian law professor. Henri Masson saw systematic obstruction as a destructive threat to the representative system which could not be tolerated.[4] He identified Irish systematic obstruction in the House of Commons between 1877 and 1881 as the start of a "contagion" of such obstruction which spread across Europe, even touching France briefly in 1894.[5] He viewed the urgency rules of 1881 as essential to counteract "the disastrous effects of obstructionism", paving the way for the wide use of the closure as the most important measure against obstruction and an example of the radical reforms necessary to counteract the contagion.[6] Masson viewed a loss of British distinctiveness as inherent in the adoption of the closure, as the House of Commons learned to conform to international norms.[7] Josef Redlich surveyed procedural development over a much longer period and placed much more emphasis on British distinctiveness.[8] He traced early ideas of the closure from 1848 onwards and described the onset of systematic obstruction climaxing at the sitting of 31 January 1881.[9] He argued that the steps taken by Brand had "nothing of the character of a *coup d'état*", but were rather part of a revival of old legal principles in a new context.[10] For him, in contrast to Masson, Irish obstruction had the effect of accelerating the speed of change, but "was not its true cause".[11]

Early accounts of the events of January and February 1881 and their origins understandably relied almost exclusively on published material. John Morley's biography of Gladstone quoted from Brand's unpublished diary, but only for a specific account of the days leading up to the Speaker's closure.[12] An article

3 A Milman, "The Peril of Parliament", *Quarterly Review,* Vol 178 (1894) (hereafter "Peril of Parliament"), pp 263–88, at p 275.

4 H Masson, *De l'Obstruction Parlementaire: Étude de Droit Public et d'Histoire Politique: Thèse pour le Doctorat* (Montauban, 1902), pp 20, 343, 347. All translations are mine.

5 Masson, *De l'Obstruction*, pp 23, 27–44, 343, 347–348.

6 Masson, *De l'Obstruction*, pp 269, 274, 278–279, 343, 347.

7 Masson, *De l'Obstruction*, pp 298–299.

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

9 Redlich, *Procedure*, I.86–88, 107–109, 137–159, 164–167.

10 Redlich, *Procedure*, III.81–82.

11 Redlich, *Procedure*, I.207.

12 J Morley, *The Life of William Ewart Gladstone: Volume III, 1880–1898* (London, 1903), pp 52–53.

by Edward Hughes in 1956 was the first to make extensive use of Gladstone's papers to demonstrate the extent to which proposals for closure had been actively considered prior to the sitting of 31 January 1881. Hughes also illuminated the roles played by Brand and May, as well as individual Cabinet ministers, in that development.[13] The influence of May and Brand have also been examined by Sir William McKay.[14] An earlier article by the present author considered the onset of systematic obstruction and the procedural response to it through the prism of Milman's published writings.[15] An important recent study by Ryan Vieira challenges the notion that there was a continuity of rationale for procedural reform before and after 1880, detecting a "radical transformation" from the language of continuity to a new language of reform based on themes of mechanization and speed as a virtue. Vieira also offers the first analysis which considers the involvement of Sir Stafford Northcote in procedural reform, both in government up to 1880 and as a key player in the events leading up to the sitting of 31 January.[16]

The current account draws upon the letters and associated papers of Sir Stafford Northcote,[17] William Gladstone,[18] Henry Brand,[19] and Sir Thomas Erskine May,[20] as well as the diaries kept by Gladstone,[21] Brand,[22] May,[23] and Edward Hamilton, Gladstone's Private Secretary from 1880 to 1885.[24] The

13 E Hughes, "The Changes in Parliamentary Procedure, 1880–1882", in R Pares and A J P Taylor, eds, *Essays presented to Sir Lewis Namier* (London, 1956), pp 290–319, at pp 290–307.

14 W R McKay, "Nothing Could Exceed the Badness of His Character Even in this Bad Age", in P Seaward, ed, *Speakers and the Speakership* (London, 2010), pp 129–135, at pp 133–134; W R McKay, "The Principle of Progress: May and Procedural Reform", in P Evans, ed, *Essays on the History of Parliamentary Procedure* (Oxford, 2017), pp 158–70.

15 C Lee, "Archibald Milman and the procedural response to obstruction", *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments* (2015), pp 22–44.

16 R Vieira, "The Time of Politics and the Politics of Time: Exploring the role of temporality in British Constitutional Development during the long nineteenth century", McMaster University PhD thesis (2011), pp 25, 47, 76–80, 151–154, 165–175, 258–261. See also R Vieira, *Time and Politics: Parliament and the Culture of Modernity in Britain and the British World* (Oxford, 2015).

17 British Library (hereafter BL), Add Ms 50013–50064.

18 BL Add Ms 44086–44835.

19 The Parliamentary Archives (hereafter TPA), BRA/1/3–8.

20 TPA, ERM/1–8.

21 H C G Matthew, ed, *The Gladstone Diaries with Cabinet Minutes and Prime-Ministerial Correspondence* (Oxford). References are to *Volume IX: January 1875–December 1880* (1986) and *Volume X: January 1881–June 1883* (1990) in the form GD.vol.page.

22 TPA, BRA/3/2–5. These are typescripts of the diaries; the original manuscripts have not been consulted.

23 D Holland and D Menhennet, eds, *Erskine May's Private Journal, 1857–1882: Diary of a Great Parliamentarian* (London, 1972) (hereafter *Private Journal*).

24 D W R Bahlman, *The Diary of Sir Edward Walter Hamilton 1880–1885* (Oxford, 1972; 2 vols), in the form HD.page (pagination is continuous between the two volumes).

formal records of the decisions of the House,[25] and its debates,[26] are supplemented by the parliamentary sketches of Henry Lucy,[27] and T P O'Connor, both a journalist and a Parnellite MP,[28] as well as newspaper accounts.[29]

"No rule or practice which assigns a limit to a debate": procedure before the closure

On 25 May 1604, a "Great Question" was made, whether a Bill that was then being debated "shall presently be put to Question".[30] The eighteenth-century clerk John Hatsell believed this to be "the first instance … of putting the previous question".[31] The exact circumstances of this instance and others procedural developments in 1604 are hard to disentangle. The appearance of novelty may in part be the product of a new Clerk of the House, Ralph Ewens, keen to note even long-standing practices in his manuscript journals, and possibly more inclined than his predecessors to record business management decisions.[32] But there appears to be conscious innovation as well, probably arising in part from the forceful conduct of the Speaker, Sir Edward Phelips. It was accepted at the time that the Speaker would play a leading role in the management of business, but Phelips seems to have over-stepped the mark.[33] On 2 April, after he tried to bring back a question to the House on which it had already decided, the House agreed "a Rule, That a Question, being once made, and carried in the Affirmative, or Negative, cannot be questioned again, but must stand as a Judgment of the House".[34] On 27 April the House agreed another "Rule, If any

25 *Journals of the House of Commons* (hereafter CJ).

26 *Parliamentary Debates: Third Series*: all references are to the House of Commons and for convenience are rendered in the technically incorrect form HC Deb, followed by date and column. Online versions have been cited where available, but the online version has large gaps for 1881.

27 H W Lucy, *A Diary of Two Parliaments: The Disraeli Parliament 1874–1880* (London, 1886) (hereafter Lucy, *Disraeli Parliament*); H W Lucy, *A Diary of Two Parliaments: The Gladstone Parliament 1880–1885* (London, 1886) (hereafter Lucy, *Gladstone Parliament*).

28 T P O'Connor, *Gladstone's House of Commons* (London, 1885).

29 References to *The Times* are via The Times Digital Archive. All other newspapers have been accessed via the British Newspaper Archive. Some newspapers quotations are derived from the invaluable *Pall Mall Gazette* epitome.

30 CJ (1547–1629) 226. The first quotation is from the second scribe text, available on British History Online.

31 J Hatsell, *Precedents of Proceedings in the House of Commons* (1818 edition, 4 vols), II.104.

32 S Lambert, "Procedure in the House of Commons in the Early Stuart Period", *The English Historical Review*, Vol. 95, No. 377 (1980), pp 753–781, at pp 771–772. Hatsell mentions 26 precedents from 1604 relating to matters of order and business conduct: Hatsell, *Precedents*, II.96, 103, 104, 118, 130, 160, 177, 218, 223, 227, 235.

33 S Lambert, "Procedure", pp 773–775.

34 CJ (1547–1629) 162. For Phelips's role, see his biography in History of Parliament online for the period 1604–29.

Doubt arise upon the Bill, the Speaker is to explain, but not to sway the House with Argument or Dispute".[35] Despite this rule being set, when a controversial Bill was being debated for its third reading on 25 May, the Speaker made clear his continuing opposition: "That there were Thirty-two gross Absurdities in the Bill: And wished that such as were not satisfied, should first repair unto him, before the Bill were put to Question". His speech was part of what was termed "the labour to keep the Bill from the Question".[36] It was almost certainly this continued resistance and the Speaker's role in it that led the House effectively to order the Speaker to put the question.[37] Another innovative motion had been moved on 9 May. The House had just come to a resolution on a matter of privilege on a close division. The Speaker then sought to continue the debate, and another Member tried to join in. At this point, "a Question made, whether any more should speak in this Matter" and it was "Resolved, no more should speak".[38] It was this last cited instance that led May to write in 1854: "In case … the question of la *clôture* should come under consideration, we are able to offer—what will be much more persuasive with the House of Commons than any argument—a precedent".[39]

Most of the innovations of 1604 did not prove enduring, but the same cannot be said of the motion moved on 29 October 1641, this time in the form of a question as to "whether this Question abovesaid should be now put".[40] This question was used constantly in "the 1640s and 1650s … though with particular intensity in some years (64 times in 1649, which seems to have been its peak)".[41] It was used occasionally in the Restoration period, and more frequently from the 1690s, by which time the question "That the question be now put" or the question in the alternative form "That the question be not now put" was referred to as the "previous question".[42] The effect of the question in positive form if agreed to, or in the negative form if disagreed to, was not in doubt: "no further debate can be suffered to intervene; the Speaker must put the main question

35 CJ (1547–1629) 187.

36 CJ (1547–1629) 226.

37 The Speaker's resistance is also suggested in the account by the second scribe: "Mr. Speaker moveth, that the Bill will do Hurt, where it is intended for Good".

38 CJ (1547-1629) 205. The quotation is from the second scribe's version.

39 T E May, *The Machinery of Parliamentary Legislation reprinted from the Edinburgh Review of January 1854 with a Letter from the Author* (London, 1881), p 26.

40 CJ (1640–43) 298. For the context, see P Seaward, "A perpetual disturbance? The history of the previous question", History of Parliament online.

41 P Seaward, "A perpetual disturbance?".

42 See, for example, CJ (1667–87) 40; CJ (1693–97) 13, 65, 75; P Seaward, "A perpetual disturbance?"; W Petyt, *Lex Parliamentaria, or a Treatise of the Law and Custom of Parliaments* (3rd edition, 1748), pp 289, 292–293.

immediately".[43] However, the previous question's effectiveness in closing debate was severely hampered in several respects; it could only be moved by a Member with the floor; it could itself be debated without restriction;[44] it could not be used in Committee of the whole House;[45] and it could not be moved when an amendment had been proposed.[46] Due to these limitations, the previous question was generally seen as "an ingenious method of avoiding a vote", rather than as a device for bringing a matter to a conclusion.[47]

Until the mid-nineteenth century, all motions to be decided in the House of Commons could be debated before the question could be put by the Chair and every Member had a right to be called and heard in debate.[48] As Erskine May put it in 1844, "there is no rule or practice which assigns a limit to a debate, even when the nature of the question would seem to require a present determination".[49] This position was circumscribed only informally. Hatsell had argued that the Speaker had a duty to ensure every Member was heard, but noted that "where the love of talking gets the better of modesty and good sense … it is a duty very difficult to execute in a large and popular assembly".[50] In 1871, Erskine May observed that the disapprobation of those who continued to speak when a division was expected "may be called a moral *clôture*, and it is often exercised with very great effect".[51] Reginald Palgrave, the Clerk Assistant, writing in 1878, was to refer to "this rough method of applying 'la clôture'", citing instances of members yelling "Question! Question!" when they felt a debate had been unduly drawn out.[52]

Speaking in 1882, Gladstone referred to the "deference which 30, 40, 50 years ago was paid by all the Members of this House to the general wishes of the House in relation to the prolongation of debate" so "the House was virtually possessed of a closing power, because it was possessed of a means of sufficiently

43 Hatsell, *Precedents*, II.115; Petyt, *Lex Parliamentaria*, p 292.

44 Petyt, *Lex Parliamentaria*, pp 292–293; Hatsell, *Precedents*, II.112–116; T Erskine May, *A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament* (1st Edition, 1844), pp 174–175; *Report from the Select Committee on Business of the House*, HC (1871) 137, QQ 54–55; BL, Add Ms 44625, fos. 114–121v, Printed Cabinet paper by Dodson, 24 Nov. 1880; Redlich, P*rocedure*, II.227.

45 Hatsell, *Precedents*, II.110.

46 Hatsell, *Precedents*, II.109.

47 *Treatise* (1st Edition), p 173.

48 *Treatise* (1st Edition), p 172; Hatsell, *Precedents*, II.108; *Report from the Select Committee on Public Business*, HC (1847–48) 644, QQ 19–21.

49 *Treatise* (1st Edition), p 174.

50 Hatsell, *Precedents*, II.102.

51 HC (1871) 137, Q 216.

52 R Palgrave, *The House of Commons: Illustrations of its History and Practice* (2nd edn; London, 1878), p 15.

making known its inclinations; and to those inclinations, unless my memory monstrously deceives me, uniform deference was paid by Members".[53] Another Liberal Member since 1852, Hussey Vivian, put it in even starker terms:

> "until the last few years, a very effective clôture had always existed for all practical purposes. The custom was that when a question had been thoroughly debated the Government and the Opposition agreed that the time had come for taking a division. The Minister who had charge of the measure used invariably to wind up the debate, and if anybody rose after he had spoken he was howled down."[54]

"The oppression of overpowering majorities": early exploration of the closure

The possibility of curtailing debate was tentatively explored by several select committees between 1848 and 1871, but each shied away from the idea. The House showed what Palgrave termed "tenacious conservatism" in that it had "steadily refused to adopt those methods of arresting prolonged debate, which are found necessary elsewhere".[55] In July 1848 a Select Committee was established due to a "confusion" in the management of business under a weak minority government, which led to a proliferation of intermingled adjourned debates.[56] The Speaker, Charles Shaw-Lefevre, proposed that a form of closure should be available on the second or subsequent day of a debate to be moved by any Member if notice was given prior to the resumption of the debate. The motion would take the form "That such debate shall not be further adjourned". The question on that motion would be put immediately without debate or amendment and, if agreed to, the question was to be put at 2.00am the following morning if the debate was continuing.[57] In suggesting that "The House should have the power of deciding when the debate shall close", he drew attention to the use of an effective closure in the US House of Representatives, and the Committee took extensive evidence on practice both there from a former Congressman and in the French National Assembly from the newly-exiled François Guizot. They were told by him that the "*clôture*" had been introduced there in 1814 and that its use had become relatively routine and non-controversial. The Committee nevertheless rejected "restrictive rules", preferring instead to rely on "increased consideration on the part of Members in the exercise of their individual privileges", on "the good feeling of The

53 HC Deb, 20 Feb. 1882, cols 1139–40.
54 HC Deb, 23 Mar. 1882, col 1735.
55 R Palgrave, *The House of Commons*, p 14.
56 HC Deb, 30 Mar. 1882, col 341; HC (1847–48) 644, p iii.
57 HC (1847–48) 66, QQ 3–4.

House, and on a general acquiescence in the enforcement by The Speaker of that established rule of The House which requires that Members should strictly confine themselves to matters immediately pertinent to the subject of debate".[58]

In January 1854 Erskine May took up some of the themes of evidence to the 1848 Committee in an article in the *Edinburgh Review*. He argued that the US House of Representatives and the French Chamber of Deputies had taken effective measures to prevent "the undue protraction of their debates". However, he believed that the problems of over-extended debates were less acute than in 1848 and could not "call to mind any recent occasion on which such a power as that of *la clôture* could reasonably have been exercised". He thought that "unless there should hereafter be an urgent necessity for interference, it is not probable that the House will consent to the limitation of its debates".[59] Another committee on public business was established later that year, to which Shaw-Lefevre restated his belief in the need to be able to bring debates, such as those on urgent legislation, to a close, although he did not press the issue.[60] The Chairman of Ways and Means, Edward Bouverie, did not support the closure, believing that a minority in the House needed "the full power of protecting itself against being overborne by a large majority" and so must retain the ability of "interposing delay".[61] The Committee in its conclusions was "not unmindful of the necessity of great caution in effecting changes in a system sanctioned in its main features by long experience and national respect", and argued that any "new and stringent rule" would be inconsistent with its preferred approach.[62] Another committee of 1861 was even more conservative in outlook, cherishing "perfect freedom of debate" as "a sure defence against the oppression of overpowering majorities" and contending that it was "the first duty of the House" to maintain the existing rules "inviolate, and to resist every attempt to encroach on them".[63]

The possibility of closure received rather fuller consideration by another committee on the business of the House in 1871, chaired by Gladstone's chancellor of the exchequer, Robert Lowe. Erskine May, in his evidence, thought that the introduction of the closure could and should be avoided,[64] but did begin to sketch out how a closure would work. He suggested the form of the question—"That the Question be now put"—and envisaged that it would

58 HC (1847–48) 644, pp iv–viii.

59 May, *Machinery of Parliamentary Legislation*, pp 25–26. On the wider elements of this article, see McKay, "Principle of Progress", pp 160–162.

60 *Report from the Select Committee on the Business of the House*, HC (1854) 212, QQ 579–580.

61 HC (1854) 212, Q 76.

62 HC (1854) 212, pp iv, vii.

63 *Report from the Select Committee on the Business of the House*, HC (1861) 173, pp iii, xi.

64 HC (1871) 137, QQ 74–75, 211.

be put forthwith.[65] He also proposed two safeguards: first, that the closure would only be available where two motions for the adjournment of a debate had been negatived;[66] second, that it would only be operable against a "very small minority".[67] The Committee also considered the idea of what was in effect an "automatic" closure which might operate at 5.45pm on Wednesdays devoted to private Members' Bills if the adjournment of debate were negatived, although May was against this idea.[68] The Speaker, John Denison, opposed closure even with the first safeguard mooted by May, and only one member of the Committee, the Liberal Edward Knatchbull-Hugessen, supported the closure during the Committee's deliberations,[69] but some of May's ideas about how a closure rule might operate first expressed in 1871 were to be prove significant when the practicalities of such a rule were subject to fuller consideration.

"Inclination … to do as little as possible": Northcote's response to obstruction as leader

In February 1877 Sir Stafford Northcote assumed the leadership of the House after the Prime Minister, Benjamin Disraeli, was elevated to the House of Lords as the Earl of Beaconsfield.[70] Although Disraeli's dominance of the House had waned in 1876, he was a very tough act to follow.[71] Many were quick to judge Northcote: Lucy's brutal verdict as early as May 1877 was that Northcote has been "tried" and "found wanting" as leader.[72] That year also saw the onset of systematic obstruction undertaken by a small faction within the Irish Home Rule party,[73] and Northcote's qualities, which might have commended themselves to the House in other times, were unsuited to this challenge. As Milman was to put it, Northcote was "not a fighting captain".[74] Milman thought that Northcote was hamstrung by "his curious inability to realize that obstruction was not a passing

65 HC (1871) 137, Q 53.
66 HC (1871) 137, QQ 53, 208.
67 HC (1871) 137, Q 184.
68 HC (1871) 137, QQ 212, 228.
69 HC (1871) 137, Q 313 and p vi.
70 The only biography is A Lang, *Life, Letters, and Diaries of Sir Stafford Northcote First Earl of Iddesleigh* (2 vols, London, 1890). The chapter on his leadership of the House and his time as Leader of the Opposition (II.127–147) is written by someone else (I.xx–xxi) and is more insightful than Lang's work. There are good modern assessments by W D Rubinstein in the Oxford Dictionary of National Biography (hereafter *ODNB*) and Lord Lexden, "A Tragic Tory Leader and His Diaries", *Parliamentary History*, Vol 37, pt. 3 (2018), pp 435–441.
71 For a description of the trajectory of Disraeli's command of the House from 1874 to 1876, see *Disraeli Parliament*, pp 39-40, 68-71.
72 *Disraeli Parliament*, p 250.
73 On which, see Lee, "Procedural response", pp 30–31.
74 "Peril of Parliament", p 276.

extravagance, but a settled policy".[75] Brand concluded privately that Northcote was "wanting in force and energy for such times: and he has shewn want of skill in choosing the occasions for a trial of strength with the Obstructives".[76] The session ended with the House seemingly powerless in the face of obstruction.[77]

As the session drew to a close, the Speaker wrote to Northcote urging him to find ways to correct the "evil" of "wilful obstruction".[78] Northcote consulted May on possible ways forward, centred on new disciplinary powers against individual members, which Northcote thought was "the only effectual remedy unless we adopt the clôture".[79] On 31 July 1877 Northcote announced his intention to establish a select committee on public business early the following session.[80] His correspondence with Beaconsfield in September did not refer to the possibility of the closure,[81] and his optimism that disciplinary measures would be sufficient was to some degree shared by the Speaker.[82] May, however, was not convinced, reviving one of the propositions he had advanced to the 1871 select committee, while adding the concept of an enhanced majority:

> "I cannot help thinking we shall be driven to *la clôture,* in some form or other. Perhaps the best form would be to allow such a notice to be proposed after two motions for adjournment have been negatived (say by a majority of three fourths of the members present), and determined without debate."[83]

He thought this proposal might respond effectively to the reluctance of the House to abridge the rights of minorities, by protecting the rights of "considerable minorities".[84] This may well have been the first mention of an enlarged majority as a safeguard for the closure, although it had been suggested by a Liberal backbencher as a precondition for the exercise of disciplinary sanctions. The Liberal frontbencher Sir William Harcourt had spoken against that idea, saying that the House "had never had such a Rule" and describing the idea of a super-majority as "one of the most radical innovations of those Rules that had ever been attempted".[85]

Perhaps emboldened by May, Brand himself made a suggestion for a closure

75 "Peril of Parliament", p 276.
76 TPA, BRA/1/3/21, Brand to Sir George Grey, 15 Aug. 1877.
77 Masson, *De l'Obstruction*, pp 27–33.
78 BL, Add Ms 50021, fos. 167–167v, Brand to Northcote, 25 July 1877.
79 TPA, ERM/8/171, Northcote to May, 26 July 1877.
80 HC Deb, 31 July 1877, col 227.
81 BL, Add MS 50018, fos. 52–57v, Northcote to Beaconsfield, 4 Sept. 1877.
82 TPA, BRA/1/3/22, Northcote to Brand, 2 Sept. 1877; TPA, BRA/1/3/21, Brand to Sir George Grey, 15 Aug. 1877.
83 TPA, BRA/1/3/25, May to Brand, 8 Oct. 1877.
84 TPA, BRA/1/3/25, May to Brand, 8 Oct. 1877.
85 HC Deb, 27 July 1877, cols 34–38.

triggered by a single dilatory motion, with a less demanding majority and encompassing the main question as well as any amendment before the House:

> "A modified form of clôture might be applied, founded upon the condition, that the main question should be immediately put if upon a division on the adjournment, a small proportion only (say less than one fifth) of the members present supported the motion for adjournment."[86]

Northcote was sceptical, believing that "it would hardly do to put the main question immediately on the rejection" of a dilatory motion. He thought it was "reasonable" for the rejection of one dilatory motion to "put a stop to fresh" dilatory motions, but that it would not be reasonable to stop the discussion of the clauses of a bill itself.[87] Northcote was even blunter to his Chief Whip: "I should be sorry to see even a modified system of 'Clôture' adopted. I think it would be quite sufficient that the same two Members should not move more than once" the same dilatory motion.[88] Northcote advised Brand in November that "the inclination of my colleagues is to do as little as possible".[89] Brand underscored these words and highlighted them in a subsequent letter to May.[90]

At the start of the 1878 session there were also public suggestions that the closure would be forced upon the House,[91] but Northcote had other ideas. His first instinct was to make no government recommendations to the planned committee.[92] This was subsequently modified to bring forward some proposals on dilatory motions and some changes to divisions with small minorities, but "further than this I am indisposed to go".[93] He explicitly ruled out "making new rules with respect to" obstruction in a letter to Brand and repeated the sentiment in the debate on establishing the committee, expressing the "hope that such matters will never again cause us trouble in this House".[94] Northcote himself chaired the Committee and steered it away from radical ideas. At the Committee's second private meeting on 12 March the idea of closure seems to have been considered and rejected, even before witnesses were examined.[95] Witnesses were seemingly asked to make no mention of it. May, in his evidence,

86 TPA, BRA/1/3/26, draft Memorandum to the Chancellor of the Exchequer, 15 Oct.1877.

87 TPA, BRA/1/3/27, Northcote to Brand, 23 Oct. 1877.

88 BL, Add Ms 50040, fos. 84–88, copy of Northcote to Sir William Hart Dyke, Nov. 1877.

89 TPA, BRA/1/3/33, Northcote to Brand, 13 Nov. 1877. For an indication that this was an accurate assessment, see a letter opposing any changes to Northcote from the Conservative Chief Whip: BL, Add Ms 50040, fos. 80–83, Hart-Dyke to Northcote, 14 Jan 1878.

90 TPA, ERM 4/71–72, Brand to May, 14 Nov. 1877.

91 *Birmingham Daily Post*, 7 Jan. 1878, p 8.

92 TPA, BRA/1/3/32, May to Brand, 12 Nov. 1877.

93 TPA, BRA/1/3/36, Northcote to Brand, 14 Jan. 1878.

94 TPA, BRA/1/3/36, Northcote to Brand, 14 Jan. 1878; HC Deb, 24 Jan. 1878, col 382.

95 *Report from the Select Committee on Public Business*, HC (1878) 268, p vi; *Leeds Mercury*, 13 Mar. 1878, p 4.

alluded to a practice of the US House of Representatives which amounted to "a *clôture* of debate", but revealingly went on to say "as I understand, the Committee do not wish to entertain that proposal".[96]

Knatchbull Hugessen, a Committee member as in 1871, again advocated the closure, but the Speaker backed away even from limited support: "I do not think that the necessity for the adoption of the Clôture has yet arisen, and I hope it never may".[97] In his oral evidence, he referred simply to the need for "a firm determination on the part of the House to exert its own will to close business at a proper time".[98] Henry Raikes, the Chairman of Ways and Means, alluded to ideas first floated by Speaker Shaw-Lefevre in 1848 for a closure that would be triggered indirectly by the negativing of successive dilatory motions, coupling this with the concept of a requirement for "a very large majority" against such motions.[99] He emphasised, however, that he did not favour the simpler type of closure.[100] The Committee rejected the closure by 13 votes to 2, and said of "the power of formally closing a debate" that "they are not prepared to offer such a recommendation for the present adoption of the House".[101] Milman's assessment of the report was that it was "the liberty of reckless railing, not that of reasonable speech, which is being respected by the unwillingness of the House to act".[102] Reflecting later on the work of the 1878 Committee and its predecessors, May observed that "their labours have been curiously sterile" and that "all parties have … recoiled from bold and effectual remedies for evils which none are able to deny".[103]

When one proposal from the Committee relating to Supply was debated in 1879, the Marquess of Hartington, the leader of the opposition, was almost a lone voice in arguing that the House needed to find a way to classify its business better and manage its time according to the priorities of different types of business. He accepted that there was currently no appetite within the House for a "scheme for the proper conduct and management of its work", but "he was strongly of opinion that, until it took up the question in that sense, it would never be able to cope with the real evil with which it had to contend".[104] John George Dodson, who was also to play a significant role in Gladstone's

96 HC (1878) 268, Q 270.
97 TPA, BRA/1/3/40, Brand's notes on proposals forwarded by Northcote, 21 Mar. 1878.
98 HC (1878) 268, Q 786.
99 HC (1878) 278, QQ 806–808, 813, 823–825, 886
100 HC (1878) 278, Q 1337.
101 HC (1878) 278, pp xvii, iii. The word "present" was retained by 9 votes to 6.
102 A Milman, "The Block in the House of Commons", *Quarterly Review*, Volume 146 (1878) (hereafter "The Block"), pp 181–202, at p 198.
103 May, *Machinery of Parliamentary Legislation*, p iii.
104 HC Deb, 17 Feb. 1879, col 1362.

Cabinet from 1880 onwards, diagnosed the three difficulties that the House faced—multiplicity of business, prolixity of debate and "uncertainty as to the hour or even the day when any particular piece of business was to come on" —but "hoped they would never be reduced to the necessity of a gag law, or the *clôture*".[105]

"Reluctance not unmingled with disgust": discussion in February 1880

Obstruction was worse in 1879 than in the previous year, and the House was reduced to a sense of "powerless anger", with May concluding that "the vicious tactics of obstruction had become insufferable".[106] The procedural response early the following year focused on disciplinary powers against individual Members. On Saturday 28 February 1880 the House agreed a Standing Order providing for a Member who was named to be suspended for the remainder of the sitting in question.[107] When Northcote gave notice of the proposal, Brand wrote a note in the chair to be handed to Northcote by Milman complaining that the resolution was "too weak".[108] Brand suggested amendments to provide for much tougher penalties.[109] The rule as proposed and then agreed was described by Milman as "wholly inadequate" and "of no practical use against obstruction".[110] In the context of the closure, its significance lay in being the first Standing Order to make provision for a question to be put forthwith, without possibility of debate or amendment.[111] May noted nevertheless that the Standing Order "was destined to cause grave troubles to the House itself, to the Speaker, and all concerned in the business of the House".[112] This may in part have been because of Northcote's continuing belief that the very limited power embodied in this Standing Order and essentially directed against individuals constituted a sufficient response to obstruction even when it was becoming a more collective enterprise. As the Chairman of Ways and Means, Sir Lyon Playfair, was to note tartly late in 1881: "Sir Stafford Northcote is so enamoured of his Rule that he

105 HC Deb, 20 Feb. 1879, col 1577.

106 Masson, *De l'Obstruction*, pp 33–34; Lee, "Procedural response", p 35; *Private Journal*, p 52.

107 CJ (1880) 68–69.

108 TPA, BRA/3/4, 25 Feb. 1880; BL, Add Ms 50021, fos. 177–179, Brand to Northcote, 25 Feb. 1880.

109 BL, Add Ms 50021, fo. 180, Notice of motion with amendments, 25 Feb. 1880.

110 "Peril of Parliament", pp 273, 274.

111 There had also been a similar provision in a resolution on the withdrawal of strangers adopted on 31 May 1875 and treated by the Speaker as having standing effect: CJ (1875) 244; HC (1878) 278, QQ 767–775.

112 *Private Journal*, p 52.

thinks no other changes of Rules are needed".[113]

During the debate on the proposed Standing Order, Northcote effectively admitted that the proposal to which he was so opposed would be the most effective in preventing obstruction:

> "There is only one alteration of our Rules which would be of a character that really could prevent Obstruction, and that is one for which we have no English name, but which is known to us all under the name of the clôture. If we were certain that Business could be got through in a certain time, we know that it would be possible to make a Rule to that effect. But that is a method on which I venture to think that this House will pause very long before they adopt it. It is wholly at variance with the traditions of the British House of Commons."[114]

As one observer wrote of this speech, Northcote "detested" the closure, and referred to it in this speech "in the same tone of reluctance not unmingled with disgust with which he would have spoken of the Russian knout or the Turkish bastinado".[115]

Hartington suggested in response that the House was prevaricating on the solution needed, referring to the closure as "a proceeding to which in time you will be forced to come, and … which would undoubtedly be efficient for the purpose for which it would be intended".[116] Gladstone's dislike of the closure was almost as evident as Northcote's, suggesting that it was wholly irrelevant to the matter under consideration. By enacting the closure, Gladstone considered, the House "would punish itself, and the great interests with which it is charged, in consequence of the offence of a particular Member".[117] Some other participants in the debate were more supportive of the closure. One suggested that "sooner or later we must come to" a closure.[118] Another said he would "very reluctantly" be able to support the closure if supported by three-fourths of the House, rather than a bare majority.[119] Despite these glimmers of support, it would be left to the new Liberal Government to address the issue.

"Grave public evils": the session of 1880 and preliminary consideration of the closure

The parliamentary challenges faced by Gladstone's second administration

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

[114] HC Deb, 26 Feb. 1880, col 1457.

[115] Lang, *Northcote*, II.134–135.

[116] HC Deb, 26 Feb. 1880, col 1476.

[117] HC Deb, 27 Feb. 1881, col 1593.

[118] HC Deb, 27 Feb. 1880, col 1604.

[119] HC Deb, 27 Feb. 1880, col 1606.

formed in April 1880 proved to be greater than those which Northcote had failed to surmount. The Irish Home Rule party following the 1880 election bore the stamp of Parnell's leadership, with greater cohesion and many more Members willing to engage in obstruction.[120] For the first time, the House of Commons had a modern three-party system, with a recognised "Third Party", which was well-organised and whipped, but which differed from the two main parties in not aspiring to government.

Northcote's position as Leader of the Opposition was very exposed.[121] His sympathetic biographer notes that "Sir Stafford was unrivalled in the rare skill of waging a losing fight, playing a losing game, with courage and with good temper".[122] These were qualities unlikely to commend him to his parliamentary party, and he was not helped by the fact that his senior lieutenants, Sir Richard Cross and W H Smith, were also natural administrators temperamentally unsuited to opposition.[123] Northcote was seen as too deferential to Gladstone, both personally—they referred to each other as "Right honourable Friends" until around 1883, reflecting Northcote's time as Gladstone's private secretary—and politically.[124] He was almost invariably outclassed when following Gladstone in debate, like "the shrill note of a tin whistle after the sublime notes of an organ fugue".[125]

An initial cause of difficulty in the 1880 session was the question of whether the atheist Charles Bradlaugh could take his seat without taking the oath, a dispute which in Brand's words, proved "interminable",[126] but that was merely the start of the Government's problems. The Bradlaugh dispute saw the emergence of what was soon dubbed the "Fourth Party", initially composed of three Conservatives—Lord Randolph Churchill, John Gorst and Sir Henry Drummond Wolff—soon joined by a fourth "honorary" member, Arthur Balfour. The last of these was less effective as a parliamentarian, but "with the rich gift of conveying the impression that presently he will be a successful Parliamentary debater, and that in the meantime it is well that he should

120 Lee, "Procedural response", p 37.

121 *Gladstone Parliament*, pp 44–46; *Salisbury–Balfour Correspondence: Letters exchanged between the Third Marquess of Salisbury and his nephew Arthur James Balfour 1869–1892* (Hertfordshire Record Society, 1988) (hereafter *Salisbury–Balfour Correspondence*), p 49.

122 Lang, *Northcote*, II.187.

123 A J Balfour, *Chapters of Autobiography* (London, 1930), pp 141–42.

124 *Gladstone Parliament*, pp 362, 44–45, 66–67; R Rhodes James, *Lord Randolph Churchill* (London, 1959), pp 73–75.

125 *Gladstone's House of Commons*, p 260.

126 TPA, BRA/3/4, 14 July 1881; *Gladstone's House of Commons*, pp 2–3.

practise".[127] They operated as a cohesive unit and were determined to harry both Gladstone and their own frontbench and in particular Northcote, who they felt had "a constitutional dislike to decided action".[128]

During that session, "The tactics of obstruction became more intolerable", according to May.[129] Obstruction was undertaken by the Fourth Party and Irish Members, often in cooperation.[130] Robert Lowe, the chair of the 1871 committee and now Lord Sherbrooke, in an article published in late September 1880, argued that the Government had only passed "two measures of first-rate importance" during the session because half the time of the House had "been intentionally and deliberately wasted". He suggested that, under current arrangements, "many branches of legislative duty" had become "utterly impossible" and that the Parnellites had an effective veto over Irish legislation.[131] He lambasted the Fourth Party, contending that the difference between them and the Irish party was "merely nominal, as they pursue the same object, the obstruction of business, by the same means".[132]

Sherbrooke's article made the case for the clôture, suggesting that without changes things would only get worse, "and the mischief, which is fast becoming inveterate, will have become ineradicable".[133] He argued that "the liberty of endless speech which we allow to our tormentors is, in the times in which we live, a gross anomaly".[134] On the form which the clôture might take, he had remarkably little to say, simply suggesting that it had to embody the principle that the duration of the debate should be at the disposition of the majority.[135] He concluded by asserting that the closure would only be used where the "disease" of obstruction existed and that he had come to his view "with the bitterest regret and the most extreme reluctance".[136]

The article was widely read, not least by Gladstone and Northcote.[137] Some

127 Rhodes James, *Churchill*, pp 80–83; *Gladstone Parliament*, pp 76–78, 84–85; *Gladstone's House of Commons*, p 81. Balfour himself relished Lucy's jibe, which he quoted in his autobiography: Balfour, *Chapters of Autobiography*, p 137.

128 *Gladstone Parliament*, p 99; *Gladstone's House of Commons*, pp 2–3, 73; *Salisbury–Balfour Correspondence*, p 52.

129 *Private Journal*, p 52.

130 *Gladstone Parliament*, pp 86–88; *Gladstone's House of Commons*, pp 14, 74–77, 80–83; Rhodes James, *Churchill*, p 97.

131 Lord Sherbrooke, "Obstruction or 'Clôture'", *Nineteenth Century*, No. 44, October 1880, pp 313–325, at p 314.

132 "Obstruction or 'Clôture'", p 318.

133 "Obstruction or 'Clôture'", p 319.

134 "Obstruction or 'Clôture'", p 321.

135 "Obstruction or 'Clôture'", pp 321–322.

136 "Obstruction or 'Clôture'", pp 324–325.

137 GD, ix.590; BL, Add MS 50018, fos, 203–232v, Northcote to Beaconsfield, 7 Oct. 1880.

of the press reaction was negative. There was acknowledgement of Sherbrooke's characteristic "pungency", but the article was seen as "a wild cry for repression in the House of Commons".[138] Some commentators were not convinced that the 1880 session could be seen as the model for all future sessions, with the impact of the Bradlaugh case being seen as a unique source of delay.[139] Even some of those who supported Sherbrooke's belief that obstruction would grow and that the clôture was needed thought that he had neglected the need for safeguards, such as the requirement for a two-thirds or three-fourths majority.[140] Others concluded that he was right to advocate the clôture while predicting that "Probably half a session will be lost before the rules of the House of Commons can be altered as Lord Sherbrooke desires."[141]

The experience of the 1880 session prompted the first sustained consideration of the closure within government. On 25 August 1880 the Foreign Secretary, Earl Granville, sought information on the meeting times and sitting hours, and time occupied, in various legislative assemblies from British Ambassadors "required for the use of Parliament" and particularly sought "any information respecting the working of the *clôture*, should it exist".[142] On 10 September the Colonial Secretary made a matching request respecting the *clôture* "or any analogous mode of abridging or summarily terminating discussion, which may have been established" in the self-governing colonies.[143] Granville's "prescient eye" was later to be wryly remarked on by a Conservative frontbencher to imply a concerted plan to introduce the closure at this point.[144] Contemporary evidence suggests there was no such plan. By October Gladstone felt that "the question of obstruction in the proceedings of the House of Commons has grown to such a magnitude that it seems to require the consideration of the Government during the present recess".[145] On 23 October he produced a paper for the Cabinet on procedural reform, but the focus was very much on delegation of legislative powers to Grand Committees. He argued that repression would be counter-productive in an Irish context, and also made clear his aversion to the closure: "Any serious changes in the role of the House of Commons, if repressive of

138 *Western Daily Press*, 1 Oct. 1880, p 5; *Derby Daily Telegraph*, 29 Sept. 1880, p 3.

139 *Glasgow Herald*, 29 Sept. 1880, p 4.

140 *Dundee Evening Telegraph*, 30 Sept. 1880, p 2.

141 *Bradford Observer*, 1 Oct. 1880, p 2.

142 *Reports respecting the Practice and Regulations of Legislative Assemblies in Foreign Countries*, January 1881, C–2753, p 1.

143 *Reports respecting the Practice and Regulations of Legislative Assemblies in Colonies possessing Responsible Government*, January 1881, C–2984, p 2.

144 HC Deb, 20 March 1882, col 1304.

145 The National Archives (hereafter TNA), CAB 37/3/60, Obstruction and Devolution (GD. ix.598–99).

the liberty of debate, would be grave public evils, even should we be able to avert, by their means, evils graver still".[146] However, by the time the paper was circulated to the Cabinet in printed form on 11 November, Gladstone was ready to hint at the possibility of closure in due course:

> "It may be question[ed] whether the House has yet attained a sufficient consciousness of the existing and impending evils to be willing to face a drastic remedy; but unless it has arrived at this willingness, I believe it will still have to draw upon its stock, if any, of unexhausted patience before getting rid of obstruction or reducing arrear."[147]

Most of the Cabinet was lukewarm about delegation as a solution to the immediate challenge,[148] and wanted further examination of the systems for curtailing debate in France, the United States and elsewhere.[149] On 18 November the Cabinet received a report from the British Embassy in Paris on the operation of the clôture in France.[150] At around the same time an analysis was prepared as to how the "previous question" in the US House of Representatives had diverged from the British form of that motion to become in effect a closure motion, which also enabled the question to be put on all amendments as well as the main question in one fell swoop.[151] On 24 November John George Dodson, President of the Local Government Board and a former Chairman of Ways and Means, provided the Cabinet with a fuller account of the closure and comparable procedures for closing debate. He suggested that the clôture in France had never been abused by the majority, and also gave an account of a similar rule in Belgium and of the "Chiosura" in Italy. He noted that "the American Previous Question is a more powerful weapon than the Continental Clôture, as the latter, to be fully successful, must be moved and carried upon each amendment separately, and then upon the main question".[152]

Cabinet consideration of procedure for much of autumn 1880 was hampered by uncertainty as to whether, when the new session started, the House would be asked to agree to emergency legislation to increase powers of arrest and

146 TNA, CAB 37/3/60, Obstruction and Devolution (GD.ix.598–99).

147 TNA, CAB 37/3/60, p 12 (Hughes, p 299).

148 TNA, CAB 37/3/60, pp 8–12; C H D Howard, ed, *A Political Memoir 1880–1892 by Joseph Chamberlain* (London, 1953) (hereafter *A Political Memoir*), p 9.

149 GD.ix.614; HD.68.

150 BL, Add Ms 44625, fos. 106–108, Report on French system of Bureaux and Clôture, dated 18 Nov. 1880, including letter from Lord Lyons to Lord Tenterden, 16 Nov. 1880.

151 BL, Add Ms 44625, fos. 110–113v, Notes on Clôture in the United States, derived from Cushing's Manual.

152 BL, Add Ms 44625, fos. 114–121v, Printed Cabinet paper by Dodson, 24 Nov. 1880. A revised version was circulated in December 1881: BL, Add Ms 44252, fos. 128–141; also available at TNA, CAB 37/6/38.

detention in Ireland. The situation there appeared to be rapidly deteriorating. The Irish Land League had been formed in the autumn of 1879, and had brought together constitutional Home Rulers such as Parnell with Fenian nationalists more willing to contemplate direct confrontation with landlords, particularly in the west of Ireland. Despite this, Gladstone's administration had allowed coercive legislation to lapse in the spring of 1880. As the year went on, the scale and geographical spread of violence associated with protests about rent levels and evictions increased. The government decided to proceed against Parnell and the Land League under the existing law, but were not sure it would be effective, a fear which proved justified when a Dublin jury did not come to a decision. Gladstone recognised that the growth in the size and militancy of the Home Rule parliamentary party meant that coercive legislation in the new session "might be ably and vehemently opposed" and "might take a considerable time to pass into law".[153] On 25 November Gladstone told the Speaker that he was still hesitating over whether coercion in Ireland would be effective and worth the "rather serious difficulty of obtaining it".[154]

However, by 9 December Gladstone had concluded that "repression" had to precede "remedy" for the Irish land crisis.[155] On 15 December Gladstone wrote to Brand stating that Parliament would meet in January and would be first asked to consider "repressive measures". He stated that, "In view of the recently developed arts of obstruction", it would be necessary to assess before Parliament meets "what will be the best means of expediting business".[156] Gladstone's own tentative suggestion involved two established methods to force through urgent business: the first was a motion was to give proceedings on the Bill precedence over all other business, so that the Government kept control of the agenda even on days usually available for private Members' business; the second was the use of what were termed "continuous sittings", whereby the business set down for one day would continue into the next, with the subsequent sitting lost. The use of "continuous sittings" as an expression of resolve had been the method by which the back of obstruction had been broken in 1877.[157] Brand's reply, after taking advice from May, enclosed a draft motion to give precedence and admitted that recourse to continuous sittings might be necessary.[158] May also

153 P Guedalla, *The Queen and Mr Gladstone, 1880–1898* (London, 1933), p 123.

154 TPA, BRA/1/4/21, Gladstone to Brand, 25 Nov. 1880 (GD.ix.622).

155 GD.ix.635; HD.87.

156 TPA, BRA/1/4/23, Gladstone to Brand, 15 Dec. 1880 (GD.ix.643).

157 TPA, BRA/1/4/23, Gladstone to Brand, 15 Dec. 1880 (GD.ix.643); Lee, "Procedural response", p 31.

158 BL, Add Ms 44194, fos. 230–233, Brand to Gladstone, 18 Dec. 1880 (Hughes, pp 301–302). May's advice was given orally, but recapitulated in writing: TPA, BRA/1/4/26, May to Brand, 20 Dec. 1880.

expected that "all the modern tactics of obstruction" would be brought into play, but still seemed only willing to contemplate a response "without undue restrictions upon debate" based on continuous sittings.[159]

May's fears were realised when the session started in early January. The debate on the Address began on 6 January, and it soon became evident that Irish obstruction had assumed a darker hue than ever before. On 13 January *The Standard* saw the prolongation of the debate as "a source of future trouble, inconvenience, and obstruction to the Government". *The Daily Telegraph* thought that "There must arrive a moment with such tactics … when the House of Commons will have to assert its rights and dignities, and terminate any conspiracy of obstruction".[160] On the eighth night of debate on the Address Gladstone did little to hide his disgust at successive amendments relating to the situation in Ireland, which stood in the way of the House turning to substantive business. He described it as "almost a ludicrous thing" that the House was asked to consider such amendments and cautioned that "the liberty of speech, which is its highest and dearest privilege, and its greatest ornament, is too often applied for purposes such as this".[161] The next day the Speaker recorded that "It is plain that the Party of action headed by Parnell mean to obstruct all they can."[162] Lucy saw the House as "like a gentleman armed with a rapier attacked by a bully with a bludgeon" and thought it was "now perfectly helpless at the feet of Mr Parnell".[163] Ministers such as Hartington and W E Forster, the Irish Secretary, emphasised that the persistent abuse of the rules by Irish Members to defeat the object of the House would call those rules into question.[164] The Address was finally agreed after eleven nights of debate, which May termed "a period quite unprecedented and plainly foreshadowing the impending difficulties of Parliamentary Government".[165] The Speaker similarly noted that "the party of action have plainly shewn their cards, and we must expect the worst in the way of obstruction".[166]

159 TPA, BRA/1/4/27, May to Brand, 21 Dec. 1880; forwarded to Gladstone by Brand: BL, Add Ms 44194, fos. 234–234v, Brand to Gladstone, 22 Dec. 1880; BL, Add Ms 44154, fos. 71–78, Memorandum by Sir Thomas Erskine May, 21 Dec. 1880.

160 *Pall Mall Gazette*, 13 Jan. 1881, p 2.

161 HC Deb, 17 Jan. 1881, cols 871, 874.

162 TPA, BRA/3/4, 18 Jan. 1881.

163 *Gladstone Parliament*, p 114.

164 HC Deb, 17 Jan.1881, col 932; HC Deb, 18 Jan. 1881, col 1006.

165 HC Deb, 20 Jan. 1881, col 1061; HC Deb, 21 Jan. 1881, col 1090; *Private Journal*, p 53.

166 TPA, BRA/3/4, 20 Jan. 1881.

"Wide powers … for the regulation of business": the emergence of the concept of Urgency

While the House seemed helpless, much thought was being given in private to a radical procedural departure. On 15 December Gladstone had asked Brand to consider ways to modify "our ordinary modes of proceeding" and to seek May's assistance.[167] Replying on 18 December, Brand had noted the possibility that precedence and continuous sittings might not prove sufficient: "What is to be done if actual rebellion shews itself within the walls of the House in the form of wilful and persistent obstruction with the deliberate intention of stopping its action?" While he continued to believe that the "moral force of the will of the House" might stop this occurring, he cautioned Gladstone that "we must be prepared for such a crisis".[168] He thought that, faced with such a crisis, it might be necessary for the House to pass "a resolution, setting aside our ordinary modes of proceeding, for the purpose of passing a Bill or Bills essential to the Public Safety".[169] This seems to be the first reference to the concept which was soon to be termed Urgency, whereby the House might be unable, under its existing rules, even to adopt a closure rule, so that the power to make temporary rules would be invested in the Speaker.

From early in January 1881 the Cabinet began preparing for such a crisis in earnest. This vital, but hitherto largely neglected phase, was the essential background to the events that unfolded late in January and at the start of February. Individual Cabinet ministers were asked to provide their own draft proposals on procedure and at least seven draft resolutions were provided, which were then printed for the Cabinet's use.[170] These were subsequently shared with May and Brand.[171] The first four propositions all gave the Speaker what he himself termed "wide powers … for the regulation of business when the House shall have formally declared a state of Urgency".[172]

167 TPA, BRA/1/4/23, Gladstone to Brand, 15 Dec. 1880 (GD.ix.643).

168 BL, Add Ms 44194, fos. 230–233, Brand to Gladstone, 18 Dec. 1880 (Hughes, pp 301–302).

169 BL, Add Ms 44194, fos. 230–233, Brand to Gladstone, 18 Dec. 1880 (Hughes, pp 301–302).

170 BL, Add Ms 44626, fos. 23–25, Printed Cabinet paper, 18 January 1881. It is possible that the drafts also included those supplied by two Liberal backbenchers, William McCullagh Torrens and Peter Stewart Macliver. Dodson analysed their proposals in two letters to Gladstone and the fifth proposition broadly matches Macliver's scheme as described by Dodson: BL, Add Ms 44252, fos. 102–102v, Dodson to Gladstone, 24 Dec 1880; BL, Add Ms 44252, fos. 104–105, Dodson to Gladstone, 8 Jan. 1881. The suggestion by Hughes that all the rules were drafted by Gladstone (Hughes, pp 302–303) is clearly erroneous.

171 May's annotated copy is available at BL, Add Ms 44626, fos. 26–28; Brand's copy is TPA, BRA/1/4/38.

172 BL, Add Ms 44195, fos. 8–11v, Brand to Gladstone, 22 Jan. 1881.

The first proposition, of unknown authorship, provided that when the House voted that the state of public business was urgent, "the power for the regulation of its business shall be and remain with Mr. Speaker until Mr. Speaker shall declare that the state of public business is no longer urgent". The second anonymous proposition set out a series of rules that would come into force when the House resolved that public business was urgent, including an effective closure without debate covering amendments as well as the main question. Brand thought that "these rules may be in themselves good", but that it "would be inexpedient (under the existing rules of debate) to submit them in detail"; the same end could be achieved by "absolute authority being vested in" the Speaker as in the first proposition.[173]

The third and fourth propositions also employed the concept of urgency, but as a means to adopt a closure rule, rather than to pave the way for a broader set of new rules. The third resolution was possibly Gladstone's own draft, and provided that, when urgency had been resolved, any Member could move a motion to invest the Speaker with a power to put any question forthwith without debate while the state of urgency continued.[174] The fourth version was proposed by Lord Hartington.[175] It requested the Speaker to take such measures as he deemed fit to ascertain whether the question should be put. Hartington supplied this draft reluctantly, stating that he was "still inclined to think that the Speaker should be urged to take the responsibility on himself".[176]

At this stage, May was uneasy about the concept of the Speaker being invested with sweeping powers. May noted that "If such powers were entrusted to the Speaker, it is to be feared that he would be brought into violent conflict with the obstructive party; and the authority of the Chair might be impaired."[177] Although Brand had first mooted the idea of these broad powers for the Speaker in December, he was also uneasy, picking up on May's doubts: "I have no hesitation in assuming any authority which the House may for the public good impose upon me: but there is some danger that by a process of this kind the authority of the Chair may be permanently impaired".[178] He thought that resort should not be had to what would be regarded as a "high-handed"

173 BL, Add Ms 44195, fos. 8–11v, Brand to Gladstone, 22 Jan. 1881.

174 For the original manuscript version, on 10 Downing Street paper, see BL, Add Ms 44626, fos. 57–58. Supporting evidence for this being Gladstone's draft is contained in BL, Add Ms 44195, fos. 8–11v, Brand to Gladstone, 22 Jan. 1881, cited below.

175 For the original manuscript version, in Hartington's hand, see BL, Add Ms 44626, fos. 60–61.

176 BL, Add Ms 44145, fos, 178–178v, Hartington to Gladstone, 16 Jan. 1881.

177 BL, Add Ms 44626, fos. 26–28, May's annotations.

178 BL, Add Ms 44195, fos. 8–11v, Brand to Gladstone, 22 Jan. 1881.

measure "until all other means have been exhausted".[179] Gladstone was also unconvinced at this stage that Urgency was the right way forward: "My own opinion is, as far as I have formed one, that the Speaker's office would not bear the weight likely to be placed upon it if he were called upon to secure the House against the various forms of obstruction organized by a considerable body of members".[180]

"A code of Rules for regulating its own business": closure as an alternative to Urgency

The draft proposals on procedure considered by the Cabinet in mid-January included three further propositions which embodied an alternative to Urgency. As Brand put it, instead of extending "the authority of the Speaker", the House could itself frame "a code of Rules for regulating its own business".[181] A fifth proposition in the Cabinet memorandum was for a power of closure by resolution to apply to further stages of Bills.[182] Brand thought that this failed "to meet the obstruction with which we now have to deal, and which will not be limited to particular Bills, but which will be constantly applied so as to gag the House, and bring it into contempt".[183] The sixth version by Hugh Childers, Secretary of State for War, also made quite radical proposals to bring proceedings on a Bill to a conclusion where a question had been declared urgent "by a majority of at least 100 votes, the number of the Ayes being also five times that of the Noes".[184]

The seventh version, and probably the most influential, was prepared by Dodson and drew upon his comparative research on the closure and the previous question.[185] He envisaged that, when the Speaker or the Chairman "shall have declared that in his judgment the business of the House or of the Committee is wilfully and persistently obstructed", a motion which Dodson termed the "previous question" could be moved. This was to be more like the US Congressional previous question than the British one, without any of the restrictions usually applied to the previous question and encompassing the main question. It would be put forthwith, but would need to be supported "by a majority of not less than three to one". In considering Dodson's draft, May queried the proposed narrowness of the closure power, arguing that "there is no

179 BL, Add Ms 44195, fos. 8–11v, Brand to Gladstone, 22 Jan. 1881.
180 GD.x.7.
181 TPA, BRA/1/4/49, Brand to Sir George Grey, 16 Feb. 1881.
182 The original in unidentified hand is at BL, Add Ms 44626, fo. 62.
183 BL, Add Ms 44195, fos. 8–11v, Brand to Gladstone, 22 Jan. 1881.
184 For the original manuscript version, see BL, Add Ms 44626, fos. 64–65.
185 For the original manuscript version, see BL, Add Ms 44626, fos. 66–67

reason why the *clôture* should be confined to cases of obstruction".[186] This may have reflected the same concern that Brand had about the fifth proposition, namely that the obstruction could be indirect and relate to various items of business. It may also have indicated May's preference for a more general power of closure.

Reflecting on all of the propositions provided to the Cabinet, Brand made clear that he "much preferred" the option whereby the House itself would agree changes to its own rules. Nevertheless, he recognised the "serious difficulties" in passing a new code "in the face of obstruction from various quarters".[187] He told Gladstone that he had "come to the conclusion that the best way to meet the crisis is to take the power to close a debate, subject to certain conditions for the protection of minorities".[188] He saw a closure rule itself as the means by which a broader set of changes could be effected, telling Gladstone that "if he were armed with an effective form of clôture, he might, under its operation, frame a code of rules for the regulation of business".[189] In those circumstances, he argued that closure should be attempted first, in preference to Urgency:

> "My belief is that a well considered resolution for closing the debate may be a means for delivering the House from the tyranny of obstruction under which it now suffers: and I should advise an attempt in that direction, before you adopt your Resolution of urgency making the Speaker absolute".[190]

Brand may have come to this view in part because it seemed that press support for the closure was building. On 14 January the Government had published the information obtained during the autumn on the closure in foreign jurisdictions.[191] Responding to this publication, *The Times* suggested the public "demands that a remedy for the obstruction of endless talk should be speedily discovered and swiftly applied". The newspaper thought that the House of Commons needed a remedy such as the clôture "even more than other Chambers". *The Standard* thought that the Government had to be prepared to take "some prompt and decisive action". The *Daily News* preferred the idea of the closure being voted for by the House rather than proposals to enlarge the authority of the Speaker. It acknowledged the perils of the closure, but believed that the House itself could be trusted to prevent abuse. The *York Herald* preferred the idea of appointing fixed end times for debates on second reading, of the Committee stage and

186 BL, Add Ms 44626, fos. 26–28, May's annotations.

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

188 BL, Add Ms 50021, fos. 181–183, Brand to Northcote, 19 Jan. 1881 (Hughes, p 304, derived from BL, Add Ms 44195, fos. 2–4, draft of Brand to Northcote, 19 Jan. 1881).

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

190 BL, Add Ms 44195, fos. 8–11v, Brand to Gladstone, 22 Jan. 1881.

191 *Reports respecting the Practice and Regulations of Legislative Assemblies in Foreign Countries*, C–2753.

of other stages to the introduction of the clôture.[192] On 17 January *The Times* suggested that "if waste of time were to be further systematically practised, public opinion with respect to the clôture would ripen rapidly". It supported closure if requested by 50 Members and agreed by a two-thirds majority. *The Standard* noted that "the opinion appears to be gaining ground that … the clôture, in some form or other, will have to be accepted". *The Newcastle Chronicle* was more sympathetic to Irish resistance to a Bill which could see many Irish MPs arrested and imprisoned, and noted that the closure could not "be adopted without discussion, and the discussion might have to run on for weeks, or possibly months".[193]

The press debate on the closure contemplated the possibility that the Speaker might have to take steps on his own authority to break the *impasse*. On 18 January an "Old Whig Whip" wrote anonymously to *The Times* proposing what he admitted was "a most unparliamentary proceeding"—that the Speaker should, with the agreement of Gladstone and Northcote, "put the question to the House without debate, and that the House should at once proceed to a division". The Liberal MP and historian Thorold Rogers wrote to the papers the same day citing precedents from 1604 and 1610 for the Speaker to stop "impertinent" speeches.[194] *The Times* thought that an agreement to adopt the closure by a two-thirds majority was the proper remedy instead of leaving it to the Speaker to terminate a debate.[195]

On the same day, Brand met Gladstone and Hartington to offer to take the initiative to secure agreement for the introduction of a closure rule by decision of the House.[196] He showed them a draft closure resolution, in the following terms:

> "That on a motion being made, during any Debate, in the House or in any Committee of the whole House, 'That this Debate be now closed', the Speaker or the Chairman may, if he thinks fit, desire any Members who support such motion to rise in their places; and if not less than Forty Members so rise, he shall thereupon put the Question, no debate, adjournment or amendment being allowed; and if such question be resolved in the affirmative, the original question shall be forthwith put from the Chair."[197]

192 *Pall Mall Gazette*, 15 Jan. 1881, p 2.

193 *Pall Mall Gazette*, 17 Jan. 1881, p 2.

194 *Pall Mall Gazette*, 18 Jan. 1881, p 2. The "Old Whig Whip" may have been Knatchbull-Hugessen, an early advocate of the closure who served in the Whips office under Henry Brand in Palmerston's second administration.

195 *Pall Mall Gazette*, 18 Jan. 1881, p 2.

196 TPA, BRA/3/4, 18 Jan. 1881; GD.x.8.

197 BL, Add Ms 50021, fo. 185, draft resolution, 19 Jan. 1881; also available at TPA, BRA/1/4/34; TPA, BRA/3/4, 19 Jan. 1881.

There were several important characteristics of this closure proposal: the initiative lay with any Member who wished to move the motion, subject only to the requirement for a quorum of forty Members rising to support it; the power extended to both the Speaker and the Chairman of any Committee of the whole House; the Chair had discretion on whether to grant the request; the motion was framed so as to make it explicit that it extended to the whole matter under debate, not just a single amendment, with the main question to be put forthwith in consequence. This was very much a maximalist closure motion, perhaps framed as such in anticipation of the concessions that could be expected to be needed to secure agreement. Brand recorded that "Both Mr Gladstone and Lord Hartington, without expressing a definite opinion, were disposed to entertain the Resolution favourably as a basis for consideration."[198]

On 10 January the Queen had encouraged Gladstone to "consult the leaders of the opposition in order to secure their support", and offered to help in brokering an agreement.[199] Perhaps conscious of that, Gladstone asked Brand "What will Northcote think of it?" and Gladstone added, as Brand was subsequently to tell Northcote, that "he was desirous upon such a matter to obtain your co-operation, and that before taking any action he would confer with you in the hope, if possible, of coming to a common understanding".[200] Brand volunteered to approach Northcote, and seek cross-party agreement on the way forward.[201]

"Weaker than water": the Conservative veto on a closure rule

By 18 January Brand had prepared a serviceable closure rule ready for introduction. The fact that this path was not taken was due to the critical and ultimately destructive role played in the following fortnight by the Conservatives.[202] The Conservative leadership had been contemplating the prospect of a proposal on closure and how it might respond for some time. Northcote had written to Beaconsfield, who remained the head of the party, on 7 October 1880, noting the likelihood of coercive legislation for Ireland and Sherbrooke's article about the closure, which he saw as "a straw in the wind". Northcote restated his own opposition to the proposal, even denying the argument of effectiveness he had conceded in February of that year:

198 BL, Add Ms 50021, fos. 181–183, Brand to Northcote, 19 Jan. 1881 (Hughes, p 304).

199 *LQV, 1879–1885*, p 188.

200 BL, Add Ms 50021, fos. 181–183, Brand to Northcote, 19 Jan. 1881 (Hughes, p 304).

201 BL, Add Ms 50021, fos. 181–183, Brand to Northcote, 19 Jan. 1881 (Hughes, p 304); TPA, BRA/1/4/49, Brand to Sir George Grey, 16 Feb. 1881.

202 The account by Hughes omits any reference to correspondence between 19 January and the sitting on 31 January, serving to obscure the pivotal role of this period in shaping events.

> "My own belief is that no measure of that kind will really stop deliberate Obstruction, but that it may and would be used to check legitimate debate; and that our policy and duty will be to resist it, much as we shall be abused in the Radical Press and the Standard."[203]

As the autumn progressed Northcote faced conflicting pressures. Two frontbench Irish Conservative MPs, David Plunket and Edward Gibson, were sympathetic to the Government's approach to the Irish land question.[204] Their views could not be set aside, not least because Gibson was close to Beaconsfield and, in Hamilton's words, "a rare fighter" and "the backbone of the front Opposition Bench".[205] Plunket told Northcote that if an acceptable coercion measure was "met by Obstruction which can only be overcome by the Clôture, he and Gibson must support them [the government], and run the risk of the inconvenience which will follow from the precedent".[206] Northcote feared that if the Conservatives were seen to take the side of the Home Rulers in opposing coercion, it "might even break up the party".[207]

On the other hand, the Fourth Party, as Northcote told Beaconsfield, were for "no compromise … They would resist any attempt at the *Clôture*; and they denounce the 'frightened landowners', of whom they consider Gibson and Plunket to be representative."[208] The Marquess of Salisbury, at this point Northcote's rival for the succession to Beaconsfield, "tried to indoctrinate" Northcote not to "go too far in accepting the clôture". Salisbury saw a need for a "strong distinction" to be "drawn between those Parliamentary functions, the performance of which is absolutely necessary to secure the working of the executive machine: & those which, having no object but to change laws under which we are living quite tolerably, can be suspended certainly without serious injury & often with great advantage". In the "first class of functions" Salisbury placed "Supply, Mutiny, Continuance Bills and such measures as may be declared in a Message from the Crown to be necessary for the maintenance of the public peace". For items within that class, Salisbury though that "there ought to be within reach powers which will enable the House to decide without superfluous delay" and "I should limit the cloture to these". For the second category, he thought that "It is not in our interests to grease the wheels of *all* legislation: on the contrary, it may do all the Conservative classes of the country

203 BL, Add MS 50018, fos, 230–232v, Northcote to Beaconsfield, 7 Oct. 1880.

204 BL, Add Ms 50041, fos, 39–40, Gorst to Northcote, 30 Oct. 1880.

205 *ODNB* entry for Edward Gibson; HD.25. Gibson was later termed by Brand "the most effective and ready Debater on the Front Opposition Bench": TPA, BRA/3/5, 10 Feb. 1882.

206 BL, Add MS 50018, fos. 237–238v, Northcote to Beaconsfield, 18 Dec. 1880.

207 BL, Add Ms 50041, fos. 41–42v, copy of Northcote to Gorst, 1 Nov. 1880.

208 BL, Add MS 50018, fos. 237–238v, Northcote to Beaconsfield, 18 Dec. 1880.

infinite harm".[209]

Reflecting these conflicting pressures, Northcote suggested to Beaconsfield the idea of making urgency a gateway to closure as a possible compromise:

> "Perhaps we might find some mode of solving the difficulty by confining the Clôture to cases in which Urgency has first been voted. If you are going to take the strong step of suspending Habeas Corpus, it might not be inappropriate to begin by taking a Vote of Urgency, which should require a large majority to carry it; and when Urgency had been cited there should be a power of Closing the Debate at any stage of the measure."[210]

Northcote was seemingly reluctant to share this idea more widely, insisting to Brand on 4 January that "I seriously doubt the acceptance of anything like the Clôture".[211]

The consultation with the Opposition got off to a bad start when, on the morning of 19 January, Northcote "was startled by the paragraph in the morning Papers, announcing that the Speaker was in communication with the Leaders on the subject of Obstruction, for I had heard nothing of it".[212] The delay may have been in part because Brand was consulting Gladstone on his proposed letter to Northcote. Gladstone confirmed he was content with the letter, although they had agreed he would not be a party to it.[213] Brand's letter to Northcote began by setting out the impact of Irish obstruction as he saw it:

> "The tactics of Members, commonly known as the Third Party, have been clearly disclosed by their proceedings since the meeting of Parliament. Their tactics may be shortly described as a determination to stifle discussion under cover of our present Rules and Orders. They exercise a monopoly of debate for themselves, and thus effectively shut out all freedom of debate for others. The House is now, through the actions of this Party, paralyzed; and the state of things, if allowed to continue, will bring Parliamentary Government into contempt."[214]

Brand noted that it was the tenth day of the debate in the Address, and believed that "throughout the Session (and I may say throughout the Parliament) every available opportunity will be seized by the same Party to paralyze the action of the House".[215] He then set out the proposal in the same terms as that shown to Gladstone and Hartington the previous day and offered to confer when

[209] *Salisbury–Balfour Correspondence*, p 58; emphasis in original..

[210] BL, Add MS 50018, fos. 237–238v, Northcote to Beaconsfield, 18 Dec. 1880.

[211] TPA, BRA/1/4/32, Northcote to Brand, 4 Jan. 1881.

[212] BL, Add MS 50018, fos. 245–246v, Northcote to Beaconsfield, 19 Jan. 1881.

[213] BL, Add Ms 44195, fos. 2–4, draft of Brand to Northcote, 19 Jan. 1881; TPA, BRA/1/4/35, Gladstone to Brand, 19 Jan. 1881.

[214] BL, Add Ms 50021, fos. 181–183, Brand to Northcote, 19 Jan. 1881.

[215] BL, Add Ms 50021, fos. 181–183, Brand to Northcote, 19 Jan. 1881.

Northcote had considered it.[216]

Northcote finally received this letter on afternoon of 19 January,[217] and gave an initial reply based on "a very hasty impression" the same day. He questioned the idea of the Chair determining whether to accept a motion for a closure moved by another Member:

> "at the first blush it strikes me that your proposal would throw a very serious task upon the Speaker,—and perhaps a still more serious one upon the Chairman of Committees. In a nicely balanced House the closing of a debate an hour or two earlier than had been expected might cause great embarrassment, and I can easily conceive cases in which it would [be] almost equally difficult for the Speaker to concede or to refuse the Clôture without exposing himself to the charge of partiality."[218]

Brand interpreted this reply, which somewhat ironically in view of later events largely took issue with the only significant safeguard in Brand's proposal in the form of the Chair's discretion, as giving him "reason to hope that the Principals could come to terms".[219] At the same time, Brand feared Northcote's lack of autonomy: "I do not doubt that Northcote will consider with reason and fairness any proposal made, so far as regards his own judgement: but he is too much swayed by stronger and unreasoning minds with whom he is associated."[220]

On the same day, Northcote wrote to Beaconsfield, repeating his concerns about the threat to the Speaker's impartiality from discretion on when and whether to accept the closure.[221] Northcote's letter demonstrated the constraints he faced: "I bear in mind your warning not to come to any arrangement except openly in the House; but I think I am right in stating objections as soon as possible, so that I may not be accused of allowing the Govt to make proposals and then resisting them."[222] Northcote and Brand then met, and the former made evident his need to take party colleagues with him: "The question is full of difficulties and I do not see my way to make any suggestion without consulting".[223] Brand indicated flexibility in reply to Northcote: "I had not overlooked the objection stated in your note, to leaving a discretion with the Chair. I have proposed it as a protection to minorities: but, if this object can be

216 BL, Add Ms 50021, fos. 181–183, Brand to Northcote, 19 Jan. 1881.
217 BL, Add MS 50018, fos. 245–246v, Northcote to Beaconsfield, 19 Jan. 1881.
218 TPA, BRA/1/4/33, Northcote to Brand, 19 Jan. 1881.
219 TPA, BRA/1/4/49, Brand to Sir George Grey, 16 Feb. 1881.
220 TPA, BRA/3/4, 19 Jan. 1881.
221 BL, Add MS 50018, fos. 245–246v, Northcote to Beaconsfield, 19 Jan. 1881.
222 BL, Add MS 50018, fos. 245–246v, Northcote to Beaconsfield, 19 Jan. 1881.
223 BL, Add MS 50014, fos 235, undated note by Northcote; the context suggests this was a preparatory note for the meeting with Brand.

secured without leaving the discretion to the Chair, so much the better."[224]

Brand then forwarded the exchange with Northcote to Gladstone.[225] Further meetings took place between the Speaker and the Cabinet. They were unsure about the proposal that any Member should be able to move the closure motion, Hamilton recording that an alternative version giving the Speaker the power to close a debate "seems to be favoured most".[226] Gladstone also remained anxious about the rights of minorities, which he saw as a difficulty "at the very root of the case" and which Northcote's initial reply had neglected. Gladstone stressed that "I can see no method of proceedings which will be effectual without placing the minority, I mean the regular minority, of the House, at the mercy of the Speaker—to which if it stood alone they might readily consent—and also to some extent at the mercy of the Government".[227] Gladstone's reference to "the regular minority" was hugely significant: he realised that the closure was an instrument that, without safeguards, could be used against the official Opposition, and not simply against Irish obstruction. Thus, Gladstone decided to put the proposal on hold to strengthen the case for action: "I would rather plod on a little longer, suffering as we are now, to have a clear case & a decisive measure, rather than take an indecisive measure a few days sooner".[228]

Northcote was trying to be creative in response, addressing his own concerns about the discretion of the Speaker in the face of tactical demands for closure in a proposal which may have reflected the earlier suggestions from Salisbury. On 20 January, Northcote wrote to Beaconsfield:

> "It has occurred to me that, if we agreed to the Clôture at all, it might be subject to this limitation,—that a Minister of the Crown should have risen in his place and demanded it on the specific ground that the public interest would be endangered by a longer delay in coming to a decision on the question before the House. It should of course be confined to measures brought forward, or proposals made, by the Government."[229]

Northcote was rewarded for his creativity with a stern rebuke from Beaconsfield: "The Business is too vast & grave to settle in this off-hand manner". He described Northcote's suggestions as "hasty & crude" and went on to advise: "You had better sleep on it, & see your friends again … Pray beware of suggesting anything beyond what you have done."[230] Balfour, who visited Beaconsfield on

224 BL, Add Ms 50021, fos. 187–187v, Brand to Northcote, 20 Jan. 1881.
225 BL, Add Ms 44195, fo. 6, Brand to Gladstone, 20 Jan. 1881.
226 GD.x.9; HD.100.
227 TPA, BRA/1/4/36, Gladstone to Brand, 20 Jan. 1881 (GD.x.9).
228 TPA, BRA/1/4/36, Gladstone to Brand, 20 Jan. 1881 (GD.x.9).
229 BL, Add MS 50018, fos. 247–247v, Northcote to Beaconsfield, 20 Jan. 1881.
230 BL, Add MS 50018, fos. 248–249, Beaconsfield to Northcote, 20 Jan. 1881.

23 January, noted the latter's insistence that no position could be adopted by Northcote without a prior Party meeting and thought "He evidently dislikes the idea of any such measure" as the closure.[231] Cross also spoke to Brand to reinforce the need for the Conservatives to be given more time for consultation, although Cross himself seems to have been sympathetic to the idea of closure.[232] Hartington urged Gladstone to come to an understanding with Northcote before tabling a motion.[233]

Northcote now wrote to Gladstone to emphasise that any agreement would not be on Brand's proposal for a closure without safeguards: "Further reflection confirms me in my first impression that the House would not accept the Clôture in such a form as he proposes".[234] In reply, Gladstone indicated that he saw the potential for agreement between the main parties based on adequate safeguards for minorities and for the official Opposition in particular: "Every fair minded man must feel that the great question which arises on a clôture of any kind is that of protection for the minority and this it is your special duty to consider though we I hope do not undervalue it."[235] He stressed his desire to proceed on the basis of cross-party agreement: "I do not think it at all likely that we shall make a proposal or advance to a resolution until after adequate communication with you".[236]

At this juncture, Brand believed that there was basis for an agreement: "It looks as if my resolution would be agreed to with two modifications. 1. That the discretion proposed to be vested in the Speaker should be removed, as placing him in an invidious position. 2. That the close of the debate should not be carried unless the majority should exceed 2 to 1."[237] On Saturday 22 January he wrote to Gladstone enclosing a draft which he thought took account of the concessions required by Northcote and Cross. Notwithstanding concerns within Cabinet, the initiative remained available to any Member with the support of 39 colleagues, and the Chair's discretion to put the question was removed. The draft stated that the closure would not "be operative unless the affirmative be carried by a majority of two thirds of the Members present", but was otherwise unchanged apart from drafting amendments which clarified that

231 *Salisbury–Balfour Correspondence*, p 61.
232 BL, Add Ms 44145, fos. 183–184v, Hartington to Gladstone, 20 Jan. 1881; HD.103.
233 BL, Add Ms 44145, fos. 183–184v, Hartington to Gladstone, 20 Jan. 1881.
234 BL, Add Ms 44217, fos. 167–168, Northcote to Gladstone, 20 Jan. 1881.
235 BL, Add MS 50014, fos 233–233v, Gladstone to Northcote, 20 Jan. 1881 (GD.x.9).
236 BL, Add MS 50014, fos 233–233v, Gladstone to Northcote, 20 Jan. 1881 (GD.x.9).
237 TPA, BRA/3/4, 20 Jan. 1881.

the main question would be put forthwith after the closure on an amendment.[238] Brand suggested that the resolution in this form should be tried as a sessional order only, to be renewed the following session; he thought any attempt to make it a standing order "would involve debate and delay and possibly serious opposition".[239] Brand's new draft was considered by the Cabinet at its meeting that day and "provisionally adopted subject to a modification" which Gladstone thought "will probably raise no difficulty".[240] Gladstone told the Queen:

> "The general course of opinion is towards the adoption of a modified form of *clôture*. A form has been drawn by the authorities of the House. Communications have been held to a certain extent with the regular Opposition, and they are believed to be favourable."[241]

Thus, when the debate on the motion for leave to introduce the Bill for the better Protection of Person and Property in Ireland began on Monday 24 January, Gladstone believed that he had the basis for an agreement to introduce a closure provision by sessional order "if obstruction shewed itself … at all virulently".[242] Gladstone expected "desperate resistance", but principally from Home Rule Members, so that, while it would "try the temper and mettle of the House", it "would probably bring about a decisive issue, and form a preface to a better period".[243] That day, there was a meeting between Gladstone and Northcote.[244] At this meeting, Northcote changed his position on the required majority, switching from a 2 to 1 requirement to 3 to 1.[245] Brand wrote: "I suppose that, being at his mercy, we must agree, in order to secure agreement on both sides: but the force of the resolution is thus much weakened".[246]

However, by the following day, the prospects of agreement began to fade. Northcote reported to Beaconsfield that he had told Gladstone that "on consulting a few of my friends, I found a very strong feeling against the Clôture as a general measure".[247] He thus asked for the closure provision to be an emergency measure confined to a single Bill, rather than a sessional order. According to Northcote, Gladstone was "a good deal cast down, and said he

238 BL, Add Ms 44195, fos. 8–11v, Brand to Gladstone, 22 Jan. 1881; BL, Add Ms 44626, fo. 54, Draft resolution. That this is the draft enclosed with the letter of 22 Jan. 1881 is supported by the copy at TPA, BRA/1/4/39.

239 BL, Add Ms 44195, fos. 8–11v, Brand to Gladstone, 22 Jan. 1881.

240 GD.x.11; *LQV, 1879–1885*, pp 184–85.

241 *LQV, 1879–1885*, p 184.

242 HD.101

243 *LQV, 1879–1885*, p 185.

244 HC Deb, 24 Jan. 1881, col 1208; GD.x.12.

245 TPA, BRA/3/4, 24 Jan. 1881.

246 TPA, BRA/3/4, 24 Jan. 1881.

247 BL, Add MS 50018, fos. 250–251, Northcote to Beaconsfield, 25 Jan. 1881.

could not see how he could make the proposal specifically for the Coercion bill as it would have an invidious appearance".[248] Gladstone instead suggested that the closure might be time-limited, to one or two months. Northcote declined to agree to this, instead reserving his position while he consulted Beaconsfield.[249]

Beaconsfield then convened a meeting on 25 January to decide whether to support the proposal in Gladstone's resolution with the further concessions offered.[250] Revealingly, those invited included not simply senior members of the previous administration, but also Churchill, who immediately set out his stall. He argued that a proposal for a procedural resolution in the "middle" of proceedings on the Bill would be "unpopular". Northcote noted Churchill's view as being that "Clôture ad hoc was objectionable". Churchill suggested the House might "sit through night (as alternative)". Hicks Beach supported this last idea. Viscount Sandon, President of the Board of Trade in Beaconsfield's administration, was "against giving way", and argued that if a closure was to be conceded at all, he "would rather put it in hands of Speaker". The idea of the Speaker "initiating" the closure was also supported by Sir Richard Cross. Lord John Manners said he "would support" Gladstone. Chaplin's preference was to apply disciplinary restrictions to individual Members through a motion that they be no longer heard, but he indicated that he would accept an ad hoc closure in certain cases.[251] Lord Beaconsfield stated that he "would not refuse to help Govt for *emergency*" and this became the agreed position recorded by Northcote: "would support Govt in case of emergency", but "will not accept general cloture".[252]

A further meeting then took place between Gladstone and Northcote.[253] The Prime Minister tried to make further concessions, including an offer to extend "the authority of the Speaker", presumably in the form of the initiative supported by Cross and Sandon. However, Gladstone "met with no better success in his negotiations with Northcote".[254] Gladstone reported to the Queen with great regret that Northcote "refused to entertain or agree to, or even to support generally" the propositions Gladstone had advanced.[255] Brand's view

248 BL, Add MS 50018, fos. 250–251, Northcote to Beaconsfield, 25 Jan. 1881.

249 BL, Add MS 50018, fos. 250–251, Northcote to Beaconsfield, 25 Jan. 1881.

250 BL, Add MS 50018, fos. 273–274v. This is an undated note in Northcote's hand of a meeting with Lord Beaconsfield and others. The original compiler suggests a later date, but the date of 25 January tallies with Balfour's account of the meeting: *Salisbury–Balfour Correspondence*, p 62.

251 BL, Add MS 50018, fos. 273–274v; *Salisbury–Balfour Correspondence*, p 62.

252 BL, Add MS 50018, fos. 273–274v; *Salisbury–Balfour Correspondence*, p 62.

253 GD.x.12.

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

255 *LQV, 1879–1885*, pp 186–87.

was that hopes of a deal on closure ended at this point.[256] He characterised Northcote as "a Head, who is moved by his tail, & consequently he gave us no assistance in putting down obstruction, for many sitting behind him are themselves Obstructives".[257] Hamilton recorded at the end of the week that communications with the opposition

> "have made no advance in the last few days. Northcote won't even now promise his own individual support to any form of the clôture however modified, nor has he any alternative to suggest. So much for the patriotic opposition. This change of front on the part of Sir Stafford—(for at first he was quite inclined to view the Government proposals with favour)—is characteristic of the timidity and shabbiness of the man, His conduct in this instance corresponds with the epithets Mr. G. once applied to him—'flabby and shabby'."[258]

Gladstone was to echo these views early the next week, describing Northcote as "really weaker than water".[259] With both Cross and Smith apparently supportive of the closure, Hamilton concluded that Northcote was "frightened at the Fourth Party".[260]

"The usual rules have proved powerless": Brand's closure

On 24 January Forster had moved the motion for leave to bring in a Bill for the better Protection of Person and Property in Ireland.[261] The proposed Bill, as John Morley later put it, "enabled the viceroy to lock up anybody he pleased, and to detain him as long as he pleased, while the Act remained in force".[262] The tensions between the Government and the official Opposition were apparent during the debate to secure precedence for the motion, which started on the afternoon of 25 January, but was not concluded until the end of a continuous sitting well into the next day, so that a further day was lost. During exchanges in a "thoroughly exhausted" House, Northcote chided Gladstone for not making the opposition aware of his exact plans.[263]

When the fourth day of debate on the motion for leave began on Monday 31 January, Gladstone had concluded that there was no hope of a deal on closure. When Northcote had effectively rejected supporting the closure on any

256 TPA, BRA/1/4/49, Brand to Sir George Grey, 16 Feb. 1881.
257 TPA, BRA/1/4/49, Brand to Sir George Grey, 16 Feb. 1881.
258 HD.103.
259 GD.x.15.
260 HD.103.
261 HC Deb, 24 Jan. 1881, cols 1208–35.
262 Morley, *Gladstone*, p 52. Strictly speaking the powers were exercised under warrant of the lord lieutenant for certain crimes in prescribed districts: see HC Bill 79 of session 1881.
263 HC Deb, 25 Jan. 1881, cols 1463–64.

conditions acceptable to the government, he had given an "assurance that we would support him [Gladstone] in case of a prolonged sitting".[264] Gladstone was forced back on that option, stating at the outset that the House would be asked to sit continuously until the debate was concluded.[265] Brand had discouraged this approach when consulted on it the previous week, and thought Gladstone's decision unwise.[266] The early hours of the morning of Tuesday 1 February saw a debate on a dilatory motion of what Gladstone termed "outrageous irrelevance commenced by the Irish Members".[267] At 4.50am that morning, the Speaker left the Chair to be replaced by his Deputy Playfair.[268] The Speaker noted that "the House was boiling over with indignation at the apparent triumph of obstruction".[269]

Brand "saw plainly that this attempt to carry the Bill by continuous sitting would fail, the Parnell Party being strong in numbers, discipline and organization, and with great gifts of the power of speech".[270] He "reflected on the situation, and came to the conclusion that it was my duty to extricate the House out of the difficulty by closing the debate of my own authority, and so reasserting the undoubted will of the House against a rebellious minority".[271] He sent for Gladstone at 12noon on 1 February and told him "I should be prepared to put the question in spite of obstruction" if two conditions were met. The first was that the debate should be continued until "the following (Wednesday) morning: my object in this delay being to mark distinctly to the outside world the extreme gravity of the situation, and the necessity of the step which I was about to take". The second was that Gladstone would immediately follow that step by proposing new rules to regulate business, "either by giving more authority to the House, or by conferring authority on the Speaker". Gladstone agreed to these conditions.[272] The Speaker returned to the Chair at 1.25pm, intending to stay until late that evening, leaving Playfair in the Chair for the overnight session, and then to return at 9.00am to put the question.[273]

The Cabinet met at 4.00pm in the Speaker's Library while Brand remained in the Chair. Gladstone did not tell his ministerial colleagues of the Speaker's

264 BL, Add MS 50018, fos. 250–251, Northcote to Beaconsfield, 25 Jan. 1881.
265 HC Deb, 31 Jan. 1881, col 1745; *LQV, 1879–1885*, p 187.
266 TPA, BRA/3/4, 28 Jan. 1881; TPA, BRA/3/4, 31 Jan. 1881.
267 *LQV, 1879–1885*, p 187.
268 HC Deb, 31 Jan. 1881, col 1861.
269 TPA, BRA/3/4, 31 Jan. 1881.
270 TPA, BRA/3/4, 31 Jan. 1881.
271 TPA, BRA/3/4, 31 Jan. 1881.
272 TPA, BRA/3/4, 31 Jan. 1881. See also BL, Add Ms 44626, fo. 52, manuscript note of Speaker's plan in Hamilton's hand.
273 HC Deb, 31 Jan. 1881, col 1905; BL, Add Ms 44626, fo. 52.

intentions, but secured agreement for the terms of the resolution to follow "constituting a state of urgency and investing the Speaker with nearly absolute powers over procedure during its continuance", drawing upon the drafts considered in January before the attempt had been made to obtain cross-party agreement on a closure rule.[274] Gladstone brought the text of the resolution to Brand in the Chair, who agreed to proceed as proposed.[275] Brand also informed Gladstone that he would tell Northcote of his plan and the motion that would follow, which he did.[276] Brand noted that "Sir S. Northcote was startled, but expressed no disapproval of the course adopted."[277] Brand hoped that the plan would remain confidential, and the only other person he told was May, who provided advice and drafting assistance.[278] Northcote immediately communicated the plan to Beaconsfield, describing it as an *"astounding* proposal".[279]

Despite knowing of the Speaker's plan, and to Brand's surprise, Northcote did nothing to prevent Sir Richard Cross raising a point of order just before the Speaker left the Chair at 11.00pm publicly appealing for him "to deal with Obstructives" using the 1880 standing order which provided for individual Members to be named, and then suspended for the remainder of the sitting by motion.[280] The Speaker was "still more surprised" when, at midnight, Northcote "himself pressed Playfair in the same sense" shortly after the Speaker had left the Chair.[281] The Speaker was "persuaded that the standing order in question is not strong enough for such a purpose", and believed that an attempt to enforce it "would have ended in the discomfiture of the House".[282] Bright referred during the course of the night to the fact that the Government had procedural proposals ready if opposition agreement could be secured.[283] The newspapers prepared that night for readers the next morning still assumed that this course could be followed. *The Times* had concluded that "The simple fact is that the clôture, in some form sufficiently guarded to make it a relief and not a gag, is the one remedy to which the reflections of all men now unmistakably point".

274 TPA, BRA/3/4, 31 Jan. 1881; TPA, BRA/1/4/49, Brand to Sir George Grey, 16 Feb. 1881; *LQV, 1879–1885*, p 187.

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

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

277 TPA, BRA/3/4, 31 Jan. 1881.

278 TPA, BRA/3/4, 31 Jan. 1881.

279 BL, Add MS 50018, fos. 253 to 253v, Northcote to Beaconsfield, 1 Feb. 1881; emphasis in original.

280 HC Deb, 31 Jan. 1881, cols 1943–44; TPA, BRA/3/4, 31 Jan. 1881.

281 HC Deb, 31 Jan. 1881, cols 1950–51; TPA, BRA/3/4, 31 Jan. 1881.

282 TPA, BRA/3/4, 31 Jan. 1881.

283 HC Deb, 31 Jan. 1881, col 1967.

The Standard thought that "The patience of the House of Commons and of the country is completely exhausted", arguing that the Bill could not pass unless the House adopted a closure rule as soon as the motion for leave was agreed to.[284]

From around 7.00am on Wednesday 2 February there was a "feeling of electricity" in the House, a sense that "momentous events were at hand".[285] The House began to fill up, Gladstone came into the chamber about 8.45am, and at 9.00am Speaker took the Chair. The notorious obstructive Joseph Biggar was in possession of the House, "his rasping voice filling the chamber with nothingnesses".[286] The Speaker rose, and Biggar resumed his seat, assuming it was just a temporary interjection. The Speaker then proceeded with his address, "as concocted with May".[287] Brand read from "a paper that trembled like an aspen-leaf in his hand", but he was strengthened by "the burst of enthusiastic cheering that filled up each slightest pause in the reading".[288] He told the House that "a crisis … has arisen which demands the prompt interposition of the Chair, and of the House. The usual rules have proved powerless to ensure orderly and effective debate."[289] He went on:

> "The dignity, the credit, and the authority of the House are seriously threatened, and it is necessary that they should be vindicated. Under the operation of the accustomed rules and methods of procedure, the Legislative powers of the House are paralysed."[290]

He then described the "new and exceptional course" required to "carry out the will of the House" by immediately proceeding to put the question. He concluded his address by calling "either for the House itself to assume more effectual control over its Debates, or to entrust greater authority to the Chair".[291] *The Pall Mall Gazette* stated that, when the Speaker "closed the discussion and put an end to a strain that had become unbearable, the House of Commons broke out into such an expression of feeling as no living member of it has heard before".[292]

Hamilton noted that "The secret had been admirably kept, and a rare mine was sprung on the Irish miscreants."[293] Parnell was absent from the chamber,

284 *Pall Mall Gazette*, 2 Feb. 1881, p 2.
285 *Gladstone's House of Commons*, p 125; *Gladstone Parliament*, p 124.
286 *Gladstone's House of Commons*, p 126; *Gladstone Parliament*, p 124.
287 TPA, BRA/3/4, 31 Jan. 1881.
288 *Gladstone Parliament*, p 125; *Gladstone's House of Commons*, p 126.
289 HC Deb, 31 Jan. 1881, col 2033.
290 HC Deb, 31 Jan. 1881, col 2033.
291 HC Deb, 31 Jan. 1881, col 2033.
292 *Pall Mall Gazette*, 3 Feb. 1881, p 1.
293 HD.104. See also *Private Journal*, p 54.

and his colleagues watched "in speechless amazement".[294] After a division on the amendment before the House, the full force of the Speaker's closure became apparent when the main question was then also put forthwith, with attempts to debate it drowned out, and Irish Members leaving in protest.[295] The Speaker observed that "the scene was most dramatic; but all passed off without disturbance".[296] Gladstone recorded in his diary that "The Speaker showed himself worthy of his place", but Hamilton was more forthcoming on Gladstone's feelings: "Mr. G. was ecstatic over the way in which the Speaker acquitted himself in the climax of the difficulties".[297]

When the House resumed that afternoon, the radical Henry Labouchere asked the Speaker to identify the Standing Order under which he acted. The Speaker replied that "I acted upon my own responsibility and from a sense of duty to the House". He recorded of the reaction to his own defence that "I never heard such loud and protracted cheering: none cheering more loudly than Gladstone".[298] He denied priority for an Irish protest treating the matter as one of privilege, but there was then a debate on a motion for adjournment "by which the Irish storm eventually calmed down".[299] Churchill stirred the pot, referring to those who were "greatly alarmed" by the Speaker's action.[300] Other Conservatives who were unsighted by the move were dismayed by the Speaker's use of the closure and still hankered after the use of disciplinary powers, somehow thinking that those powers could be used in relation to Members who were not speaking.[301] Northcote, however, explicitly supported the Speaker's action and Gladstone reported to the Queen that "The Opposition gave a most unequivocal support to-day to the Government in resisting the adjournment: and Sir S. Northcote expressed his intention to sustain the recent and very important decisions of the Chair".[302] The press was overwhelmingly supportive of Brand's "courageous and chivalrous resolution".[303] *The Daily Telegraph*, while dreading the prospect of an "exotic clôture" by majority, had no doubts about the rightness of the Speaker's actions: "Mr Brand did not wait for a vote; he exercised an authority which was from the first his own, which might have

294 *Gladstone Parliament*, p 125; *Gladstone's House of Commons*, p 126.
295 *Gladstone Parliament*, p 125; *Gladstone's House of Commons*, p 126; *Pall Mall Gazette*, 3 Feb. 1881, p 2.
296 TPA, BRA/3/4, 31 Jan. 1881.
297 GD.x.15; HD.104.
298 HC Deb, 2 Feb. 1881, cols 7–8; TPA, BRA/3/4, 2 Feb. 1881.
299 HC Deb, 2 Feb. 1881, cols 8–43; TPA, BRA/3/4, 2 Feb. 1881.
300 HC Deb, 2 Feb. 1881, cols 20–21.
301 *Salisbury–Balfour Correspondence*, p 64.
302 HC Deb, 2 Feb. 1881, cols 21–22; *LQV, 1879–1885*, p 190.
303 *London Evening Standard*, 3 Feb. 1881, p 4.

been exercised long ago, and which at the instant of exercise did everything that was necessary."[304]

"Resolution for a quasi Dictatorship": the introduction of urgency

The Pall Mall Gazette for Thursday 3 February observed that "this morning we have all slept upon it, and what we now see is that the difficulties from which the Speaker extricated the House for the moment have still to be faced, with new complications added".[305] The solution lay in the urgency motion which had been several weeks in gestation, had been agreed by the Cabinet at its meeting on 1 February and of which Gladstone gave notice after the Speaker's closure on 2 February.[306] Gladstone had sent the motion to Northcote, who consulted Beaconsfield on a series of amendments prepared to meet what Northcote saw as "the striking defects or faults of Gladstone's resolution".[307] Gladstone's motion was based on the concept that the Speaker would be empowered to put in place temporary rules of procedure if the House agreed a subsequent motion, to be moved by a Minister and put forthwith, declaring that the "state of public business" was urgent. Northcote's amendments replaced this general provision with the idea that a particular Bill or motion could be treated as urgent.[308] Gladstone proposed that the motion declaring urgency would need a 3:1 majority, but Northcote proposed that the majority would also have to consist of at least 300 Members.[309]

Gladstone was far from pleased when he learned of Northcote's amendments. He suggested to Brand on the morning of 3 February that the proposal to confine urgency to a particular Bill or motion "cuts to the root of all efficiency in the measure".[310] Hamilton echoed his master's view in suggesting that "The Opposition are not properly supporting the Government in their endeavours to prevent the recurrence of these sad and monstrous proceedings".[311] Brand agreed with Gladstone that Northcote's amendments caused difficulties, and might lead to obstruction of other business, but he thought that they could be

304 *Daily Telegraph*, 3 Feb. 1881, p 4.
305 *Pall Mall Gazette*, 3 Feb. 1881, p 1.
306 HC Deb, 31 Jan. 1881, cols 2035–36.
307 BL, Add MS 50018, fos. 254–255, Northcote to Beaconsfield, 2 Feb. 1881.
308 BL, Add MS 50018, fos. 256–257, Northcote's amendments to draft Urgency resolution, 2 Feb. 1881.
309 BL, Add MS 50018, fos. 256–257, Northcote's amendments to draft Urgency resolution, 2 Feb. 1881.
310 TPA, BRA/1/4/42, Gladstone to Brand, 3 Feb. 1881. On the timing of this letter, see GD.x.16.
311 HD.105.

made to work if they had to be accepted as a basis for agreement.[312] Hartington was also sympathetic to Northcote's principal amendment to narrow the scope of the motion, and urged Gladstone to do a deal with the opposition.[313] Gladstone remained unhappy at the concessions needed, thinking the "prospect not very bright" and finding Hartington "very stiff" for expressing sympathy for Northcote's position.[314]

When Gladstone stood up to move his motion, he had not completed a sentence before he was interrupted. Parnellite feeling had been inflamed by the news that Michael Davitt, the chief organiser of the Land League, had been arrested.[315] The first to interrupt was John Dillon, who then defied the Chair, was named after a division, and had to be removed by force: the Serjeant at Arms Gossett "shook all over in discharging his duty".[316] Parnell and one other then interrupted and were named in succession after a division.[317] Gladstone had feared extensive delays from successive namings and divisions, but, as he later told the Queen, "Fortunately, however, the tactics of the Party were so suicidal as to relieve the House from this embarrassment".[318] The Parnellites refused to withdraw from the chamber during the third division. At May's suggestion, the Speaker ordered Milman to record their names and 35 were named *en bloc*, despite unhelpful questioning by Balfour and Gorst as to whether this was permissible under the 1880 Standing Order.[319] In this way, "The back of obstruction then became fairly broken".[320] Throughout, according to Gladstone, the Speaker conducted himself in a "masterly way", the Prime Minister believing that it was impossible to overrate his "firmness in mind, his suavity in manner, his unwearied patience, and his incomparable temper under a thousand provocations".[321] Brand himself recorded that he had "had to take strong and decisive action for the maintenance of order, and to liberate the House from the domination of the (self-styled) Third Party".[322]

After a delay of three and a half hours resulting from the expulsion of the

312 BL, Add Ms 44195, fos. 13–14, Brand to Gladstone, 3 Feb. 1881; BL, Add Ms 44195, fo. 15, Brand to Gladstone, 3 Feb. 1881.

313 BL, Add Ms 44145, fos. 193–196, Hartington to Gladstone, 3 Feb. 1881.

314 GD.x.16.

315 HD.105; *Gladstone Parliament*, p 129.

316 CJ (1881) 55; HC Deb, 3 Feb. 1881, cols 69–70; HD.105; *Gladstone Parliament*, pp 129–131.

317 CJ (1881) 55–57; HC Deb, 3 Feb. 1881, cols 73–80; TPA, BRA/3/4, 3 Feb. 1881; *Gladstone Parliament*, pp 131–132.

318 *LQV, 1879–1885*, p 191.

319 *Private Journal*, p 54; HC Deb, 3 Feb. 1881, cols 80–88; *Gladstone Parliament*, p 132; *Gladstone's House of Commons*, p 130.

320 HD.106; *Gladstone Parliament*, pp 131–138.

321 HD.106.

322 TPA, BRA/3/4, 3 Feb. 1881.

Parnellites, at around 9.00pm, Gladstone "proposed my Resolution for a quasi Dictatorship".[323] The mood was transformed by the absence of the Parnellites, so that one observer wrote "So great was the change, that it seemed like another Parliament".[324] The premier's speech was described as "one of the most brilliant orations Mr. Gladstone ever delivered" which held the chamber "spellbound".[325] His praise for the Speaker was met with prolonged and vehement cheering.[326] Gladstone noted that a sixth of the session had passed, but no business had been transacted except the first reading of one Bill.[327] He said that the House's predicament was a direct result of "claims of speech unlimited … under the name of liberty of speech".[328] He told the House that the Government's first preference from the outset had been a normal rule change to introduce the closure, but this course had not been able to obtain Conservative support.[329] His speech clearly set out the disastrous effects of obstruction.[330] He concluded by saying that "The House of Commons has never since the first day of its desperate struggle for existence stood in a more serious crisis—in a crisis of character and honour, not of external security, of character and honour, which are its essence". He appealed to the House "to rally to the performance of a great public duty, and to determine that you will continue to be, as you have been, the mainstay of the power and glory of your country, and that you will not degenerate into the laughing-stock of the world".[331] His peroration "moved many an eye to tears" and was greeted with cheers not only from the Government benches, "but from Tories who perhaps never cheered Mr Gladstone before".[332] Years later, Milman recollected this speech as proof of Gladstone's status as the greatest parliamentarian of Milman's time in the House, admiring the "brilliancy of the *coup d'état*".[333]

Gladstone accepted most of Northcote's amendments, including that confining the effects of urgency to individual Bills or matters. Hamilton noted that he did so to secure "moral unanimity … emasculating even as they did the measure".[334] The only division was on the proposal to require 300 Members

323 GD.x.16; *Gladstone Parliament*, p 138.
324 *LQV, 1879–1885*, p 192; *Gladstone's House of Commons*, p 133.
325 *Gladstone's House of Commons*, pp 131–132.
326 *Gladstone's House of Commons*, p 132.
327 HC Deb, 3 Feb. 1881, col 92.
328 HC Deb, 3 Feb. 1881, col 94.
329 HC Deb, 3 Feb. 1881, col 97.
330 Masson, *De l'Obstruction*, p 43.
331 HC Deb, 3 Feb. 1881, col 102.
332 HD.106; *Gladstone Parliament*, p 138.
333 R de Cordova, "Illustrated Interviews: The late Sir Archibald Milman KCB, Clerk of the House of Commons", *The Strand Magazine*, April 1902, p 377.
334 HD.106.

to vote for urgency, where the Government amended the requirement to one that 300 Members vote in total, so requiring 225 Members to vote in favour of urgency.[335] Before 2.00am, the final text was agreed to without division, and a declaration of urgency was made in respect of the coercion bill.[336]

"A source of much care and anxiety": the framing of the first closure rule

An integral feature of the urgency resolution agreed on 3 February was that it gave the Speaker a power to introduce procedural rules of his own devising.[337] The Speaker recorded in his diary:

> "By this resolution very large powers for regulating debate are conferred upon the Speaker under certain conditions: and when Mr Gladstone asked me whether I wished for any note of the House in approval of my conduct yesterday, I answered saying that it appeared to me that the passing of this resolution was sufficient mark of the confidence and approval of the House."[338]

The first rule that the Speaker introduced the following day was to prevent dilatory motions prior to the start of the main business, but he indicated that he proposed to introduce further rules "in a few days".[339] He effectively trailed the inclusion of a closure rule within the subsequent package, while denying the idea that such a rule was incompatible with freedom of debate:

> "The House has entrusted to me great and unprecedented powers; and I accept them with a grave sense of the responsibility imposed upon me. I shall endeavour to carry them out in such a manner as to maintain freedom of debate, which is one of the most cherished traditions of this House, and at the same time to restrain any abuses of that freedom."[340]

He was, as he later told Gladstone, "confident that some power to close a debate under proper safeguards is essential if we are to meet obstruction effectually".[341] Brand worked closely on the preparation of the rules with May, who acted as draftsman, Playfair and also Samuel Whitbread, who was widely recognised as one of the most expert Members on procedural matters, and was also Brand's nephew.[342] There were to be 17 new rules in total, including further controls on dilatory motions, a power to end a speech for irrelevance or repetition, a power to

335 CJ (1881) 57; *LQV, 1879–1885*, p 192.
336 CJ (1881) 57–58; GD.x.16; TPA, BRA/3/4, 3 Feb. 1881.
337 CJ (1881) 57–58.
338 TPA, BRA/3/4, 3 Feb. 1881.
339 CJ (1881) 60; HC Deb, 4 Feb. 1881, col 162.
340 CJ (1881) 60; HC Deb, 4 Feb. 1881, col 162.
341 BL, Add Ms 44195, fos. 19–19v, Brand to Gladstone, 7 Feb 1881.
342 *Private Journal*, p 54; TPA, BRA/3/4, 7 Feb. 1881.

avoid divisions where the number in the minority did not exceed 20, provisions to reduce the normal of formal questions during legislative proceedings and a prohibition on second speeches in Committee of the whole House.[343] However, when Brand sent the draft rules to Gladstone and Northcote on 7 February, he stressed the centrality of the closure rule above all others:

> "It is essential that power to close a Debate should, in extreme cases, rest either with the House or with the Speaker; or with both combined; because unless such power be reserved, all our rules may be rendered nugatory by the Obstructive tactics of which the House has had such painful experience."[344]

The draft he provided to them was one "leaving the initiative to the Speaker".[345] The draft was as follows:

> "6. That when any Debate has been adjourned, Mr Speaker may inform the House that, on the Debate being resumed, he may think fit, at a convenient hour, to submit to the House that a Motion should be made, 'That the Question be now put;' and if such Motion be made, Mr Speaker shall forthwith put such Question; and if the same be decided in the affirmative, by a majority of three to one, the Question previously under Debate, and in case of an Amendment, also the main Question, shall be forthwith put from the Chair."[346]

This draft retained some of the elements of the Speaker's first draft of 18 January, most notably making provision for the closure to be effective on the main question as well as an amendment. However, it contained significant safeguards and limitations. By applying only to an adjourned debate, it could only be engaged on the second or subsequent day of a debate. The power applied only to the Speaker, and not to the Chairman of Committees. It carried forward the requirement for a three to one majority which Northcote had made a condition for his support for urgency provisions. Brand had considered that element as "the weak point" in the initial urgency resolution,[347] and he was later to write: "I don't like the introduction of a new principle in our proceedings by which the vote of the House is rendered nugatory unless the majority is as 3 to 1".[348]

Following initial consultation with Cross, Northcote replied the next day, stating that "Rule 6 raises questions of very great difficulty and we can only

343 *Business of the House (Urgency)*, HC (1881) 73; see also CJ (1881) 66.

344 BL, Add Ms 44195, fos. 19–19v, Brand to Gladstone, 7 Feb 1881; BL, Add Ms 50021, fos 189–189v, Brand to Northcote, 7 Feb. 1881.

345 BL, Add Ms 44195, fos. 19–19v, Brand to Gladstone, 7 Feb 1881.

346 BL, Add Ms 50021, fos. 191–193, draft of Urgency rules, 7 Feb. 1881. The term "forthwith" was defined in a separate draft rule to preclude amendment, debate or adjournment.

347 TPA, BRA/3/4, 3 Feb. 1881.

348 TPA, BRA/3/4, 21 Feb. 1881.

speak of them with much reserve". He claimed that the concession of limiting the closure to adjourned debates gave rise to uncertainty as to when and whether the Speaker was required to give notice that he would allow a closure motion. Northcote also suggested it was not evident whether the closure could be employed more than once if it failed to get the requisite majority. He contended that the possible extension of a single closure to the main question was "a very serious" point, particularly in a case where an amendment had narrowed the scope of debate. Finally, he complained that he was being given insufficient time to respond on the draft.[349] Brand recorded that he had "had some trouble in meeting Sir S. Northcote's objections to some of my Urgency Rules", but was in no doubt that Northcote had to be placated.[350]

The rules as published on 9 February were described by Brand as "a source of much care and anxiety".[351] The closure rule reflected three changes from the draft. First, all reference to the requirement for a debate to have been previously adjourned was removed: the closure could now be used "during any Debate". However, this was offset by a new safeguard, that a closure motion could only be moved "when it shall appear to Mr. Speaker … to be the general sense of the House, that the question be now put".[352] This reference to the "general sense" of the House was an important concession to Conservative concerns, and one that was to have enduring consequences for the form and effectiveness of the closure standing order introduced in 1882. Finally, the rule, unlike Brand's initial drafts and the closure actually applied on 2 February, extended only to the immediate question before the House.[353] As Milman noted, this minor or simple closure was ineffective for an amendable proposition, because amendments could be "multiplied *ad infinitum* with very little ingenuity, and, as fast as one question was closured, a new one could be started".[354]

"A wholesome restraint": the use and effect of the first closure rule

The closure rule came into effect on 9 February, coinciding with the fourth night of debate on the second reading of the coercion bill. The debate came to a conclusion that evening without controversy, so that the closure was not needed.[355] The leading Parnellite Thomas Sexton chose in the debate that day not to obstruct the bill's passage, but to portray his party as victims of a denial

349 TPA, BRA/1/4/46, Northcote to Brand, 8 Feb. 1881.
350 TPA, BRA/3/4, 8 Feb. 1881.
351 TPA, BRA/3/4, 9 Feb. 1881.
352 CJ (1881) 66; HC Deb, 9 Feb. 1881, cols 435–36.
353 CJ (1881) 66; HC Deb, 9 Feb. 1881, cols 435–36.
354 A Milman, "Parliamentary Procedure *versus* Obstruction", *Quarterly Review* (1894), Vol 178, pp 486–503, at p 492.
355 HC Deb, 9 Feb. 1881, col 468.

of freedom of speech.[356] As already noted, the initial closure did not extend to the Chairman of Committees. A rule was issued by the Speaker which would have enabled the Chairman to be able to exercise a closure during Supply proceedings,[357] but that rule never became effective because the necessary prefatory motion to apply urgency to Supply was not agreed with the necessary majority.[358]

It was not the closure but the separate procedural device of a motion to set a prospective end time for proceedings in Committee and then at report stage—soon to be termed a "guillotine motion"—that ensured progress on the coercion bill.[359] The relevant urgency rule enabled motions which would provide for all proceedings on Committee or report stage to be terminated at a set time to be decided without debate or amendment. The two such motions for the coercion bill passed off without too much incident.[360] These motions were sometimes referred to as "the clôture" at the time,[361] but they were distinct from the closure in its proper sense.

The first use of the closure came on Friday 25 February. The intention to conclude the debate on third reading on that day, the second day of debate, had been trailed in a business statement by Hartington before the debate began.[362] Northcote had been uneasy about the proposed use of the closure, thinking that "the Speaker's idea of forcibly closing the debate on the 3rd Reading on his own authority … will raise very serious questions".[363] The debate on third reading itself was concluded at about midnight without the need for the Speaker's closure, but a Home Rule Member then sought to begin a fresh debate on the technical and formal motion that the Bill do now pass, which was rarely debated. Such was the dissatisfaction in the House at this abuse that the Speaker was able to apply the closure within minutes, and it was passed convincingly, by 282 to 32.[364] Brand recorded in his diary: "Applied the new rule for closing the debate soon after midnight. Very effective, and will produce a wholesome restraint on

356 HC Deb, 9 Feb. 1881, cols 439–40.

357 CJ (1881) 122–123; HC Deb, 11 Mar. 1881, col 825.

358 CJ (1881) 124–125; HC Deb, 11 Mar. 1881, cols 815–25; HC Deb, 14 Mar. 1881, cols 917–21, 922–26. Supply proceeded "swimmingly" in the absence of such rules: TPA, BRA/3/4, 14–21 Mar. 1881.

359 "Parliamentary Procedure *versus* Obstruction", p 492.

360 CJ (1881) 85; HC Deb, 21 Feb. 1881, cols 1391–92, 1472–75; CJ (1881) 92–93; HC Deb, 24 Feb. 1881, cols 1665, 1672–75.

361 See, for example, BL, Add Ms 44217, fos. 172–172v, Northcote to Gladstone, 23 Feb. 1881; *Dublin Weekly Nation*, 26 Feb. 1881, p 9.

362 HC Deb, 25 Feb. 1881, cols 1832–35.

363 BL, Add Ms 44217, fos. 172–172v, Northcote to Gladstone, 23 Feb. 1881.

364 CJ (1881) 96; HC Deb, 25 Feb. 1881, cols 1830–33.

Parnell and his Party."[365]

The Government had havered on whether to introduce a second bill, termed the Peace Preservation (Ireland) Bill, and intended to control access to firearms in Ireland. When the Government decided to proceed with the Bill, Northcote felt he had no choice but to agree to urgency for this Bill, or risk being seen to abet obstruction.[366] On Tuesday 1 March the House overwhelmingly agreed to apply the urgency rules to the Bill (by 395 votes to 37), and the debate on the motion for leave to bring in the Bill began immediately thereafter.[367] After a Home Rule attempt to secure the adjournment of the debate was defeated by 202 votes to 21, the Speaker concluded from that result that it was the general sense of the House that the question be now put, and the closure was moved accordingly.[368] He recorded in his diary that the closure was "applied late at night with good effect. Several divisions, but the cloture had to be applied but once, as the Parnell Party knew it was in reserve if they debated and obstructed the measure."[369] He went on to say: "Remembering how many nights we debated the motion for leave to introduce the Protection of Life and Property Bill, it is plain that the cloture is a very effective instrument against the tactics of obstruction".[370]

It is nevertheless striking that the number voting in favour had fallen to 200, reflecting a leakage in Conservative support compared with the earlier vote on urgency. It is also notable that the subsequent progress of the Bill again relied on the general provisions for bringing stages to a conclusion, with such motions applied for Committee stage on 9 March and report stage on 10 March, despite Home Rule protests about the authority for putting questions forthwith.[371] Assessing the overall impact of the closure and the wider guillotine powers, Brand wrote: "Rebellion has reared its head in the House, but it has been put down; not however without severe strain upon the House itself."[372]

Two of the most important concessions made to Northcote at the outset of discussion on urgency had been to confine its effect to individual measures and to require a level of support which operated as a Conservative veto on its application. The effect of these limitations was brought home during the remainder of the 1881 session, which was almost wholly occupied by proceedings

365 TPA, BRA/3/4, 25 Feb. 1881.
366 BL, Add MS 50018, fos. 262–267, Northcote to Beaconsfield, 22 Feb. 1881.
367 CJ (1881) 100; HC Deb, 1 Mar. 1881, cols 1957–63.
368 CJ (1881) 100; HC Deb, 1 Mar. 1881, col 2020.
369 TPA, BRA/3/4, 1 Mar. 1881.
370 TPA, BRA/3/4, 1 Mar. 1881.
371 CJ (1881) 113–114; HC Deb, 8 Mar. 1881, cols 657–58; HC Deb, 9 Mar. 1881, cols 659, 691–96; CJ (1881) 116–117; HC Deb, 9 Mar. 1881, col 697; HC Deb, 10 Mar. 1881, cols 762–65.
372 TPA, BRA/3/4, 9 Mar. 1881.

on Gladstone's Irish land bill, the great reforming measure which for him was essential to balance the earlier coercive measures. The Bill occupied 58 nights during the remainder of the session.[373] This delay was largely attributable to Conservative delaying tactics; the Home Rule party rationed its participation severely so as not to be a cause of delay.[374] Almost all legislative business for England and Scotland was abandoned in consequence.[375]

Conclusions

In Government, the Conservatives had been slow to face up to the realities of systematic obstruction, constrained by Beaconsfield's hazy romanticism about the Commons after he left it and Northcote's lack of assertiveness. Northcote's failure up to 1880 lay not in his reluctance to implement the closure, because that reluctance was widely shared, but in his determination to place the closure beyond the pale of acceptable procedural solutions to obstruction. Hartington as Leader of the Opposition was both far-sighted in his recognition of the scale of reform needed in the House, and instinctively supportive of the need for a government, even one he opposed, to manage the business of the House effectively.

The approach of the Conservatives when in Opposition was in contrast to that of Hartington. The Conservative leadership failed to recognise two novel challenges facing their Liberal successors from April 1880. The first arose from the scale and organisation of the Home Rule party, fully committed to a programme of obstruction to support its land campaign, and even more determined in the face of a coercive measure which could be expected to lead to some of them ending up in prison. The second challenge arose from the existence of the Fourth Party, a small but forceful group within the official Opposition, who engaged in an opportunistic and selective, but highly effective, form of obstruction. In the face of these novelties, the Conservatives evinced a tendency not only to idealise an era when, in the words of one Conservative, "the collective assembly of English Gentlemen met together and discussed matters according to Rules contrived for mutual convenience",[376] but also to pretend that that era had survived or could be resurrected. The Conservatives also had an ideological distrust of legislative efficiency, summed up in Salisbury's dictum that "It is not in our interests to grease the wheels of all legislation". A leader of authority and vision might have risen above these constraints; Northcote was not such a leader.

373 HC Deb, 20 Feb. 1882, cols 1144–45; Masson, *De l'Obstruction*, p 44.
374 HC Deb, 27 Mar. 1882, cols 85–86.
375 HC Deb, 20 Feb. 1882, cols 1144–45; Masson, *De l'Obstruction*, p 44.
376 HC Deb, 23 Mar. 1882, col 1714.

The preparation and delivery of the closure would not have been possible without the intellectual rigour of Gladstone or the procedural insight of May, but the closures of 1881 were above all the achievement of one man—the Speaker Henry Brand. Drawing on the creativity of Shaw-Lefevre and the unquestioned independence of Denison, he had completed the restoration of the authority of the speakership to a position akin to that achieved under Arthur Onslow in the mid-eighteenth century. Brand coupled his authority with a willingness to contemplate radical innovation not associated with the speakership since the seventeenth century. He was motivated throughout by the conviction that the steps he was taking were, in his words "a disagreeable necessity imposing obligations of a novel character upon the House and upon the Chair; but without which Parliamentary Government would have come to a deadlock".[377]

The events of the sitting of 31 January and the urgency rules, including the first closure rule, introduced thereafter represent a turning point in the history of procedural development in the House of Commons. Josef Redlich, in his great survey of the practice of the House, argued that, in responding to obstruction, the House "had a firm foundation upon which to build its defences". He suggested that, when Brand put the question on 3 February, "the form alone of his procedure was without precedent".[378] He went on to conclude that:

> "The sharp measures taken by the House of Commons for fighting obstruction were … in no sense innovations; they were simply revivals of old legal principles having their roots in the most ancient and elementary conceptions of parliamentary government. In their applicability to new problems we may once more see the marvellous continuity of development shown by the fundamental institutions of English national life."[379]

Viewed against the backdrop of the dizzying pace of constitutional change affecting continental legislatures, Redlich's stress on the value of a firm foundation is understandable. The shared traditions and understandings, not least about the authority and impartiality of the Speaker, were integral to the effective response at the climax of the crisis.

However, Redlich overstates the element of continuity. Brand himself was quite explicit on the need for a radical new departure: "Under the operation of the accustomed rules and methods of procedure, the Legislative powers of the House are paralysed".[380] The procedural oddities of the early Stuart period were really of relevance only to procedural antiquarians, and seen as such

377 TPA, BRA/3/4, undated entry at end of 1881 Session.
378 Redlich, *Procedure*, III.81.
379 Redlich, *Procedure*, III.81–82.
380 HC Deb, 31 Jan. 1881, col 2033.

by contemporaries. It was actually in form, not substance, that the question on a closure motion had precedent, because the wording of the 1881 rule—"That the Question be now put" —was derived from the original form of the previous question. The substantive effect of the closure was wholly different. As a question that could be put forthwith to terminate debate, the motion was revolutionary, at least in a British as opposed to international context.

Redlich wrote that Brand's action in putting the question on 2 February had "nothing of the character of a coup *d'état*".[381] In this Redlich was right, but perhaps not for the reasons he gave. The roots of Brand's actions lay not in ancient precedents, but in the careful examination of the options for a closure rule and of alternatives to it undertaken by Gladstone's Cabinet, by Brand and by May. The Conservative opposition leadership had a chance to engage with and shape that process, but failed properly to do so. The Speaker's actions can be seen not simply as a necessity to preserve parliamentary government, but as a rebuke to the failure of the Conservatives to recognise and support the case for such action.

Brand took the lead not only in recognising the necessity for the closure, but also addressing the challenges in the design of a closure rule. The Speaker's initiative, which was a fundamental aspect of the closure rules of 1881 and 1882, was not Brand's preference. Rather, he was led to it by pressure from the Cabinet and from Northcote. Brand also never favoured the idea of the need for a super-majority for the closure, although it had been canvassed by May and others since the late 1870s, and proved necessary for all the urgency provisions of 1881.

Those who considered the form of a closure rule in most detail, most notably Dodson and May as well as Brand, identified the need for form which could be applied by a single motion to an amendment and a main question, but such provision was seemingly vetoed by Northcote in 1881. The 1881 rule was also restricted in its application to the Speaker alone, rather than also including the Chairman of Committees.

The Speaker's first use of the closure on 2 February 1881 and the construction of the first closure rule laid the foundations for the procedural transformation which took place from 1882 onwards. But the steps taken in 1881 were limited in their initial scope and effect. Their reliance on cross-party support meant that they could not prevent the wider problems of the 1881 session. John Morley, the Gladstonian editor of the *Fortnightly Review*, wrote:

> "A Session prolonged beyond precedent is likely to be characterised by barrenness without parallel. The Parliamentary collapse is almost painfully

381 Redlich, *Procedure*, III.81.

> complete. Measures of pressing urgency affecting the vital interests of the United Kingdom are blocked. Nothing can be done. The Parliamentary machine has broken down, and the paralysis of the legislature is at last being recognised as a grave public evil."[382]

It was the wider stalemate of the 1881 session, as much as the partial success of that year's closure rule and other urgency measures, that set the context for the next stage in the evolution of the closure.

[382] Hughes, p 306.

TAKING BACK CONTROL? INITIATIVES IN NON-GOVERNMENT AGENDA CONTROL IN THE UK PARLIAMENT IN 2019

COLIN LEE
Principal Clerk, UK House of Commons

MICHAEL BERRY
Legislation Clerk, UK House of Lords[1]

Introduction

On Monday 25 March 2019 the House of Commons agreed an order which set aside the default precedence for Government business on the Wednesday of that week and specified the business that would have precedence instead. This was recognised at the time as a "constitutional innovation", and seen by some as a "constitutional revolution".[2] It started a process whereby the Government lost control of the agenda on a series of days and the Commons and then the Lords passed two private Members' Bills despite concerted Government and backbench opposition. This process was sometimes referred to as Parliament "taking back control" of its business, in a conscious echo of the winning Vote Leave slogan in the 2016 referendum on the United Kingdom's membership of the European Union—"Take Back Control". This article examines the changes to parliamentary practice and procedure that gave effect to or arose from the assumption of non-Government agenda control in the Commons and then from parliamentary proceedings in the two Houses on the two private Members' Bills.

The events which drove the innovations in procedure and practice all related to the United Kingdom's planned departure from the European Union on 29 March 2019 and subsequent extensions of the pre-departure period, initially to 12 April 2019, then to 31 October 2019 and finally to 31 January 2020. This article does not purport to be a narrative or analysis of those wider political

[1] The authors are grateful to Graeme Cowie, Sir Oliver Letwin, Liam Laurence Smyth, Sir David Natzler and Andrew Makower for comments on an earlier draft of this article.

[2] HC Deb, 25 March 2019, col 144.

events and their impact on Parliament.[3] It does not examine the remarkable feats of whipping and cross-party political organisation that enabled an anti-government majority in the House to be established and maintained. It also does not address some of the legal controversy—including matters relating to Queen's Consent and Royal Assent—which arose in relation to the two private Members' Bills passage of which was enabled in part by the procedural innovations with which this article is alone concerned.

Background: the House of Commons

Management of business in House of Commons since at least the early eighteenth century has been based on the presumption that Government has a special place of priority in securing its business. The rules of proceeding were based on a theory of antithesis between the majority exercising power through Ministers and minorities whose rights needed protecting.[4] There were instances in the eighteenth century of Governments losing the confidence of the House and the control associated with it, but these were invariably followed by a dissolution or a change of Ministry.[5] In the course of the nineteenth century, the Government gradually assumed more control over the business of the House.[6] The great populariser of the role of the Cabinet as "the buckle" which fastened the legislative and executive functions was Walter Bagehot.[7] He identified the Government's power to dissolve Parliament as central to executive control over Parliament.[8] The procedural implications of executive predominance were analysed by Josef Redlich, who argued that procedural change was increasingly driven by the conception that "the order of business of the House

[3] An excellent narrative with legal analysis is provided by G Cowie, "Parliament and the three extensions of Article 50", House of Commons Library Briefing Paper Number 8725, 31 October 2019. For more general analyses of Parliament's role in Brexit, see in particular, P Norton, "Is the House of Commons Too Powerful? The 2019 Bingham Lecture in Constitutional Studies, University of Oxford", *Parliamentary Affairs* (2019), 72, 996–1013; M Russell, "Brexit and Parliament: The Anatomy of a Perfect Storm", *Parliamentary Affairs* (2020), 73, 1–21; J Marshall, A Lilly, M Thimont Jack, H White, *Parliamentary Monitor 2020* (Institute for Government); *Parliament and Brexit* (UK in a Changing Europe, University of Leicester and The Constitution Unit, 2020).

[4] Speaker Onslow attributed to senior Members when he was first elected the dictum "That the forms of proceeding, as instituted by our ancestors, operated as a check and control on the actions of Ministers, and that they were, in many instances, a shelter and protection to the minority, against the attempts of power": J Hatsell, *Precedents of Proceedings: Vol II: Members/Speaker* (1781 edn.), p 157

[5] P Seaward, "Votes of no confidence", https://historyofparliamentblog.wordpress.com//08/20/votes-of-no-confidence/.

[6] P Seaward, "Standing Order No. 14", https://historyofparliamentblog.wordpress.com//03/28/standing-order-no-14/.

[7] W Bagehot, *The English Constitution* (Oxford, 2001), pp 11, 13.

[8] *Ibid.*, pp 13–14, 16, 58, 155.

[of Commons], of which the Cabinet is the dependent confidential agent, must be transformed into a serviceable instrument for the function of governing".[9] By this means, according to Redlich, "the British constitution … has done away with the possibility of a political conflict between the majority of the House of Commons and the Ministry".[10]

After 1868, when majority Government became the norm, Ministers increasingly asserted "that the majority of the House of Commons, which is responsible for the Government of the country, ought to have the control of the time of the House of Commons".[11] The predominance of Government in the business of the Commons was reflected initially in the increasingly routine process whereby the Government secured precedence over a larger and larger proportion of the House's time. From 1902 the default control of the Government over the time in that House was embodied in a Standing Order.[12] The principle enshrined in that Standing Order remained effectively unchallenged between 1902 and 2018. Its modern textual form is paragraph (1) of Standing Order No. 14 which states: "Save as provided in this order, government business shall have precedence at every sitting". The remainder of Standing Order No. 14, alongside other Standing Orders, makes provision for a number of days in each Session to be allocated to others. Thus, 17 days are available to the Leader of the Opposition, and three days to other opposition parties.[13] At least 27 days are available to the Backbench Business Committee.[14] Three days are set aside for Estimates days, with the subjects for debate chosen by the Liaison Committee.[15] Private Members' Bills have precedence over Government business on 13 Fridays each Session.[16] The Speaker also has a power under Standing Order No. 24 to grant emergency debates which can precede planned business. However, none of these provisions challenge the hegemony of the Government in Commons business, and legislation in particular. The allocation of particular days to those entitled to them remains

9 J Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form* (London, 1903, 3 vols), I.115.

10 Redlich, *Procedure*, I.207.

11 Sir William Harcourt at the National Liberal Federation, *The Times*, 4 Nov. 1886, p 6. See also the speech by the Marquess of Hartington on 20 March 1882 cited by M Koß, *Parliaments in Time: The Evolution of Legislative Democracy in Western Europe, 1866-2015* (Oxford, 2018), p 1. This work is an excellent comparative analysis of parliamentary agenda control.

12 P Seaward, "Standing Order No. 14".

13 SO No. 14(2). The formal allocation of the three days is to the leader of the second largest opposition party, but that person makes days available to other parties.

14 SO No. 14(4).

15 SO No. 54. In current practice, the Backbench Business Committee determines the choice of subjects for debate on Estimates days.

16 SO No. 14(8).

within the gift of the Government. There is no power to enforce the allocation. Furthermore, the entitlement of Opposition parties to 20 days in a Session, which is assumed to be around 12 months in length, lost its direct effect by the Government's decision to continue the Session which began in the Summer of 2017 throughout 2018 and for much of 2019.

Although some important legislative proposals originating as private Members' Bills have reached the statute book, the Government has been assumed to possess sufficient control to prevent the passage of legislation inimical to its policies or objectives. Because private Members' bills have not been programmed, any determined group of Members has been able to block progress. This option has been available to Ministers. As long ago as 1869, Reginald Palgrave, later Clerk of the House of Commons, believed it was unimaginable that Parliament could pass a Bill to which the Government objected: he considered that, if Ministers saw that Parliament was "resolute to pass a bill to which they object", those Ministers ought to resign as Ministers or else advise the monarch to dissolve Parliament.[17] In Spring 2019 the sessional allocation of private Members' Bill Fridays for the Session had already expired, so that no time was available under normal arrangements for private Members' Bills to progress.

Background: House of Lords

The House of Lords is a self-regulating chamber, with few formal powers for the Lord Speaker and substantially fewer Standing Orders than the Commons (approximately half of the Commons total). Although the House of Lords Standing Orders set out, for example, the order of business to be taken in the Chamber, the Government does not have formal priority in introducing or debating legislation in the House. Nevertheless, Government business is usually accorded priority and the Government Whips Office lead on the arrangement of business. This is in part due to arrangements between the "Usual Channels" (the Government whips and whips of other parties) and the established practice that debating time will be accorded to opposition and backbench peers. Essentially, the Government Whips Office act as a "custodian" of the Order Paper, with priority customarily given to their business in return for generous opposition and backbench time. For example, in the 2016–17 session, 31 per

[17] R Palgrave, *The House of Commons: Illustrations of its History and Practice* (London, 1869), p 29.

cent of the total time available was used for debates.[18] For legislation, private Members' bills are provided time on the floor of the House, usually on one sitting Friday each month in which two to three bills are debated. Again, this is a convention and has no basis in Standing Orders.

The fact that the House of Lords is unelected is a key factor in the prioritising of the business of the Government, which is usually formed by the majority party in the elected House of Commons. In addition, an overarching constitutional convention, the Salisbury Convention,[19] means the House of Lords does not (usually) reject Government bills based on material in the governing party's election manifesto. If the Lords do vote a bill down, this could generally be circumnavigated by the Parliament Acts 1911 and 1949 which provide that the unelected House can only block a bill other than a Money Bill for one session subject to certain timetable requirements, including the requirement for an interval of a year between Second Reading in the Commons in the first session and the Bill being passed by that House in the next. These provisions established in statute the primacy of the House of Commons.[20] They have been used only seven times and were last invoked for the Hunting Act 2004.

Unlike the Commons, the Lords has been a hung chamber since 1999 and is likely to remain so unless it is thoroughly reformed. Although the makeup of the House of Commons may change dramatically overnight following a general election and lead to a sizeable majority for one party or another, this does not apply to the Lords, the majority of whose members have a seat for life under the Life Peerages Act 1958 (appointed by the Crown on advice on the Prime Minister). A hung chamber requires cooperation between the Usual Channels for legislation to get through the House of Lords, which is a contrast

[18] House of Lords, *Statistics on Business and Membership: Session 2016-17: 18 May 2016 to 27 April 2017* (2017), p.3, https://www.parliament.uk/documents/publications-records/House-of-Lords-Publications/Records-activities-and-membership/Business-membership-statistics/HL-Sessional-Statistics-on-Business-and-Membership-2016-17.pdf. "31 per cent of the total time available time" for debates is comprised of general back-bench debates; general "take note" debates; questions for short debate; debates on non-domestic select committee reports; and the motion for an address on the Queen's Speech.

[19] The Salisbury Convention is named after the Fifth Marquess of Salisbury, Leader of the Conservative Party Opposition following the election of Clement Attlee's Labour Government in 1945, where it was agreed that the majority Conservative peers would not block Labour's programme for Government stated in their manifesto.

[20] The 1911 Act removed from the House of Lords the power to veto a Bill, except one to extend the lifetime of a Parliament. Instead, the Lords could delay a Bill by up to two sessions. The 1949 Act reduced this to one session. The 1911 Act also provided that Money Bills (Bills designed to raise money through taxes or spend public money) may receive Royal Assent no later than a month after being introduced in the Lords, even if the Lords has not passed them. This Act was the eventual result of the House of Lords' refusal to pass Prime Minister Lloyd-George's 'People's Budget' of 1909.

to the majoritarian and more adversarial nature of the Commons. These conventions, in addition to restraint and cooperation from other parties, allow the Government to get its business to progress through the Lords (although often amended).

A defining feature of the House of Lords is the consideration of legislation with the absence of guillotine or programme motions, a reflection of the Chamber's self-regulation. By convention, time for debate on legislation is not limited. This could lead to debate on bills becoming prolonged. However, filibustering in the House of Lords is rare. The Government Whips Office, as custodians of the Order Paper and business in the House, set a total number of days for each stage of each bill, and an informal target amendment to be reached for each day's proceedings, which is agreed by the Usual Channels. This establishes an expectation of progress which members and parties generally abide by and ensures progress is made on Government bills in a timely way. This has been described as the "reasonable time convention".[21] All amendments tabled can be moved and debated, because no Lord on the Woolsack has the power to select amendments. Stages of bills generally take longer in the House of Lords, but the approach allows for detailed scrutiny which the more constrained Commons may not always be able to provide. Similarly, the Lord Speaker and Deputy Speakers, in the House of Lords do not call on members during debate, nor do they call "order", a result of the House's self-regulation.

There are recommended intervals between each stage of a bill in the House of Lords, agreed by the House in 1977. Once again, intervals are not constituted in Standing Orders, with one exception: that no two stages of a Bill to be taken on one day (Standing Order 46). It is common practice to dispense with this Standing Order through a Business of the House motion, customarily tabled by the Leader of the House of Lords by agreement through the Usual Channels, in order to fast-track Government legislation when necessary.

This characteristic of the Lords' self-regulation, without guillotine or programme motions, survives due to cooperation and mutual understanding that it may not continue were it to be abused by filibustering. This practice of formally uncurtailed debate provides for minority views to be heard and for detailed scrutiny, less bound by political pressures. Any disagreements are usually sorted out amongst the Usual Channels and compromise reached. In 2011 during proceedings on the Parliamentary Voting System and Constituencies Bill, filibustering led to the Bill having 17 days in Committee stage alone due to delaying tactics from some members. The rumour of a guillotine motion to

[21] Joint Committee on Conventions, *Conventions of the UK Parliament*, Report of Session 2005–06 https://publications.parliament.uk/pa/jt200506/jtselect/jtconv/265/265.pdf, p 36.

be tabled by the Government eventually led to a compromise amendment from crossbench peers enabling the Bill to proceed through its remaining stages.[22] This left the custom of the House—that it operates without programme or guillotine motions—unscathed.

The context for the events of 2019

The procedural innovations relating to agenda control in 2019 arose from a concatenation of circumstances. First, the assumption that the Government was necessarily entitled to its effective monopoly over the agenda of the Commons had been increasingly challenged. In 2007, Meg Russell and Akash Paun of the Constitution Unit suggested that there should be categories of House business and backbench business with time reserved alongside Government business.[23] The idea of a votable agenda was taken up by the Wright Committee (the Select Committee on the Reform of the House of Commons), which proposed a House Business Committee to control the overall framework for the agenda of the Commons and the division of days, and a Backbench Business Committee to act as the gatekeeper for backbench non-legislative time.[24] This last proposal was adopted, but the Government retained overall control over the agenda, and the choice of days available to the Backbench Business Committee. Backbench business was also defined so as to explicitly exclude any motion to amend Standing Order No. 14.[25]

A second pre-condition arose from the Fixed-term Parliaments Act 2011, which was passed following a commitment in the Coalition Programme for Government which underpinned the Conservative-Liberal Democrat coalition Government between 2010 and 2015. To prevent either coalition partner pulling the plug at an electorally advantageous moment, this Act removed from the executive the power to dissolve Parliament which had underpinned the Bagehottian conception of Government agenda control. General Elections were fixed for the first Thursday in May every five years and an early General

22 Winnett, R (2011) 'David Cameron to step in to end Lords debate', *The Telegraph*, 31 January. Available at: https://www.telegraph.co.uk/news/politics/8292287/David-Cameron-to-step-in-to-end-Lords-debate.html [accessed 8 April 2020]; BBC News (2011), 'Peers reach deal on AV vote bill after marathon debate', *BBC News*, 31 January. Available at: https://www.bbc.co.uk/news/uk-politics-12327408 [accessed 8 April 2020]; Baroness D'Souza, HL Deb, 31 January 2011, col 1216.

23 M. Russell and A. Paun, *The House Rules?: International Lessons for Enhancing the Autonomy of the House of Commons*. Constitution Unit (2007).

24 First Report from the Reform of the House of Commons Select Committee, *Rebuilding the House*, HC (2008–09) 1117.

25 Standing Order No. 14(6)(e). On the implementation of the reforms, see M Russell, "Strengthening the British House of Commons: The Unexpected Reforms of 2010", Papers on Parliament No. 55, February 2011, available at aph.gov.au.

Election could only take place in one of two circumstances: the first arose from the House of Commons passing a motion of no confidence in the Government and certain subsequent conditions being met; the second circumstance was that the House of Commons resolved to hold an early General Election with two thirds of all Members of the House (434 Members out of 650) voting in favour of that motion.[26]

The third contributing factor arose from the referendum held on 23 June 2016 when 52 per cent of the UK electorate participating supported the proposition that the United Kingdom should leave the European Union. The Conservative government then in office was committed to giving effect to the decision of that majority, and the formal process for exiting the European Union under Article 50 of the Treaty on European Union was initiated by Theresa May's Government in March 2017. At the subsequent 2017 General Election, the Conservative administration lost its overall majority in the House of Commons, thereafter relying on a 'Supply and Confidence' agreement with the Northern Ireland Democratic Unionist Party to sustain a working majority. The continuance in office of a Government which lacked both a formal majority and an effective majority for its central policy objective created a position in which the body politic seemed "paralysed by competing legitimacies".[27] There was no majority to depose the Government, but also no apparent or effective majority to support the central policy platform of the Government on how best to secure the United Kingdom's exit from the European Union.[28]

The fourth element which set the stage for the events of 2019 arose from the legal requirements, national and international, for securing the United Kingdom's withdrawal from the European Union. The European Union (Withdrawal) Act 2018, passed in June of that year, provided for the United Kingdom to leave the European Union on "exit day", which was defined as 29 March 2019. However, there was a power to amend that date by regulations to reflect the underlying international law position derived from Article 50 of the Treaty on European Union subject to the affirmative resolution procedure. In essence, the United Kingdom could leave the European Union on that date if it secured a Withdrawal Agreement with the European Union or if it chose to leave the European Union without such an Agreement. The only legally

[26] Fixed-term Parliaments Act 2011, sections 1 and 2. A vote of no confidence would not lead to an early General Election where it was superseded by a vote of confidence within 14 days. On this Act and its effect in this context, see P Norton, "Is the House of Commons Too Powerful?", pp 1806–07.

[27] HC Deb, 14 October 2019, col 8.

[28] M Russell, "Brexit and Parliament", p 2–9; P Norton, "Is the House of Commons Too Powerful?", p 1009.

available alternatives were to revoke its notification of withdrawal or to seek and obtain from the European Council an extension of the "Article 50 period" to allow for continued negotiations on a Withdrawal Agreement.

During the passage of the Bill for the 2018 Withdrawal Act, a series of changes were secured through defeats for the Government in the Commons and then the Lords, and Government concessions made during "ping pong" prior to final agreement between the two Houses, finally embodied in section 13 of the 2018 Act. Changes to the Bill made it evident that separate legislation would be required to enable the ratification of a Withdrawal Agreement, but section 13 of the 2018 Act imposed additional requirements. There was to be what was dubbed a "meaningful vote" in the form of the Commons passing a resolution to approve both the negotiated withdrawal agreement and also the framework for the future relationship between the United Kingdom and the European Union. More significantly still in the light of subsequent events, section 13 set out a series of requirements that would follow "if the House of Commons decides not to pass" the resolution endorsing the withdrawal agreement and political declaration. A Minister was required to make a statement on how the Government propose to proceed within 21 days, and make arrangements for a motion relating to that statement to be debated in the House of Commons within a further 7 days.[29]

Prime Minister Theresa May reached an agreement with the European Union on a Withdrawal Agreement and Political Declaration on 25 November 2018. As the start of the debate on the "meaningful vote" on this agreement and declaration drew near, it appeared likely that the Government would not secure a majority for that agreement in the House of Commons, and consideration was given to the aftermath of that expected defeat. On 4 December 2018 the Government put forward a Business of the House motion to allocate five days for debate on the "meaningful vote". A Conservative backbencher (and former Attorney General), Dominic Grieve, tabled an amendment to that motion which made provision not about the "meaningful vote", but about the debate that would follow on how the Government proposed to proceed. Section 13 of the 2018 Act required that the motion should be in "neutral terms", thus echoing and potentially engaging the terms of Standing Order No. 24B of the House of Commons, whereby, when certain motions are expressed in neutral terms, no amendment may be tabled to them. Grieve's amendment explicitly disapplied the provisions of that Standing Order from any Ministerial motion under section 13. This was agreed to by the House by 321 votes to 299: 25

[29] A statement and debate were also required if no agreement in principle was reached by 21 January 2019. The debate on 29 January related to this statement as well as the statement relating to the failure of the first meaningful vote.

Conservatives rebelled against the Government whip to vote for it. This amendment, while not itself concerned with the control of business, opened the initial path to such control.

The Conservatives had fought the 2017 General Election in part on the basis of a proposition that "no deal is better than a bad deal". The Government argued that a willingness to leave the European Union without a Withdrawal Agreement would strengthen the United Kingdom's negotiating position and facilitate securing a better deal. Early in 2019 it became evident that there was a majority in the House of Commons that would not support the proposition that departure without a Withdrawal Agreement was an acceptable political outcome. The Finance (No. 3) Bill, which was considered at its report stage in the Commons on 8 January 2019, included provision that was limited in nature but designed to enable changes to tax law in consequence of the United Kingdom leaving the European Union without a deal. The Labour backbencher and Chair of the Home Affairs Select Committee Yvette Cooper tabled an amendment which effectively neutered that power by providing for it only to come into force if the House of Commons passed a resolution authorising departure without a deal. During debate on that amendment, the Conservative backbencher Sir Oliver Letwin explained that he and other Conservatives were supporting the amendment as the expression of "a majority in this House" which "will sustain itself, and … will not allow a no-deal exit to occur at the end of March".[30] The amendment was agreed by 303 votes to 296; 20 Conservatives voted for the amendment.

The failed attempts to take control

The House's acceptance of an amendment which removed the Government's default control of the Order Paper on 25 March was preceded by a number of unsuccessful attempts to achieve the same end by amendment of the various statutory and non-statutory Government motions debated between 29 January and 14 March 2019. These are summarised in Table 1.

30 HC Deb, 8 January 2019, col 264.

Table 1: Defeated amendments to disapply SO No. 14(1) on a future day or days[31]

Date of amendment	Mover	Proposed business	Division result
29 Jan	Dominic Grieve	Amendable motions in the name of the Chairman of Ways and Means relating to EU exit	301/321
29 Jan	Yvette Cooper	Business of the House motion in connection with the European Union (Withdrawal) (No. 3) Bill and any subsequent proceedings on the Bill	298/321
14 March	Hilary Benn	Business of the House motion governing business relating to EU exit on a future day or days	312/314

The starting point for each of these unsuccessful amendments was a relatively simple proposition: that on a specific day or days, Standing Order No. 14(1), which granted default precedence to the Government, would be disapplied and precedence would instead be granted to specified non-Government business. Much of the controversy over these unsuccessful amendments, and the successful amendments and motions that were to follow, related to the principle embodied in this disapplication. Thus, on 29 January, the Prime Minister argued that the Grieve and Cooper amendments both sought

> "to create and exploit mechanisms that would allow Parliament to usurp the proper role of the Executive. Such actions would be unprecedented, and could have far-reaching and long-term implications for the way in which the United Kingdom is governed and the balance of powers and responsibilities in our democratic institutions. I am sure that, as former Ministers of the Crown, both Members must know that. So, while I do not question their sincerity in trying to avoid a no-deal Brexit, to seek to achieve that through such means is, I believe, deeply misguided, and not a responsible course of action."[32]

[31] A number of amendments with similar effects were tabled, but not voted on, including an amendment in very similar terms to the Cooper amendment of 29 January 2019, except in relation to a subsequent Bill, which was selected but not moved on 14 February 2019.

[32] HC Deb, 29 January 2019, col 673.

Supporters of the amendments contested this. Sir Oliver Letwin emphasised that the House's control over its own procedures was uncontested both in constitutional theory and in practice: "The Standing Orders of the House of Commons, which Bagehot tells us are the nearest thing in this terrible constitutional melee to a constitution in our country, are under the control of this House. There is nothing improper, wrong or even unusual about changing Standing Orders by a majority of this House of Commons."[33]

Beyond the common starting point in approach, the main distinction between the amendments related to the non-Government business to be accorded precedence. After the rejection of the Withdrawal Agreement through the defeat of the "meaningful vote" by 202 votes to 432, there were concerns about the apparent absence of attempts to ascertain whether there was a new approach to negotiations with the European Union that could command majority support in the House. The Select Committee on Exiting the European Union called for so-called "indicative votes" on a series of options to provide clarity on the matter soon after rejection of the "meaningful vote".[34] The Grieve and Benn amendments both sought to give time for motions by votes on which the House of Commons could express views.

The narrow defeat of the Benn amendment may in part have been because Ministers had promised that if no agreement could be reached "we would have to come back to the House in the two weeks following the Council to consult through the usual channels the political parties across the House to agree on the process by which the House could then seek to find a majority"—in effect an offer for indicative votes to be held in Government time.[35] However, it also arose from contention as to how the business was to be managed and whose business was to be accorded priority in place of the Government. The Grieve amendment in January envisaged motions in the name of the Chairman of Ways and Means in standard form, where the determining factor on what decisions were then reached would lie with the Speaker's selection of amendments to that motion. The Benn amendment envisaged decisions on motions selected by the Speaker, preceded by a governing Business of the House motion "in the name of at least 25 Members, including at least five Members elected to the House as members of at least five different parties, relating to the Business of the House on a future day or days in connection with matters relating to the United Kingdom's withdrawal from the European Union". Commenting on the

33 HC Deb, 29 January 2019, cols 735–36.

34 Eleventh Report from the Select Committee on Exiting the European Union, *Response to the vote on the Withdrawal Agreement and Political Declaration: Options for Parliament*, HC (2017–19) 1902.

35 HC Deb, 14 March 2019, col 569.

amendment on behalf of the Government, David Lidington, the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, contended that the requirement for any Business of the House motion tabled to have support from across five parties meant that the smallest parties in the House had "a power of veto" over the motion, although Hilary Benn noted that any motion would still be amendable to give effect to the wishes of a majority in the House.[36] The uses of the additional time governed by the proposed Business motion were not specified in the motion, even though it had been proposed in the context of indicative votes, so that it was open to different interpretations.[37]

In contrast, the Cooper amendment of 29 January was clear in its purpose, which was to open a path to passage of a private Member's Bill. The European Union (Withdrawal) (No. 3) Bill, presented on 21 January by Yvette Cooper, provided that, in the event that a "meaningful vote" had not been agreed to before 26 February, the Prime Minister was required to move a motion in the House directing the Prime Minister to seek an extension from the European Union to a period ending on 31 December 2019. Further provisions were designed to secure that any extension granted by the European Council, whether to that date or another date, would be reflected in United Kingdom law by amending the definition of "exit day".[38] The proposal to use the disapplication of Standing Order No. 14 (1) to open the path for passage of legislation through the Commons on a high-speed timetable was criticised by Mark Harper, a former Chief Whip, who argued that it was wrong to use that method "to ram through a piece of contested legislation that has not been agreed to in a procedure usually used for emergency legislation agreed by both Front-Bench teams".[39]

After defeat of her amendment on 29 January, Yvette Cooper presented a new Bill, the European Union (Withdrawal) (No. 4) Bill, on 13 February. That Bill set out a process to be followed from 13 March onwards in the event that a "meaningful vote" on a withdrawal agreement and political declaration had

36 HC Deb, 14 March 2019, cols 571–73.

37 Thirteenth Report from the Select Committee on Exiting the European Union, *Response to the 12 March 2019 vote on the Withdrawal Agreement and Political Declaration: next steps for Parliament*, HC (2017–19) 2073; HC Deb, 14 March 2019, col 556.

38 For a full analysis of the Bill and initial reaction to it, see House of Commons Library Briefing Paper 08480, 23 January 2019. This Bill had been preceded by the European Union (Withdrawal) (No. 2) Bill, presented by the Conservative backbencher Nick Boles on 15 January. That Bill required the Prime Minister to seek an extension of the Article 50 period if certain conditions were not met. The Bill envisaged the preparation of a plan for the process of withdrawal by the Liaison Committee, the Committee composed of the chairs of select committees in the Commons. The approach was disowned by the Liaison Committee. For a full analysis of that Bill and reaction to it, see House of Commons Library Briefing Paper 08476, 18 January 2019.

39 HC Deb, 29 January 2019, col 749.

not been agreed to by that date.[40] A Minister would be required to move one of two motions in the House. The first motion would be to approve leaving the European Union without a deal. The second motion would be to invite the House to approve the Prime Minister seeking an extension of the Article 50 period to a specified date. If the first motion was moved, but not agreed to without amendment, the second motion would then have to be moved the next sitting day.[41] If the motion to seek an extension were agreed to in the form proposed, the Prime Minister would be subject to a duty to seek an extension of the Article 50 period to that date. If the motion were amended to substitute another date for the extension, the motion would be binding in the same way.[42] The Bill also made provisions for the House of Commons to control the Prime Ministerial position in the event that the extension offered by the European Union were to be for a period other than that proposed in the relevant resolution of the House of Commons.[43]

During a debate on 14 February Sir Oliver Letwin set out why he had concluded that legislation was needed. He thought that the Government was still willing to "head for the exit door without a deal". Alluding to exchanges earlier that day on the status and effect of resolutions of the House, he said he was "driven to the final conclusion that it is only by legislation that we will resolve this problem, because it is only by legislation that the Government will feel compelled to act". The (No. 4) Bill was the "necessary instrument" to achieve this. To a greater degree than on 29 January, he conceded the constitutional innovation implicit in the method proposed:

> "This is a remarkable condition for Parliament, the Government and this country to find themselves in. The structure of our affairs, almost throughout our history, since this House first established its rights over and against the Crown, has been that the Government—Her Majesty's Ministers—put forward policy and carry it out, subject only to the ability to maintain the confidence of the House, and to legislate in it. To my knowledge, it has never previously been the practice for this House to have to take control and direct Government policy by legislation. That is an astonishing turn of events … Mostly, our country has operated on the principle that its great work is done by Governments, and that we in this House have the extraordinary privilege of observing, informing, scrutinising and checking, but do not have to take

40 HC Bill 336 of Session 2017–19, Clause 1. The remaining provisions would cease to have effect if a "meaningful vote" were agreed to after 13 March and before 29 March.

41 *Ibid.*, Clause 2(1)–(6).

42 *Ibid.*, Clause 2(6)–(8).

43 *Ibid.*, Clause 2(9)–(11). For a full analysis of the Bill and initial reaction to it, see House of Commons Library Briefing Paper 08502, 19 February 2019.

> the ultimate responsibility for those crucial decisions that those of us who have served in Cabinets and in National Security Councils have, from time to time, had to take about what this country does … When this House comes to legislate, as I hope it will and fear it must, it will be, so to speak, a Cabinet. We will be making real-life decisions about what happens to our fellow countrymen … The process of which we are now at the start will require the fundamental realignment of the relationship between the civil service, Government and Parliament. There is no way we can continue to act as though we were merely a body to which the Government were accountable; for a period, for this purpose, we will have to take on the government of our country."[44]

In the fortnight after this debate, there was a significant shift in the Government's position, particularly in relation to "no deal Brexit". On 26 February the Prime Minister made the promised statement on the progress of negotiations. While she remained hopeful of a modified agreement acceptable to the House, she acknowledged that Members across the House "are genuinely worried that time is running out—that if the Government do not come back with a further meaningful vote, or they lose that vote, Parliament will not have time to make its voice heard on the next steps". In response to those concerns, she made three commitments. First, the Government would hold a second meaningful vote by Tuesday 12 March at the latest. Second, if the Government did not win that vote by that date, it would then table a motion to be voted on by Wednesday 13 March, at the latest, asking the House whether it supported leaving the EU without a withdrawal agreement on 29 March; she also indicated that the motion would be politically binding in its effect: "the United Kingdom will only leave without a deal on 29 March if there is explicit consent in this House for that outcome".[45] Third, if the no deal option were rejected, she agreed to bring forward a motion on whether the House wanted to seek a short, limited extension to Article 50; she also indicated that this too would be politically binding, so that she would seek "to agree that extension approved by the House with the EU".[46] The Prime Minister's commitments, as she noted, fitted the timescale set out in Yvette Cooper's (No. 4) Bill, and effectively delivered the substance of that Bill, so far as they related to parliamentary proceedings prior to the seeking of an extension.[47] The Prime Minister committed to measures along the lines of those in the Bill while restating her opposition to the proposed

44 HC Deb, 14 February 2019, cols 1108–10.

45 HC Deb, 26 February 2019, col 166.

46 HC Deb, 26 February 2019, cols 166–67.

47 HC Deb, 26 February 2019, col 167. See also the exchange with Yvette Cooper at cols 175–76.

mechanism that might have allowed it to proceed:

> "Tying the Government's hands by seeking to commandeer the Order Paper would have far-reaching implications for the way in which the United Kingdom is governed and the balance of powers and responsibilities in our democratic institutions, and it would offer no solution to the challenge of finding a deal that this House can support."[48]

The Prime Minister's commitments on 26 February effectively defused the issue of control for the purposes of the debate on the non-statutory motion the following day. An amendment in very similar terms to the Cooper amendment of 29 January 2019, except in relation to the (No. 4) Bill, was tabled in the name of Dame Caroline Spelman and selected for decision, but not moved after exchanges between David Lidington and Sir Oliver Letwin, Yvette Cooper and Nick Boles.[49] An amendment in the name of Yvette Cooper which sought to encapsulate the Prime Minister's commitments was agreed to by 502 votes to 20.

The motion to take control

The debates and votes arising from the Prime Minister's undertakings on 26 February took place on 12, 13 and 14 March. On 12 March the House rejected the Withdrawal Agreement and associated legal instruments and declarations by 242 to 391. On 13 March the House rejected leaving the European Union without a Withdrawal Agreement by 321 to 278.[50] On 14 March the House agreed a motion by 412 to 202 agreeing that the Government would seek an extension for a period ending on 30 June 2019 unless the Withdrawal Agreement was approved by the House by 20 March.[51] In the continuing absence of such approval, an extension was requested by the Prime Minister on 20 March and the European Council granted an extension which related to two possible scenarios: if the Withdrawal Agreement were approved by the House of Commons by 29 March, the extension would last until 22 May 2019; if the Agreement was not approved, the extension would only last until 12 April 2019. When the House debated the options on 25 March, on a statutory motion under section 13 of the 2019 Act relating to the rejection of the previous "meaningful vote", Sir Oliver Letwin tabled an amendment to disapply Standing Order No. 14(1) and take control of the agenda on Wednesday 27 March, initially for a Business of the House motion and then for motions to be

48 HC Deb, 26 February 2019, col 167.

49 HC Deb, 27 February 2019, cols 378–80, 453.

50 The motion as agreed arose in substance from an amendment moved by Yvette Cooper and agreed to by 312 votes to 308.

51 HC Deb, 14 March 2019, cols 553-651.

voted upon through a series of indicative votes. The Prime Minister set out the Government's opposition to the motion. She repeated the argument that taking control of the Order Paper would "set an unwelcome precedent, which would overturn the balance between our democratic institutions". She also renewed the Government's own offer to facilitate indicative votes in Government time, although she remained sceptical about the value of the process.[52] During the debate, Sir Oliver asserted the legitimacy of a decision by the House to disapply a particular Standing Order and also noted that the Government had not been clear on how it envisaged facilitating decisions on motions for indicative votes.[53] The amendment was agreed to by 329 votes to 302; 30 Conservatives voted with the Ayes. The motion as amended was then agreed by 327 votes to 300.

The amendment agreed to on 25 March contained many common elements with the preceding unsuccessful amendments. It began by disapplying Government precedence on 27 March and granting precedence to a Business of the House motion followed by substantive motions relating to the exit process. The issue of how to identify a Business of the House motion which had arisen during the debate on 14 March—when identification was based on a certain number of signatories from a certain number of parties—was resolved by a statement that, if more than one such motion was tabled, "the Speaker shall decide which motion shall have precedence".

The next provision required the Speaker to "interrupt proceedings on any business before the Business of the House motion having precedence at 2.00pm"—two and a half hours after the start of the sitting on the day of the motion. In the course of a normal sitting, the main business of the House of Commons in the form of notices of motions or orders of the day is preceded by oral questions to Ministers, urgent questions, Ministerial statements and certain preliminary business, most notably ten-minute rule motions: this is also the time when points of order are most commonly raised.[54] Although the Speaker has discretion on how many Members to call following urgent questions or Ministerial statements, the right of Ministers to make oral statements at this point in the day's business is formally unlimited.[55] In view of this, the provision to interrupt proceedings at 2.00pm removed any possibility that the preliminary proceedings might be extended to prevent the motion being moved.[56] This provision affecting prior business was almost completely novel in character,

52 HC Deb, 25 March 2019, col 24.

53 HC Deb, 25 March 2019, cols 80–87.

54 *Erskine May* (25th Edition, 2019), paras 19.2 ff.

55 *Erskine May* (25th Edition, 2019), para 19.21.

56 A further provision of the motion allowed for any proceedings interrupted or superseded by the 2.00 pm provision to be resumed or entered upon at the end of the day's main business.

reflecting the unique challenges associated with initiating business in the face of determined opposition from the Government and many Government backbenchers.

The amendment then provided for debate on the Business of the House motion to be concluded at 3.00pm, with the questions on any selected amendments and the main question being put at that time. This provision echoed relatively common provisions in respect of Government Business motions, while still being almost without precedent in respect of a non-Government motion. The final "anti-dilatory" provision provided for the mover of one of the motions to be debated to be called when the proceedings on the Business of the House motion had concluded, ensuring no other business could intervene.

The Business of the House motion on 27 March made arrangements for the "indicative votes" to take place that day, using a system that was termed "recorded votes". This new arrangement was designed to allow for simultaneous votes rather than consecutive divisions, with Members recording their votes on paper. The motion also contained a number of further "anti-dilatory" provisions, preventing any attempts to disrupt the votes or the debate that preceded it by use of the closure, previous question or motions to sit in private. Perhaps most importantly, the Business motion began the process which was dubbed "daisy-chaining",[57] whereby the motion not only governed business that day, but disapplied Standing Order No. 14(1) on a subsequent day (Monday 1 April), which was also reserved for a further Business motion and a subsequent round of "indicative votes" taking place in the light of the knowledge of the outcome of the first round. The Business of the House motion was agreed to by 331 votes to 287, with 33 Conservatives voting in favour.

Recorded votes took place on 8 motions on 27 March, and on a further four motions on 1 April. None of the motions was agreed to, with the nearest vote being a motion proposing the Government seek a Withdrawal Agreement that allowed for UK membership of a Customs Union with the European Union, which was defeated by 273 votes to 276. The shortcomings of the indicative vote process and the reasons for them have been considered by others.[58] There were differences from the outset on the perceived aims of the votes, whether they were to test opinion or determine outcomes. The propositions voted on related to distinct issues, conflating next steps and end-states. Some Members abstained on end-state options relating to a form of Brexit, because they wished to avoid Brexit altogether. It has been suggested that "the voting system incentivised tactical and insincere voting", and alternatives approaches

[57] HC Deb, 27 March 2019, col 338.

[58] D Gover, "Procedural Innovation", in *Parliament and Brexit*, pp 26–27; *Parliamentary Monitor 2020*, p 14.

to secure a clearer outcome were suggested at the time.[59] It is at least arguable, however, that an outcome produced by a less familiar voting system would have had at best contested legitimacy, and the lack of any outcome with majority support arguably reflected the underlying parliamentary position. As another study puts it, "'Two rounds of 'indicative votes' on different Brexit options simply established two things that MPs didn't want—a 'no-deal' exit and a Northern Ireland backstop—rather than a plausible alternative to May's deal".[60]

What endured from the proceedings of 27 March and 1 April was the provision for the next step in the daisy chain in the Business motion of 1 April. That mirrored the previous Business motion in booking a further day—Wednesday 3 April—but initially for a Business of the House motion only, to be debated for up to 3 hours from 2.00 pm, with no explicit provision on the business to follow.[61] After the inconclusive result of the second round of indicative votes, the proposal became clearer the next day, when Yvette Cooper presented the European Union (Withdrawal) (No. 5) Bill. This Bill required the Prime Minister, on the day after Royal Assent, to move a motion inviting the House to agree to her seeking an extension of the Article 50 period to a date to be specified in the motion. The Bill then sought to make the period of extension proposed in such a motion, if agreed to, binding on the Prime Minister. This was followed by provisions giving comparable control if the European Council granted an extension of a different length.[62]

The Business of the House motion on 3 April set out a timetable to enable the European Union (Withdrawal) (No. 5) Bill to pass through all its Commons stages that day and to grant precedence to any proceedings on consideration of Lords Amendments on a subsequent day. The starting point for the motion was the type of Business of the House motion that was used by the Government for passage of its most urgent legislation in a single day.[63] Broadly speaking, the role and powers of a Minister in such a motion were granted instead to "a designated Member", defined as the Member in charge of the Bill (Yvette Cooper) or "any other Member backing the Bill and acting on behalf of the

[59] R Fox and L Baston, *Indicative Votes: Options, voting methods and voting systems* (Hansard Society, March 2019); D Gover, "Procedural Innovation", in *Parliament and Brexit*, pp 26–27.

[60] *Parliamentary Monitor 2020*, p 14.

[61] HC Deb, 1 April 2019, col 808. The Business motion on 1 April was agreed to 322 votes to 277; 28 Conservatives voted in favour.

[62] For a full analysis of the Bill and initial reaction to it, see House of Commons Library Briefing Paper 08541, 2 April 2019.

[63] See, for example, Votes and Proceedings, 13 November 2018.

Member".[64] The additional "anti-dilatory" provisions of the preceding Business of the House motions were also echoed in this motion. The motion was fiercely debated. Controversy centred on the principle of non-Government control of business, on the speed with which a contentious Bill was to pass through all its stages on that day and on the extent to which the motion set a precedent for the future. Opposition was perhaps best encapsulated by Sir William Cash:

> "The precedence that is given in Standing Order No. 14 to Government business is one of the rocks of our parliamentary system. Why? Because we have a system of parliamentary government, and a system of democratic government … Standing Order No. 14 gives precedence to Government business for a very simple reason. If a Government are formed because the Queen has agreed that a Prime Minister should take office, it follows that Her Majesty's Government have a majority and/or a sufficient degree of confidence to be able to carry the business of the House. That is the constitutional convention, and that is what our Standing Orders say … To rip up that convention … is extremely undemocratic and, if I may say so, unparliamentary."[65]

Before the House voted on the Business of the House motion itself, it considered an amendment from Hilary Benn acting as the next link in the daisy chain—seeking to secure precedence on Monday 8 April for a third round of indicative votes. That amendment was the subject of a tied vote (310/310) and, in accordance with precedent, the Speaker declared himself with the noes, on the principle that a decision should be affirmed by a majority of the House. The Business motion itself was then passed by a single vote (312/311), with 14 Conservatives voting for the motion.[66]

The proceedings on the Bill itself did not entail new procedural departures, although they reflected the close voting seen on the Business motion. The Speaker gave a ruling on two matters that contributed to the controversy on the Bill, stating that the Bill did not require Money or Ways and Means resolutions and that Queen's consent was also not required.[67] The Second Reading was agreed to by 315 votes to 310. Two amendments were made in Committee, both

64 The backers of a private Members' Bill are those Members (not exceeding 11) whose names are listed as supporters on the back of the Bill as first published. The backers in this case included Sir Oliver Letwin, Hilary Benn, Dame Caroline Spelman and Dominic Grieve.

65 HC Deb, 3 April 2019, col 1086.

66 The decline in Conservative support in part arose because of Members resigning the Conservative Whip and "crossing the floor". For the most literal instance of this, see HC Deb, 1 April 2019, col 880.

67 HC Deb, 3 April 2019, cols 1130-1131. For consideration of the context of the latter ruling, see A Makower, "Queen's Consent", in *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments*, Vol 87 (2019), pp 35–44.

in Yvette Cooper's name and both minor drafting changes.[68] The Government tabled a new Clause which changed the procedure for regulations under the European Union (Withdrawal) Act 2018 altering the definition of "exit day" from affirmative to negative procedure, which was agreed to without division and with the support of the Bill's backers.[69] Under the provisions of the Business motion, the question on Third Reading was put without debate and agreed to by a single vote (313/312) shortly before 11.30pm.

Passage of the (No. 5) Bill through the Lords

By the time proceedings had finished on the Bill the House of Lords had already risen, so the Bill was printed under Lords Standing Order 50(1) prior to its First Reading. On Wednesday 4 April a Business of the House motion, tabled by Baroness Hayter of Kentish Town (Labour Deputy Leader), was debated.[70] It provided that Standing Orders 46 (no two stages of a Bill to be taken on one day) and 39 (that the House shall proceed with the Notices and Orders of the Day in the order in which they stand in the Order Paper) should be dispensed with for that day to allow the Bill to be taken through all its stages. This Business of the House motion referenced an Opposition resolution agreed by the House on 28 January, which called on the Government to take all appropriate steps to ensure that "sufficient time is provided for this House to ensure the timely passage of legislation necessary to implement any deal or proposition that has commanded the support of the majority of the House of Commons". That motion had been tabled so that, in the words of Baroness Smith of Basildon, Leader of the Opposition in the Lords, "if the House of Commons agrees a course of action that requires new legislation, [the motion] makes it clear that both the Government and this House should facilitate its passage." In other words, it sought to pressure the Government to carve out time for a backbench bill reaching the Lords in the face of Government opposition to it.

The tabling of a Business of the House motion by a non-Government member is unusual but not unprecedented. The last instance was on 13 February 1996 when the then Leader of the Opposition, Lord Richard, moved to suspend (then) Standing Order 38 (arrangement of the Order Paper) to allow a motion in his name on the Order Paper to come before the Broadcasting Bill. In the debate, Lord Richard said "I have taken the opportunity of looking at the relevant page of the Companion, which, … makes it clear that a Motion to suspend standing orders is customarily in the name of the Leader of the House—customarily, my Lords, not exclusively." The Companion to the

68 HC Deb, 3 April 2019, col 1155.
69 HC Deb, 3 April 2019, col 1179
70 Baroness Smith of Basildon, Labour Leader in the Lords, was indisposed.

Standing Orders retains "customarily" today, and along with this precedent, paved the way for the Opposition to table the motion to make time for the Bill. There was opposition to the motion from members who opposed the Bill. Seven amendments were tabled to Baroness Hayter's motion, and an additional motion was tabled by Lord Forsyth of Drumlean to move that the House resolve into a Committee of the Whole House on the motion. Lord Forsyth's motion was considered first. Standing Order 30 mandates that, when debating a motion, no Member of the House may speak more than once. In Committee of the Whole House, this Standing Order does not apply. In moving his motion, Lord Forsyth explained, "We need to be in Committee because we need to be able to cross-examine the basis for the Motion tabled by the noble Baroness. We need to be able to speak more than once, which we cannot do unless we are in Committee". This approach was seen by some as an attempt to filibuster, both were his motion successful thus allowing a lengthier debate, and through the time taken to debate this motion in the first place. Lord Forsyth accepted 11 interventions in his opening speech.

After approximately 40 minutes of debate, Lord Pannick moved that the Question be now put (a closure motion). A closure motion seeks to bring the debate to a close and to force the House to make an immediate decision on the question currently being debated. Crucially, the closure motion itself is not debatable and must be voted on immediately (unique amongst Lords procedural motions). In accordance with paragraph 4.59 of the Companion, the Deputy Speaker on the Woolsack told the House that "the Motion "That the Question be now put" is considered a most exceptional procedure", and required Lord Pannick to reaffirm he wanted to move the motion. The closure motion was then divided on and agreed to, leading to the subsequent division on Lord Forsyth's motion which was defeated by 254 votes to 94. These two divisions took approximately 30 minutes and were therefore somewhat limited in their effectiveness in shortening the length of debate.

Over the next seven hours debate continued on the amendments to the Business of the House motion. A further five closure motions were divided on, each in turn being described as "a most exceptional procedure" by the Lord on the Woolsack. Despite this phrase being increasingly greeted with both humour and frustration in the Chamber, historically closure motions are exceptional. Only seven closure motions had been agreed to from 1900 to that day.

Lord Blencathra, whose amendment was the last to be debated, did not move his amendment because of "new information" that had been received. Lord Taylor of Holbeach, Government Chief Whip, made a short statement at 6.45pm in which he explained that the Usual Channels had agreed that the Second Reading of the Bill would take place that evening and that Committee, Report and Third Reading would take place on Monday 8 April. Baroness

Hayter's Business of the House motion was agreed to without division. This Motion was still necessary in order to take Second Reading that sitting day as First Reading had not yet taken place. The Second Reading debate concluded at 10.41pm after the House had been sitting for nearly 12 hours.

On Monday 8 April a further Business of the House motion was required to dispense with Standing Order 46 (no two stages of a Bill to be taken on one day). The motion incited only six minutes of debate and was agreed to without amendment or a division. During the short debate, the Leader of the House referred to the lengthy and passionate debates which had taken place about the Bill on the Thursday before and reminded the House that the Government remained opposed to the Bill and the manner it had been taken through both Houses. It is unusual for the Usual Channels in the House of Lords not to proceed by agreement. However, the Lords agreed to progress the Bill passed by the elected House, in line with convention.

The House then moved to Committee stage. Tidying amendments to the Bill were agreed to without division. The only division was on the Question that Clause 2 Stand Part of the Bill, which was agreed to. The Bill was reported to the House with amendments. Usually the House would have had at least fourteen days between Committee stage and Report stage in line with the recommended intervals (paragraph 8.04 of the Companion) but the expedited proceedings meant that there was just 90 minutes between those stages. As no further amendments were tabled, Report stage took only a minute to complete before the House adjourned again during pleasure for approximately 40 minutes. Third Reading started at 7.37pm and the Bill was passed and returned to the Commons with amendments. The Commons Business Motion required them to keep sitting to receive and consider Lords amendments that evening.

Throughout proceedings in the Lords on Monday 8 April, concerns were repeatedly raised that the way in which the Bill had been considered created a precedent, and what that meant for established practice in the House that consideration of legislation was not time-restricted. Lord Goldsmith said "to those…who have said we have to ensure there is not a precedent, I say that of course this is not a precedent, because the circumstances are exceptional." Lord Judge, former Lord Chief Justice of England and Wales, disagreed, telling the House "we are setting a precedent. There is no point in pretending that we have not set a precedent by what has happened."

Final stages and assessment of the (No. 5) Bill

Proceedings on the Bill in the House of Lords finished shortly after 7.45pm on Monday 8 April. The Commons consideration of the Lords Amendments, which was limited to an hour by the Business motion of 3 April, began at 9.00pm that evening. All of the Lords Amendments, designed to simplify and

clarify the process for agreeing the request for an extension and remove the second stage in the event that an extension of a different length were offered by the European Council, were agreed to. The final proceedings in the House of Lords took place at 11.05pm, when that House was notified that Royal Assent had been signified. The Commons was similarly notified at 11.08pm.[71] Royal Assent takes effect on the day when the second House is notified. As Royal Assent was signified swiftly and notified in both Houses before midnight, it allowed for the Bill's provisions to come into force before Tuesday 9 April and require a Minister of the Crown to table a motion regarding the extension date in the House of Commons the following day (in accordance with section 1(1)) and for it be decided before the scheduled European Council on Wednesday 10 April.

The foregoing account focused on the procedural innovation implicit in the passage of the Bill through the two Houses risks neglecting the immediate political context of the Bill. Much of the argument against the Bill focused not simply on the innovative aspects, but on the suggestion that the Bill was not needed. The Government had already recognised, before the Bill was published, that a further extension would be needed, and Ministers were already committed to seeking an extension. The Bill compelled the Prime Minister to do something she was going to do anyway. The formal letter requesting extension was sent by the Prime Minister before the Bill had passed the House of Lords. Sir Oliver Letwin responded to this line of criticism in introducing the Business motion on 3 April, arguing that the case for the Bill was that "there should be a transparent and orderly statutory process or framework within which the House has an opportunity to consider the length of the extension that is asked for and to provide the Prime Minister with backing for her request to the EU in an unequivocal and transparent way".[72] It is possible that the legal requirement to seek an extension provided a safe political context for the length of extension that was subsequently agreed, but the lasting significance of the Bill was perhaps best captured by Stephen Bush, political editor of *The New Statesman*, who wrote on 9 April:

> "The main use of the Bill is as a proof-of-concept: we now know how long it would take Parliament to force through a bill without the consent of the executive. That means that should, at a later date, with a different Prime Minister and the same Parliament, a majority emerge to force another delay or to revoke Article 50, backbench MPs now know how much time they need. And that's much more important than anything that's actually in the

71 HC Deb, 8 April 2019, col 148; HL Deb, 8 April 2019, col 442.
72 HC Deb, 3 April 2019, col 1060.

Cooper Bill."[73]

The path to the (No. 6) Bill

On 11 April the European Council agreed a further extension of the Article 50 period until 31 October 2019. On 24 May following elections to the European Parliament in the UK which this extension necessitated, Theresa May announced that she would be resigning as leader of the Conservative Party on 7 June, enabling a new leader (and a new Prime Minister) to take up their position before the Summer recess. Against this background, during an Opposition day on Wednesday 12 June, the House was invited to consider a motion that would set aside Government precedence, and grant precedence to a Business of the House motion in connection with matters relating to the United Kingdom's withdrawal from the European Union, on Tuesday 25 June. Motions on Opposition days are not subject to the same restrictions regarding Standing Order No. 14 as Backbench Business days, but there had been no Opposition days provided between November 2018 and late April 2019. The motion on 12 June was in the names of the leaders of the official Opposition, the SNP, Plaid Cymru and the Greens, and also had the support of Sir Oliver Letwin. The motion was defeated by 298 votes to 309; only 10 Conservatives voted in favour, while 8 Labour Members voted against.

A number of factors underlay the defeat of this attempt to take control of the order paper.[74] Motions in the name of the leader of the Opposition are often harder to support for Government backbenchers than motions or amendments in the name of fellow backbenchers. The exact purpose of the proposed non-Government day on 25 June were not confirmed during the debate. Sir Oliver indicated that it would be for proceedings on a European Union (Withdrawal) (No. 6) Bill, but did not set out concrete proposals on its content.[75] For some, there was a sense of urgency due to limited time between the election of the new leader of the Conservative party and the Summer recess, and the ideas that had been mooted by some candidates in that election that methods could be found to limit opportunities for non-Government legislation to mandate a request for extension beyond 31 October, most notably through an extended prorogation. However, the fact that the outcome of the Conservative party leadership election and its consequences were unknown was probably a significant inhibition on Conservative support for the motion at this time.

[73] "The significance of Yvette Cooper's bill to stop a no-deal Brexit", newstatesman.com, 9 April 2019.

[74] See the excellent analysis by G Cowie and S Samra, "Taking control of the order paper", House of Commons Library Insight, published 26 June 2019.

[75] HC Deb, 12 June 2019, col 714.

On Tuesday 23 July Boris Johnson was elected leader of the Conservative party, committed to ensuring that the United Kingdom would leave the European Union on 31 October, with or without a deal. Theresa May resigned as Prime Minister the next day, and Boris Johnson was appointed as her successor. On 25 July the House of Commons rose for the Summer recess, with its return due on Tuesday 3 September. On 28 August it was announced that Parliament would be prorogued from a date between 9 and 12 September until 14 October.

The day before the House returned on 3 September, a proposed European Union (Withdrawal) (No. 6) Bill was publicised on Twitter, to be introduced by Hilary Benn.[76] The Bill required the Prime Minister to seek a further extension of the Article 50 period to 31 January 2020 unless the House of Commons had either approved a Withdrawal Agreement or approved departure from the European Union without a deal (Clause 1). There were further provisions to establish new reporting requirements on the progress of negotiations and associated motions (Clause 2). The Bill also included provisions designed to ensure that the Prime Minister could not unilaterally decline to agree to an extension offered by the European Council.[77] In a statement when the House met on 3 September, the new Prime Minister was critical of the proposed Bill:

> "It is not a Bill in any normal sense of the word: it is without precedent in our history. It is a Bill that, if passed, would force me to go to Brussels and beg for an extension. It would force me to accept the terms offered. It would destroy any chance of negotiation for a new deal. It would destroy it. Indeed, it would enable our friends in Brussels to dictate the terms of the negotiation. That is what it would do. There is only one way to describe the Bill: it is Jeremy Corbyn's surrender Bill. That is what it is. It means running up the white flag—the Bill is shameful. I want to make it clear to everybody in this House: there are no circumstances in which I will ever accept anything like it. I will never surrender the control of our negotiations in the way that the Leader of the Opposition is demanding."[78]

The path to control of the Order Paper if the proposed Bill was to progress was less clear in September than had been the case earlier in the year. There were no Government motions, statutory or non-statutory, to be amended. No Opposition days were expected to be available. Expectations centred around the possible use of Standing Order No. 24, which enables the Speaker to grant an emergency debate. From the introduction of what is now Standing Order

[76] https://twitter.com/hilarybennmp/status/1168560598650621953?lang=en.

[77] For further information on the Bill, see G Cowie, "The Benn-Burt Bill: Another Article 50 extension?" House of Commons Library Insight, published 4 September 2019.

[78] HC Deb, 3 September 2019, col 27.

No. 24 in November 1882 until October 2007, there was only one form that motions for emergency debates could take, namely "That this House do now adjourn". Such a motion is unamendable.[79]

The change to the form of the motion to be moved under Standing Order No. 24 arose from a Report published by the Modernisation Committee in June 2007. The Report was concerned principally with debates on various topics in Government time which took place on a motion for the adjournment of the House. The Committee accepted that there would be cases where it would be convenient for there to continue to be general debates without possibility of amendment, as opposed to debates on "substantive" motions. However, it thought that the use of motions for the adjournment of the House as the procedural device for such general debates was "confusing". Accordingly, it recommended that what were to be termed "general debates" that had hitherto taken place on a motion for the adjournment of the House "should take place on a motion 'That this House has considered [the matter of] [subject]'." The Report went on to state:

> "there should be a strong convention that such motions moved for the purpose of having a general debate would not be amended. As a consequence, these motions must be titled and expressed in neutral terms and cannot be used to convey any argument. The Table Office should play a part in vetting these motions."[80]

The Report also implied that the rationale for replacing motions for the adjournment of the House with motions in the new form applied equally to motions enabled by the provisions of Standing Order No. 24, and stated its belief "that debates following a successful Standing Order No. 24 application would be general debates".[81]

The Government response to this Report accepted the proposal for "general debates" to replace motions for the adjournment of the House but suggested it would be necessary for there to be clearer rules to prohibit the possibility of amendments to such motions:

> "As the Committee notes, it would be helpful for it to be clear that such motions would not be subject to amendment. Establishing a convention in the House from a standing start can be difficult, and it could well be for the convenience of the House for the principle to be clearly incorporated into the standing orders. This would entail specifically defining such motions in the standing orders, in terms of the wording of the motion and, as the Committee

79 *Erskine May* (8th Edition, 1879), p 325; *Erskine May* (25th Edition, 2019), para 20.41.

80 First Report from the Select Committee on Modernisation of the House of Commons, *Revitalising the Chamber: the role of the back bench Member*, HC (2006–07) 337, paras 83–85.

81 *Ibid*., para 71.

> notes, the requirement for such motions to be titled and expressed in neutral terms – i.e. terms not conveying argument. (Where the House wished to debate a subject on a motion in this form but it was not in the opinion of the Speaker expressed in neutral terms, it would accordingly be an amendable motion.)"[82]

The same response made it clear that the Government envisaged debates under Standing Order No. 24 (along with the now largely forgotten topical debates) to be general debates and subject to the same restrictions, including the prohibition on the possibility of amendment.[83]

The changes made to Standing Orders in October 2007 gave effect to two of the three elements of the approach envisaged in the Government response to the Report. First, Standing Order No. 24 was amended to provide that "debate shall be held on a motion that the House has considered the specified matter". (There was no need for a matching change for general debates of other kinds, with the exception of the new topical debates, because no Standing Order governed or governs such motions; it was for the Government to choose whether or not table a motion in the specified terms and make it a "general debate"; the same freedom now applies to other Members in respect of motions in Backbench Business time.) Second, Standing Order No. 24B was introduced which provides that "where, in the opinion of the Speaker, a motion, That this House has considered a specified matter, is expressed in neutral terms, no amendment to it may be tabled".

By accident or design, the changes did not give effect to the requirement that motions under SO No. 24 should be expressed in neutral terms. The use of the conditional in Standing Order No. 24B ("where … a motion … is expressed in neutral terms") might be read as giving sanction for motions not in neutral terms. It is also possible that the House's general endorsement of the Report of the Modernisation Committee might have been felt to give authority to vet motions to secure neutrality, and the term "general debate" is widely understood in contexts such as backbench motions in Westminster Hall and in Backbench Business on the floor of the House to refer to a motion where the words after "has considered" are expressed in neutral terms.

The 2019 edition of *Erskine May* stated that debate on a motion under Standing Order No. 24 "occurs in the form of a general debate", but also referred to a December 2018 motion which it characterised as "a matter not

[82] *Governance of Britain: Revitalising the Chamber: the role of the back bench Member*, October 2007, Cm 7231, para 19.

[83] *Ibid.*, paras 20, 11.

expressed in neutral terms".[84] Fuller consideration in a later paragraph of the same edition states that such a motion "is *normally* expressed in neutral terms rendering the motion incapable of amendment by virtue of Standing Order No 24B", and again cited the December 2018 instance.[85]

The Speaker concluded that a motion under Standing Order No. 24 which takes the requisite form (in other words, begins "that this House has considered …") but which is not in neutral terms was allowed. On 3 September he granted an application from Sir Oliver Letwin for an emergency debate, to be held almost immediately thereafter.[86] Although the motion began in the requisite form for such a debate—"That this House has considered the matter of the need to take all necessary steps to ensure that the United Kingdom does not leave the European Union on 31 October 2019 without a withdrawal agreement"—the remaining provisions drew heavily upon the amendments and Business of the House motions of early April. It disapplied Government precedence for the following day and set a timetable for the (No. 6) Bill to pass through all stages, as well as for subsequent proceedings. The main novel provisions of the motion related to the formal introduction of the Bill the next day and to the introduction of a successor Bill in the next Session if the Bill were to be read the third time in the Commons in the Session then underway, but had not received Royal Assent. Under Standing Orders, notice of a private Member's Bill cannot be given until after the Bills chosen by Members successful in the private Members' Bill ballot have presented their Bills on the fifth Wednesday of a Session. The motion provided that a Bill in the same terms as the (No. 6) Bill could be presented on the first day of the new Session and that the timetable provisions of the motion would essentially apply on the second day of the new Session. This was a further extension to the procedural novelty in the Letwin Business motions.

During the ensuing debate on the motion, the new Leader of the House, Jacob Rees-Mogg, was critical of the motion in even more forthright terms

84 *Erskine May* (25th Edition), para 18.38. The motion, on 11 December, was as follows: "That this House has considered the Prime Minister's unprecedented decision not to proceed with the final two days of debate and the meaningful vote, despite the House's Order of Tuesday 4 December 2018, and her failure to allow this House to express its view on the Government's deal or her proposed negotiating objectives, without the agreement of this House". A SO No. 24 motion on 18 March 2013, not mentioned in *Erskine May*, but later referred to by the Speaker, related to "the matter of the *welcome* publication of the draft Royal Charter by the Prime Minister, Deputy Prime Minister and Leader of the Opposition today, and the Prime Minister's intention to submit the Charter to the Privy Council for Her Majesty's approval at the Privy Council's May meeting" (emphasis added).

85 *Ibid*., para 19.22; emphasis added.

86 HC Deb, 3 September 2019, cols 76–77.

than Ministers in the Government. In addition to restating concerns arising with previous motions—"this motion risks subverting Parliament's proper role in scrutinising and the Executive's in initiating"—he drew attention to the Speaker's "grave responsibility, of which I know you are well aware, to uphold the norms and conventions that underpin our constitution" and to his specific interpretation of Standing Order No. 24. The Leader questioned whether the Speaker's decision to allow a substantive motion under Standing Order No. 24 was consistent with his previous statements.[87] The Speaker responded almost immediately to explain his position:

> "If, in the judgment of the Chair, a motion under Standing Order No. 24 is expressed in neutral terms, it will not be open to amendment—if it is judged to be expressed in neutral terms. The reality of the matter is that there have been previous occasions upon which there have been Standing Order No. 24 motion debates which have contained what I would prefer to call evaluative motions, notably on 18 March 2013 and on 11 December 2018 with which I feel sure the Leader of the House is familiar. It is in conformity with that practice that I have operated. I have taken advice of a professional kind, and I am entirely satisfied that the judgment that I have made is consistent with that advice."[88]

The motion was agreed to by 328 votes to 301. 21 Conservatives voted for the motion, all of whom had the party whip withdrawn from them that evening. These included two former Chancellors of the Exchequer, one of whom was Father of the House (Kenneth Clarke) and seven other former Cabinet Ministers.

All stages of the Bill in the Commons took place the following day in accordance with the motion. Some of the matters of controversy were familiar from proceedings on the (No. 5) Bill in early April.[89] The majority established on the Business motion on that day increased slightly on Second Reading, agreed to by 329 votes to 300, and Third Reading was agreed by 329 votes to 299.[90]

Proceedings on the (No. 6) Bill in the Lords

The imperative nature of the situation for the anti-No Deal parties led the Leader of the Opposition in the House of Lords, Baroness Smith of Basildon, to table a Business of the House motion to be debated on Wednesday 4 September, ahead of the Bill being received from the Commons. Although the Bill was

87 HC Deb, 3 September 2019, cols 91–93.
88 HC Deb, 3 September 2019, col 94.
89 HC Deb, 4 September 2019, cols 210–14.
90 A single amendment was made to the Bill, without a division.

successful in passing its stages in the House of Commons in a single day, the self-regulatory nature of the House of Lords and the absence of guillotine or programme motions could have proved to be a significant obstacle to the supporters of the Bill in ensuring it reached the statute book before Parliament was prorogued. Like the Business of the House motion for the (No. 5) Bill which had been debated exactly five months earlier, Baroness Smith's motion sought to suspend Standing Orders 46 (no two stages of a Bill to be taken on one day) and 40(3) and (9), giving the Bill precedence over other business on the following two days, and required the House to sit on Friday 6 September which it was not scheduled to do. As demonstrated in April and in other routine contexts, expediting a bill this way was not unusual, save in being moved by the Opposition. The motion also referred to the successful Opposition resolution from 28 January.

However, due to the looming spectre of prorogation, this Business of the House motion went considerably further than the April motion. This motion provided that proceedings on Second Reading and commitment must end by 7.00pm on Thursday 5 September. It specified that Committee stage, Report, Third Reading and passing of the Bill must conclude by 5.00pm on Friday 6 September. It made provision for drawing business to a close at those times, including instructions on which questions would and would not be put. It made other provision to attempt to secure timely consideration of the Bill, including providing specific powers to the Leader of the Opposition. This was without precedent and a radical departure from the norms and practice in the House of Lords that legislation, subject to informal targets and cooperation between the Usual Channels, takes as long as necessary.

Because notice is required for a Business of the House motion, there was opportunity to table amendments to Baroness Smith's motion. 86 amendments were tabled to the Business of the House motion on the Order Paper for Wednesday 4 September. A further 15 manuscript amendments were tabled on the day itself. This dwarfed the seven amendments tabled to Baroness Hayter's motion in April, reflecting the fact that this motion was more dramatic in its departure from established practices of the House.

It was feared by the Opposition and supporters of the Bill that, if opponents drew out proceedings on the Business of the House motion from the sitting on Wednesday 4 September to beyond 10.00am on Friday 6 September (i.e. beyond the scheduled start time for a sitting that day) by debating amendments, the Bill would not pass before prorogation. A historically lengthy sitting of the

House of Lords over two full days was touted in the national press.[91] Although opponents of the Bill were in a minority in the House and were likely to lose any divisions, they could still begin a war of attrition and slow proceedings on the Bill.

When moving the motion just after 3.30pm, Baroness Smith told the House, "there is a fixed end time not of our choosing. Your Lordships' House has no say or impact on that fixed end time, which has been decided by the Prime Minister through a rather unusual and controversial prorogation". In speaking for her amendment, Baroness Smith argued, "we are, and were, aware of what would be a deliberate attempt to filibuster the Bill". Lord Forysth of Drumlean, who was one of the vocal opponents in April and again this time, tabled a dozen amendments to the motion, argued that "we are making a dangerous and unprecedented assault on the part of this House… the implications are enormous." From around 8.00pm the Usual Channels entered negotiations to seek agreement on the way forward. The Leader of the Opposition said that if a plan could be agreed, her programme motion would be unnecessary.

Meanwhile over nine and a half hours of debate followed with a similar course to April's proceedings. The various amendments were moved, then closure motions were moved, divided on and agreed to, resulting in an immediate further division on the amendment itself. Each of these rounds of divisions took approximately 30 minutes. Each of the six closure motions moved during the debate was again described by the Lord on the Woolsack as "a most exceptional procedure", in accordance with the procedure for a closure motion. By 12.02am, with the battle of attrition still raging in the Chamber, these words rang increasingly hollow to those present.

The Government ChiefWhip told the House at 1.10am, "we have agreed that consideration of the current Business of the House Motion will be adjourned and a new Motion tabled tomorrow to allow the Bill to complete all stages in this House by 5.00pm on Friday 6 September … It is the Government's intention that the Bill be ready to be presented for Royal Assent." The House was adjourned until later in the morning of Thursday 5 September, with a new record for the most divisions in a sitting day of 17.

Subsequently, a revised Business motion was tabled in the name of Baroness Smith of Basildon to allow the Bill to complete all stages in the Lords by 5.00pm on Friday 6 September. This motion still crucially set cut-off times

[91] D'Arcy, M (2019), 'Brexit: The Lords gear up for a battle over no-deal bill', *BBC News*, 4 September. Available at: https://www.bbc.co.uk/news/uk-politics-parliaments-49583520. [Accessed 9 April 2020]; Blitz, J (2019) 'Conservative peers battle to stop rebel anti-no-deal bill', *Financial Times*, 4 September. Available at: https://www.ft.com/content/a64c6648-cf35-11e9-99a4-b5ded7a7fe3f. [Accessed 9 April 2020].

by which Second Reading and the remaining stages should be completed. The difference from the previous day's motion was that it had removed the provisions for drawing business to a close at those times. In effect, it set a timetable but did not specify how to enforce it. However, with agreement amongst the Usual Channels, the procedural mechanisms for enforcing this were unnecessary, thereby retaining an aspect of self-regulation. Despite the significance of this motion and its contradiction of usual practice of the House of Lords, it was agreed to without division in under five minutes. Opponents during the previous day's debate did not speak, and the short contributions commended the agreement being made. The rest of the debate on the Bill took place uneventfully, and opponents did not seek to frustrate the Bill's progress. The Bill was passed unamended. Royal Assent was notified to both Houses on the afternoon of Monday 9 September and it became law as the European Union (Withdrawal) (No. 2) Act 2019.[92]

In a reflection of the high political drama and departure of broader constitutional conventions in the context of an extremely controversial prorogation, the House of Lords momentarily abandoned one of the defining features of its self-regulation and its scrutiny of legislation, and passed its first ever programme motion.

The aftermath

The Prime Minister responded immediately to the passing of the Standing Order No. 24 motion establishing a timetable for the (No. 6) Bill by calling for an early General Election, arguing that it was the only way to resolve the conflict between the Commons and the Government.[93] In moving a motion for an early General Election under the Fixed-term Parliaments Act 2011 the following day, the Prime Minister described the Bill passed by the Commons the previous day as

> "a Bill designed to overturn the biggest democratic vote in our history, the 2016 referendum. It is therefore a Bill without precedent in the history of this House, seeking as it does to force the Prime Minister, with a pre-drafted letter, to surrender in international negotiations. I refuse to do this."[94]

The motion for an early General Election secured the support of 298 Members, well short of the requisite number voting in the majority of 434.[95] A further motion for an early General Election on Monday 9 September, following Royal

[92] Bills are numbered by Session. Acts are numbered by calendar year, so that the European Union (Withdrawal) (No. 5) Bill had become the European Union (Withdrawal) Act 2019.

[93] HC Deb, 3 September 2019, col 140.

[94] HC Deb, 4 September 2019, col 291.

[95] The Official Opposition abstained; 56 Members voted against.

Assent to the Bill, was similarly unsuccessful.[96] The ceremony for Prorogation took place later that night. On 25 September, the House sat again following the ruling by the Supreme Court that "Parliament has not been prorogued". A more regular Prorogation took place on 8 October. A Queen's Speech opened a new Session on Monday 14 October. By the end of that week, the Prime Minister had secured a new Withdrawal Agreement with the European Union. For the first time in 37 years, the House of Commons and House of Lords held Saturday sittings to debate a statutory motion which, in the case of the Commons, would have represented approval of the new Withdrawal Agreement and voided the duty on the Prime Minister to seek an extension under the European Union (Withdrawal) (No. 2) Act 2019 by the end of that day. An amendment tabled by Sir Oliver Letwin which withheld approval until the to necessary ratifying legislation was passed, and thus retained the legal effect of the Benn Act, was agreed to by 322 votes to 306. The letter seeking an extension in the form required by the terms of the Act was duly sent that evening. The following week, the House gave a second reading to a Bill to enable ratification of the revised agreement, by 329 votes to 299, but a Programme Motion which might have enabled the Bill to be passed before the 31 October deadline was defeated by 322 votes to 308. Without the prospect of the Bill being passed by that deadline, the European Council, on 28 October, granted an extension to 31 January 2020. Legislation for an early General Election was passed the following week, circumventing the need for the super-majority under the Fixed-term Parliaments Act 2011. The Conservatives secured a substantial majority at the December General Election, bringing an end to the tension between majority opinion in the Commons and the position of the Government that had driven many of the procedural innovations of 2019.

Conclusions

For the House of Lords, the legacy of 2019 could prove significant. It is hard to overstate how significant the agreement of a programme motion is compared to the usual practice of the Lords. Legislation, subject to certain guidance agreed by the Usual Channels, takes as long as is necessary to pass the Lords. Usual Channels cooperation leads to informal targets for days of debate leading to an established expectation for a bill's progress, but if it takes longer, then it takes longer. This is a key characteristic of the Lords and one which has complemented the majoritarian and time-restricted nature of comparable business in the House of Commons. Lords procedures provide space for minority views, including time for debates and private Members'

[96] HC Deb, 9 September 2019, cols 616–39; the Ayes were 293; the Noes were 46.

bills, as well as ample time for detailed scrutiny of Government legislation where necessary. Many Members of the House value having the opportunity to scrutinise legislation in depth without time or political pressures. Even in 2011, as progress on the Parliamentary Voting System and Constituencies Bill dragged on for its seventeenth day in Committee, the House pulled back from the procedural brink when it was touted that the Government might table a programme motion to progress their Bill.[97] In the end, it was nine years later and in very different circumstances that the Opposition, not the Government, tabled and eventually succeeded in passing a programme motion in order to get a bill through which the Government opposed. It is worth bearing in mind that, chiming with a characteristic of the Lords, it was agreement amongst the Usual Channels that led to a revised motion (which did not set out how proceedings would be brought to a conclusion) being agreed to without division the day after the original Opposition Business motion was debated. It was the agreement of that revised motion which set a precedent.

One may argue that the Opposition took this extreme step at a time of high political drama, when other constitutional conventions and understanding, including around prorogation, were contested. The Parliamentary Voting System and Constituencies Bill provided the clue that programming *could* be done in the House of Lords. However, a precedent has now been set and the long-established practice of the Lords has, for once, been broken. Whether this may now become a more frequent procedural lever to be pulled remains uncertain, although no programme motion has been tabled or agreed to since. Nevertheless, a Government or Opposition of any political colour could feasibly table a similar motion should the level of opposition to a bill be seen as unsatisfactory. However, it would require a majority in the hung chamber and therefore appears more likely it would be a future Opposition, rather than a government, that takes this approach in the Lords once again. The door is now open, if thought necessary, for a Government or Opposition to table another programme motion.

It can and has been argued forcefully that the disapplication of Standing Order No. 14(1) by decision of the House of Commons and the subsequent passage through both Houses of legislation imposing obligations on a Government against its will were constitutionally inappropriate. Sir Stephen Laws and

[97] Winnett, R (2011) 'David Cameron to step in to end Lords debate', *The Telegraph*. Available at: https://www.telegraph.co.uk/news/politics/8292287/David-Cameron-to-step-in-to-end-Lords-debate.html [accessed 8 April 2020]; BBC News (2011), 'Peers reach deal on AV vote bill after marathon debate', *BBC News*. Available at: https://www.bbc.co.uk/news/uk-politics-12327408 [accessed 8 April 2020]; Baroness D'Souza, HL Hansard, 31 January 2011, vol. 724, col. 1216; Lord Howarth of Newport, HL Deb, 26 January 2011, col 1049.

Richard Ekins argued in April 2020 that "This attempt to relocate the initiative in policy-making from the Government to an unstable cross-party coalition of MPs runs contrary to the logic of our constitution". They also suggested that "it undermines political accountability and electoral democracy".[98] A similar argument was advanced in October 2019 by Professor Lord Norton of Louth:

> "At the heart of the Westminster system is the concept of accountability. There is one body responsible for public policy—the party in government. Collective responsibility ensures that it is a united entity, accountable between elections to Parliament and at elections to electors. Parliament scrutinises and challenges the Government but does not seek to substitute policy of its own. MPs have always privileged party above the interests of the House of Commons. Party, however, has facilitated accountability. We are in an exceptional situation where no one body is accountable. Electors cannot hold themselves to account for the outcome of a referendum. Electors cannot hold to account a transient majority comprising an ad hoc amalgam of parties and independents in the House of Commons. The position we are in derives from the collision of two concepts of democracy. We had an exercise in direct democracy in the form of a referendum, and an exercise in representative democracy the following year, producing results not clearly compatible one with the other. The House of Commons has sought to wrest control of public policy from the Government. That, as I have argued before, is not 'taking back control': you cannot take back something you did not have in the first place. Because a transient majority cannot be held to account, it is an exercise in power without responsibility".[99]

Lord Norton also subsequently suggested that "What we are witnessing is at the very least some undermining of the relationship confirmed by the Glorious Revolution … We are in danger of seeing the constitutional glue that holds together the political system coming somewhat unstuck".[100]

It is unquestionable that the precedence for Government business embodied in paragraph (1) of Standing Order No. 14 has some constitutional heft and is more than just another Standing Order. No evidence has been found of its disapplication during previous periods of minority Government during the twentieth century. The steps to disapply the provision in 2019 arose not simply from a wish to displace Government business with non-Government business, but from an aim to force policy on the Government through legislation. That was possible in part because of the provisions of the Fixed-term Parliaments Act

98 Sir Stephen Laws and R Ekins, *Endangering Constitutional Government: The risks of the House of Commons taking control* (Policy Exchange, 2019).

99 HL Deb, 21 October 2019, cols 417–18.

100 P Norton, "Is the House of Commons Too Powerful?", p 1010.

2011, which removed the prerogative power in the Executive to bring about a dissolution at the time of its choosing. That changed the terms of trade between the Government and backbenchers, even if for much of 2019 an early General Election seemed an unlikely prospect.

Moreover, the formal power in Standing Order No. 14(1) is underpinned by a series of informal arrangements and understandings about the allocation of time. Thus, according to Erskine May, "By established convention, the Government always accedes to the demand from the Leader of the Opposition to allot a day for the discussion of a motion tabled by the official Opposition which, in the Government's view, would have the effect of testing the confidence of the House".[101] One of the roles of the usual channels in the House of Commons is to try and ensure that the wishes of the Opposition parties for an appropriate distribution of Opposition days are understood and as far as possible accommodated. Standing Order No. 14 allocates 20 Opposition days in a Session, assumed to be around 12 months in duration. In the whole of 2019, only 8 Opposition days were provided. None took place between November 2018 and late April 2019. The Official Opposition did not have any Opposition days after 12 June for the remainder of 2019.[102] Broader understandings have generally begun to be established in respect of Backbench Business days. These informal arrangements did not function in a normal way in the course of 2019, and that failure formed part of the context both for the amendments and motions to disapply Standing Order No. 14(1) and for the Speaker's interpretation of Standing Order No. 24 in September.

The disapplication of paragraph (1) of Standing Order No. 14 was in conflict with an implicit constitutional convention. Conventions are there for a reason: they reduce the likelihood of transient majorities taking decisions that have significant and unforeseen repercussions. But they are also conventions for a reason: conventions are flexible, enabling constitutional innovation. The judgment on whether the innovations seen in 2019 were justified or not lies in the political realm, beyond the narrow field of the present authors. Those innovations certainly provide a toolkit for how the Government's default control over business can be overturned in the rare and exceptional circumstances where a non-Government majority in the Commons can be established and sustained.

101 *Erskine May* (25th Edition, 2019), para 18.44.

102 House of Commons Library, "Commons Opposition days since 1992", Excel spreadsheet. The total of 8 days includes two half-days. For previous proposals for a guarantee of an Opposition day within a certain period, including from the Conservative Democracy Taskforce, see M. Russell and A. Paun, *The House Rules?*, pp 72–73.

INTERPRETATION IN THE CHAMBER

PENNY HART
Acting Editor of Debates, Northern Territory Legislative Assembly

Introduction

Aboriginal Members have represented Territorian constituents in every Legislative Assembly of the Northern Territory, with Mr Hyacinth Tungutalum being elected to the first fully-elected Assembly in 1974. Mr Tungutalum, from the Tiwi Islands north of Darwin, the Territory's capital, was the first Indigenous Member of an Australian state or territory parliament.[1]

While not the largest state or territory, the Northern Territory is one of the most linguistically diverse areas of the world. A thi rd of the population is Aboriginal and more than 100 Aboriginal languages and dialects are spoken within 18 overarching language groups.[2] English is not the first language that children grow up speaking in remote Northern Territory communities. Some people may speak four or five languages more fluently than English.

Indigenous languages in parliaments

Apart from acknowledgements of country or brief references to phrases forming part of Members' speeches, there appears to be little in the way of Indigenous languages spoken in Australian parliaments. In the Parliament of Australia, Indigenous languages are only spoken occasionally by witnesses at committee hearings, with an interpreter beside them. The Western Australia Parliament has given leave on a number of occasions for Members to address the House in their first language and self-interpret.

Use of languages other than English in the Chamber also varies around the globe. The House of Lords requires Members to speak in English unless it would help their argument.[3] Te reo Maori is spoken frequently in the New Zealand Parliament. In the Legislative Assembly of the Northwest Territories in Canada, 11 official languages can be spoken in the House. Some Pacific Islands jurisdictions, including the Cook Islands, Vanuatu and Tuvalu, allow their members to speak in English, Indigenous and other official languages, such as French.

1 Forrest, P. &. (2004, October 19). Landmark day in Territory politics. *Northern Territory News*, pp. 28-29.

2 *Aboriginal Interpreter Service. (, October 8). Working With Interpreters Training. Darwin, Northern Territory, Australia.*

3 *The use of the Welsh language is also permitted for the purpose of committee proceedings held in Wales.*

Parliamentary Record considerations

The Legislative Assembly of the Northern Territory transacts its daily routine of business in English and has done so since 1974.[4] It is interesting to note that the Standing Orders do not assert English as an 'official' language, but it is accepted as the primary language.

Indigenous language words regularly appear in the Northern Territory *Parliamentary Record* without translation, in the same way commonly known Latin terms are not translated. For example:

- *Kwementyaye (cu-min-jai*) is a term of respect in the Northern Territory used to identify a deceased person
- *Balanda* means 'white people', or people other than Yolngu people; Yolngu is a major northern language group
- *Dhuway Walal* is 'brothers and sisters' in Yolngu
- *Gwalwa Daraniki* means 'our land' in Larrakia, the traditional owners of the Darwin region.

People understand and express themselves better in their first language because the context of words and meanings changes across languages and cultural differences affect understanding.

Members have contributed in languages other than English in past Assemblies. But, as Members were not formally required to provide a subsequent translation or interpretation, it resulted in different outcomes in the *Parliamentary Record*, including some instances where the translation was not recorded. The record has shown:

- a translated text noting it was delivered in a language other than English
- the language text only, on one particular occasion a reading from Socrates was presented in Greek and recorded in Greek in the record
- both texts
- a notation that a Member spoke in another language and did not record the translation or the original text.

The presentation of contributions in languages other than English in *Parliamentary Record* varies by jurisdiction nationally and internationally.

Standing Orders and speaking of languages other than English

A concern that prompted the review in 2016 was that parts of the *Parliamentary*

[4] 13th Assembly Standing Orders Committee. (2017). *Report on Consideration of Reform to Standing Order 23A (Speaking of Languages other than English during proceedings of the Legislative Assembly of the Northern Territory)*. Darwin: Legislative Assembly of the Northern Territory.

Record were lost in interpretation. Standing Order 23A[5] provided the protocol for the transaction of business of the Assembly in a language other than English:

> *Speaking in a language other than English*
> A Member may rise to speak in any language other than English so long as an oral translation is provided in the English language by the same Member immediately prior to the words spoken in the language other than English and a written translation is tabled immediately prior to the contribution by the Member speaking.
> Apart from existing arrangements for extensions of speaking times, no allocation of additional speaking time is provided for translation purposes.
> When the language spoken is a language other than English, the Member speaking will also make the original text language available for incorporation into the *Parliamentary Record* alongside the English language text.

The view of the Assembly was that introducing Standing Order 23A was an improvement on the previous arrangements where Members were allowed to speak a language other than English by leave of the Chair or the Assembly. While Standing Order 23A contributed to an accurate *Parliamentary Record*, it removed flexibility for Members to contribute in a first language. A speech essentially needed to be prepared prior to presentation, without the ability to add additional comment on the floor. This restrained, rather than accommodated, linguistic inclusion. While the practice was well-intentioned it did not realise the outcomes desired by its introduction.

A review was undertaken when the Member for Nhulunbuy, Mr Yingiya Mark Guyula, sought changes to the Standing Order in 2017 to reverse the onus so that he could speak in his first language then provide a translation in English, which is preferable for speakers.

The Standing Orders Committee considered the matter for more than two years, engaged in considerations about the best procedure to allow members to speak during debate in a language other than English[6]. The Standing Order was removed in 2019 and the Assembly reverted to the practice of leave being sought by Members to contribute in languages other than English.

Contributing in languages other than English

If requested, the Speaker makes arrangements to assist a Member where leave

[5] 13th Assembly Standing Orders Committee. (). *Further Report on Consideration of Reform to Standing Order 23A (Speaking of Languages other than English during proceedings of the Legislative Assembly of the Northern Territory).* Darwin: Legislative Assembly of the Northern Territory.

[6] *Legislative Assembly of the Northern Territory. (, March 14). Parliamentary Record No 18 - Debates and Questions Day 3 - 14 March 2019. Darwin.*

is granted for that Member to participate in a language other than English. Members must provide the Speaker with adequate notice for arrangements to be made. Arrangements may include use of an interpreter, or relying upon the Member to provide their own translation orally or in writing.

In May 2019 the Member for Nhulunbuy addressed the Legislative Assembly of the Northern Territory in his first language, Yolngu Matha, in the Djambarrpuyngu (*jum-barra-pun-yu*) dialect.

Pursuant to a resolution of the Assembly on 14 March 2019, the Member was given leave to approach the Speaker for the resources that would enable him to speak in his first language in the Chamber. The Member's goal was to express himself in his first language and to be heard and understood without the disadvantage of speaking in a second language. With the assistance of the Aboriginal Interpreter Service, his speech was interpreted live in the Chamber. The Aboriginal Interpreter Service is a registered, recognised and independent body, with 30 interpreters on staff who are trained to interpret accurately and impartially.[7] Interpreting is accurately conveying a message from one language to another.

Practical interpretation

Most jurisdictions that include languages other than English in the House are far larger than the Northern Territory and have inbuilt audio-visual systems for interpreters and the broadcast of interpreters. These jurisdictions would also likely have more funds for a comprehensive solution, such as off-site interpreters providing a separate audio channel that Members are able to access via an earpiece in the Chamber for simultaneous interpretation. This is similar to what can be observed in meetings of the United Nations.

The simple option decided on for the Northern Territory was to have the Member for Nhulunbuy's speech interpreted live in the Chamber. The Speaker allocated the advisers' box on the Opposition side of the Chamber for Aboriginal Interpreter Service staff to be on hand to facilitate the oral interpretation.

On 8 May 2019 the Speaker made the following statement:

> "Honourable members, pursuant to a resolution of the Assembly on 14 March 2019, the Member for Nhulunbuy has approached the Speaker for resources to permit him to speak in his first language in the Assembly.
>
> In providing the resources, I have allocated the adviser's box on my left to the Aboriginal Interpreter Service staff on hand to facilitate the oral interpretation and translation into English.

[7] Aboriginal Interpreter Service. (2020, February 03). *Aboriginal languages in NT.* Retrieved from Aboriginal Interpreter Service: https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-languages-in-nt

> While normally it would be highly disorderly for a stranger in an adviser's box to speak and be heard in the Assembly, the procedure endorsed by the Assembly on 14 March will, for these limited purposes, permit a stranger to assist a member with translation and/or interpretation if leave is granted. For this to occur, the member must seek leave of the Assembly to do so."[8]

Being interpreted live in the Chamber enables the Member for Nhulunbuy to be heard by all and in real time, with the interpreter close by in the advisers' box. The audio is included in the live broadcast of the meeting. This option also gives the Member the opportunity to add any comments to his pre-prepared speech that might occur to him while he is on his feet, which is an advantage afforded to all Members who speak in English as their first language.

Assisted interpretation is notated in the *Parliamentary Record* in this way:

> **Mr GUYULA (Nhulunbuy):** Madam Speaker, I move that this Assembly:
> - urge government to discontinue its policy of using truancy officers to fine parents in communities where children have not attended school
> - urge the government to implement its policy of community-led schools and work with community members to identify what barriers exist for children in attending school—and implement changes identified by communities to remove barriers to education for all children.
>
> **Mr GUYULA (by leave):** [The member spoke in Djambarrpuyngu.] **The Interpreter:** Madam Speaker, today I bring this motion to the Chamber because parents in the communities are being fined, and that is a failure. These fines have the capacity to result in criminal history and possible imprisonment.[9]

Members also have the option to speak in a language other than English and provide an immediate translation, by leave of the Assembly. At present, the *Parliamentary Record* only displays the English translation of a language other than English, unless it is only a short phrase with non-English words that can be confirmed or have been provided by the Member.

Interpreting in Chamber

There have been complications in providing live interpretation. The specific timing of a Member's contribution to an item of business is unknown, meaning that the interpreter may be sought on the day, pending availability, and if in attendance could be waiting outside the Chamber for extensive periods of time. There are two interpreters who speak the Member for Nhulunbuy's language

[8] *Legislative Assembly of the Northern Territory. (, May 8). Parliamentary Record No 19 Debates and Questions Day 2 - 8 May 2019. Darwin*

[9] *Legislative Assembly of the Northern Territory. (, May 8). Parliamentary Record No 19 Debates and Questions Day 2 - 8 May 2019. Darwin*

and have been inducted in parliamentary procedures. If neither are available, he cannot contribute in his first language and be interpreted.

Ensuring the interpreter is on site and has been briefed on the matter to be debated is important to ensure the Member and the interpreter are prepared. For example, there are English words that do not exist in Yolngu that the Member for Nhulunbuy and his interpreters have discussed prior to speaking in the Chamber.

The Member for Nhulunbuy has also expressed a wish to speak freely in his first language in the Chamber, rather than only as part of pre-prepared speeches. While this requires further investigation, with the Northern Territory's significant representation of Indigenous people it is likely that future Members will seek for this to be available to further reduce barriers to speaking an Aboriginal language in Parliament.

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Resolution on Members' qualifications

Matters concerning Members' qualifications under the Constitution, particularly with regard to citizenship, had an unprecedented impact on the House in the 45th Parliament, resulting in by-elections for seven seats.

On the last sitting day of the 45th Parliament, the House adopted a resolution requiring all Members of the 46th Parliament to provide statements in relation to their eligibility under sections 44 and 45 of the Constitution. The resolution provided for a public register of Members' qualifications and set out procedures for resolving questions of qualification, including the referral of matters to the Court of Disputed Returns. The Senate adopted a parallel resolution in respect of Senators.

The resolution superseded a resolution adopted by the House in December 2017, which dealt only with citizenship issues.

Constitutional questions about Senate amendments to Home Affairs bill

On 12 February 2019, the Speaker reported a message returning the Government's Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2018 with amendments made by the Senate. The amendments related to medical evacuations to Australia for people held in offshore detention. The Speaker referred to advice received from the Attorney-General and the Solicitor-General that the amendments contravened section 53 of the Constitution, specifically that the Senate may not amend any proposed law so as to increase any proposed charge or burden on the people, and the requirement under section 56 that a proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has been recommended by a message of the Governor-General. The Speaker left it to the House to decide how it would proceed.

The Attorney-General moved that the House endorse the Speaker's statement and that consideration of the Senate amendments be made an order of the day for the next sitting. The Manager of Opposition Business moved, as an amendment, that the House refrain from the determination of its constitutional rights in this instance because of the public interest in the early enactment of the legislation, and that the amendments be considered immediately. The Opposition amendment was carried on division and the motion, as amended, was carried on division. Accordingly, the House proceeded to consider the

Senate amendments.

The Leader of the House moved that the Senate amendments be disagreed to. The Leader of the Opposition moved to amend this motion, proposing instead that the Senate's amendments be agreed to but with amendments to Senate amendment no. 2. With the support of independent and minor party Members, the Opposition amendment was carried on division. The question 'that the motion as amended be agreed to' was also carried on division. Thus, the Senate amendments were agreed to, with amendments to Senate amendment no. 2.

New division recording system in the House

The House of Representatives introduced a new electronic division recording system in April. While Members continue to vote in the same way, with the 'Ayes' sitting to the right of the Chair and the 'Noes' to the left, tellers now record divisions electronically using iPads. The new system saves the time of the House and allows for the immediate publication of division results.

Following on from this innovation, a House divisions database was developed to maintain detailed information on divisions of the House. This information is published on the Parliament's website in a format that allows for the searching of data and the collection of statistics.

Senate

A new Parliament

Following the federal election on 18 May 2019, the composition of the Senate changed significantly when the terms of new senators officially commenced on 1 July with the Government holding 35 of 76 seats, compared with 31 in the last Parliament, and the formation of a reduced crossbench. A total of 18 new senators were elected, including two senators who were previously disqualified under section 44 of the Constitution. In September 2019 the Senate reached gender parity for the first time since federation with the appointment of another female senator to fill a casual vacancy.

The opening of the 46th Parliament occurred on 2 July in accordance with the proclamation by the former Governor-General, General the Hon Sir Peter Cosgrove AK MC. The Senate again elected Senator the Hon Scott Ryan as its President and Senator Sue Lines as its Deputy President and Chair of Committees.

Senate amendments and the financial implications of establishing public offices

On 13 February 2019, the Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2018 passed both the Senate and House of Representatives with amendments opposed by Government. The Senate had passed the bill on the

final sitting day in 2018 with amendments concerning medical evacuations from regional processing centres.

When the Senate's message was reported in the House of Representatives on 12 February, the Government challenged the constitutionality of these amendments, citing limitations upon the financial powers of the Senate under section 53 the Constitution which prohibits the Senate amending bills 'so as to increase any proposed charge or burden on the people'. Any amendment having that effect must proceed by way of a request that the House initiate the change. It was also argued that the amendments infringed section 56, which prevents the passage of a bill appropriating moneys unless the purpose of the appropriation has been recommended by the Governor-General.

The Senate's amendments sought to establish a health advice panel. In advice tabled in the House on 12 February, the Solicitor-General argued that members of the panel would hold 'public offices' as defined in the Remuneration Tribunal Act 1973, and that the obligation to remunerate them would automatically trigger expenditure under a standing appropriation in that Act. There are several precedents where both Houses have accepted that the creation of public offices, which triggered the same provisions of the Remuneration Tribunal Act, may proceed by way of Senate amendments and without the need for a message of the Governor-General.

Ultimately the House agreed to the Senate amendments with further amendments, including one intended to address the constitutional point. The various votes on the bill were carried with Opposition members and most non-aligned members in the majority over Government members, 75 votes to 74. It was widely reported that this was the first time a government had lost a vote on government legislation in the House since 1929. The 1929 vote led Prime Minister Stanley Bruce to advise an election the following day. However, as seen on this occasion, such votes are not necessarily fatal.

When the bill returned to the Senate, the Opposition successfully suspended Standing Orders to give it precedence and require consideration of a single question—that the amendments made by the House be agreed to—which was carried by Opposition senators and some crossbench senators 36 votes to 34. Despite the Government's opposition to the bill as finally passed, the Prime Minister indicated that the normal processes for assent would be followed and the Governor-General assented to the bill on 1 March 2019.

Qualifications register

On 3 April 2019 the Senate passed a resolution to establish a Register of Senators' Qualifications relating to sections 44 and 45 of the Constitution. This complements the Electoral Legislation Amendment (Modernisation and Other Measures) Act 2019, which established a mandatory qualification

checklist for candidates nominating for election. The checklist was among the recommendations made in a report of the Joint Select Committee on Electoral Matters (JSCEM) following its inquiry into section 44 of the Constitution, established in response to the unprecedented number of senators and members disqualified under this section during the 45th Parliament.

The Register of Senators' Qualifications comprises successful candidates' checklists, statements from the existing citizenship register and supplementary material. Under procedural constraints introduced by the Senate resolution, reference of qualification matters to the Court of Disputed Returns may only be moved if a possible disqualification arises from facts not disclosed on the register.

When a question respecting a senator's qualification turns solely upon the interpretation or application of foreign citizenship law, the Standing Committee of Senators' Interests must take evidence from experts in the relevant foreign law and can only recommend the question be referred if it considers there is a sufficient possibility that the senator is or was a foreign citizen under the relevant foreign law at the relevant time. One limitation of such procedures is that, like any other order of the Senate, they may be suspended by majority vote if the political will to maintain them falls away. The House of Representatives adopted an equivalent process.

The rationale for these measures may be found in the recommendations of the JSCEM. In seeking to balance the need for compliance with the need for certainty, the committee reasoned that full disclosure by candidates at the time of nomination would better inform those seeking to challenge a successful candidate's qualifications by petition to the Court of Disputed Returns within the existing 40-day window after the return of the writs. In the committee's view, a person's eligibility in respect of matters so disclosed should not be able to be questioned in any other way. This could be achieved if the Houses agreed to limit their use of the referral power to those matters not, or not fully, disclosed.

Censure of a senator

On 2 April 2019 the Leaders of the Government and the Opposition in the Senate jointly gave notice for debate the following day of a motion to censure a senator for his comments in the aftermath of the Christchurch attacks, which sought "to attribute blame to victims of a horrific crime and to vilify people on the basis of religion".

That senator's comments also led to the tabling of a petition from 1.4 million signatories demanding that he be removed from the Senate—reportedly Australia's largest ever online petition. Unlike other jurisdictions, the Senate lacks the power to expel its members. Prior to debate on the censure motion, the President of the Senate made a statement outlining the constraints on

the Senate's power to suspend a senator, particularly in relation to conduct occurring outside the chamber.

Australian Capital Territory Legislative Assembly

A citizens' jury

Early in 2018, the Government of the Australian Capital Territory (ACT) commissioned a citizens' jury of 50 Canberrans who met several times over six weeks to hear evidence from experts and people making claims concerning compulsory third party insurance schemes. The jury was the first large scale trial of the deliberative democracy approach in the ACT. The jury came up with a proposed model and the Government then drafted an exposure draft based on the model chosen by the citizens' jury, and on 20 September 2018 the Assembly referred the exposure draft Bill to the Standing Committee on Justice and Community Safety.

On Tuesday 12 February 2019 the Committee presented a one page report (which had been circulated out of session on 14 December 2018) with no recommendations, although the report had additional comments from the two Government members of the committee and a dissenting report by the sole opposition Member of the Legislative Assembly (MLA) (who was also the Chair).

On 19 March 2019 the Treasurer presented the Motor Accident Injuries Bill which differed from the exposure draft agreed to by the citizens' jury presented the previous year. The Bill was debated on 14 May and was finally passed on 16 May 2019 with the Government moving 54 amendments (which were agreed to), the Opposition 80 amendments (which were not agreed to), and the Greens moving three amendments which were agreed to.

With the proliferation of citizen enhanced democratic processes being discussed, it will be interesting to watch how legislatures deal with their requests for legislative action.

Motion of want of confidence in a Minister moved in accordance with standing orders

On Thursday 21 March 2019 an opposition MLA, after being granted leave by the Assembly, moved a motion of no confidence in the Minister for Health and Wellbeing. The MLA had previously notified the Speaker, in accordance with Standing Order 81A, that she would be seeking leave to move such a motion, and the Speaker, in turn, had notified all MLAs 90 minutes prior to the motion being moved. Standing Order 81A states:

> In relation to proposed motions of censure, motions of no confidence and the proposed establishment of a privileges committee, copies of the relevant motions shall be provided to the Speaker for circulation to all Members 90

minutes prior to the time at which the motion is proposed to be moved. This was the first such no confidence motion using the new Standing Order. The Assembly voted 10 in favour of, and 13 against, the motion.

Integrity Commissioner

On Tuesday 4 June 2019 the Speaker moved a motion approving the appointment of the Honourable Dennis Cowdroy, AO, QC as the ACT Integrity Commissioner, and drew the attention of the Assembly to the requirement in the Integrity Commission Act that the appointment be approved by a two thirds majority of the Assembly. The Speaker directed the Assembly proceed to a vote and the vote was conducted with 24 ayes and zero noes.

Ceremonial sitting to mark the 30th anniversary of self-government

On Friday 10 May 2019 the Assembly had a ceremonial sitting to mark the 30th anniversary of self-government. All former Members of the Assembly had been invited to the sitting, and the previous evening the Former Members Association had been established.

Immediately after the ceremonial sitting there was a presentation to the Assembly of a possum skin cloak from the local Aboriginal community, which was preceded by a smoking ceremony and a Welcome to Country ceremony. The possum skin cloak is permanently displayed just outside the entrance to the Assembly Chamber.

Motion to mark the 40th anniversary of independence of the Republic of Kiribati

On Thursday 6 June 2019 the Speaker moved a motion marking the 40th anniversary since the sovereign democratic Republic of Kiribati was declared. The motion expressed congratulations and friendship to the people of Kiribati, the Kiribati Parliament, the Speaker and the President on the significant milestone, and acknowledged the enormous value and deep and abiding ties between the Legislative Assembly for the ACT and the Kiribati Parliament, the Maneaba ni Maungatabu that had been established through the Commonwealth Parliamentary Association's twinning program, and wished the people of Kiribati a bright and prosperous future in which its democratic institutions continue to flourish.

The Chief Minister and Members who had visited Kiribati all spoke in the debate, and a copy of the resolution was framed and presented to the Speaker of the Kiribati Parliament when the Speaker lead an all-female delegation there in September 2019.

Committee report on respectful dialogue

On Tuesday 30 July 2019 the Speaker presented a report from the Standing Committee on Administration and Procedure entitled Respectful Dialogue. This followed a reference earlier in the year in the following terms:

> That this Assembly:
>
> (1) notes the terrible terrorist attack in Christchurch and the public call for politicians to lead with demonstrated actions;
>
> (2) calls on the Standing Committee on Administration and Procedure to review the Continuing Resolution 5, MLA's Code of Conduct, namely whether the Code of Conduct should be enhanced to reflect MLA's responsibilities for respectful dialogue.

The report recommended that the Members' code of conduct should be amended to include a new paragraph:

> (11) Treat all citizens of the Australian Capital Territory with courtesy, and respect the diversity of their backgrounds, experiences and views. In particular, Members should by their words and actions demonstrate, and by their example and leadership encourage and foster others to show, respect for the peaceful, temperate and lawful exercise by all members of the community of their shared and individual rights and entitlements, including freedom of religion, freedom of association and freedom of speech.

The amendment to the Members' code of conduct was duly made.

Clarification of who can make a complaint to the Commissioner for Standards

On Thursday 22 August 2019 the Assembly, following a recommendation from the Standing Committee on Administration and Procedure, agreed to change the continuing resolution that deals with the operation of the Assembly's Commissioner for Standards.

The relevant continuing resolution previously provided that, in relation to persons wishing to lodge a complaint about a possible breach of the Members' Code of Conduct, that members of the public, members of the ACT Public Service and Members of the Assembly may make a complaint to the Commissioner via the Clerk of the Legislative Assembly about a Member's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests.

It was noted that this excluded some categories of persons (for example, MLAs staff, OLA staff, Electoral Commission staff) and so the Assembly agreed to amend the resolution to state that "Anyone may make a complaint to the Commissioner via the Clerk of the Legislative Assembly about a Members compliance with the Members' Code of Conduct or the rules in relation to the registration or declaration of interests."

Use of the term "the Honourable"

In the major review of Assembly standing orders that is now conducted once an Assembly term, the Standing Committee on Administration and Procedure had recommended that:

> "The ACT Government seek advice on the legal and protocol issues associated with the use of the honorific "The Honourable" through its Strategic Communications Media and Protocol Branch within the Chief Minister, Treasury and Economic Development Directorate and provide that advice to the Assembly."

On Thursday 22 August 2019 the Manager of Government Business tabled the Government's response to that recommendation. The Government response indicated that the advice by the ACT Government Solicitor was that there was no legal barrier to the ACT adopting the honorific title "the Honourable" for Members of the ACT Executive during their term of office, noting that across Australia, apart from a few instances where the issue is addressed by law, the use of the honorific is determined by convention and courtesy with the practices that vary from one jurisdiction to another within Australia.

The Government response indicated that they would not introduce the use of "the Honourable" into the Legislative Assembly, noting that the existing approach has now been the approach for 30 years and is consistent with the egalitarian, modern nature of the ACT and that, noting that MLAs need to be accessible to the people who elected them, should the title be introduced, it could create a perceived barrier between Members and the community they represent.

Report on the Review of Latimer House Principles

On Tuesday 17 September 2019 the Speaker presented, pursuant to Continuing Resolution 8A, a review of the performance of the Three Branches of Government in the Australian Capital Territory by Emeritus Professor John Halligan and Benedict Sheehy, from the University of Canberra.

The report made 13 recommendations and, under the continuing resolution, will be subject to an inquiry by the Standing Committee on Administration and Procedure.

Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

On Wednesday 25 September 2019 the Assembly passed the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018. The Bill amends the Drugs of Dependence Act 1989 to allow for the personal use and carrying of cannabis up to a limit of 50 grams. The bill also allows individuals to grow up to four cannabis plants, excluding artificial crop growing.

Subsequent to the passage of the Bill reports of its passage indicated that the

ACT has become the first Australian jurisdiction to legalise the possession, use and cultivation of small amounts of cannabis.

The law came into effect from 31 January 2020. There has been much discussion about whether the legislation conflicts with Commonwealth laws prohibiting the possession of cannabis. Cannabis remains a prohibited substance under Commonwealth law, and police officers in the ACT will retain the power to arrest and charge anyone with cannabis under those laws.

It is possible for the Commonwealth to overrule the ACT and seek to have the laws struck out as inconsistent with its own legislation.

Committee reports on petition referred

On Thursday 29 November 2018 the Assembly received petitions from 907 and 69 residents respectively, concerning the ACT Government's decision concerning funding to the ANU School of Music. In accordance with Standing Order 99a the petition was referred to the relevant committee for consideration.

On Tuesday 26 November 2019 the Committee reported on the petition, making six recommendations, with the sole government MLA on the Committee making a dissenting report.

This is the first time that a petition referred to a committee has been reported on since the standing orders referring petitions with more than 500 signatures to committees was introduced in November 2015.

Euthanasia

In the lead up to the vote in the Western Australian Legislative Council where it was reported that Western Australia was set to become the second state to legalise voluntary euthanasia after proposed laws allowing terminally ill people to end their own lives were being considered the Upper House of Parliament the Assembly debated a motion concerning its powers in relation to this matter. On Wednesday 27 November 2019 the Assembly passed a resolution calling on:

> " (a) the Federal Parliament to:
>
> (i) resolve that no Australian citizen should be disadvantaged with respect to their democratic rights on the basis of where they live; and
>
> (ii) remove subsections 23(1A) and (1B) from the Australian Capital Territory (Self-Government) Act 1988 (Cwlth); and
>
> (b) all ACT Legislative Assembly party leaders to write to their federal counterparts before the end of 2019 requesting their commitment to remove subsections 23(1A) and (1B) from the Australian Capital Territory (Self-Government) Act 1988 (Cwlth) in 2020."

It is understood that all party leaders wrote to the party leaders in the Federal parliament along the lines indicated in the resolution.

Indigenous language in the Assembly

On Thursday 28 November 2019 the Assembly passed a resolution calling on the Assembly to:

(a) use a Ngunnawal language introduction at the beginning of each Assembly sitting day;
(b) consult with members of the UNEC and other Ngunnawal Elders in order to agree on the appropriate use of words;
(c) make cultural awareness training available to all Members of the Assembly, including in the correct pronunciation of the agreed words;
(d) use these Ngunnawal words to formally recognise that the Assembly is meeting on the lands of the Ngunnawal traditional custodians each sitting day, by the end of the Ninth Assembly; and
(e) amend the standing orders accordingly and ensure that the words are accurately reflected in the daily Minutes of Proceedings and Hansard.

The Speaker has written to the United Ngunnawal Elders Council to discuss how this resolution can be implemented in 2020

New South Wales Legislative Assembly and Legislative Council (joint notes)

Opening of the 57th Parliament

Following the New South Wales (NSW) State Election on 23 March 2019 the first session of the 57th Parliament of NSW was opened on 7 May 2019 by Commissioners, the Ministers in the Legislative Council appointed by the Governor. Later that day the Governor, Her Excellency the Honourable Margaret Beazley AO QC, attended the Legislative Council and gave a speech on the Opening of Parliament to assembled members of the Legislative Council and Legislative Assembly.

Presiding Officers' statements recognising Aboriginal culture and heritage

In June 2016 the NSW Legislative Council General Purpose Standing Committee No. 3 inquired into, and reported on, reparations for the Stolen Generations in NSW. The report, *Unfinished Business*, made 35 recommendations that sought to address the enduring effects of past government practices in relation to the Stolen Generations.

The Government accepted the majority of the report's recommendations and suggested that the Presiding Officers acknowledge and promote Aboriginal culture and heritage at the commencement of each new Parliament. These measures would be in addition to the formal recognition of Aboriginal culture and history already in place in the NSW Parliament, such as an acknowledgement of Country being read at the commencement of each sitting day in the Legislative

Assembly and at the commencement of the first sitting day of each week in the Legislative Council, smoking ceremonies at the commencement of official functions, and the Aboriginal flag being hung in the Legislative Assembly and Legislative Council Chambers.

Accordingly, on 7 May 2019 (the first day of the 57th Parliament) the Presiding Officers each made statements of acknowledgment and respect to the traditional owners of the land on which the Parliament meets, the Gadigal People of the Eora nation, in their respective Houses.

The Presiding Officers then spoke about reparations for the Stolen Generations in NSW, recognising the events suffered by Aboriginal people, the work of the Parliament in response to those events, and acknowledging the work still to be done.

Later, in the Legislative Council, members of the Gamilaraay nation addressed Members, guests and the Governor from the Bar of the House in their language and handed the message stick to the Usher of the Black Rod for placement on the dais. This new practice was introduced as part of the presentation of the message stick to the NSW Parliament on 11 October 2017, during the ceremony to mark the introduction of the Aboriginal Languages Bill 2017. The message stick resides in the Legislative Council, as the House in which the Aboriginal Languages Bill was introduced.

Passage of the Reproductive Health Care Reform Bill

On 1 August 2019 Alex Greenwich MP, the Independent Member for Sydney, introduced the Reproductive Health Care Reform Bill 2019 into the Legislative Assembly.

The Private Member's bill sought to decriminalise abortion in NSW and reform certain laws relating to the termination of pregnancies. The bill was co-sponsored by fifteen other Members from across both Houses and from across the major parties and the cross-bench. Government and Opposition Members were given a conscience vote on the bill.

Over three days, 65 Members spoke in the Second Reading debate. On 8 August, after the Assembly agreed to the bill's Second Reading on division (ayes: 56, noes: 33), it was considered in detail.

During Consideration in Detail stage a total of 42 amendments were moved, including three amendments to amendments. Of the 42 proposed amendments 21 were carried, three were withdrawn and two were ruled out of order. After Consideration in Detail had concluded the bill was read a third time on division (ayes: 59, noes: 31) and passed the Assembly, and was sent to the Legislative Council for concurrence.

While debate was taking place in the Legislative Assembly, the Legislative Council, in preparation for receiving the bill, resolved on 6 August that its Social

Issues Committee conduct a short inquiry into the bill to give stakeholders an opportunity to provide their views on the bill.

Notwithstanding the short timeframe, the Committee received over 13,000 submissions and heard 15 hours of evidence from 44 witnesses. The Committee produced a report based on the evidence received which was published just prior to the House sitting on 20 August, the day the bill was received from the Assembly. As was the case with the Assembly, Members were afforded a conscience vote on the bill.

On 20 and 21 August all Members of the Legislative Council, except for the President in the Chair, spoke in the 10-hour Second Reading debate on the bill. The Second Reading was ultimately agreed to on division (ayes: 26, noes: 15). Members opposed to the bill strongly contended, both in debate and in public, that the passage of the bill had been rushed. Consequently, the Council resolved that after the Second Reading consideration of the bill in Committee of the Whole would not commence until 17 September.

Ultimately, consideration of the bill in Committee of the Whole was virtually the only business conducted on 17, 18, 19, 24 and 25 September. Over 30-plus hours were spent considering the bill in Committee, with 122 amendments being moved and 25 of those being agreed to. The first amendment agreed to provided that, upon assent, the Act would be titled the Abortion Law Reform Act.

Following the Committee stage and after a brief debate the third reading was agreed to on division (ayes: 26, noes: 14) just after 9pm on 25 September and the bill was returned to the Assembly with 25 proposed amendments in which the Council requested the Assembly's concurrence. The following day all of the Council's amendments were agreed to on the voices and the bill passed the Parliament that day.

10 Members of the Legislative Council signed a protest against the passing of the bill. According to Standing Orders, the protest was recorded in the Minutes of Proceedings and a copy of the protest was forwarded to the Governor.

The bill was assented to on 2 October. After assent the Act was re-titled the Abortion Law Reform Act 2019, in accordance with the Council amendment.

Joint Select Committee on Sydney's Night Time Economy

In May 2019 a Joint Select Committee was appointed to inquire into and report on Sydney's night time economy.

Among other things the Committee examined measures to ensure that existing regulatory arrangements in relation to individuals, businesses and other stakeholders, including Sydney's so-called "lockout laws", which came into effect in 2014, remain appropriately balanced.

On 30 September the Joint Select Committee on Sydney's Night Time

Economy tabled the report of its inquiry.

The Committee made 40 recommendations aimed at maintaining safety in Sydney while enhancing nightlife; improving the governance of Sydney's night time economy; and promoting cooperation between venues and regulators.

The Government provided a response to the Committee's report on 28 November, in which it supported, or partially supported, all of the Committee's recommendations.

On 14 January 2020 the lockout laws were effectively lifted in all areas of the Sydney CBD, but remain in place in Kings Cross.

New South Wales Legislative Assembly

Election of the Speaker, Deputy Speaker and Assistant Speaker

During the opening day of the 57th Parliament (on 7 May) the Hon. Jonathan O'Dea MP was elected as Speaker of the Legislative Assembly, Leslie Williams MP was elected as Deputy Speaker, and Mark Coure MP was elected as Assistant Speaker.

Establishment of Legislative Assembly-administered committees for the 57th Parliament

Following the commencement of the 57th Parliament the Legislative Assembly resolved to establish the same nine portfolio and standing Committees as in the previous Parliament, and appointed members to the six joint statutory oversight committees, as well as to the Public Accounts Committee.

A Joint Select Committee on Sydney's Night Time Economy was also established on 29 May 2019.

The committees that were established or re-constituted that have not already been referred to were:

- Committee on Children and Young People
- Committee on Community Services
- Joint Standing Committee on Electoral Matters
- Committee on Environment and Planning
- Committee on the Health Care Complaints Commission
- Committee on the Independent Commission Against Corruption
- Committee on Investment, Industry and Regional Development
- Committee on Law and Safety
- Legislation Review Committee
- Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission
- Joint Standing Committee on the Office of the Valuer General
- Standing Committee on Parliamentary Privilege and Ethics
- Joint Standing Committee on Road Safety (Staysafe)

- Standing Orders and Procedure Committee
- Committee on Transport and Infrastructure

Deputy Speaker gives casting vote

On 5 June 2019 the House divided on a proposed amendment to the wording of a Motion Accorded Priority that referred to the NSW Labor Opposition not having a leader at that time. The result of the division was an equality of votes, exactly 45 ayes and 45 noes.

The Deputy Speaker cast her vote with the noes in order to preserve the motion in the form that it was originally put. This was in keeping with the principle that a casting vote on an amendment to a motion should leave the motion in its existing form where there is no clear agreement to a proposed amendment.

The casting vote was necessitated by a Government Member mistakenly voting with the noes.

Standing Orders and Procedure Committee report on e-Petitions

On 22 October 2019 the Standing Orders and Procedure Committee tabled a report, entitled *Modernisation and reform of practices and procedures: e-Petitions*.

This was the second interim report of the Committee as part of its ongoing inquiry into modernisation and reform of practices and procedures of the Legislative Assembly, in which it made recommendations about a process for the Legislative Assembly to receive 'e-Petitions'.

If the process is taken up by the Assembly, e-Petitions will allow residents to create and 'sign' a petition through the Parliament's website.

Member named and suspended

On 22 August 2019, during Question Time, the Speaker named Greg Warren MP, the Member for Campbelltown, for "…persistently and willfully obstructing the business of the House and for being guilty of grossly disorderly conduct." A subsequent motion "That the Member be suspended from the service of the House" was carried on division. It being the first time that the Member had been suspended during the current parliamentary session, the suspension was for two sitting days.

This was the first time a Member had been named and suspended in the Assembly since 2004.

Private Member's bill referred to a committee

On 21 November 2019, during debate on the Professional Engineers Registration Bill 2019 (a Private Member's bill standing in the name of the Deputy Leader of the Opposition, Yasmin Catley MP), the Minister for Better Regulation

and Innovation, the Hon. Kevin Anderson MP, moved an amendment to the question on the Second Reading that "the bill be referred to the Legislative Assembly Standing Committee on Environment and Planning."

Both the amendment and the referral were carried on the voices.

The last time a Private Member's bill was referred to a committee prior to its Second Reading was in 1994. In that instance the bill was not ultimately considered by a committee as the Parliament dissolved.

Administration of services to electorate offices

In August 2019, as a consequence of a structural re-alignment, the provision of services to the Legislative Assembly's 98 electorate offices moved from being administered by the Department of the Legislative Assembly to the Department of Parliamentary Services.

New South Wales Legislative Council

Re-establishment of committees that previously operated on a trial basis

During the previous parliament the following committees were established on a trial basis:

- Selection of Bills Committee
- Regulation Committee
- Public Works Committee
- Public Accountability Committee

The Selection of Bills Committee and Regulation Committee were initially established on 23 November 2017 in response to a recommendation from the 2016 inquiry into the Legislative Council Committee System, which recommended that the Legislative Council should play a greater role in scrutinising bills and delegated legislation.

In November 2018 the Selection of Bills Committee and Regulation Committee produced evaluation reports recommending that each committee be re-established at the commencement of the 57th Parliament. This subsequently happened on 8 May 2019.

The Public Accountability Committee was first established on 15 March 2018 in the 56th Parliament. It was established to inquire into and examine the public accountability, financial management, regulatory impact and service delivery of New South Wales government departments, statutory bodies or corporations. The Public Works Committee was first established on 15 March 2018 in the 56th Parliament. It was established to inquire into and report on public works to be executed (including works that are continuations, completions, repairs, reconstructions, extensions, or new works) where the estimated cost of completing such works exceeds $10 million.

Both the Public Accountability Committee and the Public Works Committee

were reappointed in the 57th Parliament on 8 May 2019.

Orders for papers

The Legislative Council has the power to order government documents in order to scrutinise government decisions and hold the government to account. During the previous Parliament very few orders for papers were agreed to. There has been a large increase in this session, attributable largely to a change of numbers in the House.

In 2019, 52 orders for papers were agreed to. This is the second highest number of orders for papers agreed to in a year, behind the 56 orders agreed to in 2006.

With respect to one order an issue has arisen relating to whether the power of the House to order the production of state papers is constrained by statutory secrecy provisions. On Thursday 19 November 2019, the Hon Daniel Mookhey MLC, moved a motion for an order for papers concerning any investigation undertaken by Revenue NSW into the payroll tax compliance of certain companies and related entities, as well as documents held by the Office of the Minister for Finance and Small Business regarding wage theft.

During the debate, the Leader of the Government took a point of order that the motion was invalid and should be ruled out of order on two grounds:

- firstly, that "it is incompatible with the secrecy provisions under the Taxation Administration Act 1996" and therefore that requiring the production of documents would "interfere with the operation of the statutory scheme established by the Act and would require public servants to commit an offence in order to comply with the order" and that "Ministers responsible for the administration of the Taxation Administration Act 1996 cannot call for the documents that are sought in this motion"
- secondly, that "the motion is incompatible with the NSW Ministerial Code of Conduct… In order to comply with the motion, the responsible Ministers would be required to give unlawful directions to public servants to return documents contrary to their obligations under the Taxation Administration Act 1996."

The President reserved his ruling and indicated that in view of the importance and complexity of the matters raised he would seek advice from senior counsel during the summer recess.

According to advice from Bret Walker SC "the law is a harmonious whole" and statutory secrecy provisions do not preclude a public servant from co-operating with the Legislative Council's exercise of its power to order the production of state papers. Mr Walker observed that the statutory secrecy provisions around taxation law were not absolute—that if a taxpayer does not pay their tax and they are prosecuted the cloak of secrecy does not extend to the courts, so why

would the other arm of government (Parliament) have a prohibition on access to information?

A public servant responding to an order of the Legislative Council will not be committing an offence and the doctrines around statutory secrecy are not intended to inhibit the actions of those who exercise or execute the orders of the House.

Based on this advice the Acting President (in the absence of President and with his agreement) ruled that Mr Mookhey's motion was in order. In making the ruling, the Deputy President referenced page 38 of the 14th edition of *Odgers' Australian Senate Practice*, where there is any doubt as to the interpretation of a rule or order, the President, as the independent and impartial representative of this House, leans towards a ruling which preserves or strengthens the powers of the House and rights of all members rather than an interpretation that may weaken or lessen those powers and rights.

On 27 February 2020 the House agreed to an order for papers concerning any investigation undertaken by Revenue NSW into the payroll tax compliance of certain companies and related entities. The Government voted against the order and indicated it would obtain independent legal advice as to the status of public servants supplying the ordered information. The return to order was due within 21 days.

On 19 March 2020 the House received correspondence from the Department of Premier and Cabinet requesting an extension until 31 May 2020 because the return would likely run into many hundreds of thousands of pages and would need sufficient time to prepare. The correspondence did not dispute the validity of the order with its main concern being the burden imposed on the public service.

On 24 March 2020, the House agreed to a further order for the documents that stipulated they be returned within 21 days. The further order removed reference to documents held by the Office of the Minister for Finance and Small Business regarding wage theft.

Queensland Parliament

Notice of disallowance motion ruled out of order

On 7 June 2019 and 8 August 2019 the Speaker made rulings relating to a notice of motion to disallow a statutory instrument, namely, the Electrical Safety (Solar Farms) Amendment Regulation 2019.

On 14 May 2019 Michael Hart MP, Member for Burleigh, gave notice of a motion to disallow the Electrical Safety (Solar Farms) Amendment Regulation 2019, Subordinate Legislation No. 46 of 2019. This motion was in accordance with section 50 of the Statutory Instruments Act 1992 (the SI Act).

On 29 May 2019 the Supreme Court of Queensland declared that section

73A of the Regulation was invalid and *ultra vires* of its governing act. This declaration had the immediate effect of voiding the operation of that section of the Regulation.

The issue then was whether the disallowance motion could be moved given the declaration by the Court that the instrument was *ultra vires*.

On 6 June 2019 the Speaker ruled that the decision by the Court did not affect the notice of motion for disallowance before the House and its consideration would take precedence the next Tuesday sitting evening when disallowance motions would be considered. The Speaker made the ruling because:

- the judicial decision did not remove the provisions from the regulation in the same way as a disallowance motion;
- the Court's ruling is not binding on higher courts, nor on another court with the same jurisdiction;
- section 50 of the Statutory Instruments Act 1992 effectively gives a member a statutory right to give notice of and move a disallowance motion; and
- the scheme for the notification, tabling and ensuring consideration of disallowance motions contained in the SI Act is fundamentally a scheme to ensure Parliament's oversight of its delegated authority.

On 7 June 2019 an appeal by the State of Queensland against the Supreme Court's declaration was heard before the Court of Appeal. On 25 June 2019 the Court of Appeal affirmed the primary judge's decision in the matter.

The Speaker noted that the Court of Appeal's decision raised no new issue and would not affect his earlier ruling. The reasons for that ruling persisted. However, following the Court of Appeal's decision a regulation was approved by Governor in Council and commenced on 19 July 2019. The effect of this regulation was to repeal the operative provision of the regulation—namely, section 73A.

The repeal of the effective provision of the regulation raised a different issue as to whether a disallowance motion could be moved in respect of an instrument, the effective provision of which has been repealed. The four reasons for the Speaker's ruling of 6 June 2019 did not apply in respect of a repealed provision. In his ruling on 8 August 2019 the Speaker noted that *Odgers Senate Practice* stated:

> "Another question which has arisen is whether it is possible for the Senate to pass a motion disallowing instruments which have already been held to be invalid by a court. On 25 August 1983 the Attorney-General's Department submitted an opinion to the President that it was not possible for the Senate to do so. The Attorney-General subsequently took a point of order to this effect in the Senate, but no ruling was made in response to the point of order, and the notice of motion to disallow the regulations in question was withdrawn. A contrary opinion presented by Senate officers was that, just as

> invalid instruments may be repealed, they may also be disallowed by a House of the Parliament, either of those actions, repeal or disallowance, having the effect of terminating the existence of the invalid instruments."

However, the Speaker also noted that, under the Commonwealth's Legislation Act, a successful disallowance motion has two consequences. The first is that the instrument is void from the time of the disallowance (and earlier subordinate legislation is revived). The second consequence is that the government cannot make another instrument the same in substance for six months from the date of the disallowance (section 48). Thus, the Senate may have allowed disallowance motions to be moved in relation to instruments that had already been repealed in order to ensure the second consequence—thus ensuring no resurrection by the Government of the instrument.

The substantive operative part of the regulation no longer exists, having been repealed and leaving only a remnant shell (historical legacy) of the regulation 'on the books'.

The Speaker outlined how many of the rules followed by the Legislative Assembly, often inherited from the UK Parliament, have been developed or evolved to guide the effective and efficient use of the Assembly's time whilst still ensuring fairness to members in the minority and affording due process to important parliamentary functions.

In this instance the Speaker pointed out that as the operative part of the statutory instrument no longer existed, if the motion proceeded it would not be an effective use of the Assembly's time. The Speaker therefore ruled that the motion for the instrument's disallowance should not proceed.

The remaining issue was how the notice of motion on the Notice Paper should be removed. Once a motion has been moved it is in the possession of the Assembly and, if ruled out of order, is generally withdrawn. The Speaker noted that, as the question in the notice had not been moved, it was arguably not yet in the possession of the Assembly. There are precedents where Speakers have ruled the notice of motion out of order and ordered the removal of the notice of motion from the Notice Paper.

In this instance the notice of motion was in order when given by the member. It was the underlying circumstances that had changed since the notice of motion was given which resulted in the Speaker ruling that the motion should not proceed. The Speaker ruled that the member should be permitted the opportunity to withdraw the notice of motion in accordance with Standing Order 68. The Speaker noted that if the notice of motion was not withdrawn the Assembly may order that the notice of motion be expunged from the Notice Paper under Standing Order 70.

Conduct in chamber

The Speaker received correspondence from the Deputy Premier alleging that the member for Kawana made a number of offensive, derogatory and misogynistic comments about the Deputy Premier which were unbecoming and not fitting of the institution of the parliament during a division at the regional sitting of the Parliament. The Deputy Premier cited Standing Order 234, the Ethics Committee report No. 41 and the Code of Ethical Standards about the standards expected of a member of parliament. As the comments were made during a division, they were not recorded in the Record of Proceedings. The Deputy Premier could only relay her recollection of the comments. The Chief Hansard Reporter compiled a transcript of commentary made from the ambient microphones for Mr Speaker's consideration. The transcript confirmed the comments recollected by the Deputy Premier. However, the transcript also revealed that there was considerable banter by a number of members from both sides during the division, of which the member for Kawana's comments formed part.

Mr Speaker determined to not refer the matter to the Ethics Committee and instead made the following statement to all members:

> "members' conduct in divisions should be no less than the conduct when debate is occurring; the House is required to be in order at all times, whether or not the bells are ringing and whether or not counting is in progress; a member who feels aggrieved or personally offended should raise the matter; Speakers can deal with issues of order including personal reflections immediately; and such matters should be raised and dealt with at the time, not be escalated to the Ethics Committee which should be dealing with much more serious matters.

Mr Speaker advised he would consider matters such as this in respect of the general review of rules relating to conduct and language which he committed to take to the Committee of the Legislative Assembly.

Responsibility of passholders and suspension of member's right to visitors

On 16 October 2019 the Speaker made a ruling about the responsibility of passholders. Mr Speaker suspended a member's privileges to bring visitors to the Parliamentary Precinct for six months under section 50 of the Parliamentary Service Act 1988 and asked the member to make an immediate apology to the House. This was in response to footage of the member for Mirani and a group of visitors to the parliamentary precinct under his responsibility. Security footage showed several of the member's guests interfered with the desks of other members in the chamber by opening the compartments under the desk where members store personal belongings and, in some cases, interfering with

the contents. Mr Speaker stated that this was not the first time he had written to the member about the behaviour of visitors he had responsibility for on the Parliamentary Precinct.

Absolute majority required to pass bill

The Electoral and Other Legislation Amendment Bill 2019 proposed to amend the Electoral Act 1992 to provide discretion for the Speaker of the House or the Governor to not fill a vacancy in the Legislative Assembly in the last three months before the next normal dissolution day, which from 2020 will be predetermined in accordance with the Constitution (Fixed Term Parliament) Referendum Act 2015. This provision in the bill invoked section 4A of the Constitution of Queensland 2001 insofar as it affects the constitution, powers or procedure of the parliament. In order for the bill to be passed and presented to the Governor for assent, it must be passed by an absolute majority—namely, 47 members of the 93 member Legislative Assembly. In Queensland, a bill is passed after its third reading and long title—with or without amendment—have been agreed to. In order for the Clerk to be able to certify to the Governor that the bill was passed with an absolute majority, the Speaker called for divisions on the questions for the third reading and long title of the bill and required the results of the division to be included in the Record of Proceedings.

Human Rights Act

Human Rights legislation was introduced into the House on 31 October 2018. The bill was reviewed by a parliamentary committee who recommended that it be passed. The bill was passed without amendment on 27 February 2019 and received royal assent on 7 March 2019. The Act is due to commence from 1 January 2020.

The Human Rights Act 2019 requires the House to be informed of the compatibility of a bill or subordinate legislation with human rights. All bills introduced must be accompanied by a statement of compatibility in which the minister (or member) introducing the bill sets out how the bill is compatible with the human rights. Portfolio committees must also consider both the compatibility of bills with these human rights and the statement of compatibility and report to the House accordingly.

Where a bill seeks to override a human right the minister (or member) must advise the House and explain the exceptional circumstances which justify the overriding of human rights. This declaration must also be tabled.

The Supreme Court may decide that a provision or provisions of an Act are incompatible with the Human Rights Act and issue a declaration of incompatibility to the Attorney-General. The minister responsible for the relevant statutory provision/s must table the declaration of incompatibility

within six sitting days of receipts and it automatically stands referred to the relevant portfolio committee for consideration and report within three months. A declaration of incompatibility by the Supreme Court does not affect the validity of the statutory provision.

South Australia House of Assembly

125th Anniversary of women's suffrage in South Australia

In 2019, the South Australian Parliament commemorated the 125th anniversary of women's suffrage. With the passage of the Adult Suffrage Bill in 1894, South Australia became the first place in the world where women gained both the right to vote and to stand as members of Parliament. While some jurisdictions had extended the franchise to women, South Australia was the first place where women could run for Parliament. A series of commemorative events were held across the State to commemorate this significant event, supported by government agencies and community groups.

A joint committee of members from the Legislative Council and House of Assembly was established to make recommendations on how the Parliament should commemorate the anniversary, with Members of the committee active in promoting celebrations. Following the committee's recommendations, the Parliament supported three key events.

In October, the South Australian chapter of the Australasian Study of Parliament Group (ASPG) hosted a panel discussion with current and former State and Commonwealth MPs at Parliament House on *Beyond Politics: A Women's Perspective on Politics in Australia*. The panel included the first woman elected President of the Legislative Council, Hon Anne Levy AO, the first woman elected Speaker of the House of Assembly, Hon Lyn Breuer, and the youngest woman to sit in the Commonwealth Parliament, former Senator Natasha Stott Despoja AO.

In the same month, Parliament House was the venue for the Commonwealth Women Parliamentarians (CWP) Australia Region Conference with the theme '125 years toward getting even'. The conference was attended by women parliamentarians from across the region and discussed the progress of women in parliament since 1894.

In December, the Parliament held a re-enactment of the 1894 debates on the Adult Suffrage Bill. Over 65 people, including members, former members, Clerks, staff and volunteer actors, took part in the re-enactment held at Parliament House and narrated by the South Australian Commissioner for Equal Opportunity. Participants wore period costumes and acted out extracts from the debates in the Legislative Council and House of Assembly, including the divisions that led to the passage of the Bill. The event was watched in person by 120 attendees, and online by over 5000 unique viewers.

Limitation of debate

During 2019 the House agreed to limit debate on a controversial piece of legislation to counter filibustering by the Opposition. The Government reorganised business to prioritise the Bill and the House sat until midnight on two consecutive days. By midnight on the second day, the House had still not progressed beyond the first clause in the committee stage. To counter the obvious filibustering, the following day the House agreed to limit the allotted time for the committee stage to 30 minutes and the allotted time for the third reading to five minutes in accordance with Standing Orders. The Opposition then raised, as a matter of privilege, that the Premier was obstructing the business of the House by limiting debate, which the Speaker dismissed. The Bill passed the House with Government amendments in accordance with the time limits agreed to.

Victoria Legislative Assembly

Parliamentary apology to survivors of sexual abuse

The Minister for Sport Tourism and Major Events moved the parliamentary apology to survivors of sexual abuse that had occurred in connection with a tourist railway body. The apology, held on 27 November 2019, was a recommendation from the Ombudsman through her report tabled the year prior. The report, *Investigations into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies*, was tabled in 2018 and addressed significant shortcomings in the administration of the railway body, which enabled the offender to continue his abuse for many years. The Minister tabled a formal apology, and members made moving speeches of apology and regret.

Independent Remuneration Tribunal

In March, both Houses passed legislation to establish the Victorian Independent Remuneration Tribunal. One of the roles of the Tribunal is to set the basic salary and allowances for members of Parliament, including additional salary and allowances for ministers and other parliamentary officeholders. Under the legislation, the Tribunal was required to make its first Determination relating to Members of Parliament within six months.

The Tribunal made its Determination on 16 September 2019. It reviewed and increased the salaries of all members of Parliament and made a number of changes to members' allowances and budget arrangements. The main change is the clear separation of work-related allowances from budget claims. Other changes included:

- Members can make claims for travel allowances, the parliamentary accommodation sitting allowance, the international travel allowance,

commercial transport allowances and the motor vehicle allowance by submitting a claim form and supporting documentation to their House Department, and the Clerk is the relevant officer responsible for approving their claims.
- Members submit claims for expenditure against the Electorate Office and Communication Budget to the Department of Parliamentary Services, and the Secretary is the relevant officer and responsible for approving their claims.

The new legislation has also introduced quarterly public reporting of all members' allowances and budget claims, and a Compliance Officer to whom a member can appeal if they disagree with a decision of a relevant officer.

Parliamentary Integrity Adviser

The Houses have appointed a Parliamentary Integrity Adviser (PIA) to assist and advise members of Parliament on integrity and ethical issues. The position started on 1 September 2019, and the role was filled by former Clerk of the Parliaments and Clerk of the Legislative Assembly, Ray Purdey. The recommendation for his appointment came from the Privileges Committee. The PIA is an independent and confidential point of contact on some of the difficult questions that arise in the course of members' duties. This might include, for example, questions about potential conflicts of interest and use of entitlements.

The PIA provides advice consistent with legislation, regulations and any other rules or guidelines adapted by Parliament. The PIA cannot give legal advice and has no investigative or enforcement role. It is up to Members how or whether they adopt the advice that is given.

The PIA will offer periodic education and training on a range of ethical issues and integrity matters.

The PIA will also report to the Parliament on the performance of his duties and may identify systemic or recurring issues relating to the parliamentary standards framework and report back as needed.

Victoria Legislative Council

Co-Sponsorship of Bills

On 31 October 2019 a non-Government member introduced the Drugs, Poisons and Controlled Substances Amendment (Pill Testing Pilot for Drug Harm Reduction) Bill 2019 on behalf of herself and another member. This was the first time a co-sponsored Bill has been introduced in the Victorian Legislative Council. Standing Orders do not provide for co-sponsoring of Bills, nor do they prohibit such.

The President gave a ruling before the Second Reading of the Bill to offer members guidance on the procedure. He noted that a 'lead sponsor' of the co-

sponsored Bill would be responsible for the formal carriage of the Bill through the House, including delivering the official Second Reading speech and a right of reply at the conclusion of the Second Reading debate. Other co-sponsors of the Bill may contribute to the debate on the Bill in the normal process. If the Bill goes into the Committee of the whole stage, all co-sponsors of the Bill may sit at the Table and answer questions. The Government would receive the first call for the Second Reading debate.

This Bill was listed on the Notice Paper under both sponsors' names and both their names are reflected on the Bill itself.

First People's Assembly

The Parliament of Victoria hosted the inaugural meeting of the First People's Assembly of Victoria in the Legislative Council Chamber 10 to 11 December 2019. The Assembly is independent of Government and will serve as the voice of Aboriginal people in Victoria and work with the Government to prepare for Treaty negotiations.

In hosting the First People's Assembly, care was taken to ensure the Legislative Council Chamber, and Parliament House itself, could become a culturally safe space for the Assembly members. Culturally symbolic items such as possum skins, flags, coolamons, message sticks and native flora were brought in to transform the Chamber into the venue for the Assembly. The Treaty Advancement Possum Skin Cloak, symbolising the journey of Treaty and filled with words and art from Aboriginal people across the State, laid in prominence in the centre of the Legislative Council Chamber. A Treaty sign in traditional black, yellow and red was erected on the steps of Parliament, looking down Bourke Street in the centre of the CBD. Assembly members also entered the Chamber accompanied with the sacred gifts of their communities.

Parliament provided broadcast and audio-visual support to the First People's Assembly and assisted the Victorian Treaty Advancement Commission (VTAC) with streaming the historic event on Facebook Live. The ceremonial proceedings and maiden speeches were also broadcast live on IPTV into all staff offices and onto the internal parliamentary network to enable the parliament community to bear witness to the historic event. Parliamentary staff accompanied and assisted VTAC and the Assembly members where requested and assisted in helping to deliver a significant milestone in the Treaty story.

CANADA

House of Commons

First sitting in the new Interim Chamber

On 28 January 2019 the House sat for the first time in its new interim chamber in

West Block (originally one of the departmental buildings erected on Parliament Hill in the latter half of the 19th century). Speaker Regan began the first sitting by acknowledging that the House had assembled on the traditional territory of the Algonquin people, and commented on the efforts required to ensure parliamentary work continued without interruption. At the end of 2018, the House of Commons vacated the Parliament of Canada's Centre Block building, which was built to replace a similar, but smaller, structure lost to fire in 1916. The move is to enable the renovation of the building. The West Block has been extensively remodelled, with the central court being glassed over and retrofitted to accommodate an "interim chamber" with all its ancillaries until the Centre Block is ready to welcome the House's return.

Use of indigenous languages

On 28 January 2019, during Private Members' Business proceedings on M-207, a motion recommending the establishment of a Dutch Heritage Day, Robert-Falcon Ouellette (Winnipeg Centre) rose to speak in an indigenous language. Mr Ouellette's speech in Cree was interpreted simultaneously into English and French and recorded in the Debates. He later posed a question in Cree to the Minister of Canadian Heritage during Oral Questions. This was the first time following the 66th report of the Standing Committee on Procedure and House Affairs *The Use of Indigenous Language in Proceedings of the House of Commons and Committees*, concurred in on 29 November 2018, that a speech was simultaneously interpreted from an indigenous language into English and French in the House of Commons.

Committee report on a parallel Chamber

On 28 February 2019 the Standing Committee on Procedure and House Affairs began a study of whether it would be advantageous for the House of Commons to establish a parallel debating chamber. Parallel debating chambers can serve as additional forums for debate on certain kinds of parliamentary business and have been used by the Parliaments of Australia and the United Kingdom since the 1990s. The report *A Parallel Debating Chamber for Canada's House of Commons* was presented to the House on 18 June 2019, but was not concurred in by the House. It recommended that in the next Parliament the Standing Committee on Procedure and House Affairs develop a detailed plan for a provisional parallel debating chamber for the House of Commons.

Point of order: instruction of the House to a committee

On 9 May 2019 Shannon Stubbs (Lakeland) rose on a point of order related to her motion M-167, adopted by the House on 30 May 2018, which instructed the Standing Committee on Public Safety and National Security to study rural

crime in Canada and to "report its findings to the House within six months of the adoption of this motion." Ms Stubbs pointed out that the committee had, by not presenting a report to the House within the deadline, failed to comply with an order of the House. The Chair of the committee, John McKay (Scarborough—Guildwood), responded that the language of the motion was not prescriptive, stating that the committee had been busy, that there was significant disagreement in the committee as to the content of the report, and that events in the House had had a disruptive effect on committee proceedings. The Speaker ruled on 16 May 2019 that committee dynamics and challenges did not excuse a committee from its obligation to respect orders of the House and that, should difficulties arise in executing an order of the House, the committee should request an extension to a deadline it cannot meet by way of a report to the House. As Mr McKay had presented the report of the committee earlier that day, the Speaker said he considered the matter closed.

Speaker's statement: Chair's procedure for requests for unanimous consent

On 16 May 2019, following Oral Questions, Borys Wrzesnewskyj (Etobicoke Centre) rose on a point of order seeking unanimous consent for a motion. Before he could begin reading his motion, he was quickly cut-off by the Speaker who stated it was clear there was no consent. When some members objected, the Speaker reiterated that it was clear the member did not have unanimous consent to move his motion. When, later in the sitting, the Parliamentary Secretary to the Leader of the Government in the House of Commons, Kevin Lamoureux (Winnipeg North) rose on a point of order to express concern with the handling of the most recent request for unanimous consent, the Speaker reiterated his intention to move quickly on from requests for unanimous consent when it was clear there was no consent.

International Grand Committee on Big Data, Privacy and Democracy

On 27 to 29 May 2019 the Standing Committee on Access to Information, Ethics and Privacy, whose members had previously joined elected officials from 10 different foreign legislative assemblies in the inaugural meeting of the International Grand Committee on Big Data, Privacy and Democracy in London (UK), on 27 November 2018, invited the other elected officials associated with the Grand Committee to participate in the Standing Committee's meetings. Members of the Standing Committee and other members of the Grand Committee representing 11 foreign legislative assemblies questioned witnesses and participated in deliberations. The Standing Committee presented a report to the House on 18 June 2019.

Point of order: impartiality of the Chair

On 28 May 2019, during a debate on Senate amendments to a government bill, a verbal exchanged occurred—not captured in that sitting's Debates—between the Assistant Deputy Speaker, Carol Hughes, and the Leader of the Government in the House of Commons, Bardish Chagger (Waterloo), who alleged that the Assistant Deputy Speaker showed bias in her recognition of members during questions and comments. The Assistant Deputy Speaker made a statement requesting an apology. She explained that the Chair usually manages the period for questions and comments, and that the Chair had recognised a member from each party. Ms Chagger apologised; the Assistant Deputy Speaker, however, did not consider it sincere. After further interventions, the Assistant Deputy Speaker reiterated that rotations for questions and comments vary depending on the number and the order in which members rise to be recognised by the Chair. Ms Chagger again apologised. The Assistant Deputy Speaker accepted this second apology.

Committee report on maternity leave

On 6 June 2019 the Standing Committee on Procedure and House Affairs presented in the House its 97th report *Regulations Respecting the Non-Attendance of Members by Reason of Maternity or Care for a New-Born or Newly-Adopted Child*. The report proposed regulations respecting maternity leave for members. These regulations provided for pregnant members to be absent from the House for up to four weeks before the birth of their child, and for members to be absent for up to one year following the birth when caring for the child, without reduction in their sessional allowances. The report was concurred in on 12 June 2019.

Amendment to a Standing Order: televising and webcasting

Following a decision taken by the Board of Internal Economy at its meeting on 13 June 2019 to fund a new webcasting standard for streaming committee meetings, the House adopted a motion on 19 June to authorise the televising or webcasting of up to six simultaneous meetings, provided that no more than two of the meetings are televised. Before this change, only two committees were limited to two simultaneous television broadcasting streams. The House also confirmed that the electronic media would be permitted to video record meetings that are not televised, in accordance with the existing guidelines.

Dissolution, General Election and a new Parliament

On 11 September 2019 Parliament was dissolved. The general election was subsequently held on 21 October 2019. The Liberal Party won 157 of the 338 seats, less than the 170 seats required for a majority government. On

29 October 2019 Prime Minister Justin Trudeau (Papineau) met with the Governor General to confirm his intention to form a minority government. On 20 November 2019 the new cabinet of 36 ministers was sworn in. Parliament was summoned on 5 December 2019. The election's outcome meant that the House now has four recognised parties: the Liberal Party of Canada, the Conservative Party of Canada (121 seats), the Bloc Québécois (32 seats) and the New Democratic Party (24 seats). The remaining four seats are held by three Green Party members and one independent member.

New Member's Orientation Program and improved information sharing

On 22 October 2019 the House of Commons Administration launched the "Source" website: an internal, one-stop-shop for members and parliamentary staff with information and services related to finance, human resources, information technology and various operational services offered by the House of Commons Administration, Following the general election, the House ran a Members' Orientation Program, by which it helps new members prepare for their roles, including as legislators and operators of constituency offices. Its goal is to ensure that members receive adequate administrative and procedural support and services as they become familiar with their new roles. The programme was redesigned based changes on feedback from members elected in 2016. The House, using a learning-based approach, developed and delivered a combination of self-directed online learning modules, including video content and in-person sessions tailored to members' needs. These were made available on a "just in time" basis that aligned with the timeline for the opening of Parliament and start-up of operations such as Private Members' Business and Committees. The aim is to have a member-centred approach, rather than one that had been oriented around the services that the House provides.

Opening of Parliament: election of a new Speaker and Speech from the Throne

The opening of Parliament, on 5 December 2019 presented a new logistical challenge, as the

House's members had to travel from the House of Commons in West Block to the Senate of Canada Building, some 700 metres away in what was originally Ottawa's central train station and, until recently, the Government Conference Centre. Joined there by Chief Justice Richard Wagner, in his role as the Deputy of the Governor General, to elect a Speaker, the House returned to West Block where, as dean of the House, Louis Plamondon (Bas-Richelie—Nicolet—Bécancour) presided for a fourth time over the election of the Speaker. As its first order of business, the House proceeded to elect its new Speaker by secret preferential ballot. Anthony Rota (Nipissing—Timiskaming) was elected the

37th Speaker of the House of Commons. He is the first member of Italian descent to hold the position. That afternoon the members again made their way to the Senate. Her Excellency the Right Honourable Julie Payette, Governor General of Canada, delivered the Speech from the Throne, outlining the Government's agenda. The House returned to West Block to initiate its business and then to consider the Speech from the Throne.

Appointment of Chair Occupants

On 9 December 2019 the House agreed to the appointment of Bruce Stanton (Simcoe North) as Deputy Speaker and Chair of Committees of the Whole. On 10 December the House agreed to the appointments of Carol Hughes (Algoma—Manitoulin—Kapuskasing) as Assistant Deputy Speaker and Deputy Chair of Committees of the Whole, and to Alexandra Mendés (Brossard—Saint-Lambert) as Assistant Deputy Speaker and Assistant Deputy Chair of Committees of the Whole.

Financial procedures

When Parliament opened there were only four sittings available before the supply period was to end on 10 December 2019. The House, therefore, agreed to a special order so that the Supplementary Estimates (A) for the fiscal year ending 31 March 2020 would be referred to and considered in a committee of the whole on 9 December before proceeding with a "first and final" allotted day for the Business of Supply on 10 December 2019. It went on to pass Bill C-2, Appropriation Act No. 3, -20, giving effect to the spending plans in the supplementary estimates, The Senate passed the bill on 11 December 2019 and the House attended the Governor General in the Senate chamber for a royal assent ceremony, as required by the Royal Assent Act in the case of the first bill of a session appropriating sums for the public service of Canada, on 12 December 2019.

Special Committee

The only allotted day in the supply period ending 10 December 2019 was granted to the official opposition. Erin O'Toole (Durham), seconded by Candice Bergen, Portage—Lisgar), moved a motion to strike a special committee to examine and review all aspects of the Canada—China relationship. The House adopted the opposition motion, thereby ordering the creation of a special committee.

Senate

New meeting location

The sitting of 19 February marked the first sitting in the Senate of Canada

Building, the Senate's new meeting location until the completion of the Centre Block's rehabilitation project. On that day, the Speaker provided welcoming remarks, acknowledging the efforts involved in the rehabilitation and move to the former Government Conference Centre.

Televised proceedings

18 March marked the first day that the Senate's proceedings were televised. Previously, the Senate's proceedings were only broadcast in audio format, though Senate committee proceedings have been televised for many years. The Senate Chamber proceedings are available on the Cable Public Affairs Channel (CPAC) and on the Senate website.

Vacancies

Five vacancies were filled in 2019. All new senators were selected using the Senate appointment process established by Prime Minister Justin Trudeau in 2015, which allows Canadians meeting the assessment criteria to apply for a seat in the Senate. The Prime Minister then selects individuals from a list of candidates recommended by the Independent Advisory Board for Senate Appointments.

On 4 November the Canadian Senators Group (CSG) became a new recognised parliamentary group in the Senate. The eleven founding members include senators who previously belonged to the Conservative Party of Canada and the Independent Senators Group (ISG), and one non-affiliated senator. The interim leader of the CSG is Senator Scott Tannas (Alberta) and the interim deputy leader is Senator Josée Verner (Quebec (Montarville)). On 14 November the Progressive Senate Group (PSG) became another recognised parliamentary group. The PSG counted nine members at its creation, all of whom previously belonged to the Liberal Party of Canada. Senator Joseph Day was the interim leader of the PSG and Senator Terry Mercer the interim deputy leader. On 18 November Senator Percy Downe left the PSG to join the CSG, which resulted in the PSG dropping below the nine members required to be designated as a recognised parliamentary group pursuant to the *Rules of the Senate*. As a result, the remaining eight PSG senators became non-affiliated senators.

By the end of 2019, there were 100 senators and 5 vacancies. With new appointments, and with senators who have resigned, retired or changed affiliation, standings in the Senate at the end of 2019 were as follows: 51 members of the ISG, 24 Conservatives, 13 members of the CSG and twelve non-affiliated senators.

British Columbia Legislative Assembly

Alleged misconduct and administrative reforms

The Legislative Assembly of British Columbia continues to face challenging times. As reported in last year's Table, in response to an Royal Canadian Mounted Police (RCMP) investigation into allegations of misconduct, the Legislative Assembly of British Columbia unanimously adopted a motion on 20 November 2018 placing Craig James, Clerk of the Legislative Assembly, and Gary Lenz, Sergeant-At-Arms, on administrative leave with pay and benefits (this investigation remains ongoing). The Legislative Assembly Management Committee (LAMC) subsequently received a 72-page report in January 2019 from Hon. Darryl Plecas, Speaker of the Legislative Assembly of British Columbia. The report *A Report of Speaker Darryl Plecas to the Legislative Assembly Management Committee Concerning Allegations of Misconduct by Senior Officers of the British Columbia Legislative Assembly* outlined several allegations with respect to financial, workplace and ethical misconduct by Mr. James and Mr. Lenz. The Committee adopted motions authorizing the public release of the report, and invited a response from Mr. James and Mr. Lenz to the allegations in the report. The Auditor General of British Columbia also announced that her office would undertake a comprehensive financial audit of the Legislative Assembly.

A month later LAMC received and considered legal submissions and written responses to the Report from the Clerk and the Sergeant-at-Arms; at the same meeting, a second report by the Speaker on the written responses was also considered and authorised for public release along with the written responses. In addition, at that meeting, LAMC supported a comprehensive financial audit of the Legislative Assembly by the provincial Auditor General and authorised an independent review process to examine the allegations in Speaker Plecas' report to determine if the Clerk and Sergeant-at-Arms had engaged in misconduct. The Right Honourable Beverley McLachlin, former Chief Justice of the Supreme Court of Canada, was retained as a Special Investigator to conduct this investigation. Her report, tabled in the Legislative Assembly on 16 May 2019, concluded that Mr. James had engaged in misconduct while Mr. Lenz had not. Mr. James retired effective 16 May 2019.

Following on the release of the *McLachlin Report*, an additional investigation into the allegations against Mr. Lenz was authorised by the Speaker, pursuant to the Special Provincial Constable Complaint Procedure Regulation of the Police Act. Conducted by the former Deputy Commissioner of the Vancouver Police Department, Doug LePard, the investigation found that Mr. Lenz had not upheld his Oath as a Special Provincial Constable and purportedly committed Neglect of Duty. Mr. Lenz retired effective 1 October 2019; the report was publicly released on 8 October 2019.

In September 2019 the Auditor General's report *Expense Policies and Practices*

in the Offices of the Speaker, Clerk and Sergeant-at-Arms, was released. The Report focused on the need to address weaknesses and gaps in policy and establish efficient and effective oversight of the Legislative Assembly's use of public resources. The Legislative Assembly accepted all nine recommendations made by the Auditor General and presented a comprehensive action plan indicating progress and ongoing work on policy renewal, review and reform across the Legislative Assembly. This is the first of five planned financial and performance audits on the Legislative Assembly by the Auditor General. Future reports will examine purchasing cards, compensation and benefits, capital asset management, and overall governance.

At its January 2019 meeting LAMC also authorised the Acting Clerk to develop a framework for a workplace review of Legislative Assembly departments to address allegations contained in the report. A Request for Proposals was issued in the spring of 2019 and ADR Education, an independent contractor, was selected to conduct this review. The review will explore current and former Assembly employee's lived experiences and seek ways to enhance organizational health and well-being. Results are expected to be presented to LAMC and all Assembly employees in 2020.

LAMC continues its work on renewing policies and reviewing, reforming and addressing gaps outlined in the Speaker's January report. New and strengthened policies have addressed key priority areas including employee travel, uniform, alcohol, and gifts and honoraria. In particular, the travel policy formalises existing practices and sets standards of reporting and oversight, requires the listing of out-of-province and international trips in departmental budget submissions and establishes a tiered system of pre-approval criteria.

Position of Clerk of the Legislative Assembly

In an additional significant reform initiated by LAMC, on 30 May 2019 the Legislative Assembly appointed a Special Committee to select and unanimously recommend the appointment of a Clerk to the Legislative Assembly pursuant to the Standing Orders and statutory provisions—the first time in the Legislative Assembly's history that a recruitment process has been used to recommend an individual for the position of Clerk. LAMC approved the description, compensation, terms and conditions of the Clerk of the Legislative Assembly's position on 23 October 2019. The position's salary is fixed upon appointment to that of Judge of the Provincial Court, with future increases subject to approval by LAMC. The Special Committee issued a call for applications on 7 November with a closing date of 15 January 2020.

Special Address

Traditionally when the Legislative Assembly of British Columbia has invited

individuals to address the Assembly they are invited to do so from the Bar of the House. On 24 October 2019, following the First Reading of Bill 41, the Declaration on the Rights of Indigenous Peoples Act, the House suspended proceedings to allow Indigenous leaders to address the Legislative Assembly from the Clerk's Table. Prior to the introduction of the Bill, proceedings in the Chamber began with a blessing, land acknowledgement and prayer song by members of local Indigenous communities. The Premier, Leader of the Official Opposition and Leader of the Third Party also made statements following the address of the Indigenous leaders, all of which were appended to the Official Report of Debates of the Legislative Assembly.

Saskatchewan Legislative Assembly

Infant in the Chamber

A parliamentary first in Saskatchewan was marked on 31 October 2019 when the Deputy Leader of the Opposition attended and participated in proceedings with her baby. The stage for this event was set in April 2019 when the Legislative Assembly adopted changes to the Rules and Procedures of the Legislative Assembly of Saskatchewan to permit a member to bring their infant into the Chamber.

Additionally, the Assembly authorised absences from sittings for maternity, paternity, or adoption leave without financial penalty.

CYPRUS HOUSE OF REPRESENTATIVES

Amended Rules of Procedure

In 2019 amended Rules of Procedure were adopted by the House of Representatives. The document is not available in English yet, however some of the main changes focus around committees' functions and procedures, including updated processes for drafting agendas, briefing Chairs prior to committee meetings, and how Members take, and address, the floor.

The procedure of how amendments are discussed at committee level, prior to their submission to the Plenary has also changed significantly. The aim is to decrease the number of amendments that reach the Plenary for actual discussion and not just approval. Another significant update has been a new format to produce Committee Reports from now on.

Financial autonomy

Financial autonomy for the House was another issue that was successfully concluded within 2019. For the first time the House drafted and submitted its own budget for 2020, which was successfully approved.

Code of Conduct and Ethics

Although still pending approval by the Plenary, a Code of Conduct and Ethics for MPs, is in its final stages.

INDIA

Lok Sabha

A major procedural change was made in regard to the Lok Sabha when a limit on the number of notices of amendments to Motion of Thanks and of Cut Motions was placed. Before 2019, a Member was free to table any number of notices to the Motion of Thanks on the Address by the President and Cut Motions to the Demands for Grants. However, the number of notices has now been limited to ten Amendments to the Motion of Thanks and ten Cut Motions to the Demands for Grants. Where notices of amendments to the Motion of Thanks or of Cut Motions to a Demand received from a member are in excess of ten, the first ten admissible amendments or Cut Motions, as the case may be, are taken into consideration, unless the member has indicated the preference. Similarly, a limit on the number of Private Members' Bills has also been placed which a Member can introduce during a session. A member now is permitted to introduce not more than three private member's Bills during a session. Where notices of Bills received from a member are in excess of three, the first three admissible notices are taken into consideration, unless the member has indicated the preference. Earlier, a Member was permitted to introduce four bills during a session.

Rajya Sabha

250th Session

The Winter Session of Parliament held from 18 November to 13 December 2019 marked the 250th Session of the Rajya Sabha. The Hon'ble Chairman of the Rajya Sabha took the initiative to commemorate the historic 250th Session of Rajya Sabha in a befitting manner. On the eve of the Session, the Hon'ble Chairman At a meeting held with the leaders of various parties and groups on 17 November, the Hon'ble Chairman released the publication *Rajya Sabha: The Journey Since 1952*, which had been produced by the Rajya Sabha Secretariat. The publication is replete with interesting facts about the Rajya Sabha. A special logo was also designed for the occasion for use by the Rajya Sabha Secretariat. A special discussion entitled "The role of the Rajya Sabha in Indian Polity and the way forward" was held on the opening day of the Session. The discussion commenced with the observations of the Hon'ble Chairman and was initiated by the Hon'ble Prime Minister, in which 28 Members belonging to various political parties and groups, including the Deputy Chairman, participated in the

discussion, which lasted for four hours and 28 minutes. During the discussion, over 80 suggestions were made by the Hon'ble Chairman and Members for more effective functioning of the House. A 250 rupee silver coin and a postage stamp to commemorate the 250th Session of the Rajya Sabha were released by the Hon'ble President of India on 26 November. A commemorative volume entitled *Role of Rajya Sabha in Indian Parliamentary Democracy*, published by the Rajya Sabha Secretariat was also released by the Hon'ble Vice-President of India and Chairman of the Rajya Sabha, and a first copy of the publication was presented to the Hon'ble President of India. The commemorative volume contains articles contributed by Hon'ble Members of Parliament and other eminent personalities reflecting on various facets of the Rajya Sabha's role and contribution in the Indian polity.

70th anniversary of the adoption of the Constitution

A function to commemorate 70 years since the adoption of the Constitution of India was held on the 26 November 2019 in the Central Hall of Parliament House, The Hon'ble President of India, Hon'ble Vice-President of India and Chairman, Rajya Sabha, Hon'ble Prime Minister of India and Hon'ble Speaker, Lok Sabha were all in attendance, and also attended by Members of both the Houses of Parliament.

Informal group on the impact of pornography

On the 5 December 2019 the Hon'ble Chairman made an observation about the constitution of an informal group with Shri Jairam Ramesh as Coordinator and 13 other Members belonging to various political parties and groups to study the alarming issue of pornography on social media and its effect on children and society as a whole pursuant to the issue raised in the House by Shrimati Vijila Sathyananth on 28 November 2019. The Chairman further observed that the Group may consult civil society groups, the Computer Emergency Response Team, social media companies, and after comprehensive discussion, submit a Report within one month, after which a further course of action will be decided with due deliberation thereon.

On 12 December 2019 the Chairman made an announcement to give the status of an Ad-hoc Committee to the informal group constituted by him on 5 December 2019 to resolve certain logistical problems being faced by the Group due to its informal nature. He also informed the House that the Rules relating to a Select Committee on Bills would apply to this Ad-hoc Committee. The Ad-hoc Committee presented its Report to the Chairman of the Rajya Sabha on 25 January 2020 and the same was laid on the Table of the House by the Secretary-General of the Rajya Sabha on 3 February 2020.

Regional languages

Pursuant to a new initiative by the Hon'ble Chairman of the Rajya Sabha to encourage Members to speak in the House in the regional languages which have been recognised in the Constitution of India, some Members while raising issues with the permission of the Chair during Zero Hour spoke in those regional languages. Simultaneous interpretation facility was made available in the House by the Secretariat. Members can speak in the House in any of the twenty two languages included in the Eighth Schedule of the Constitution, besides English.

Death of a sitting member and former members

As a departure from the existing practice of adjourning the House for the whole day as a mark of respect to the memory of a sitting Member in the case of their demise during a Session period, the House was adjourned until 2.00pm on 25 June 2019 as a mark of respect to the memory of Shri Madanlal Saini, a sitting Member, and three former Members.

STATES OF JERSEY

The role of Bailiff as President of the States Assembly

In May 2019 a proposition to replace the Bailiff as President of the States Assembly with an elected Speaker was withdrawn after the Assembly narrowly voted to put the matter to a public referendum. Later in the year, another proposition to alter the role of the Bailiff in relation to the States was rejected.

Centenary of women's suffrage

In July 2019 Jersey marked the centenary of women's suffrage in the Island with a series of events including an exhibition and a march through St. Helier.

Public Finances Law

The Assembly adopted a new Public Finances Law which was intended to modernise the Island's arrangements for public finances in line with international best practice. Budget and public spending proposals for a rolling four-year period must now be tabled annually by the Government 12 weeks before they can be debated in order to allow time for scrutiny.

Time limited speeches

In November 2019, the Assembly agreed in principle to introduce a 15-minute time limit on speeches in most debates. This has not yet been brought into force.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Parliamentary response to terrorist attacks on 15 March

On 15 March 2019 acts of terrorism were committed at two Christchurch mosques, resulting in the deaths of 51 people and injuries to 49. The next sitting of the House, on 19 March, was unusual in several ways as Parliament sought to acknowledge the tragedy.

As a sign of unity and togetherness the Speaker, the Rt Hon Trevor Mallard, was escorted into the Chamber by a group of inter-faith leaders who sat with him for the sitting. Various representative communities were also seated in the Gallery. Rather than beginning the sitting with a prayer in English, the Speaker invited Imam Nizam ul haq Thanvi to open the sitting with a prayer in Arabic. This was translated into English by Tahir Nawaz, and followed by the parliamentary prayer in te reo Māori and in English.

After prayers the Prime Minister gave a ministerial statement on the attacks expressing grief and sympathy, and the leaders of each party made their own contribution. Following these tributes, the House adjourned. The following sitting day a motion of condolence was moved to allow the House to express its sorrow to the victims, families and communities of the terrorist attacks on Al Noor Mosque and Linwood Islamic Centre in Christchurch. That day, leave was given for the House to adjourn early and for the rest of the week as a mark of respect for those people affected by the attacks.

The Prime Minister, the Rt Hon Jacinda Ardern, announced a two-minute silence would be observed nationally to mark the Christchurch tragedy. In response Mr Speaker invited Parliamentary staff and members of the public to gather together on the front lawn of Parliament, where, following the Muslim call to prayer, two minutes of silence was observed at 1.32pm—one week after the time the Christchurch shootings happened.

Three days after the Christchurch mosque terrorism attack, Cabinet met to discuss reforming New Zealand's gun laws. As a result the Government signalled that legislation to ban military style semi-automatics and assault rifles would be introduced when Parliament next sat on the 2 April. The Government indicated that the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill would have a shortened select committee process, with the expectation that the Bill receive Royal assent by 11 April 2019.

Several factors made for an unusual and unusually speedy select committee process. First, the Prime Minister invited the public to submit comments on the proposed law changes before the Bill was introduced to the House. This meant establishing a new email address as a vehicle for public comment. The email address was advertised across social media, and the 854 emailed comments were summarised for the committee. Secondly, the Finance and Expenditure

Committee was given only seven days to examine the bill and report back to the House, where consideration of four to six months is typical and bills with a high level of public interest sometimes are considered for even longer periods.

The committee met on the day the Bill was referred to decide how the scrutiny of the Bill could be done in a way that worked within the shortened time frame while still adequately responding to the high level of public interest. The committee resolved that, although it could not accept the 854 emailed comments as formal submissions, they provided a helpful range of opinions New Zealanders had on the changes to the gun laws. The committee also chose to have its advisers on the Bill, the New Zealand Police, provide its briefing in public and live-streamed, although this would usually be a private briefing.

Public submissions to select committee are part of select committee scrutiny of almost all legislation in New Zealand. Submissions are usually open for about one month. This process was drastically shortened in order to meet the tight reporting time frame. The submissions process ran from 2 to 4 April. In all, 13,062 submissions were processed within 48 hours. Of the submissions received, about 60 per cent supported the bill, 26 per cent were opposed to the bill, and 14 per cent expressed another view. The committee and its advisers listened to the concerns raised by 22 submitters in eight hours of oral hearings. The views of all submissions were reviewed by advisors and summarised as part of the departmental report. Members of the committee considered the departmental report on Friday, 5 April. Further changes were made with the help of 90 extra advisory staff who analysed submissions. These additional changes were incorporated into the report, and the committee presented its report to the House on 8 April.

The tight time frame also affected how the Bill progressed through the House after it left the committee. Normally, changes recommended by a select committee would be tracked into the introduction version of the Bill and incorporated at the Second Reading stage. Due to the time pressure for this Bill, the select committee agreed to report the Bill as it was originally referred, and changes recommended by the committee were incorporated into the Bill by amendment at the Committee of the Whole House stage.

Such drastic changes to the select committee process reflect a high degree of support for the bill across the House and a willingness to make changes to ensure that the House responded quickly to the 15 March tragedy. The Bill was passed on 10 April 2019 with almost unanimous support.

Scrutinising and passing controversial legislation with a high degree of public engagement

In 2019 the New Zealand Parliament considered several pieces of legislation with a high degree of public engagement: the End of Life Choice Bill, which

dealt with voluntary medically-assisted dying; the Climate Change Response (Zero Carbon) Amendment Bill, which dealt with New Zealand's climate change response; and the Abortion Legislation Bill, which sought to decriminalise abortion and modernise the legal framework around accessing abortion in New Zealand. The consideration of each of these bills required new and creative ways for Parliament to hear from New Zealanders and to effectively scrutinise and debate the legislation.

Select committee processes

Almost all legislation in New Zealand passes through select committee scrutiny. Select committees are permanent committees with a specific policy area, and may have a Government majority, an Opposition majority, or an equal number of Government and Opposition members. In scrutinising legislation select committees receive advice from advisers, take submissions from the public, and write a report summarising their view on the legislation, recommending any changes, and recommending whether or not they think the bill should proceed. The select committees that considered the End of Life Choice Bill, the Climate Change Response (Zero Carbon) Amendment Bill, and the Abortion Legislation Bill each chose different ways to respond to the high level of public engagement.

The Justice Committee, which considered the End of Life Choice Bill, received 39,159 submissions from interested groups and individuals, and heard oral evidence from 1,350 submitters. The committee chose to hear from anyone who wanted to speak to them. Hearing from such a large number of people required flexibility in the oral submission process. Committees often hold public hearings only in Wellington; instead, the committee heard from submitters in 14 cities across the country. Furthermore, while public hearings are usually held with the whole committee, the Justice Committee formed subcommittees that held hearings around the country in order to maximise its availability to the public. The large volume of submitters also meant submitters had only a short time to speak to the committee.

The Justice Committee could not agree whether or not the Bill should pass. However, it could agree on minor, technical, and consequential amendments that should be made to the Bill were it to pass. It is unusual for a Bill to be reported to the House where a committee has agreed amendments but not agreed as to whether the Bill should pass.

The Environment Committee's consideration of the Climate Change Response (Zero Carbon) Amendment Bill took a similar approach to submissions. It received 10,200 submissions and heard oral evidence from submitters in eight cities. The Environment Committee also took the unusual step of engaging the Parliamentary Commissioner for the Environment, an

Officer of Parliament, as a specialist adviser.

The consideration of the Abortion Legislation Bill reflects a different possible approach to a bill with a high degree of public engagement. The House chose to establish a special select committee, the Abortion Legislation Committee, specifically to consider the Bill and related matters. The Abortion Legislation Committee received 25,776 submissions from interested groups and individuals, and it also chose hear oral submissions in New Zealand's three main centres. However, unlike the Justice Committee and the Environment Committee, the Abortion Legislation Committee chose not to hear from everyone who had expressed an interest in making an oral submission. Instead, it invited a representative sample of submitters from across the range of views expressed by submissions, hearing from 139 submitters. This approach meant the committee was able to spend more time hearing from submitters and hear the full range of views while still considering the Bill in an efficient manner.

Controversial legislation in the House

Legislation with a high degree of public engagement is also likely to have a high level of disagreement among members of Parliament. The End of Life Choice Bill and the Abortion Legislation Bill were both treated as conscience bills, an informal process in the New Zealand Parliament where bills are voted on using non-whipped personal votes, rather than the far more typical whipped votes along party lines. Support for the bills did not fall along party lines, which meant that typical processes to allocate the call along party lines might have seen an unbalanced debate. For debates on the End of Life Choice Bill, in order to achieve a balance of views, the Speaker chose to grant calls based not on party affiliation but on attendance at select committee meetings on the Bill, seniority of members, and attendance in the House during the debate on the Bill. For debates on the Abortion Legislation Bill, the Business Committee, a special select committee that makes decisions around the business of the House that reflect the views of the majority of the House, granted some debates extra time. The Speaker also encouraged members to request 5-minute calls rather than the usual 10-minute calls, meaning a larger number of members and a wider range of views could be heard from.

The committee of the whole House stage also presented unusual challenges for each of these controversial bills. Specifically, a large number of members sought to amend the bills at committee stage. In order to give members time to read and consider each of these amendments, for both the End of Life Choice Bill and the Abortion Legislation Bill the Speaker encouraged members moving amendments to circulate the amendments at least 24 hours before the committee stage began. Members who submitted amendments within this time frame were given preference in the allocation of calls.

Recognising diversity in New Zealand

In 2019 the House continued its efforts to recognise diversity in New Zealand by celebrating the use of other languages in the Chamber. New Zealand Sign Language interpretation is offered in the House and on Parliament TV for significant events in the House, and in 2019, during New Zealand Sign Language Week, a member of Parliament asked an oral question in New Zealand Sign Language while an interpreter provided interpretation from the floor of the Chamber. Sign language interpreters who provide interpretation for significant events typically do so from a nearby studio and are broadcast on television within the precinct and on Parliament TV to the rest of the country, so having an interpreter, a stranger, on the floor of the Chamber was rare.

The Speaker chose to celebrate other language weeks by inviting members who speak different languages to deliver the parliamentary prayer, with Agnes Loheni giving a prayer in Samoan to celebrate Samoan Language Week, Hon Poto Williams giving a prayer in Cook Islands Māori to acknowledge Cook Islands Language Week, Raymond Huo giving a prayer in Mandarin to celebrate Chinese Language Week, and Anahila Kanongata'a-Suisuiki giving a prayer in Niuean to celebrate Niuean Language Week. The House also celebrated Māori Language Week. Members may speak in Māori in the House at any time, but the Speaker nevertheless invited Jo Hayes to give a prayer in te reo Māori to acknowledge Māori Language Week. Māori Language Week was also marked by a number of members giving speeches or portions of their speech in Māori.

Speaker-led outreach programme

In 2018 the Speaker of the New Zealand Parliament, Rt Hon Trevor Mallard, developed the Speaker-led outreach programme. Created following surveys indicating New Zealanders' attitude toward Parliament as well as barriers that prevented their engagement, the programme aims to bring Parliament to the people, promoting the idea "Our House is Your House" and that Parliament belongs to everyone.

> "We want all New Zealanders to know that they can easily and effectively engage with Parliament, no matter their age or background. Not everyone can make it to Parliament, so it is easy for people to feel detached from the processes."

In outreach visits, a cross-party delegation of MPs accompany the Speaker on day trips to towns across the country. Visits are made to a mix of community groups in the regions, including schools, universities, and seniors' groups. The focus is on how the parliamentary system works and how anyone can get involved. Sessions are held every six to eight weeks in a different region.

In 2019, the Speaker and members visited schools and groups in Christchurch, Tauranga, Dunedin, Hamilton, the Wairarapa, Invercargill, and New Plymouth.

On these visits, virtual reality headsets provide participants with a tour of Parliament. School visits often involve a mock Chamber, where children take on roles such as Prime Minister, Opposition Leader, Clerk, or Serjeant-at-Arms. University visits usually involve Mr Speaker and members having lunch and an informal chat with students and staff.

Governing for the future

The Institute for Governance and Policy Studies at Victoria University of Wellington and the Office of the Clerk co-authored a substantial report in 2019 that explores how Parliament can more effectively hold the Executive to account for its long-term governance and stewardship. *Foresight, insight and oversight: Enhancing long-term governance through better parliamentary scrutiny*, by Jonathan Boston, David Bagnall, and Anna Barry, proposes a variety of changes to public management and public finance to improve the capacity and conduct of parliamentary scrutiny. The suggested options for reform fall into the following categories:

- changes to the Standing Orders designed to enhance scrutiny of government performance on long-term issues
- improvements to the advice given to Parliament, especially a greater use of independent expert advice;
- new advisory and scrutiny mechanisms to involve members of Parliament in long-term issues;
- changes to policy, institutional, reporting and procedural frameworks; and
- reforms of a constitutional or quasi-constitutional nature.

The report observes that there is no silver bullet when promoting better long-term governance. Instead, it seeks to provide a more informed debate about the way forward.

New processes for old bills

In 2019 the New Zealand Parliament developed new processes to deal with the Insolvency Practitioners Bill. The Bill had had its introduction and first reading in 2010, had had its select committee consideration in 2011, and had had its second reading in 2013. Following that it remained on the Order Paper for five years, and in 2018 was referred back to select committee for consideration of a new Supplementary Order Paper that would amend the Bill to make it fit for purpose in the 2018 legislative context. That committee subsequently reported the Bill back to the House. Having already had its Second Reading, it should have been set down for Committee of the Whole House. However, in the Clerk's view, the House itself needed to consider the amendments to enable the committee's recommendations to be adopted.

In New Zealand, Standing Order 2 provides that the Speaker is responsible

for deciding how to manage cases not otherwise provided for. The Clerk worked with the Speaker under this Standing Order to develop a process that would allow the House to consider the Bill: the Minister would move a debateable motion that the House adopt the committee's unanimously recommended amendments. The Business Committee determined the structure of the debate, agreeing that it would take the same form as a Second Reading, with no more than 12, 10-minute speeches. This debate occurred, the amendments were adopted, and the Bill was then set down for Committee stage.

UNITED KINGDOM

House of Commons

Publication of the 25th edition of Erskine May's Parliamentary Practice saw the publication of the latest—the twenty-fifth—edition of Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*. It is of course more commonly known more simply as 'Erskine May' or 'Erskine May's Parliamentary Practice', and not uncommonly in the United Kindom as the 'Bible of House of Commons procedure' (although it also covers the House of Lords it is not so comprehensive in discussion of practice and procedure in that House). It remains occasionally helpful to colleagues working within a Westminster system in other parliaments across the Commonwealth (and see The Table volume 87 for a review of *Essays on the History of Parliamentary Procedure, in Honour of Thomas Erskine May*, edited by Paul Evans, published in 2017).

The new edition was produced as usual by a team of senior officials across the Commons and Lords, led this time by Sir David Natzler, the then Clerk of the House, and Mark Hutton, Clerk of the Journals, as joint Editor. The previous edition was published in 2011—a gap of around eight years between editions is in keeping with recent practice, though there is no firm guideline on the frequency of updating. As ever the new edition reflects a variety of changes to reflect new procedures, new developments, and re-writes to promote clarity (or, sometimes, to reflect more gradual changes in practice which lead to passages becoming outdated without any specific decision having been taken by either House).

The most prominent changes in this edition are probably those reflecting the introduction of the Fixed-term Parliaments Act 2011, the Recall of MPs Act 2015, and the introduction of the complex procedures governing 'English Votes for English Laws' in the Commons in 2015; other changes reflect the bedding down of some of the changes introduced in 2010 (elections to House posts, establishment of a Backbench Business Committee) following the Reports of the Select Committee on Reform of the House of Commons (the Wright

Committee) and changes to the governance of the House introduced in and after 2014. (The full impact of the procedural challenges faced in 2019 itself, as the UK Parliament struggled to agree a way forward on Brexit, will be more for the next edition.)

A key feature however of the new edition is not the content itself but the fact that it is more readily available to the public on-line, made possible by the contract for the new edition between the Trustees and the publishers (Butterworths LexisNexis). Anyone can now access the basic version on-line via the UK Parliament website free of charge (this is in addition to its being available on-line to the publishers' subscribers). The on-line version made available by the publishers has also enabled the periodic updating of the work: it is intended that significant developments will be reflected in on-line updates probably twice a year (beginning in 2020)—fuller redrafts of the more traditional kind will still take place at longer intervals.

Recall petitions

One consequence of the parliamentary expenses scandal of 2009–10 was that the three main party manifestos for the 2010 General Election proposed a mechanism to allow constituencies to recall (that is, remove) their MP should that MP be involved in a future 'scandal'. After some discussion, a White Paper and a draft Bill, the Recall of MPs Act finally received Royal Assent on the very last sitting day prior to the 2015 General Election.

The 2015 Act added to existing statutory provision that MPs sentenced to more than a year in prison were automatically disqualified from their position as an MP, by setting out that any custodial sentence of a year or less triggered a recall petition in the constituency of the MP concerned. It also provided for such petitions to be triggered when an MP was convicted of providing false or misleading expenses claims or was suspended from the House for 10 or more sitting days (or 14 calendar days) following a report by the Committee on Standards. Once triggered, the petition is open to be signed for six weeks; and in the event that 10 per cent or more of that constituency's electorate sign the petition, the MP is immediately disqualified and a by-election arranged to elect a new MP.

The first Member to be subject to the provisions of the Act was Ian Paisley MP. In July 2018, he was suspended from the House for 30 days but, despite the somewhat polarised nature of politics in Northern Ireland, Mr Paisley survived the petition as only 9.4 per cent of the electorate voted to recall him. There were then two further recalls in —one for Fiona Onasanya, then Member for Peterborough, on receiving a custodial sentence, and one for Chris Davies, then Member for Brecon and Radnorshire, on being convicted of providing false or misleading expenses claims.

Just as one can wait a seeming eternity for one bus only for three to arrive in quick succession, all three conditions in the Act, not triggered since 2015, were met in the first three calls upon the legislation between July 2018 and June 2019. Both Fiona Onasanya and Chris Davies lost their seats as the petitions to recall them gathered support from 28 per cent and 19 per cent of the electorate, respectively. Chris Davies stood in the subsequent by-election in an attempt to regain the seat but failed. He was then selected by the Conservative Party to contest another seat in the December 2019 general election but withdrew his candidacy as a result of public pressure.

While these political dramas were playing themselves out, behind the scenes there was much thought given to find a way best to communicate these events to the House and formally to record them. Under the 2015 Act, the Speaker must, "as soon as reasonably practicable" after becoming aware of a recall condition being met, give notice of that fact to the petition officer in the relevant constituency. That was straight-forward in the instance of Ian Paisley MP, as the House itself triggered the provisions by agreeing to his suspension for a period of 10 or more sitting (or more than 14 calendar) days. But, with regard to the provision being triggered externally, while the Act indicates that the Speaker must be formally notified by any relevant court that a recall condition has been met, it does not stipulate the nature of this notification; nor was it clear that all courts were necessarily aware of the duties placed upon them by the 2015 Act. In addition, once the petition period is over, electoral officers are required to communicate the result of the petition to the Speaker—but there was no set format for that communication, or process established as to how it should happen or be reported.

During the first petition process, a lot of administrative attention was turned to the relevant Member's access to the House and its services during the petition period and whether a suspension imposed on the Member by the Standards Committee would carry across a potential by-election. As it turned out, the result of the first petition was announced during a long parliamentary recess and was not mentioned in the House or published in the official record—as it was unsuccessful it had no implications for the House. For the second and third processes, the outcomes of both the judicial cases (the statutory triggers for the recall petitions being activated) and the results relating to the recall petitions were published in the Votes and Proceedings and Hansard. We await the arrival of the next 'bus', clearer at least about the communication and recording processes we shall follow when, indeed if, it arrives.

The long and short of it: the 2017-19 and 2019 Sessions

One outcome of recent political uncertainty here in the Westminster Parliament was the stretching out of the first session of the 2017 Parliament even beyond

the expected two years. There had of course been a two-year session in 2010–12 to accommodate the first legislative aspirations—and internal hesitancies and disagreements—of the 2010 coalition government. That session ran for some 295 sitting days and covered almost exactly two calendar years.

But by the 295th sitting day of the 2017 session, there was still no sign of an end. The Government's attempts to bring the Parliament to a close by a two-thirds majority vote in favour of an early general election, (under the Fixed Term Parliaments Act 2011 (FTPA), failed on two occasions in early September 2019, and the Government instead relied upon bringing the session to an end by the Queen proroguing Parliament from a date between 9 and 12 September until a planned date for the beginning of the new session on 15 October 2019. Parliament was thus 'prorogued' on 9 September.

The Supreme Court however found this prorogation unlawful and Parliament resumed, the session continuing on 25 September. Finally, the Queen prorogued Parliament—unchallenged by the courts, this time—on 8 October, until 14 October when the 2019 session began.

In a delightful juxtaposition, this 2017-19 session, running to 349 sitting days and covering some 839 calendar days, the longest session since the English Civil War, was followed by one of the shortest: the 2019 session, the second and last of the 2017–19 Parliament, which sat only from 14 October until 5 November—a period of only 19 sitting days (including a Saturday sitting). It was brought to an end by the Government finally getting support for an early general election, not through the two-thirds majority required under the FTPA, but by bringing in a bill amending that Act which then required just a simple majority for the decision.

And so Westminster lurched from one session to another. In the first, allotted days for backbench business debates, opposition debates and private members' bills seemed quickly to run out, and despite extra provision for some additional days for the last of these, and generous continuing allocation for the first, a great deal of often heated argument arose as the session wore on as to extra provision for the second. In the second, no opposition days or backbench days were ever allotted, so short was the session, and, although there was time for the ballot for private members bills to take place, the first Friday on which such business was due to take place was never reached.

House of Lords

Business of the House motion and amendment

Following oral questions on 9 January, this Business of the House motion was considered—

Business of the House The Lord Privy Seal (Baroness Evans of Bowes Park) to move that Standing Order 30 (No Lord to speak more than once

to a Motion) be suspended in respect of the debate on the motion in the name of Lord Callanan relating to section 13(1)(c) of the European Union (Withdrawal) Act 2018 to enable those members who spoke to the motion in the same terms on Wednesday 5 or Thursday 6 December to do so again.

On 5 and 6 December 2018, the House of Lords debated a motion to "take note" of the withdrawal agreement negotiated by the Prime Minister (as required by Section 13 of the European Union (Withdrawal) Act 2018). It was expected that this debate would conclude on 10 December. But, as the final day of debate was about to start on 10 December, the Leader of the Opposition moved that the House should adjourn until 5.30pm in order to afford Members the opportunity to listen to the Prime Minister's statement on exiting the European Union and for the Usual Channels to then decide how to proceed. This was an unusual turn of events that underlined how unpredictable business can be in a self-regulating House. The suggestion was carried by 201 votes to 163 votes. At 5.30pm when the House resumed, the Government Chief Whip told the House that the debate would not continue that day.

The debate arising as a result of the motion on 9 January (which continued on 10 January, and concluded on 14 January) was on the same motion as that before the House in December. But the House's usual rules of debate (Standing Order 30) do not allow a Member to speak more than once in a debate. This Business of the House motion was necessary to allow any Members who had spoken during the first two days of the debate in December to take part in the January debate. In moving the motion on behalf of the Leader, the Government Chief Whip explained that, "Given the way the previous debate was abruptly curtailed, before any of the winding speeches had been heard, and following representation from Members on all sides of the House, who spoke previously, it would seem to me to be the sensible thing to do."

Lord Adonis tabled an amendment to the Business of the House motion—

Lord Adonis to move, as an amendment to the above motion, to leave out from "that" to end and insert "the debate in the name of Lord Callanan be concluded on Wednesday 9 January and in accordance with the usual rules of debate".

In the event, citing the votes of the House of Commons earlier in the day, Lord Adonis decided not to move this amendment. Had his amendment been agreed to, the effect of it would have been twofold—firstly it would have prevented anyone who had spoken in the debate in December from speaking in the debate yesterday (or any days when the debate continued) and second it would have prevented the debate from continuing on 10 and 14 January.

Recess

Recess dates are usually agreed by the Usual Channels (comprised of the

Leaders and Chief Whips of the Parties, and on occasion, the Convenor of the Crossbench peers) and the House is informed via a statement by the Government Chief Whip. But on Monday 7 January Lord Foulkes of Cumnock tabled the following motion concerning recess dates for consideration on Wednesday 9 January—

> **Lord Foulkes of Cumnock** to move to resolve that the House should adjourn at close of business on 14 February to return on 25 February, and similarly adjourn at close of business on 4 April to return on 23 April.

Items of business are put on the Order Paper in the order in which they are received (as per Standing Order 40). The Government had not tabled the main business for Wednesday 9 January when Lord Foulkes sought to table his motion. As such, his motion took precedence over the main Government business for the day.

In speaking to his motion in the House, Lord Foulkes said that for the last 15 years, the February and Easter recess dates have been announced before Christmas. He pointed out that the House of Commons has announced its recess dates (the same as the dates contained in his motion). The Chief Whip explained in his reply that he could not support the motion because "there will be a significant amount of legislation before the House before the end of March, and I do not think it sensible to confirm recess dates before then." He was supported in this by the Labour and Liberal Democrat frontbenches. He did however say that he would provide if possible for a long weekend during February and that he hoped to be able to confirm a two week Easter recess soon (although he hinted that this might not be the same dates as the Commons recess).

Lord Foulkes then attempted to call a division but his was the only voice shouting "Content" against many shouting "Not Content" and so the Lord Speaker declared the motion disagreed to on the voices without calling a division.

Trade Bill Committee Stage amendment

On Monday 21 January, Baroness Smith of Basildon (Leader of the Opposition in the House of Lords) tabled an amendment which stated:

> **Baroness Smith of Basildon** to move, as an amendment to the motion that this House do now resolve itself into a committee on the bill, at the end insert "and resolves that the committee's report be not received until Her Majesty's Government has presented to both Houses proposals for a process for making international trade agreements once the United Kingdom is in a position to do so independently of the European Union, including roles for Parliament and the devolved legislatures and administrations in relation to both a negotiating mandate and a final agreement."

Public bills generally have five stages in the House of Lords which happen in the following order: First Reading, Second Reading, Committee stage, Report stage, and Third Reading.

After Second Reading, bills are committed to a committee on a motion in the name of the member in charge of the bill, where they receive detailed line-by-line scrutiny. Bills are usually committed to a Committee of the Whole House (which takes place in the Chamber) or a Grand Committee (Grand Committee is held elsewhere—the procedure in Grand Committee is the same as in the Chamber, except that divisions may not take place in Grand Committee.)

It is not obvious from the Order Paper that before the Committee stage of a bill starts on any day, the House must first agree a motion to resolve itself into a Committee. The item in the name of Baroness Fairhead (the peer in charge of the bill whilst it was in the Lords) was therefore a kind of shorthand to indicate that she would move that the House do now resolve itself into a Committee. Baroness Smith of Basildon's amendment is to this motion.

On 21 January, following the usual rules of debate, the Government Chief Whip, Lord Taylor of Holbeach, moved on behalf of Baroness Fairhead that the House do now resolve itself into Committee (the original motion). Baroness Smith then moved her amendment. The debate then followed.

The Explanatory Notes to the Trade Bill state that it, "provides key measures that are required as the UK Government build a future trade policy for the UK once we leave the European Union (EU)."

The Constitution Committee produced a report on it (it scrutinises all Government bills and reports on them to the House where necessary) which explained further:

> "The Bill is intended to provide a legal framework for UK trade policy after withdrawal from the European Union. As one of a series of 'Brexit Bills', it should be read alongside the recently enacted Taxation (Cross-border Trade) Act 2018. While that Act provides for tariff-related issues, the Trade Bill deals with non-tariff barriers.

The Bill is a framework measure which, whilst it is largely procedural in nature, does give the Government extensive powers, including delegated law-making powers, to effect new trade policy. As with other Brexit Bills, the Government justifies these powers in part by the need for flexibility given uncertainty over the terms of the withdrawal agreement and any implementation arrangements flowing from it."

In moving her amendment, Baroness Smith was seeking more detail from the Government "about how the Government would deal with new international trade agreements once the UK is in a position to do so independently of the EU." She stated that she wanted the House to have more information on this important policy issue before it completed its consideration of this Bill. Her

amendment calls upon the Government to present proposals relating to the policy in the Bill to Parliament before the next stage (report stage) of the Bill.

At the end of the debate, Baroness Smith called for a division. The House voted 243–208 in favour of her amendment. The motion to go into committee, as amended, was then agreed to, and the consideration of amendments to the bill continued as normal.

After the Committee stage of a Bill, the Committee of the Whole House or Grand Committee reports the bill (with any amendments) to the House. The House then considers the Bill at report stage (this cannot usually take place until at least fourteen days after the Committee stage has been completed). At the start of proceedings at report stage, the peer in charge of the Bill will move the motion that "That this report be now received"—in other words, that the House should formally receive the fruits of the committee's work, and consider any further amendments which may be needed. This motion is normally taken formally, but is in fact debateable and amendable.

In agreeing Baroness Smith's amendment, the House has resolved that the motion "That this report be now received" should not be agreed to until the Government has fulfilled the criteria set out in the amendment.
Consequently, the Report stage did not take place until 6 March. At the outset of proceedings, Baroness Fairhead stated "In response (to the motion agreed by the House on 21 January), last Thursday we published a Command Paper setting out further proposals for the parliamentary scrutiny of future free trade agreements. Those proposals drew heavily on the views put forward by Members of this House."

Lord Stevenson of Balmacara, speaking for the Opposition, said "It cannot have been easy for the Minister or the Government as a whole to get a White Paper prepared and laid in an atmosphere that is probably best not gone into and in the very short time available. It is a major achievement and we appreciate it."

Adjournment of the House

At the end of each day's business a member of the government moves "That the House do now adjourn." The Lord Speaker puts the Question, but does not collect the voices because this Question is not usually debated. The Lord Speaker then leaves the Chamber in procession with the Mace. This little ceremony signifies that the House has risen for the day.

It is however open to any member to move the motion that the House do now adjourn at any time and, as set out in paragraph 3.39(d)(i) of the *Companion*, it may be taken without notice. This means that the motion does not have to appear on the Order Paper or in House of Lords Business. It is however very unusual for a backbench member to seek to adjourn the House.

On Thursday 14 March, Lord Adonis (a backbench member) sought to adjourn the House at 11.51am (the sitting having only sat at 11am).

He explained that he wanted the House to adjourn before it proceeded with the remaining business, which was "almost exclusively no-deal Brexit regulations." The previous day the House of Commons had resolved, "that this House rejects the United Kingdom leaving the European Union without a Withdrawal Agreement and a Framework for the Future Relationship". Lord Adonis said that in the light of that decision, it was not "in the public interest for noble Lords to proceed now to debate another string of no-deal Brexit regulations." A debate followed at the end of which Lord Adonis withdrew his motion (by leave of the House). The House then proceeded with the planned business as set out on the Order Paper.

The House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill—Report stage

Last year's edition of *The Table* (volume 87) reported on the proceedings of the House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill at Committee stage.

Hostilities resumed on Friday 15 March, when the Bill started its Report stage. Another bill was scheduled afterwards, so there were only a few hours to plough through over 60 amendments, most of which had not been grouped.

Things immediately went wrong. Lord Trefgarne started by trying to speak to the motion "That the report be now received" (i.e. that the House should accept the "report" from the Committee which considered the bill line-by-line—hence the name "Report stage") which must be agreed before the amendments can be considered. As paragraph 8.129 of the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* says, this motion can indeed be debated, objected to and voted on, but in this case the Lord Speaker had moved to put the Question and it was agreed. Lord Trefgarne then tried again to speak, but at this point there was no Question before the House so it was not in order for him to make a speech. Lord Hunt of Kings Heath understandably questioned what was happening, and the alert Government Whip Lord Young of Cookham correctly moved the House on to the first amendment.

As the debate proceeded, a number of members chose to remind the House of certain rules of debate; they were quite entitled to do so, as paragraph 4.01 of the *Companion* states that "the preservation of order and the maintenance of the rules of debate are the responsibility of the House itself, that is, of all the members who are present, and any member may draw attention to breaches of order or failures to observe customs". For example, Liberal Democrat Lord Tyler reminded the House that arguments fully deployed in Committee should not be repeated at length on Report, while Lord Young of Cookham twice tried

to persuade members to address their speeches to the amendment before the House, and pointed out to another member that he should not be speaking more than once to an amendment at Report stage. Lord Campbell-Savours, meanwhile, tried several times to persuade hereditary peers participating in the debate that they ought to be declaring their interest as hereditary peers.

Things came to a head when experienced parliamentarian Lord Cormack, tired of what he saw as filibustering by Lord Adonis, invoked the very rarely used closure motion. A closure motion seeks to bring the debate to a close and to force the House to make an immediate decision on the business under discussion. Crucially, the closure motion itself is not debatable—it must be voted on immediately. To move the closure motion, Lord Cormack said: "I beg to move that the Question be now put". Because this is so rare, the Clerk at the Table approached the Woolsack and gave the Deputy Speaker the wording she needed. Reflecting the seriousness of the procedure, she was required to "read slowly" a warning about the exceptional nature of the proceeding and to ask Lord Cormack to reaffirm that he wanted to move the motion. Lord Cormack did so, and a division took place. The motion was agreed by 87 votes to 23, so the Deputy then immediately put the Question on the amendment which had been under discussion.

A further division then had to take place on the amendment, which was rejected. After the two divisions, Lord Strathclyde, Lord Cormack and Lord Adonis had a testy exchange about whether or not it had been appropriate or profitable to move the closure motion. There was soon online speculation as to whether Lord Adonis had to stay silent for the remaining consideration of the Bill, or maybe even the whole day, or possibly the whole parliamentary session—this was all quite far off the mark as the closure motion means nobody can say anything more on the current item of business, in this case the one amendment. It does however have the advantage over the alternative motion "That the noble Lord be no longer heard" of not being debatable (the latter can be debated, including by the member who is the subject of the motion!).

Later on, another division was called off because tellers were not appointed, and the Deputy Speaker declared two amendments disagreed to "on the voices" (i.e. without a division).

As the proceedings reached the agreed deadline of 1.30pm, Lord Grocott complained to the House that "half a dozen people" had thwarted "the direct wishes of hundreds who have expressed themselves in sundry votes on this issue". Lord Grocott suggested that this House "needs to look very carefully at its procedures to ensure that the farce that we have endured today is not repeated" and invited the Procedure Committee to do so. It remains to be seen whether he will exercise the right of all members to write to the Chairman of the Procedure Committee (the Senior Deputy Speaker) to ask the Committee

to consider a procedural issue of importance or concern.

Prorogation

Prorogation is the prerogative act of the Crown by which a session of Parliament is ended. There usually follows a short period where Parliament does not sit and then the new session begins with a State Opening of Parliament. The prorogation of Parliament has the effect of ending all parliamentary proceedings, and proposed legislation which does not pass prior to prorogation must be re-introduced in the next session of Parliament (unless arrangements are made for it to be carried over).

After the 2017 general election, the Government (Theresa May was the then Prime Minister), announced that the first session of Parliament after the election would last until 2019 to allow for greater parliamentary scrutiny of their Brexit plans. By May 2019, the session had become the longest to sit since the Long Parliament, some four centuries before.

Towards the end of August this year, it was announced that the Government planned to seek to prorogue Parliament in early September ahead of a Queen's Speech on 14 October. Thus on 28 August 2019, at a Privy Council meeting in Balmoral, Her Majesty The Queen gave her consent to prorogation, to start between 9 and 12 September, and end with the State Opening of Parliament on 14 October. In the early hours of 10 September 2019 amidst tense scenes in the House of Commons, a prorogation ceremony took place in the House of Lords Chamber. Objections were raised about the length of the prorogation suspension of Parliament, which was much longer than the few days that has been the custom, and also about the timing just a few weeks before the 31 October Brexit deadline.

The announcement of prorogation led to two legal cases being immediately filed—one in England by Gina Miller and one in Northern Ireland by Raymond McCord—and for the applicants in a third case in Scotland headed by Joanna Cherry QC MP to request their case (which had been lodged pre-emptively on 30 July) to be expedited.

Miller's case to the High Court of England and Wales was for a judicial review of the use of prerogative powers. The McCord case was an application at the High Court of Northern Ireland which alleged breaches of the Good Friday Agreement. Both cases were essentially rejected as non-justiciable (i.e. outside the jurisdiction of the courts): the High Court of Justice rejected Miller's case on 6 September; while the High Court of Northern Ireland did not address the aspects of McCord's case to do with prorogation in its judgment on 12 September since it was already the "centrepiece" of the English and Scottish cases.

The litigants in the Cherry case had sought a ruling that prorogation to

avoid parliamentary scrutiny would be unconstitutional and unlawful. On 11 September, the three-judge appellate panel at the Court of Session disagreed with the High Court of England and Wales, finding unanimously that they had jurisdiction and that the prorogation was unlawful. The court found that the Prime Minister (Boris Johnson) was motivated by the "improper purpose of stymieing Parliament" and had effectively "misled the Queen", and as a result, declared the royal proclamation as "null and of no effect", but did not offer a binding remedy to that effect.

The judgments relating to the Miller and Cherry cases in the senior courts of England and Wales, and Scotland respectively were fundamentally incompatible. This meant that, bizarrely, Parliament was lawfully prorogued in England, Wales and Northern Ireland, but unlawfully prorogued in Scotland. To resolve the differences between these courts, both the Miller and Cherry cases were appealed to the Supreme Court of the United Kingdom.

On 17 September the Supreme Court began a three day emergency hearing, with leading parts played by three members of the House—Baroness Hale as President of the Court, Lord Keen of Elie QC acting for the Government and Lord Pannick QC for Gina Miller. Such was the significance of the case, the maximum of eleven of the twelve Supreme Court Justices sat to hear the case. Essentially they had to decide whether judges had the power to intervene in how a Prime Minister advises the Queen to prorogue Parliament. And, if they did, was Edinburgh's court right to conclude that the Prime Minister had acted unlawfully in closing it for such a long period?

On 24 September the Supreme Court passed a unanimous judgment, ruling that they did have the jurisdiction to intervene and that "the decision to advise Her Majesty to prorogue Parliament was unlawful because it had the effect of frustrating or preventing the ability of Parliament to carry out its constitutional functions without reasonable justification."

Shortly afterwards the Speaker of the House of Commons welcomed the Supreme Court decision and announced that the Commons would sit at 11:30am the following day. The Lord Speaker similarly announced that the House of Lords would sit the following day at its usual Wednesday sitting time of 3pm. The Prime Minister said he strongly disagreed with the judgment, and that "we in the UK will not be deterred from getting on and delivering on the will of the people to come out of the EU on October 31st"

The immediate impact of the Supreme Court ruling was easy to see—both Houses of Parliament sat the following day (25 September) as if, in the words of the Supreme Court's judgment, the Royal Commissioners had walked into the House of Lords with a blank sheet of paper. In other words, the Court ruled that prorogation had never happened and Parliament had never been suspended.

During the prorogation ceremony which was later ruled not to be a prorogation, the Royal Assent to the Parliamentary Buildings (Restoration and Renewal) Bill was also signified. But as the ceremony was found to be "unlawful, null and of no effect" the Royal Assent to this Bill will need to be resignified at a later date.

Shortly after the start of business in the Chamber on 25 September, the Lord Speaker announced that, in the light of the judgment of the Supreme Court, Parliament was not prorogued and, "Accordingly, the Clerk of the Parliaments will delete the following items of business from the Minute of Proceedings of 9 September: Royal Commission, Royal Assent, Queen's Speech and Prorogation. Instead, the Minute will record that the House adjourned at 1.40 am."

In the usual run of things, oral questions to the Government which take place at the start of each sitting in the House of Lords on Mondays–Thursdays, are allocated up to 28 days in advance. For obvious reasons, none had been tabled for the days immediately following the Supreme Court's decision and so business in the House of Lords for 25 and 26 September was somewhat unusual—as well as there being no oral questions, much of the business consisted of a series of statement repeats. The order of business had to be rearranged on the hoof because proceedings in the House of Commons on individual statements had not been concluded at the point they were due to start in the House of Lords.

On 2 October the Government announced fresh plans to prorogue Parliament for six days, from Tuesday 8 October to Monday 14 October. The second prorogation ceremony took place on the evening of 8 October, and passed without the protests that had marked the previous attempt at prorogation, including the Parliamentary Buildings (Restoration and Renewal) Bill receiving Royal Assent once more.

COMPARATIVE STUDY: THE REGULATION OF MEMBER BEHAVIOUR

This year's comparative study asked, "How does your parliament regulate the behaviour of its members towards staff, committee witnesses and others? What is the process for assessing complaints made about the behaviour of members, and how are standards enforced? Is any existing regulation limited to behaviour that occurs in the conduct of parliamentary duties or does it go further? Does any such regulation extend to staff employed by members?". The question excluded issues associated with financial interests.

AUSTRALIA

House of Representatives

The House of Representatives has few rules in relation to the behaviour of its members towards staff, committee witnesses and others.

Committee witnesses

On 13 November 2013 the House of Representatives adopted a resolution outlining procedures for dealing with committee witnesses. The resolution sets out the rights of witnesses participating in the inquiry process and includes provision that witnesses shall be treated with respect and dignity at all times.

Code of conduct for members

Members are not subject to a formal code of conduct. The matter, however, has been considered by the House on a number of occasions over the years.

Following the 2010 general election and in the lead up to the formation of a minority government, Members agreed to a package of significant procedural reforms.[1] These included a commitment to establish a formal code of conduct for Members and Senators and the appointment of a Parliamentary Integrity Commissioner to provide advice to parliamentarians on ethical issues and to uphold the code of conduct.

On 22 November 2010, the House referred the development of a draft code of conduct for Members of Parliament to the Committee of Privileges and Members' Interests. A year later, the Committee submitted a draft code of conduct for the House to consider.[2] The draft code of conduct was not adopted by the House.

A non-parliamentary code of conduct for ministers was first introduced

[1] *Agreement for a better Parliament: Parliamentary reform, 6 September 2010.*

[2] *Inquiry into draft code of conduct for Members of Parliament, Standing Committee of Privileges and Members' Interests, 23 November 2011.*

in 1996.[3] In the current parliament, all ministers and assistant ministers are expected to comply with the Statement of Ministerial Standards.[4] These rules address the behaviour of ministers more generally in performing their duties rather than in their behaviour towards any staff. These standards are set by the Prime Minister without the approval or involvement of the Parliament.

Departmental policies and practices

Some policies and practices implemented by parliamentary and executive government departments address some aspects of the behaviour of members towards staff.

The Department of the House of Representatives has a Discrimination, Bullying and Harassment Prevention Policy that applies to all persons that have dealings with the Department, including Members and their staff. The policy defines workplace bullying and harassment as any behaviour that unfairly and unreasonably puts down, undermines, controls, scares, intimidates, excludes, offends or embarrasses. In practice, if a complaint of bullying, harassment or discrimination is made within the Department against a member, the Clerk would raise the issue with the Government or Opposition Whip. For independent members, the Clerk would raise the issue with the member directly. For complaints against members' staff, the Clerk would seek to resolve the issue with the relevant member.

The Ministerial and Parliamentary Services workgroup within the Government's Department of Finance has a Workplace Bullying and Harassment Policy that applies to parliamentarians and their staff. This policy outlines the responsibilities of members and their staff in preventing workplace bullying and harassment. It also provides issue resolution procedures including the process for reporting workplace bullying and harassment to the Department of Finance, making an application to the Fair Work Commission and making a complaint to the Australian Human Rights Commission.

Senate

Conduct of senators

As the Australian Constitution provides that the Senate may make rules and orders with respect to the order and conduct of its business and proceedings, the Senate has determined a range of resolutions, standing orders and other orders that cover the conduct of senators. Senators are also subject to legislative requirements in relation to the employment of staff.

[3] *A guide on key elements of ministerial responsibility,* 2 April 1996.

[4] *Statement of Ministerial Standards,* Department of the Prime Minister and Cabinet, August 2018.

Senators and committee witnesses

The principle that witnesses giving evidence before Senate committees should be treated "fairly and with courtesy" while not codified has been reaffirmed by successive Presidents and Deputy Presidents. In 2015 then Deputy President of the Senate, Gavin Marshall, stated that witnesses should be treated equitably, cautioning that if "witnesses are deterred from assisting committees by widely publicised examples of witnesses being harassed by a senator or senators, there are serious consequences for the value and credibility of committee inquiries".

The Senate has adopted a range of practices to safeguard the rights of witnesses and other participants in Senate inquiries, including a number of privileges resolutions agreed to in 1988. Privilege Resolution 1 sets out the general protections available to witnesses and other participants. Senate Privilege Resolution 2 concerns special procedures for the protection of witnesses before the Senate Committee of Privileges. The committee, whose main function is to investigate conduct which is apprehended to obstruct the work of the Senate, has stated that it regards the protection of persons providing information to the Senate and, in particular, of witnesses before parliamentary committees, as its single most important function.

Freedom of speech and right of reply

The Senate has also agreed to privileges resolutions protecting the rights of persons referred to in the Senate, including:

- Privilege Resolution 9, which enjoins senators to use their great power of freedom of speech responsibly and with regard to several factors including the rights of others and the damage that can be done to reputations and the institution of parliament by allegations made in parliament; and
- Privilege Resolution 5, which sets out procedures for the protection of persons referred to in the Senate, including a right of reply.

The Senate was the first known legislature to provide persons referred to in proceedings with a right of reply where those persons felt adversely affected in reputation or in dealings with others, or injured in some sense, including by unreasonable invasion of their privacy.

Under Privilege Resolution 5, the right of reply consists of an opportunity for a person who claims to have been adversely affected through being named or otherwise identified in Senate proceedings to have a response incorporated in the parliamentary record. The person makes a submission to the President of the Senate requesting publication of a response. If the submission is not trivial or frivolous, the President refers it to the Committee of Privileges to ensure that the suggested response is not offensive and does not itself contain material that would unreasonably adversely affect or injure another person or invade their privacy or add to or aggravate any such adverse effect, injury or invasion of

privacy.

The committee does not inquire into the truth or merits of the statement in the Senate or the response, but if it is satisfied that a response should be published, it recommends that course of action to the Senate.

Senators and their staff

Regulation of the behaviour of parliamentarians towards their staff is the responsibility of the Department of Finance. Parliamentarians and their staff operate within a legislative framework which includes the Members of Parliament (Staff) Act 1984 and the Work Health and Safety Act 2011. Parliamentarians that employ staff have a duty to take reasonable care that their behaviour does not affect the health and safety of other persons and includes a prohibition against discrimination and harassment of individuals or groups based on race, gender, disability, religion or sexuality.

Department of the Senate

The Department of the Senate engages employees under the Parliamentary Service Act 1999 (PS Act). This Act incorporates a Code of Conduct that requires parliamentary service employees, when acting in connection with their parliamentary service employment, to treat everyone with respect, courtesy and without harassment, among other things. This Code of Conduct only applies to parliamentary service employees and not parliamentarians or their staff.

In support of the PS Act, and other discrimination legislation, the Department has developed a policy on Workplace Discrimination, Harassment and Bullying outlining the process for handling complaints, which includes formal and informal mechanisms. Employees can also raise matters using other policies (for example, Procedures for Public Interest Disclosure and Procedures for Determining Suspected Breaches of the Parliamentary Service Code of Conduct) and may have access to statutory review mechanisms, including in some circumstances referral to the Australian Federal Police.

Where matters are referred to external stakeholders to investigate (for example, the Australian Federal Police or the Australian Human Rights Commission), they are considered in accordance with the relevant statutory provisions.

Australian Capital Territory Legislative Assembly

In August 2005 the Legislative Assembly adopted a Code of Conduct for all Members. The Code is a continuing resolution of the Assembly and is intended to be aspirational. In relation to behaviour of Members, the Code specifies that Members should:

"Treat all citizens of the Australian Capital Territory with courtesy, and

> respect the diversity of their backgrounds, experiences and views. In particular, Members should by their words and actions demonstrate, and by their example and leadership encourage and foster others to show, respect for the peaceful, temperate and lawful exercise by all members of the community of their shared and individual rights and entitlements, including freedom of religion, freedom of association and freedom of speech."

and "In all their dealings with staff of the Assembly and members of the ACT Public Service: extend professional courtesy and respect; and recognise the unique position of impartiality and the obligations of Public Service officials."

At the beginning of each new Assembly, directly after an election, the Assembly reaffirms its commitment to the principles, obligations and aspirations of the code. Where a new member is elected to fill a vacancy the new member shall, before they make an inaugural speech, affirm that they will abide by the code.

In October 2013 the Assembly adopted a continuing resolution to provide for the appointment of a Commissioner for Standards. The functions of the Commissioner are to:

(a) investigate complaints about Members lodged via the Clerk to the Commissioner; and

(b) report to the Standing Committee on Administration and Procedure.

Anyone may make a complaint to the Commissioner via the Clerk of the Legislative Assembly about a Member's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests. The Integrity Commissioner established pursuant to the Integrity Commission Act 2018 may also refer matters to the Commissioner for Standards for consideration via the Clerk of the Legislative Assembly about matters the Integrity Commissioner considers should be referred.

The Code of Conduct states that "in committing to this Code of Conduct, Members undertake, to the community and to one another, that they shall not act in a manner inconsistent with their duties and obligations as Members" It then outlines 10 guiding principles.

The Code also recognises the role Members play as employers and encourages Members to ensure their staff are mindful of Members' obligations under the code and to direct their staff to comply with any code of conduct applicable to those staff from time to time.

Members' staff employment is regulated by the Legislative Assembly (Members' Staff) Code of Conduct For Staff of Non-Executive Members Determination 2015 (Disallowable instrument DI2015-320).

New South Wales Legislative Assembly

Conduct towards staff

The Legislative Assembly actively works with Members of Parliament and the

Department of Parliamentary Services to foster an anti-bullying culture and a culture of respect between Members and staff.

For example, during the induction process for new Members the Clerk of the Legislative Assembly directly addresses the issue of Members' conduct towards staff and draws Members' attention to the provisions of the Anti-Discrimination Act 1977, Section 22B, which state:

> (7) It is unlawful for a member of either House of Parliament to sexually harass:
> (a) a workplace participant at a place that is a workplace of both the member and the workplace participant, or
> (b) another member of Parliament at a place that is a workplace of both members.
> (8) It is unlawful for a workplace participant to sexually harass a member of either House of Parliament at a place that is the workplace of both the member and the workplace participant.

As part of their induction new Members also receive training to assist them to effectively manage their electorate offices. Much of this training centres on effective staff management, including best practice for managing conflict and dealing with performance issues.

Further, Members are advised that they can seek advice from the Clerk of the Legislative Assembly and the Department of Parliamentary Services Human Services team if they have any questions about staff management and conduct towards staff.

Conduct towards committee witnesses

The conduct of Members towards committee witnesses is regulated, in the first instance, by the committee Chair.

If any abuse, mistreatment or intimidation of committee witnesses occurs, a committee may make a report to the House about the circumstances of the matter, and the House may then resolve to refer the matter to the Committee on Parliamentary Privilege and Ethics for consideration as a possible contempt of Parliament.

Other conduct

Members are bound by a Code of Conduct, the terms of which must be agreed to by a resolution of the House. The first Members' Code of Conduct was adopted in 1998 and the latest version was agreed to by the Legislative Assembly on 5 March 2020.

The Code provides guidance on expected standards of behaviour for Members in all aspects of their public life, and addresses issues like conflicts of interest, bribery, the proper use of public resources, and gifts and benefits

received in connection with official duties. Members' behaviour, however, is not covered by the Code.

A substantial breach of the Code by a Member could amount to "corrupt conduct" under the Independent Commission Against Corruption Act 1988, in which case the breach may be referred to the Independent Commission Against Corruption for investigation.

All staff that are directly employed by Members must comply with a *Code of Conduct for Members' Staff*, which was first adopted in 2006.

Among other things the *Code of Conduct for Members' Staff* explicitly states that Members' staff "should treat members of the public and other members' staff honestly, fairly, responsibly and compassionately" and "behave in a way that upholds the Parliament's commitment to respecting the dignity, rights and views of others. Members' staff must not engage in any form of bullying, mistreatment, coercion or harassment."

Compliance with the Code of Conduct for Members' Staff is mandatory.

New South Wales Legislative Council

Conduct towards witnesses

In 2018 the Legislative Council adopted procedural protections to safeguard witnesses and others as they take part in the inquiry process. These are codified in the resolution of the House, *Procedures to be followed by Legislative Council Committees to provide procedural fairness to witnesses*, commonly referred to as the Procedural fairness resolution. Any complaint from an inquiry participant would be dealt with on a case by case basis, in the first instance by the committee undertaking the inquiry.

Conduct towards staff

The matter of members' conduct towards staff was addressed directly by the Clerk of the Parliaments with new members during the induction programme following the 2019 election.

This included making clear to newly elected members that, although there is unfortunately still no formal mechanism for addressing complaints about members' conduct that falls short of corrupt conduct, the culture around member and staff interactions is based on and invariably demonstrates respect, that any member not treating staff with respect quickly stands out, and that any complaints/concerns about disrespectful conduct will be taken up directly. Further that the only real issue of concern to Department of the Legislative Council staff one year into the new Parliament is around ever increasing member expectations with regard to workloads, directly related to the numbers in the House and the consequent volume of committee work.

Other conduct

The Legislative Council's *Code of Conduct for Members* (recently reviewed by the Privileges Committee and adopted by the House on 24 March 2020) has clauses dealing with disclosure of conflicts of interest, bribery, gifts, use of public resources, use of confidential information, duties as a Member of Parliament, and secondary employment or engagements. Behaviour outside these clauses is not regulated.

Both Houses have adopted the Code of Conduct for the purposes of section 9(1) (d) of the Independent Commission and Corruption Act 1988 (NSW). Under this act, ICAC has jurisdiction to investigate and make findings of 'corrupt conduct' against members where there has been a 'substantial breach' of the Code.

Enforcement of the Code, however, is the responsibility of the individual Houses. Any other breach of the Code would be assessed and enforced by the House.

The Code of Conduct is limited to behaviour that occurs in the conduct of parliamentary duties. The Parliament has a separate *Code of Conduct for Members' Staff*.

Northern Territory Legislative Assembly

The Members of the Northern Territory Legislative Assembly adhere to a range of regulations.

Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008

The Code of Conduct and Ethical Standards is established under section 4 of the Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008. The Code establishes principles of ethical conduct, and standards of behaviour, for members.

The principles of ethical conduct fall under four main headings:

(1) integrity;
(2) accountability;
(3) responsibility; and
(4) the public interest.

The Code states rules and standards of conduct that are implicit in these principles. However, the Code is not to be regarded as an exhaustive statement of the implications of these principles and, in a situation that is not explicitly covered by the Code, the member must use the member's own judgment to determine an appropriate course of conduct conforming with these principles.

The Code is intended to be read in conjunction with other relevant laws, the Standing Orders of the Assembly, and other standards established by the

Assembly governing the conduct of members.

In case of conflict between the Code and the Assembly's Standing Orders or other Standards, the Code prevails.

The Assembly may refer an alleged breach of the Code to the Privileges Committee, and if the Committee finds a breach established, may punish it as a contempt of the Assembly.

Independent Commissioner Against Corruption Act 2017

The object of Independent Commissioner Against Corruption Act 2017 is to address wrongdoing in, or connected with, public administration by preventing or minimising the occurrence of improper conduct; and improving public confidence that improper conduct will be detected and dealt with appropriately. It also provides incentives and reducing disincentives to persons to assist in the detection, reporting, investigation, prosecution and prevention of improper conduct; and protects persons who put themselves at risk of harm by exposing or reporting improper conduct. The Act augments the Territory's existing framework for responding to improper conduct by establishing an Independent Commissioner Against Corruption (ICAC) intended to:

(1) investigate the most serious, systemic and sensitive improper conduct;
(2) ensure that other improper conduct is dealt with, either by an appropriate existing entity or, if the ICAC considers it appropriate, by the ICAC; and
(3) coordinate a response to improper conduct when multiple entities have jurisdiction in relation to the matter; and
(4) facilitate the prosecution of offences involving improper conduct.

Assembly Committee

The Legislative Assembly may, by resolution, designate a committee of the Legislative Assembly to receive reports, and perform other functions, in relation to the ICAC.

In February 2020, the Assembly established an ICAC Standing Committee to receive reports and perform other functions in relation to the Independent Commissioner Against Corruption (Commissioner) pursuant to Section 5 of the Independent Commissioner Against Corruption Act 2017.

The functions of the Committee are to:

(1) perform the functions of the Assembly Committee under the Act
(2) examine each Annual Report of the Commissioner and the Inspector under section 1.28 and 1.37 of the Act.
(3) report to the Assembly on matters relating to tabled reports which have been referred to the Legislative Assembly by the Commissioner under section 53 and 54 of the Act.
(4) examine trends in similar bodies in Australia and internationally, including

trends in the legislation and administration of these bodies, to ensure the NT ICAC remains fit-for-purpose.

The Committee's functions do not include:

(1) investigating a matter relating to particular conduct, or
(2) reconsidering a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or
(3) reconsidering the findings, recommendations, determinations or other decisions of the Commissioner or the Inspector, in relation to a particular investigation, preliminary inquiries, audit, review, referral, or complaint.

The membership of the Committee is two Government Members of which one will be Chair and the other the Deputy Chair of the committee, one Opposition Member and one non-party aligned Member. Membership of the Committee is subject to conflict of interest considerations to ensure members are free from perceived or actual bias.

Queensland Parliament

The Queensland Legislative Assembly has a Code of Ethical Standards as well as a Guide to the Code of Ethical Standards and Rules relating to the Conduct of Members which details the conduct of members in parliament. There are six fundamental principles underpinning the duties of, and obligations on, a member. They include integrity of the parliament; primacy of the public interest; independence of action; appropriate use of information; respect for persons; and appropriate use of entitlements.

The principle of respect for persons clearly states that members should treat members of the public, officers and employees of the Parliamentary Service and other public officials with courtesy, honesty and fairness, and with proper regard for their rights, obligations, cultural differences, safety, health and welfare. Members are not to use abusive, obscene or threatening language (either oral or written) or behaviour towards any officer, employee or member of the public. Members must also comply with the provisions of the Human Rights Act 2019.

In a practical sense, Members conduct towards staff that contravenes acceptable standards is dealt with by the Clerk as the employing authority of all parliamentary staff (including electorate officers).

The Standing Orders govern members' and committees' conduct in relation to committee witnesses and others, specifically:

- Schedule 3 deals with instructions to committees regarding witnesses
- Schedule 5 provides guidelines for the protection of persons who make public interest disclosures
- Schedule 8 provides a code of practice for public service employees assisting or appearing before portfolio committees, and

- Schedule 9 provides a code of practice for assistance to portfolio committees by the Auditor-General and the Queensland Audit Office.

Matters relating to potential breaches of parliamentary privilege or contempt may be referred to the Ethics Committee by the House or the Speaker. A parliamentary committee may also report that a matter involving its proceedings has arisen and recommend that the matter be referred to the Ethics Committee, in which case the matter stands referred to the Ethics Committee.

The procedures for raising and considering complaints are governed by Standing Orders. In considering whether matters should be referred to the Ethics Committee, the Speaker shall take into account the degree of importance of the matter which has been raised and whether an adequate apology or explanation has been made in respect of the matter. No matter should be referred to the Ethics Committee if the matter is technical or trivial and does not warrant the further attention of the House.

Proceedings for contempt of the House shall be brought only upon the adoption by the House of a report from the Ethics Committee recommending that such proceedings be instituted.

South Australia House of Assembly

Regulating the behaviour of members is a matter for the House. The House may determine how to deal with complaints about the behaviour of members, which may include referral to a Privileges Committee. To date, three matters have been referred to a Privileges Committee, none of which have related to the behaviour of members.[5]

Independent Commissioner Against Corruption (ICAC)

The Independent Commissioner Against Corruption may investigate cases of misconduct or maladministration against public officers, including a Member of Parliament.[6] Matters may be referred to the relevant House to consider, however, the Commissioner may not give direction to a House of Parliament in relation to a matter concerning a member.[7]

Statement of Principles

In the previous Parliament (53rd Parliament, 2015–17) the House agreed to a Statement of Principles for Members of Parliament. The Statement addresses managing conflicts of interests, financial interests and general conduct.

[5] *The matters included two allegations of Ministers misleading the House (1998 and 2003) and one relating to members' correspondence (2006).*

[6] *Independent Commissioner Against Corruption Act 2012 (SA), Schedule 1*

[7] *Ibid., Section 5 (6)*

Statement 11 refers specifically to members' relations with the public, public service and other members. Within 14 days of election and re-election, members were required to sign an acknowledgement that they had read and accepted the Statement.

At the commencement of the 54th Parliament in 2018, the Statement of Principles was considered to have continuing effect and all members signed an acknowledgement.

There is no formal process for assessing complaints about the behaviour of members against the Statement of Principles. The ICAC Commissioner does not have power to investigate any breaches of the Statement of Principles.[8]

Sexual Harassment by an MP against Parliamentary Staff – Equal Opportunity Act

The Equal Opportunity Act 1984 has a specific provision dealing with acts of sexual harassment by an MP. It is unlawful for an MP to sexual harass parliamentary or electorate office staff.[9]

On receipt of a complaint the Equal Opportunity Commissioner must refer the complaint to the appropriate Presiding Officer to determine whether dealing with the complaint will impinge on parliamentary privilege. If it could, the Presiding Officer will deal with the matter. If not, the Commissioner will deal with the matter under the process set out in the Act.[10]

The Act does not provide for a complaint to be made by an MP against another MP.

Inquiry into alleged misconduct

In January 2020 the Speaker appointed an independent investigator to inquire into alleged misconduct by a member at a pre-Christmas event at Parliament House. The Speaker advised the House that while he did not have power to sanction the member, he chose to appoint an investigator "by virtue of my position as Speaker as generally responsible for the good governance of the House of Assembly and for maintaining order". Prior to launching the investigation there was no complaint laid against the member or report to the police. The investigation was suspended in lieu of a report to the police and subsequent investigation. The police investigation is still ongoing and the Speaker is yet to report back to the House on the findings of the investigation.

8 *Ibid., Section 38 (4)*
9 *Equal Opportunity Act 1984 (SA), Section 87 (6c).*
10 *Ibid., Section 93AA.*

Statement of Principles for Members of Parliament

Passed by the South Australian House of Assembly on 23 February 2016, the following principles are expected to be adhered to:

1. Members of Parliament are in a unique position of being accountable to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at elections.
2. Members of Parliament have a responsibility to maintain the public trust placed in them by performing their duties with fairness, honesty and integrity, subject to the laws of the State and rules of the Parliament, and using their influence to advance the common good of the people of South Australia.
3. Political parties and political activities are a part of the democratic process. Participation in political parties and political activities is within the legitimate activities of Members of Parliament.
4. Members of Parliament should declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their duties. Members must declare their interests as required by the Members of Parliament (Register of Interests) Act 1983 and declare their interests when speaking on a matter in the House or a Committee in accordance with the Standing Orders.
5. A conflict of interest does not exist where the Member is only affected as a member of the public or a member of a broad class.
6. Members of Parliament should not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for any financial or pecuniary benefit.
7. In accordance with the requirements of the Members of Parliament (Register of Interests) Act 1983, Members of Parliament should declare all gifts and benefits received in connection with their official duties, including contributions made to any fund for a Member's benefit.
8. Members of Parliament should not accept gifts or other considerations that create a conflict of interest.
9. Members of Parliament should apply the public resources with which they are provided for the purpose of carrying out their duties.
10. Members of Parliament should not knowingly and improperly use official information, which is not in the public domain, or information obtained in confidence in the course of their Parliamentary duties, for private benefit.
11. Members of Parliament should act with civility in their dealings with the public, Minister and other Members of Parliament and the Public Service.
12. Members of Parliament should always be mindful of their responsibility to accord due respect to their right of freedom of speech with Parliament

and not to misuse this right, consciously avoiding undeserved harm to an individual.

Tasmania House of Assembly

In practice, any alleged incidents of inappropriate behaviour by Members towards staff would at first instance be managed on a case by case basis by the Clerk of the House in consultation with the Speaker, if appropriate.

Members of the House of Assembly are required to subscribe to the Code of Conduct, which sets out ethical standards and principles to assist Members in observing expected standards of conduct.

The Code of Conduct is aspirational and intentionally not exhaustive. The Code includes a "Statement of Values" to which Members must adhere, including: "integrity, honesty, accessibility, accountability, fairness, transparency, courtesy, respect and understanding, without harassment, victimisation or discrimination".[11] The Values are a recent addition to the Standing Orders, and it is likely that any future allegation of inappropriate behaviour by a Member would be measured against these values.

Members are obligated to determine for themselves how they can discharge their duties to "the highest ethical standards".[12] Members cannot rely on merely following the letter of the law to absolve themselves of their ethical duties, for "compliance with the law may not always be enough to guarantee an acceptable standard of conduct. Members must not only act lawfully, but also in a manner that will withstand close public scrutiny."[13]

The Code of Conduct requires Members to:

- respect the religious and cultural beliefs of others, in accordance with the Universal Declaration of Human Rights;
- where possible, avoid giving unnecessary offence to groups in the community whose beliefs and views differ from those held by the Members or by groups the Member represents; and
- take particular care to consider the rights and reputations of others before making use of the unique protection available under parliamentary privilege. This privilege should never be used recklessly or without due regard to accuracy.

These requirements would apply to a Member's treatment of staff, committee witnesses and others.

As the Code of the Conduct forms part of the Standing Orders, allegations of inappropriate behaviour by a Member considered to be a breach of the Code,

11 Standing Order 2
12 *Ibid.*
13 *Ibid.*

may result in the House referring the matter to the Standing Committee of Privileges and Conduct. The Committee would then inquire into the allegations and report their findings and any recommendations to the House. Should the House debate the report, it could resolve that the Member has breached the Code of Conduct and is therefore in contempt.

Whilst there is no legislation specific to Members' behaviour that occurs in the conduct of parliamentary duties, there are a number of other relevant Acts to which a Member is subject:

- If the Members behaviour included: discrimination based on a prescribed attribute; or, prohibited conduct (including sexual harassment and victimisation) could see the Member charged with an offence under the Anti-Discrimination Act 1998.
- The Public Interest Disclosures Act 2002 provides protections to parliamentary staff to enable complaints about "improper conduct" by Members, including corruption or other serious illegal behaviour. The Act provides protection for the complainant from detrimental action resulting from their complaint. The Act defines detrimental action to include bullying, harassment and loss of career advancement. Complaints of this nature are made directly to the Speaker, who can then refer the matter onto the Ombudsman for review.

The House of Assembly is unique in that it does not employ the staff for Members' offices either at Parliament House or their electorate offices. These employees are employed by the Department of Premier and Cabinet. These employees would be expected to follow the complaint procedures as prescribed by the Department of Premier and Cabinet.

Victoria Legislative Assembly and Legislative Council (joint response)

A new Code of Conduct was introduced to the Members of Parliament (Standards) Act 1978 (the Act). The changes came into effect in September 2019. Part 3 of the Act states that:

(1) This Part sets out the Code of Conduct that Members must observe when carrying out their public duties.

(2) The Code of Conduct sets out the manner in which a Member demonstrates the values set out in section 4.

The Code of Conduct directly relates to matters including the following:

- Upholding democracy and respecting others regardless of background
- Conflicts of interest
- Using position for profit
- Outside employment and activities
- Accepting any gift, hospitality or other benefit

- Use of influence
- Use of public resources
- Personal conduct
- Managing confidential and personal information
- Post-retirement activities

A wilful breach of the Code can be a contempt of Parliament. Allegations of a breach of the Code are made to the Speaker, who then determines whether to refer it to the Privileges Committee for assessment.

Western Australia Legislative Council

The Legislative Council of Western Australia does not have any special procedures that regulate the behaviour of members towards staff, committee witnesses and others apart from the inherent powers of the House to deal with its own Members.

CANADA

House of Commons

The primary policy framework that deals with the behaviour of Members relates to preventing and resolving alleged harassment in the workplace. The framework provides two mechanisms for Members of the House of Commons, House Officers, Research Offices and their employees for the prevention and resolution of alleged harassment situations in the workplace: the *Code of Conduct for Members of the House of Commons: Sexual Harassment* and the *House of Commons Policy on Preventing and Addressing Harassment*. The House Administration also has a Policy on Harassment Prevention and Resolution in the Workplace, which applies to all House Administration employees. Many of these employees provide direct services to Members and their staff.

The awareness initiatives, services, and resources available for Members, House Officers, Research Offices and their employees, have been improved since the implementation of this policy framework to ensure they are relevant, based on best practices and readily accessible.

Policy framework

The *House of Commons Policy on Preventing and Addressing Harassment*, approved by the Board of Internal Economy in December 2014, applies to Members and House Officers as employers, to their employees and to Research Office employees. Interns and volunteers (paid or unpaid) are also covered by the policy. This policy does not cover situations between Members.

Members of the House of Commons are employers of their employees. They are responsible for providing a harassment-free workplace and should diligently

address any incident or complaint brought to their attention regarding the conduct of their employees. Any incident leading to a complaint regarding the behaviour of a Member's employee should be addressed with the Member. The policy emphasises impartiality and confidentiality, as well as protecting the rights of the complainant and the respondent.

Whips are expected to address any incident or complaint brought to their attention regarding the conduct of a Member under their responsibility. Ideally, any incident regarding the behaviour of a Member should also be addressed with the Whip. Because this may not be appropriate in every case, a complainant may, at their discretion, raise the issue directly with the Chief Human Resources Officer (CHRO). In the latter case, the CHRO will advise the appropriate Whip(s).

Members and Whips can consult with the CHRO or Members' HR Services for advice on how to handle alleged harassment, including how a Member can support a complainant. Also, Members and Whips seized of such matters may choose to hand over management of the issue to the CHRO.

The *House of Commons Policy on Preventing and Addressing Harassment* addresses prevention, processes for filing informal or formal complaints, investigating and reporting, appeals, and communicating findings. Enquiries and complaints will not always result in formal harassment investigations as they may be resolved through one of the options outlined in the policy, such as mediation.

Situations between Members

In June 2015, the Standing Committee on Procedure and House Affairs presented its 38th report *Code of Conduct for Members of the House of Commons: Sexual Harassment*, which was concurred in by the House on 9 June 2015. The Code came into effect at the start of the 42nd Parliament in December 2015. It provides Members with mechanisms to resolve alleged harassment complaints and ensures the commitment of Members to creating an environment that is free of harassment. Every Member is required to sign a pledge form to affirm their commitment.

Complainants may, at their discretion, raise their issue directly with the Whip or the CHRO, In the latter case, the CHRO will advise the appropriate Whip(s) that an alleged sexual harassment complaint has been filed.

House Administration employees

The House Administration's *Policy on Harassment Prevention and Resolution in the Workplace* has been in place for several decades and applies to all House Administration employees. The latest version was approved in April 2015 by the Clerk's Management Group. The House of Commons is a multi-jurisdictional

environment. If one of the parties involved does not fall under the jurisdiction of the House Administration, measures are taken to clarify and address the situation (including notifying the concerned party's employer, if necessary) and to implement corrective measures as required. For example, a situation may occur between employees from different parliamentary institutions.

Program for informal conflict management and resolution

The Respectful Workplace Program is a confidential programme for informal conflict management and resolution that includes mediation and facilitated discussions. These resources are available to Members, House Officers, Research Offices and their employees, as well as to House Administration employees. This programme may be accessed when a workplace conflict exists, when an incident is raised, before a formal complaint is submitted, or to help resolve a complaint submitted through the above-mentioned framework.

Mediation is an important tool whether it involves alleged harassment or conflict in the workplace and has proved successful in helping resolve various workplace situations.

Reporting

The CHRO is responsible for providing the Board of Internal Economy with an annual report on the *House of Commons Policy on Preventing and Addressing Harassment*. The cases outlined in the report are categorised as enquiries or complaints (formal and informal) and are handled through the Office of the CHRO, either by the CHRO himself or by the Respectful Workplace Program.

Enquiries may involve a request for information regarding the options available under the policy. In certain situations, the person making the enquiry may be referred to a more appropriate channel to resolve the issue.

Bill C-65

On 7 November 2017 the Government of Canada introduced Bill C-65, An Act to amend the

Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1 (the Act) to the House of Commons. Part I of the Act will modify the existing framework under the Canada Labour Code (Code) for the prevention of harassment and violence, including sexual harassment and sexual violence, in workplaces under federal jurisdiction, including parliamentary workplaces. When Part 1 of the Act comes into force (expected to be in 2020), the policy framework for Members and their staff and for the House Administration will have to be adjusted to reflect the new regulations and associated obligations.

Senate

The behaviour of senators towards each other, staff, witnesses and others is governed by various instruments, including the *Rules of the Senate*, the *Ethics and Conflict of Interest Code for Senators*, and the *Senate Policy on the Prevention and Resolution of Harassment in the Workplace*. The *Rules of the Senate* govern proceedings in the Senate and in committees, supplemented by practice and precedent. They prohibit, for example, "personal, sharp or taxing speeches" (rule 6-13(1)), and allow senators to raise points of order when there is inappropriate behaviour in the Senate or a committee meeting. The Speaker (or chair of a committee) can intervene on his or her own initiative to maintain order.

The *Ethics and Conflict of Interest Code for Senators*, which was most recently updated in 2014, seeks to "maintain and enhance public confidence and trust in the integrity of Senators and the Senate" (paragraph 1(a)). It requires that senators "fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate" (paragraph 2(2)(b)). While the Code does govern possible conflicts of interest, it has also been used to deal with issues such as the behaviour towards staff and the posting of certain material on senators' web sites.

The *Senate Policy on the Provision and Resolution of Harassment in the Workplace* was adopted by the Senate on 22 June 2009. The policy applies to the conduct of all persons in the Senate, including senators and their staff, employees of the Senate Administration, contractors and their staff, and volunteers. Interim revisions were implemented in early 2019, including the transfer of complaints to an external third party for determination as to admissibility. Parliamentary proceedings are not covered by the Policy. The Standing Committee on Internal Economy, Budgets and Administration proposed a new Policy to the Senate on 6 February 2020. If the new Policy is adopted by the Senate it will require consequential adjustments to both the Rules and the Code.

A possible breach of normal process or improper behaviour during a meeting can be raised by a point of order in committee or in the Senate, depending on where the matter arises. A possible violation of privilege is dealt with through a question of privilege in the Senate. A ruling can be appealed to the Senate, if the matter was raised there, or to the committee, if a point of order was raised in that context.

Complaints under the *Ethics and Conflict of Interest Code for Senators* are subject to an initial review by the Senate Ethics Officer. If that official finds an issue of concern, the matter is then considered by the Standing Committee on Ethics and Conflict of Interest for Senators, which will make a report to the Senate and may recommend follow-up action.

The proposed new *Senate Policy on the Provision and Resolution of Harassment in the Workplace* is based on the twin pillars of prevention and complaint management. Through training, awareness and early detection of possible harassment and violence, the Senate will seek to counter the effects of harassment. Complaints made under the new Policy will be managed independently and externally by an impartial third party. There are provisions for alternative dispute resolution and mediation services, as well as protection from reprisals. The proposed Policy also provides for the implementation of remedial and corrective measures. The proposal reflects provisions of the Canada Labour Code dealing with harassment that are set to come into force in 2020.

Alberta Legislative Assembly

In January 2017 the Legislative Assembly Office (LAO) introduced the Respectful Workplace Policy for employees, which includes constituency and caucus staff (prior to 2017, the LAO paralleled the Government of Alberta policy).

The circumstances in which a Member of the Legislative Assembly of Alberta is the respondent to a complaint are outlined in the policy as follows:

> "When a Member is the respondent in a complaint, the employee has the option to report the matter to the Member's Whip and/or the Director of Human Resource Services and the Clerk, who may appoint an independent investigator if required. If the Member involved is the Whip, then the employee has the option to report the matter to the House Leader of that caucus and/or the Director of Human Resource Services and the Clerk, who may appoint an independent investigator if required. For Independent Members, the employee has the option to report the matter to the Speaker and/or the Director of Human Resource Services, who may appoint an independent investigator if required. Complaints by an employee involving the Speaker stand referred to the Ethics Commissioner."

The formal resolution process under the Respectful Workplace Policy provides that all individuals with relevant information to share will be interviewed. There is no provision for cross-examination.

There are two resolution processes—informal and formal. The informal process is:

- The individual should be spoken to directly, if possible, or communicated with through a note or an e-mail. The objective is to have employees in most instances to do their best to work things out with each other before escalating to a higher level.
- If speaking to the individual does not resolve the issue or if you are not comfortable in approaching the individual, employees can speak to their supervisor or manager. Employees are encouraged to work with their

supervisor or manager to develop a plan for how the situation can be addressed moving forward.
- Employees may also speak to Legislative Assembly Office Human Resource Services or the Clerk of the Assembly for coaching to assist with these conversations.
- Employees may ask their supervisor or manager to assist in coaching/mediating an informal resolution.
- If the matter involves an employee's supervisor, an employee may also bring concerns to their supervisor's manager or alternatively to Human Resources in an effort to find a solution prior to filing a formal complaint.
- Failing a successful informal resolution, an employee may consider pursuing the formal complaint process.

The formal resolution process is:
- The formal process must be initiated within 30 days from the date of the incident.
- In extenuating circumstances, the Clerk has the authority to extend timelines.
- A formal complaint can be filed in accordance with the Formal Issue Resolution Process.
- After an initial review of the complaint it may proceed to an investigation through the Formal Issue Resolution Process, during which all individuals with relevant information to share will be interviewed.
- Once the investigation is completed and the findings are reviewed by the appropriate party as determined by the LAO, a decision will be made regarding appropriate action.

The policy comprises all LAO employees, which includes Members' constituency and caucus staff.

British Columbia Legislative Assembly

The Standing Orders are the primary authority that govern behaviour during parliamentary proceedings, including committee proceedings. The Chair of a parliamentary committee is responsible for maintaining order and decorum in committee meetings. Pursuant to Standing Order 71, procedures in select standing and special committees are governed by the Standing Orders "to the same extent as the same may be applicable to the Committee of the Whole House." As such, the Chair of a parliamentary committee would regulate the behaviour of Members towards witnesses, ensuring that proceedings are respectful of all participants. Should a Member disregard the guidance of the Chair, and the procedural matter cannot be settled by the committee, the committee can agree to report the matter to the Legislative Assembly for consideration by the Speaker or the Assembly. Such a report would likely be

acted upon, depending on the contents of the report.

Pursuant to Standing Order 20, the Speaker may name and immediately entertain a motion to suspend a Member acting in a disorderly manner and disregarding the authority of the Chair. The motion is not subject to debate. A Member suspended under the provisions of the Standing Orders is also subject to the penalty outlined in the Members' Remuneration and Pensions Act (R.S.B.C. 1996, c. 257).

In terms of assessing complaints about the behavior of members towards staff and others, on 3 July 2019 LAMC approved in principle the Assembly's first comprehensive Respectful Workplace Policy. The policy affirms a respectful workplace environment free of bullying, harassment, discrimination and violence, and applies to all participants of the Legislative Assembly including Members, Ministerial staff, caucus staff and Legislative Assembly employees and their interactions with external parties such as visitors, Legislative Assembly contractors, and members of the Legislative Press Gallery. The policy provides for the creation of an Independent Respectful Workplace Office to coordinate compliance with the policy and conduct investigations.

LAMC undertook a Request for Proposals process to select a contractor to undertake the work of establishing the office. The successful proponent will undertake a review of the policy to ensure alignment with best practices, conduct mandatory training with all participants, and establish the framework for addressing complaints. In the interim, the Legislative Assembly's human resources office has been tasked with receiving initial reports of concerns, complaints or incidents that might arise and referring them to the employee assistance programme.

Manitoba Legislative Assembly

There is no code of conduct specifically for Members, however a Respectful Workplace Policy *Addressing and Preventing Sexual Harassment, Harassment and Bullying* was enhanced to provide information related to what is and what is not respectful behaviour as well as outlining the processes to be followed for complaints to come forward. These policies cover all Assembly employees and elected Members and their staff.

Québec National Assembly

Situations involving harassment in the workplace are managed using the National Assembly's *Policy on Preventing and Managing Situations Involving Harassment in the Workplace*, adopted by the Office of the National Assembly in June 2015 and updated in December 2018. This policy is the result of recommendations made by a working group of elected officials and confirms the political and administrative authorities' commitment to ensuring that the

Assembly is a healthy, harmonious workplace, free from harassment.

The Policy sets out the Members' responsibilities as employers, but also as colleagues. It outlines the two processes, one formal and the other informal, available to Members, Members' staff and the administrative personnel of the National Assembly to report a situation or file a formal complaint.

Accountability, in the form of annual reports, has been in place since June 2019. The reports review the awareness and training measures implemented as well as the use of the policy, so that the means can be assessed and necessary changes made.

The *Code of ethics and conduct of the Members of the National Assembly* affirms the values of the National Assembly and provides that the conduct of Members must be characterized by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice.

The National Assembly also relies on awareness and training activities to prevent harassment.

An awareness campaign was held from November 2018 to May 2019 within the precincts of the National Assembly and in the 125 riding offices. This awareness campaign was aimed at parliamentarians and political and administrative staff, and was intended to be hard-hitting, disturbing and thought-provoking, leaving no one indifferent and encouraging discussion. It dealt with the following themes: psychological harassment, sexual harassment, discriminatory harassment and, lastly, civility. The next awareness campaign will focus exclusively on civility and respect.

The National Assembly also gives mandatory training to all those working within parliamentary precincts on incivility, conflict management and on preventing and managing situations involving harassment.

Saskatchewan Legislative Assembly

In November 2017, the Board of Internal Economy (BOIE) adopted an MLA anti-harassment directive and associated policy. Sensitivity training was a requirement of the policy. With the assistance of an outside consultant, the Legislative Assembly Service developed and provided sensitivity training courses to ensure that MLAs understand the policy and best practices in a much broader societal context. All members completed the sensitivity training.

Additionally, the BOIE ordered a review of existing anti-harassment policies within the legislative arm of government, including caucuses, officers of the Assembly, and the Legislative Assembly Service. The objective was to develop a best-practices framework. Expert assistance was engaged to identify criteria to protect MLAs and, every person employed or contracted by, or associated with an MLA (including but not limited to any person employed by the Legislative Assembly). The first objective was to develop a best-practices framework

that addressed the requirements of law, labour standards and sound policy. The second objective was to provide a gap analysis of existing policy so that corrective measures might be taken.

The best-practices framework was delivered to the caucuses, officers of the Assembly, and the Legislative Assembly Service in the autumn of 2019. The gap analysis was separately provided to the respective entities with the recommendation that policies be brought up to modern standards where shortcomings were found.

Yukon Legislative Assembly

Staff of Members as well as caucus staff are hired under the Cabinet and Caucus Employees Act. Staff are subject to the hiring contracts established under that Act and the job descriptions attached as a regulation to that Act. This does not mean that they are exempt from labour law or any other statutes governing the rights of workers except as enumerated within the Cabinet and Caucus Employees Act, specifically in section 19 ("rules of conduct for cabinet employees and caucus employees") of that Act. In addition, that Act under section 10 allows for the Members' Services Board (a Standing Committee that is chaired *ex officio* by the Speaker) to establish policies for, among other things, conditions of employment of staff.

In Yukon, as of June 2019 there is a new Respectful Conduct Policy that was put in place by the Members' Services Board. This policy governs the behaviour of Members to each other, staff, government employees and members of the public and its purpose is stated as follows:

> "The Respectful Conduct Policy's (R.C.P.) intent is to ensure that the Yukon Legislative Assembly fosters a respectful, healthy and supportive environment. Further, the R.C.P. defines disrespectful and discriminatory behaviour, affirms responsibility and accountability for conduct, and mandates training and education programmes for Members of the Legislative Assembly (MLAs)."

There is a complaints process is established within the R.C.P. that is designed where possible to mediate complaints but can lead to sanctions.

> The R.C.P. states:
>
> "The Yukon Legislative Assembly is committed to resolving incidents of disrespectful conduct. The R.C.P. outlines a complaint process to ensure there are clear and timely procedures to report incidents, and where necessary, provide appropriate intervention."

The R.C.P. is in addition to the normal behavioural constraints of the House and Committees which are governed by the Speaker, or by the respective Chair of a given Committee, in concert with the Standing Orders. These behavioural constraints if enforced should be sufficient to protect witnesses from any

poor behaviour by a Member. Witnesses are treated respectfully in the Yukon experience.

INDIA

Lok Sabha

A Code of Conduct for the Members of the Lok Sabha is under consideration by the Committee on Ethics.

At present, any person or member may make a complaint relating to unethical conduct of a member of Lok Sabha. Provided that if a complaint is made by any person, it shall be forwarded by a member. A complaint should be made in writing and addressed to the Speaker, who may refer it to the Chairperson of the Committee on Ethics, for examination, investigation and report. The complainant must declare the identity and submit supporting evidence, documentary or otherwise to substantiate the allegations. It is incumbent upon any person who has made the complaint to ensure that the complaint is not false, frivolous or vexatious and is made in good faith. An affidavit to this effect should accompany the complaint. An affidavit shall not be required in case the complaint is made by a member.

Every complaint should be couched in respectful and temperate language, and be either in Hindi or English. If any complaint in any other Indian language is made, it should be accompanied by a translation either in Hindi or English and signed by the complainant.

Every complaint made by any person should be countersigned by the member forwarding the complaint to the Speaker. The identity of the complainant is kept secret, if a request to that effect is made by the complainant.

A complaint based merely on unsubstantiated media reports is not entertained. The Committee on Ethics does not take up any matter which is *sub-judice* and the decision of the Committee as to whether such matter is or is not *sub-judice* is for the purposes of these rules be treated as final.

Notwithstanding anything contained in these rules, the Speaker may refer any question involving unethical conduct of a member in Lok Sabha to the Committee on Ethics for examination, investigation and report.

Rajya Sabha

The Code of Conduct for Members of Rajya Sabha has been prescribed detailing the principles which Members should abide by in their dealings in their public life. However, specific rules for regulating the behaviour of Members towards staff, Committee witnesses and others have not been framed.

The Committee on Ethics under rule 290 of the Rules of Procedure and Conduct of Business in the Council of States is *inter alia* mandated to prepare a

Code of Conduct for members and to suggest amendments or additions to the Code from time to time in the form of reports to the Council, and to examine cases concerning the alleged breach of the Code of Conduct by members as also cases concerning allegations of any other ethical misconduct of members. In pursuance thereto, the Committee in its First Report presented to the Council of States on 8 December 1998, and adopted by it on 15 December 1999, recommended a fourteen point framework of Code of Conduct for Members of Rajya Sabha which prescribes principles which Members are required to abide by in their dealings.

Further, under Rule 295 of the Rules of Procedure, the procedure for making a complaint has been laid down. Under sub rule (1) of the said Rule, any person may make a complaint to the Committee regarding alleged unethical behaviour or breach of the Code of Conduct by a member or alleged incorrect information of a member's interests. Succeeding sub-rules lay down some conditions and directions with regard to making complaint, viz., complaint should be addressed in writing to the Committee or to an officer authorized by it in such form and manner as the Committee may specify; the complaint shall be couched in temperate language and be confined to facts; a person making a complaint must declare his identity and submit supporting evidence, documentary or otherwise to substantiate his allegations; a complaint based merely on an unsubstantiated media report is not to be entertained. Also, any matter which is *sub judice* is not taken up by the Committee for examination and the decision of the Committee as to whether such matter is or is not *sub judice* shall for the purposes of this rule be treated as final.

Under Rule 296, the procedure for inquiry has been laid down. If the Committee is satisfied that the complaint is in proper form and the matter is within its jurisdiction, it may take up the matter for preliminary inquiry. After the preliminary inquiry, if the Committee is of the opinion that there is no prima facie case, the matter may be dropped. If a complaint is found to be false or vexatious, or made in bad faith, the matter may also be taken up as an issue of breach of parliamentary privilege. If the Committee is of the opinion that there is a prima facie case, the matter shall be taken up by the Committee for examination and report. The Committee may frame rules from time to time to give effect to its mandate and for conducting inquiries either by itself or by any official acting under its authority. The Committee shall ordinarily hold its meetings in camera.

Rule 297 refers to the recommendation of imposition of sanctions on a Member. It has been laid down that after the examination of the complaint, if the Committee finds that the Member has indulged in unethical behaviour or that there is any other misconduct or that the member has contravened the Code/ Rules, the Committee may recommend the imposition of one or more

of the following sanctions laid down under rule 297, viz.: (a) censure; (b) reprimand; (c) suspension from the House for a specific period; and (d) any other sanction determined by the Committee to be appropriate.

After the report containing the observations and recommendations is approved by the Committee, it is presented to the House by Chairman of the Committee for adoption.

The Committee does not directly lay down provision for regulating the conduct of members during the proceedings inside the Council of States. However, the Committee has recommended fourteen point framework of Code of Conduct for Members of Rajya Sabha which prescribes the principles that Members are required to abide by in their dealings. Certain paragraphs of the Code of Conduct guide the Members in execution of their duties as a Member of Parliament.

The Committee does not lay down any provision regulating the conduct of staff employed by members of Rajya Sabha. Regular, as well as co-terminus, employees of the Secretariat are governed by Central Civil Services (Conduct) Rules 1964 as amended and adopted from time to time.

JAMAICA HOUSE OF REPRESENTATIVES AND SENATE (JOINT RESPONSE)

Members of staff work alongside Parliamentarians in carrying out their roles in different assigned Parliamentary tasks. This is done in a businesslike manner and seems to be working well with both parties.

Witnesses are called from time to time to committees and are free to express their views cordially on matters they are called to present on before committees. Members listen to witnesses and are free to make decisions based on those presentations.

Overall, there are no formal regulations governing Members' treatment of others, including staff and committee witnesses (notwithstanding the Rule of Law, which applies to all citizens).

STATES OF JERSEY

The Code of Conduct for Elected Members does not differentiate between behaviour in a parliamentary context and behaviour in other contexts, such as a Member's private life. Aspects of the Code are written in broad terms, including a provision of not bringing the States of Jersey into disrepute and "at all times" treating the public with respect and courtesy. As such, complaints relating to behaviour towards Members, staff and the public or relating to behaviour outside of the parliamentary context can be made to the Commissioner for

Standards and dealt with in the same way as complaints relating to financial interests.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Parliament does not formally regulate the behaviour of its members towards staff, committee witnesses, or others. Members' behaviour in committee is managed by a committee's chair as they see fit. Complaints may be raised with a committee by members of the public but it is for committees and members to determine how to respond to such complaints. Members' behaviour in the Chamber is governed by the presiding officer. Some established Speakers' rulings (Speakers' rulings 50/4 and 50/5) direct members to comment in the House on the conduct of members of the public only when necessary. However, these rulings do not govern members' conduct outside the House.

There are also some specific rules governing members' behaviour under the law and Standing Orders. Members may not solicit or accept bribes, and members commit a contempt if they accept a bribe intended to influence their conduct in parliamentary proceedings. Standing Orders also specify 25 separate examples of contempts, some of which relate to how members conduct themselves, such as attempting to prevent or inhibit other members or other people from participating fully in its proceedings, perhaps by intimidation or coercion or deliberately misleading the House. Members can raise contempts with the Speaker or by way of notice of motion.

Regulation of members' behaviour is currently under review as part of Parliament's response to the Francis Review. Historically, the New Zealand Parliament has taken the view that advice about appropriate behaviour and discipline is a matter for induction training and internal party discipline. However, in 2019 the Speaker engaged Debbie Francis to conduct an independent external review into harmful behaviour within the parliamentary workplace. The Francis Review found that bullying and harassment were systemic in the parliamentary workplace. It specifically noted the power imbalance between members and parliamentary staff. The report made 85 recommendations, which included recommendations that would establish a formal code of conduct for members of Parliament and specify sanctions for poor conduct. As part of responding to these recommendations, a cross-Parliament steering committee that included members, leaders of parliamentary agencies, union representation, members of the Press Gallery, and a cultural adviser representing Te Ao Māori (the Māori world view) was established to develop a parliamentary code of conduct. That work is ongoing.

ST HELENA LEGISLATIVE COUNCIL

The Code of Conduct for Members of the Legislative Council set out the expected behaviour of Members—this document is currently under review. It does not extend to staff employed by St Helena Government. Members of the Legislative Council do not have any staff of their own.

UNITED KINGDOM

House of Commons

The treatment of staff and others by Members has been a subject of public debate and concern in the last three years. This follows allegations about past misbehaviour originally made in autumn 2017 which received widespread media coverage. In response the Leader of the House of Commons set up a working party which whose recommendations led to the adoption of a bicameral Parliamentary Behaviour Code in July 2018.

The Behaviour Code sets guidelines for how everyone in the parliamentary community (Members, their staff, House staff, journalists, visitors and others) should treat each other. The Code is a separate document from the Code of Conduct for Members of Parliament which remains in force. A provision has been added to the latter code to make clear that MPs are subject to the Behaviour Code.

There is a long-standing process for investigating complaints of breaches of the Code of Conduct (typically involving such matters as abuse of House-provided facilities or resources, or failure to register or declare interests). Anyone, including members of the public, may make a complaint to an independent Parliamentary Commissioner for Standards. If she regards the complaint as within her remit, and evidence is provided, she will conduct an investigation and has power to escalate serious cases to the Committee on Standards for sanctioning. The Committee consists of seven MPs and seven lay members, the latter being members of the public appointed following open competition; since January 2019 they have had full voting rights.

In tandem with the Behaviour Code, both Houses in the UK Parliament have set up an Independent Complaints and Grievance Scheme (ICGS) to consider complaints of bullying, harassment or sexual misconduct within the parliamentary community. Insofar as the ICGS relates to Members, it has been grafted on to the existing Code of Conduct process, but with significant extra elements. These comprise independent helplines as well as independent investigation services under the oversight of the two Commissioners. In both Houses, serious ICGS cases involving Members can be escalated to, respectively, the Standards Committee or the Conduct Committee for sanctioning or

appeal. Sanctions available include a required apology, suspension or expulsion (the latter two sanctions being imposed by each House following a committee recommendation). The Recall of MPs Act 2015 provides that in cases where a Commons Member has been suspended for 10 or more days following a Standards Committee report, they are subject to a 'recall procedure' involving a ballot of constituents which may lead to their seat being declared vacant.

In the Commons, consideration is being given to replacing the role of the Standards Committee with that of a newly created independent panel of experts, though it is still proposed that only the House should have power to suspend or expel a Member. This proposal would implement a key recommendation by Dame Laura Cox QC, who was asked by the House of Commons Commission to review the House's practice in regard to bullying and harassment of staff. Dame Laura reported in October 2018 her view that, to restore public confidence, Members should play no part in determining ICGS complaints.

Another report, commissioned by the Commons from Gemma White QC, published in July 2019, considered bullying and harassment of Members' staff. The House of Commons Commission has accepted its conclusions, including the creation of an HR department to assist Members and their staff, and the opening of the ICGS to non-recent cases. A Director of Cultural Transformation was recruited on a fixed-term contract to galvanise desired changes in the collective culture of the House; although the Director has now departed, the process continues.

The Behaviour Code relates to behaviour by Members within the parliamentary estate and in pursuance of Members' parliamentary duties; it does not cover behaviour in constituency surgeries and does not override the Code of Conduct's provision that that code "does not seek to regulate what Members do in their purely private and personal lives".

The Commons Standards Committee is inquiring into the range of sanctions available to the House to deal with Members' breaches of the Behaviour Code. An enhanced suite of sanctions is under consideration; in addition to the existing sanctions, this might include compulsory training and deprivation of services or facilities.

Overall, Westminster still—just about—retains its 'hybrid' system for regulating Members' conduct, combining self-regulation with independent elements. The changes from 2018 onwards have tipped the balance further towards those independent elements, particularly in the Commons, without forfeiting the traditional right of each House to take decisions on suspension or expulsion of Members.

House of Lords

The House of Lords largely maintains its own Code of Conduct, separate from

the House of Commons, to regulate the behaviour of its members and investigate complaints. However, in July 2018 the implementation of the Independent Complaints and Grievance Scheme (ICGS) introduced a UK Parliament-wide Behaviour Code which clarified the standards of behaviour expected of all on the Parliamentary Estate. Amendments were subsequently made to the Lords Code of Conduct on 30 April 2019 which introduced provisions concerning bullying, harassment and sexual misconduct.

The Lords Code of Conduct now includes the following ICGS provisions in paragraphs 10 and 17:

> "Members of the House should observe the principles set out in the parliamentary Behaviour Code of respect, professionalism, understanding others' perspectives, courtesy, and acceptance of responsibility. These principles will be taken into consideration when any allegation of bullying, harassment and sexual misconduct is under investigation."
>
> "Members are required to treat those with whom they come into contact in the course of their parliamentary duties and activities with respect and courtesy. Behaviour that amounts to bullying, harassment or sexual misconduct is a breach of this Code."

An independent Commissioner for Standards is appointed by the House for a fixed term of five years to investigate alleged breaches of the Code. The Commissioner first conducts a preliminary assessment of a complaint to determine whether it engages the Code. If it meets relevant tests the Commissioner will then launch her investigation. When investigating ICGS cases, she will often take the opportunity to be supported by an independent investigator. In cases where the Commissioner upholds a complaint, a range of outcomes and sanctions are available for her to recommend depending on her findings. She may invite both the complainant and respondent to consider an agreed resolution (in which case an investigation ends with no finding being made) or a form of remedial action (in which case a finding is made and a report published). This requires the agreement of both parties and may include mediation or behavioural change training. Alternatively, the Commissioner may consider it more appropriate to recommend a sanction to the Lords Conduct Committee. The Conduct Committee is constituted of five members of the House and four lay members. Sanctions the Commissioner can recommend to the Conduct Committee range from requiring a member attend behavioural change training through to expulsion from the House. The most serious sanctions (denial of access to services and facilities, suspension and expulsion) must be agreed by the House itself. Unless a case is resolved by an agreed resolution, all reports from the Commissioner and the Conduct Committee into members' behaviour are published online. All provisions in the Code regulating the behaviour of members only apply to conduct that occurs during the course

of parliamentary activities and duties.

All staff who have a parliamentary photo-pass or email account who are sponsored by a member of the House of Lords for the purpose of providing parliamentary secretarial or research assistance to the member, are covered by the Code of Conduct for Lords Members' Staff. The Code makes similar provisions to the Members' Code with respect to regulating behaviour and conducting investigations. It is required that members' staff treat those whom they come into contact in the course of their parliamentary duties and activities with dignity, courtesy and respect. Behaviour that amounts to bullying, harassment or sexual misconduct is also a breach of this Code. Sanctions that may apply to members' staff where a breach is found, if remedial action is not agreed, can include the suspension of the individual's pass, the withdrawal of the individual's pass or the cancellation of the individual's email account. The Members' Staff Code recognises that there may be instances where the publication of a report into the conduct of a member's staff would be disproportionate to the breach. In those instances a report would be made to the sponsoring member only.

PRIVILEGE

AUSTRALIA

House of Representatives

Inquiry into refundable franking credits

On 13 February 2019 the Manager of Opposition Business raised, as a matter of privilege, the conduct of the Chair of the House Standing Committee on Economics in relation to the committee's inquiry into refundable franking credits. He referred to the following specific actions:

- the apparent organising of a public hearing of the committee to coincide with the meeting of a group with an active interest in the inquiry, including with the possible intention to engage in protest activity at the hearing; and
- the authorisation, as Chair of the committee, of a private website which appeared to solicit submissions and attendees at public hearings from just one perspective.

The Speaker made a statement in response on 21 February. He explained that, to constitute a contempt of the House, the conduct would need to amount, or be intended or likely to amount, to an improper interference with the free exercise by the committee of its authority or functions (echoing the words of section 4 of the Parliamentary Privileges Act 1987). Based on the evidence presented, the Speaker did not consider that the actions of the committee Chair had prevented the committee in a fundamental way from continuing to fulfil its basic responsibilities in relation to its inquiry work. Therefore, he did not give precedence to a motion to refer the matter to the Standing Committee of Privileges and Members' Interests.

The Speaker noted, however, that certain actions of the committee Chair were not aligned with the conventions usually observed by chairs of House committees. He also noted concerns that such conduct had the potential to damage the committee's reputation and the reputation of the House committee system more generally. The Manager of Opposition Business did not seek to move a motion referring the matter to the Committee of Privileges and Members' Interests.

Senate

Possible improper interference with a senator in the free performance of his duties

On 2 April 2019 the Privileges Committee tabled its 175th report *Possible improper interference with a Senator in the free performance of his duties*, following an inquiry into a matter of privilege raised by Senator Burston in correspondence

tabled by the President on 16 October 2018 (reported in the previous edition of The Table).

Under the terms of reference agreed by the Senate, the Privileges Committee was charged with determining whether:

- actions taken by Senator Hanson and others in relation to removing Senator Burston from certain party positions within Pauline Hanson's One Nation Party and pressing him to resign from the party constituted an improper interference in the free performance of his duties as a senator or sought to penalise him for his conduct as a senator; and
- these actions constituted a contempt of the Senate.

The committee concluded that these actions were party matters and therefore did not amount to interference with Senator Burston's duties as a senator. It noted that:

> "Parliamentary privilege and the associated resolutions of the Senate are designed to protect the Parliament, its committees and individual senators in the performance of their parliamentary duties, not as a mechanism to resolve internal party politics or quarrels between senators. It is the committee's firm view that without compelling grounds to bring these resolutions to bear, such matters should not be subject to its consideration."

Investigation of a possible contempt of the Senate

On 14 November 2019 the Privileges Committee tabled its 177th report, finding that comments made by a Victorian union leader did not warrant investigation as a possible contempt. It had been alleged that the comments, as reported in the media, could be seen as an attempt to intimidate or improperly influence senators in relation to their votes on the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019, and in particular how three senators might vote on the bill.

The Senate has always taken a robust view as to whether senators have been improperly obstructed in their duties on the basis that senators are generally capable of looking after themselves. One salient factor is that senators have a forum in which they can respond to perceived threats with the protection of parliamentary privilege. The committee found nothing in the facts of the matter that persuaded it to depart from this long-standing position.

Foreign Influence Transparency Scheme

On 28 November 2019 the Privileges Committee tabled a report on the development of a Foreign Influence Transparency Scheme for the Parliament. The inquiry was undertaken on the recommendation of the Parliamentary Joint Committee on Intelligence and Security in the wake of the establishment of the Foreign Influence Transparency Scheme in 2018, which does not apply to

members and senators.

In its 178th report, the committee took the view that existing processes for registering interests and qualifications under sections 44 and 45 of the Constitution provide a ready vehicle for a parliamentary scheme, and considered whether activities taken on behalf of foreign principals might provide grounds for disqualification under section 44(i) for being under an 'acknowledgement of allegiance, obedience or adherence to a foreign power'.

The committee noted concerns with the operation of the existing scheme and the complication of developing a scheme for members of the federal Parliament, given that the Foreign Influence Transparency Scheme excludes their staff for some purposes, as well as state and territory members of parliament. The committee stated that it will continue to monitor the implementation of the existing scheme with a view to "developing an appropriate parliamentary scheme" in conjunction with the House Committee.

Australian Capital Territory Legislative Assembly

Privilege Committee report into release of unauthorised committee documents

On Tuesday 30 July 2019 the Chair of the Select Committee on Privileges 2019 presented its report to the Assembly (having reported out of session). The Committee made two recommendations, with one stating:

> "The Committee recommends that the Chief Minister, Treasury and Economic Development Directorate: (1) review relevant sections of its publication Guidelines for Officials on Participation in Legislative Assembly and Other Inquiries, with a view to ensuring that the guidelines make it clear that privilege may attach to any document provided to an Assembly committee; and (2) remind all ACT Public Service directorates and agencies of the existence of the guidelines."

On 26 November the Manager of Government Business presented its response to the report agreeing to the recommendation and tabling a revised set of Guidelines on Participation in Legislative Assembly and Other inquiries and indicating that the revised guide had been circulated to all of the ACT Public Service.

The second recommendation was that the Standing Order dealing with how committees deal with alleged breaches be amended, and, on 22 August 2019 the Assembly amended the relevant standing order to enable the affected committee to make a special report to the Assembly about the effect of the alleged disclosure.

Queensland Parliament

Alleged breaches of parliamentary privilege

The Ethics Committee investigates and reports on the ethical conduct of particular members and on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House. In 2019 the Ethics Committee reported on seven matters of privilege. These matters contained allegations of threatening or intimidating members; threatening or intimidating or disadvantaging a member, molestation of a member, compulsion by menace and improper influence; deliberately misleading the House; and bringing the House or a committee into disrepute. There was a finding of contempt in two of these matters, with the penalties ranging from the House taking no further action to the member apologising to the House.

Premier found in contempt

Interestingly, one of those matters found the Premier, Hon. Annastacia Palaszczuk, to be in contempt of parliament. The actions of the Premier that led to the finding of contempt followed an Australian Senator's controversial speech regarding his stance on immigration.

The specific actions that led to the Premier being in contempt were threatening to withdraw parliamentary resources from Katter's Australian Party (KAP) members unless they made a statement to the Premier's satisfaction condemning the Senator speech as he was at the time a member of the KAP; and withdrawing parliamentary resources from KAP members on the basis that they failed to make a statement to the Premier's satisfaction condemning the Senator's speech. The Ethics Committee determined that these actions amounted to an improper interference with the free performance of the KAP members and their duties as members.

This finding of contempt was notwithstanding that the committee concluded there was no evidence that the Premier intended to commit any wrongdoing. The committee also noted the Premier's depth of feeling and personal closeness to the content of the Senator's speech was a mitigating factor. The penalty for the contempt was for the Premier to apologise to the House for her actions. Following this apology, the House briefly debated the matter before resolving to accept the apology. This was the first time that a Premier has been found in contempt in Australia.

Banners, signs and other things containing matter associated with political cause prohibited on precinct

During a public assembly on 15 March 2019 the member for Maiwar was in the crowd and then returned and was seen on the balcony of Parliament House. He was seen clapping and waving to the crowd and had two children with him who both had Greens signs displayed. The member was also wearing a black T-shirt with protest slogans.

Section 50 of the Parliamentary Service Act 1988 (PSA) enables the Speaker to make directions to regulate the behaviour and conduct of persons entering the Parliamentary Precinct. The directions can take the form of by-laws. Under Speaker's by-laws, banners, signs or other things that are or contain matter associated with a political cause or campaign are a proscribed item and cannot be brought into the precinct. Clothing such as protest T-shirts have to be removed, covered by a jacket or turned inside out. The rationale for these directions and by-laws is to keep the precinct free of protest and preserve its dignity. Pursuant to section 50(7) of the PSA, the by-laws do not apply to members of the Legislative Assembly in the conduct of their parliamentary business. The rationale for this exclusion is that the Legislative Assembly should deal with its members, not authorised officers. As the member for Maiwar's conduct could not be dealt with under the by-laws, on 26 March 2019 the Speaker referred this matter to the Ethics Committee.

The Ethics Committee found that the actions of the member for Maiwar did constitute disorderly conduct on the parliamentary precinct that was an improper interference with the free exercise by the Assembly of its authority and functions, and constitutes a contempt of the parliament.

In making its findings the Ethics Committee took the following mitigating factors into consideration when determining the penalty for the member for Maiwar:

- the member for Maiwar is a first-term member of parliament and appeared unaware of the seriousness of his actions on 15 March 2019;
- while the member's behaviour was a contempt, there was no element of dishonesty or malice; and
- just prior to the incident when requested by the Clerk to speak to organisers of the event with regard to safety and security concerns, the member obliged.

The member for Maiwar made a second submission to the Ethics Committee in which he sought to distinguish his behaviour from that which was dealt with in Ethics Committee Report No. 41. The committee determined that the behaviour of the member for Maiwar, while of a similar class, was on a different scale to the behaviour of that dealt with in Report No. 41. The committee considered that the differing scale and gravity of the conduct of the member for Maiwar and in the prior matter was important to consider when determining a penalty for the member for Maiwar.

Given the mitigating factors noted above, the Ethics Committee recommended that the House take no further action in relation to the finding of contempt by the member for Maiwar.

South Australia House of Assembly

The number of matters of privilege raised by Members have reached unprecedented levels during this session, increasing from 11 in 2018 to 14 in 2019. Most of these allegations accused Ministers of misleading the House. In each case, the Speaker has determined that a *prima facie* case of privilege has not been made and has declined to give precedence to any of the motions. In each case, the Speaker has requested all relevant information and reported back to the House, usually by the next sitting day. In one instance where the Speaker did not afford precedence for a motion to establish a privileges committee a private member gave notice of a motion to establish a privileges committee. On the motion being moved and debated, it was negative on a division.

Victoria Legislative Assembly

While there were no issues of privilege reported during the year, the Assembly's Privileges Committee tabled a report in October setting out a process for dealing with complaints under the updated Standards Act. The legislation was amended as part of broader reforms to members remuneration, declaration of interests and standards, and now allows for allegations of a breach of the code of conduct to be referred to the committee directly from the Speaker, without the endorsement of the House. The Committee has set some parameters around the use of this referral, making it clear they will not accept anonymous referrals.

Western Australia Legislative Council

In April 2019 the Corruption and Crime Commission of Western Australia (CCC) issued the first of a series of 'notices to produce' documents or things to the Director General of the Department of the Premier and Cabinet (DPC) relating to the parliamentary email accounts of three former Members of the Legislative Council and their staff over a four year period. The DPC has managed these email accounts on behalf of the Parliament of Western Australia, as part of its administrative management of Members' electorate offices since the early 1980s.

In May 2019 the Commissioner of the CCC approached the President of the Legislative Council to discuss the development of an agreed procedure for the Legislative Council to review those emails sought under the CCC notices so as to exclude any emails that were subject to parliamentary privilege prior to CCC investigators accessing the documents. The Legislative Council Procedure and Privileges Committee (PPC), pursuant to an order of the Legislative Council, consulted with the Commissioner of the CCC over a number of weeks in the development of a satisfactory procedure. The PPC was under the impression that the PPC and the Commissioner of the CCC had reached an agreement on such a procedure, and so the PPC took active steps to implement the procedure.

The CCC, however, advised the PPC, that, in its view, no such agreement had been reached, and promptly ceased cooperating with the PPC.

Instead, the CCC continued to deal directly with the DPC. The Director General of DPC consulted the Attorney General and the Solicitor General and instructed the State Solicitor's Office (SSO) to conduct its own review for parliamentary privilege of the approximately 70,000 emails that the CCC had identified as potentially relevant amongst the three years and 9 months of email traffic of the three members and their 11 staff. The SSO review team included solicitors and law students to undertake the review. The DPC/SSO then produced the emails it had determined were not subject to parliamentary privilege to the CCC, notwithstanding an express direction by the PPC to the DPC not to do so. Furthermore, once the DPC had produced the documents to the CCC, the Acting Director General of the DPC failed to comply with a summons issued by the PPC to attend and produce to it copies of the documents that had been produced by the DPC to the CCC, and those documents the DPC had withheld on the grounds of parliamentary privilege.

The Acting Director General's failure to comply with the PPC's summons required the PPC to report the potential contempt to the Legislative Council. The PPC's privilege report publicised the covert CCC investigation; which subsequently became a public inquiry by the CCC into risks of misconduct associated with Members' use of their electorate and travel allowances. Two privilege inquiries are currently underway by order of the Legislative Council to investigate the actions of the DPC and CCC. On 17 December 2019, the CCC published its interim report, *Misconduct risks in electorate allowances for Members of Parliament*.

The Clerk of the Legislative Council now also holds material compulsorily obtained by the CCC over which a former Member claims parliamentary privilege. A review of that claim is underway. As a result of the Clerk's possession of this material, the CCC has issued Notices to Produce to the Clerk in relation to the material held by him. In response, the Legislative Council has ordered the Clerk not to comply with these notices until their validity has been determined by the Supreme Court of Western Australia.

The Attorney General has now commenced a legal action in the Supreme Court of Western Australia against the Legislative Council, claiming, amongst other things, that:

1. the Legislative Council has no power to make an order directing its Clerk not to produce the House's documents to a government agency with statutory powers of compulsion, and
2. parliamentary privilege is effectively only a limited rule of evidence which cannot be relied upon to refuse to produce documents to an agency with statutory powers of compulsion.

On the same day as the Attorney General commenced his action, the Legislative Council also commenced a legal action in the Supreme Court against the CCC and DPC. That action challenges both the validity of the CCC notices and the purported determination of parliamentary privilege by the DPC/SSO in relation to the parliamentary email accounts of three former Members and their staff. Crucial to the case will be the interpretation given to the wording of s 3(2) of the Corruption, Crime and Misconduct Act 2003, the Act under which the CCC notices were purportedly issued, which states:

> Nothing in this Act affects, or is intended to affect, the operation of the Parliamentary Privileges Act 1891 or the Parliamentary Papers Act 1891 and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable by a House of Parliament.

One of the questions before the Supreme Court is whether the House possesses a privilege to determine claims of parliamentary privilege in respect to the documents and is therefore a matter 'determinable by a House of Parliament'. Given the paucity of legal authority in Western Australia on parliamentary privilege and the exercise of compulsory process, the Supreme Court will likely consider the decisions in several legal cases that have resulted in arrangements in other Australian jurisdictions for determining parliamentary privilege in respect to members' documents the subject of a compulsory process.

The two actions are likely to be heard together by a single judge of the Supreme Court during the first half of 2020.

CANADA

House of Commons

Question of Privilege—Motz

The Standing Committee on Procedure and House Affairs resumed its study of a question of privilege that had been found *prima facie* and presented a report to the House on 20 March 2019.

The matter had been referred to the committee on 19 June 2018, following a question of privilege raised by Glen Motz (Medicine Hat—Cardston—Wamer), alleging that information found on the Royal Canadian Mounted Police (RCMP) website led the public to believe that a certain bill had already been enacted by Parliament, even though the bill had not yet been passed. In his view, this demonstrated contempt for Parliament's role in the legislative process. In its report, the committee found that the RCMP had overlooked or diminished Parliament's role but accepted an apology from the RCMP and acknowledged that the error had been made in good faith. The committee did not find that a contempt had taken place but cautioned against similar errors recurring.

The committee recommended that federal departments and agencies indicate the status of legislation in relevant communications products. No motion was moved for concurrence in the report.

Question of Privilege—O'Toole

On 22 March and 4 April 2019 Erin O'Toole (Durham) rose on a question of privilege contending that the solicitor-client privilege being cited by former justice minister Jody Wilson-Raybould (Vancouver Granville) when declining to provide certain details related to a potential deferred prosecution agreement for the firm SNC-Lavalin should be superseded by her parliamentary privilege of freedom of speech. He asked the Speaker to confirm to the House whether parliamentary privilege superseded solicitor-client privilege and to allow Ms. Wilson-Raybould to express herself freely. On 6 May 2019 the Speaker ruled that statements made by members in parliamentary proceedings were indeed protected by the parliamentary privilege of freedom of speech, but that it was not the role of the Chair to pronounce itself on how and when members should exercise it.

Manitoba Legislative Assembly

Introduction of Bill (No. 21)

On 18 March 2019 Mr. Wiebe (Member for Concordia) rose on a matter of privilege regarding the introduction of Bill (No. 21), the Legislative Building Centennial Restoration and Preservation Act. While the Bill was introduced in the House on 15 March 2019 it was not yet distributed to Members. Mr. Wiebe alleged that despite the Bill not being distributed to the House, the Minister of Finance (Hon. Mr. Fielding) discussed the Bill with the media at a press conference that same day. Mr. Wiebe claimed that the dissemination of a bill to the media prior to the House receiving copies constitutes a breach of privilege. The Speaker took the matter under advisement.

On 6 May 2019 the Speaker ruled there was no *prima facie* case of privilege, stating that the issue was simply a matter of discourtesy. She continued:

> "I will also observe that the underlying principle here is the primacy and authority of the Assembly. As elected representatives it is our duty to carefully consider the business before us so that we may make informed decisions. Any matter destined for consideration by this body—including legislation—should be introduced and explained here first, before it is shared with the public or the media. This has been the practice of this place for almost 150 years. As I have noted previously however, in recent years we have seen this practice evolve. It has become common for Members on all sides of the House to discuss, in general or conceptual terms, potential legislation outside of the House in advance of introduction. These discussions have occurred

in the form of consultations with stakeholders, and also through interactions with the media. From the perspective of the Speaker's Chair, as long as such discussions do not reveal or relate any detailed provisions of upcoming legislation, the primacy and authority of the Assembly was not seen as being infringed upon."

The Speaker concluded by suggesting that the Standing Committee on Rules of the House may want to revisit this issue in light of modern communication methods.

Supplementary Information for Legislative Review—Revenue Estimates

On 10 October 2019 Hon. Mr. Gerrard (Member for River Heights) rose on a matter of privilege regarding the Government's failure to table the Supplementary Information for Legislative Review—Revenue Estimates before the end of session. He expressed that this failure impeded his abilities as an MLA due to lack of knowledge regarding a critical component of the financial affairs of Manitoba. The Speaker took the matter under advisement during the 1st session.

On 25 November 2019, during the 2nd session, the Speaker delivered her ruling. First she ruled that Hon. Mr. Gerrard had met the condition of timeliness for a matter of privilege, as he had raised the matter shortly after having learned of the Government's intentions regarding tabling of the report. Secondly, she ruled that Hon. Mr. Gerrard had not met the condition of demonstrating a *prima facie* case of breach of privilege; rather, his argument constituted a grievance against the Government. The Speaker quoted from Maingot's *Parliamentary Privilege in Canada*: "Questions of privilege are frequently raised but few are found to be prima facie cases. Members have a tendency to use the rubric of privilege to raise what is really a matter of order, or in the words of the Speaker of the House of Commons, a grievance against the government." She took the opportunity to remind the House of the conditions necessary for constituting a matter of privilege.

Québec National Assembly

Presuming passage of a bill and invoking its provisions before it is passed

In a notice sent on 29 October 2019 the House Leader of the Third Opposition Group raised a point of privilege concerning the arguments Hydro-Québec presented before the Régie de l'énergie with regard to Bill 34, An Act to simplify the process for establishing electricity distribution rates, within the context of a request for an adjustment of electricity rates for the year 2020–2021.

According to the House Leader of the Third Opposition Group, Hydro-Québec was in contempt of Parliament by undermining the authority and dignity of the Assembly in two ways. First, the state-owned enterprise allegedly

presumed the passage of the Bill by describing it, in several communications, as imminent in the context of a majority government. Second, it also allegedly sought to invoke provisions of the Bill before its passage by referring to specific provisions of the Bill in a pleading.

In its ruling, the Chair recalled that, as contempt pertains only to serious actions, when examining such an issue it must take into account the circumstances of the communication of information. The Chair must therefore thoroughly analyse the facts and actions surrounding the communication of the information before making its finding, rather than conclude prima facie that contempt of Parliament was committed.

In the case at hand, the excerpts of the communications in question had to be read in the context of a targeted argumentation on a point of law, presented in support of a pleading before the adjudicating officers of an administrative tribunal. The latter were fully capable of sorting out and weighing contradictory representations made before them. In addition, the lack of restraint in the contentions put forth by Hydro-Québec did not in any way give immediate effect to the provisions contained in the Bill.

The Chair recalled that a bill can produce legal effect only once it has passed all the stages of the legislative process and has come into force. It was therefore inappropriate for Hydro-Québec to state that Bill 34 set any rates whatsoever. At most, one could have said that it proposed to set those rates, but even that statement would have had to specifically mention that the everything remained subject to the Assembly's decision.

As regards the time at which the legislative process was slated to end, the Chair pointed out that the Assembly has sole jurisdiction in determining the conduct of its proceedings. To assert anything else is disrespectful not only of parliamentarians, but also of the citizens who elected their representatives to exercise the important function of legislator. While it was possible that the Bill would be passed within the time period mentioned by Hydro-Québec, it might only have been passed later on, or not at all.

Moreover, the state-owned enterprise itself recognised that the fate of the Bill remained unknown. It would have been preferable for the state-owned enterprise to adopt this tone, with the necessary restraint, throughout its representations.

This holds true with regard to the description of the text of the Bill presented in the argumentation outline, which implied that the content of a number of sections would be the same at the outcome of the legislative process. The Chair stated that this point of view showed blatant ignorance of the way in which Parliament operates and the central and essential role it plays in legislative matters.

The Chair recalled that amendments are proposed for almost all bills during the legislative process. Although not all are adopted, the texts of the

vast majority of bills are amended to some degree between introduction and passage, even in the context of a majority government. It was therefore unwise to make representations lacking nuance and founded solely on the Bill's content upon its introduction.

As there can be no certainty that a bill introduced in the Assembly will be passed or that its contents will not be amended before its passage, the Chair specified that communications regarding the legislative process should be worded with restraint and clearly specify the role to be played by the Assembly and its Members.

Although the facts do not give rise to contempt of Parliament, the Chair gave the following two warnings.

Firstly, it is quite possible to vigorously argue a position such as the one Hydro-Québec wished to defend, but it is then necessary to choose the terms used carefully so as to underscore the role Parliament plays rather than mention it in passing. The Chair therefore invited anyone who is called upon to defend such a position in the future to do so with consideration for, and deference to, the proceedings of the National Assembly at all times, since the function of legislator that is conferred on parliamentarians is essential in a democracy.

Secondly, the persons called on to represent a state-owned enterprise of Hydro-Québec's stature must assume their responsibilities, in particular that of acting respectfully as regards Parliament and its Members. One must never underestimate the role entrusted to the Members by the citizens who elected them to exercise the legislative function of the State.

Failing to meet the requirement to table a strategic plan

In a notice sent on 29 November 2019 the House Leader of the Second Opposition Group raised a point of privilege, alleging that a Minister had breached the Members' rights and privileges by failing to meet the requirement to table a strategic plan within the prescribed time limit.

In its ruling, the Chair specified that in order to conclude that there was *prima facie* contempt of Parliament, the Chair had to be presented with compelling evidence that the period between the Minister's receipt of the strategic plan and its tabling in the National Assembly exceeded the 30-day time limit prescribed by law.

In the case at hand, the Minister tabled the strategic plan on 3 December 2019. For the plan to have been considered tabled on time, the Chair would have had to determine that the Minister had received it within the 30 days before that date. However, a reply to a request for access to information received from the organisation concerned showed that the plan had been sent to the Minister on 11 March 2019.

In the light of the compelling evidence, in order for the Chair to conclude

that the Minister had received the strategic plan at a subsequent date and tabled it within the prescribed time limit, details to that effect would have had to be provided. However, no such information was received.

The Government House Leader argued that that was a mistake made in good faith and that there had been some confusion as to whether it was the final version of the strategic plan; however, he did not explain the circumstances surrounding the confusion. The Minister's explanations did not change his legal obligation, nor did they prove that he had received the plan on a date other than that indicated in the reply to the request for access to information.

As a result, the Chair concluded that the point of privilege was admissible. However, no further action was taken after the Minister had offered his apologies to the National Assembly.

Disclosure of the content of a bill before it was introduced in the National Assembly and undermining of the authority and dignity of the Assembly

In a notice dated 3 December 2019 the Official Opposition House Leader alleged that the Government had breached the Members' rights and privileges when it provided privileged information regarding a bill to third parties, including a journalist, before the bill was introduced in the Assembly.

In a further notice sent to the President on 4 December 2019 the House Leader of the Second Opposition Group raised a point of privilege on an advertisement published by a Minister in a newspaper in his riding, in which he announced that a bill had been passed even though, in reality, the bill was still at the stage of clause-by-clause consideration by a parliamentary committee. According to the House Leader of the Second Opposition Group, the authority and dignity of the Assembly had been undermined, which constituted contempt of Parliament.

Although the two questions were separate points of privilege, they both referred to related concepts of parliamentary law. Consequently, the Chair decided to make a joint decision in order to give an overall picture of the principles governing the disclosure of information and communications regarding bills.

In its ruling, the Chair pointed out that three core principles must guide Members' actions when they disclose information or communicate information relating to a bill.

Firstly, Members must be the first to be apprised of information that is intended for them. Thus, as far as bills are concerned, their content must remain confidential until the Assembly has consented to the bill's introduction.

Secondly, since there can be no certainty as to whether a bill introduced in the Assembly will be passed or as to what its content will be at the time of its passage, communications regarding the legislative process should be worded

with restraint and clearly specify the role to be played by the Assembly and its Members. Parliamentarians are the only ones who have received a popular mandate to legislate, and nothing should be done to give a different impression.

Thirdly, information disseminated with respect to parliamentary proceedings must reflect reality. Presenting the passage of a bill as a *fait accompli*, thereby entirely ignoring the role of parliamentarians, could undermine the dignity and authority of the Assembly and its Members since it constitutes a lack of deference to all parliamentarians, who have an important role to play.

The Chair also pointed out that those who do not respect those rules expose themselves to a charge of contempt of Parliament.

As regards the first point, raised by the Official Opposition House Leader, after examining the content of the bill in question, the Chair noted that some of the elements identified in the news article to which the Official Opposition House Leader referred in support of his question were indeed in the bill, while others were not. Likewise, the bill covered other aspects that were not mentioned in the news article.

The Chair pointed out that it is crucial that Members, and not journalists, be the first to receive the information that is intended for them out of respect, not only for parliamentarians, but also for the important duties of their office and the essential role they play in society as legislators.

Although jurisprudence has clearly established that communicating the text of a bill before its introduction is prohibited, it has also affirmed on many occasions that this does not prevent the Government from communicating its intention to propose certain measures via a bill to be introduced or from disclosing the general policy directions of such a bill.

The Chair pointed out that it may sometimes be difficult to distinguish between disclosing the details of a bill and communicating the general policy directions of a bill: while the former would constitute prima facie contempt of Parliament, the latter has always been allowed.

If a journalist has access to certain elements of a bill before the bill's introduction, but there is no evidence the Minister made a formal communication to make the bill public and if, moreover, the text conveyed in the news article is inconsistent with the text introduced in the Assembly, jurisprudence has until now not considered that this would constitute contempt that is *prima facie* admissible.

In the light of the facts and parliamentary law, the Chair could not conclude that *prima facie* contempt had been committed with regard to that point.

Nonetheless, the Chair asked all Members, and in particular the Members of the Executive who introduce most of the bills debated in this Chamber, to be highly vigilant when communicating information regarding a bill that has not yet been introduced.

The Chair also mentioned that a simple way to exercise caution would be to wait until the Assembly consents to introducing a bill before discussing its content with third parties. This solution, which is far from unreasonable, would ensure that parliamentarians' and Parliament's roles are respected. It would also prevent unfortunate situations in which Members feel their right to be the first to be apprised of the details of a legislative measure they will be asked to comment on, examine and vote on has been undermined.

As regards the second point, raised by the House Leader of the Second Opposition Group, the Chair pointed out that the bill in question had been introduced in the Assembly on 1 October 2019, that it had been the object of special consultations in parliamentary committee, that a debate on passage of its principle had been held in the Assembly, and that it was in committee for clause-by-clause consideration.

In addition, considering that the information could easily be found on the National Assembly's website, the Chair found it difficult to understand how the Minister's advertisement could reflect such a lack of knowledge of the parliamentary proceedings relating to the Bill.

Although the Minister tweeted that the error in question had been made in good faith by an employee of his riding office, the Chair pointed out that Members are responsible for the publications made by persons acting on their behalf and that they must ensure that their staff, at minimum, aware of Parliament's role and of the business conducted there.

The Chair nonetheless reiterated that contempt of Parliament is a serious matter and that the Chair must thoroughly analyse the facts and the circumstances before declaring that a point of privilege is admissible on those grounds.

The Chair noted that the action taken did not seem to denote any ill intentions on the part of the Minister and that the Minister was not availing himself of a provision still under consideration in order to take an action that he would not have been empowered to take unless the provision was passed. The Minister also had not undermined the role of parliamentarians or that of the Parliament by implying anything whatsoever in that respect. On the contrary, and that was the actual problem, the Minister did not refer to the Parliament or its Members in his advertisement whereas it concerned a bill that had been introduced in the Assembly.

In analysing the facts, the Chair also took into account the prompt publication of an *erratum* note in the newspaper's digital edition and on the Minister's social media accounts to rectify the inaccurate information disseminated in the initial publication. The Chair noted that those actions had been taken swiftly so that no doubt would remain as to the message that should have been communicated, which was the proper thing to do. However, it would have been appropriate for

the Minister to have thought to make amends to his parliamentary colleagues out of respect for their legislative work, either in his *erratum* note, in the context of the parliamentary proceedings or by any other means.

After an overall analysis of the context, the Chair concluded that the incident could be put down to bungling rather than a deliberate attempt to undermine the authority or dignity of the Assembly and its Members. For that reason, the Chair could not conclude that the incident had given rise to contempt of Parliament.

Saskatchewan Legislative Assembly

Notice provisions and intention to deliberately mislead the Assembly

On 9 August 2019 the Speaker received a letter regarding a question of privilege from a member of the opposition stating that a minister had knowingly mislead the Assembly.

It was alleged that the minister provided false information to the Assembly during Question Period in his response to a question concerning the potential sale of a Crown corporation by stating that ". . . there have been no formal discussions as to what a transaction may or may not look like." As evidence to support his case, the member cited the Information and Privacy Commissioner's Review Report 119–2018, released on 9 August 2019. The report was in response to an applicant's request to determine whether the Crown corporation appropriately applied The Freedom of Information and Protection of Privacy Act exemptions. It identified agreements between the corporation and a third party, which the member claimed to be documentary evidence the minister deliberately misled the Assembly.

Before dealing with the alleged contempt, a procedural issue had to be resolved about the timing of the question of privilege. The member submitted the question of privilege during the summer period when the Assembly was not sitting but that was not a real concern. Although the Speaker could not rule on the matter until the Assembly reconvened, the Member complied with the literal requirement of the Standing Order that the case should be submitted at the earliest opportunity. The problem was that the next sitting day set by the parliamentary calendar was the date for prorogation. It was expected that the Lieutenant Governor would prorogue the Assembly on the morning of 23 October 2019, which would prevent the Speaker from ruling on the case.

Consequently, the member was advised that the question of privilege would expire at prorogation; however a precedent existed that would allow the Speaker to consider the member's question of privilege if it was resubmitted on the second day of the new session, which would be 24 October 2019. As it happened, the member resubmitted the case and the Speaker rendered a decision.

At the heart of the case was whether sufficient evidence had been presented to establish that the minister knew his statement was incorrect and that he intended to mislead the Assembly. In Saskatchewan, when a member is alleged to have deliberately misled the Assembly, an admission by the member or proof of a very high order is required before a case is determined to be *prima facie*.

In his review of the facts, it was not clear to the Speaker whether the exchange of information and negotiations referenced in the Information and Privacy Commissioner's report were exploratory or a "formal discussion" on the sale of the Crown corporation. The Speaker stated that the member did not point to or provide persuasive evidence to prove that there was a formal negotiation. The interpretation of those discussions, he said, were a matter of perception. Moreover, the report did not conclusively prove the minister's comment was false, and certainly did not provide evidence that the minister purposely provided false information with the intent to mislead the Assembly. The Speaker found that the member's case had not achieved the threshold of evidence needed for him to find a *prima facie* case.

Premature disclosure of contents of a bill

On 26 November 2019 the Opposition House Leader raised a question of privilege concerning the release of details related to the Opioid Damages and Health Care Costs Recovery Act before its introduction to the Legislative Assembly. It was claimed the minister made comments to the media about the details of a bill prior to its introduction to the Legislative Assembly and that constituted a contempt.

To support the case, the Opposition House Leader cited a recent case from the House of Commons in Ottawa regarding the premature disclosure of details of Bill C-14. The House of Commons Speaker decided the release of specific details of that bill before its introduction constituted a prima facie question of privilege. The Opposition House Leader also noted a previous Saskatchewan Speaker used that ruling in 2016 to support a decision that the release of embargoed information about the provincial budget constituted a *prima facie* case of privilege. The decisions of the House of Commons in Ottawa came into the picture because the Standing Orders say that when Saskatchewan does not have its own rules or practices it may turn to other jurisdictions.

The Speaker reminded the Assembly that the Chair does not determine questions of privilege. It is up to the Assembly to decide if breaches of privilege and occurrences of contempt have occurred. The Speaker found it noteworthy that the House of Commons never did determine that contempt had been committed by the premature release of the details of Bill C-14. The issue was ordered to the Standing Committee on Procedure and House Affairs on 16 April 2016, but a decision was not reported back to the House of Commons.

The Assembly was also asked to recall that the previous Speaker's decision was in the context of a budget leak and the lack of a directly relevant Saskatchewan precedent. He found several rulings from previous Speakers in Saskatchewan to inform his ruling. He noted that in each of the previous cases, the Speakers ruled that it is an important parliamentary convention that a minister first release the bill in the Assembly before releasing it to the public or media, but failure to do so does not infringe on members' privilege. A survey of cases across Canada showed that the needle has moved a little in some jurisdictions, but he could find no examples of a case proceeding without *prima facie* evidence confirming the release of a very specific and detailed content of a bill. Even so, he could not find any case in which an Assembly found contempt for the early disclosure of information from a bill, even when a *prima facie* case had been established.

The final matter reviewed was whether the media was apprised of the bill's contents to the exclusion of the Opposition. He noted that Speakers have previously demonstrated a common concern for respect to the parliamentary convention of first access to legislative information. This was the basis of a Speaker's decision in Saskatchewan on 11 April 2005 when members of the Opposition were denied access to a technical briefing provided to the media on a legislative matter.

The Speaker stated that he had not been provided with evidence that the media was given access to the bill, any content of the bill, or specific details of the bill prior to it being provided to the members of the Opposition. Consequently, the case made by the Opposition House Leader did not equate to the situation from 2005 in connection to access to technical briefings and embargoes.

The Speaker found that the minister's comments to the media in response to questions about the bill spoke in very general terms about its objectives. The minister had expressed an inability to speak further to the legislation prior to its introduction, which demonstrated his intent to adhere to the parliamentary convention of first access. The Speaker concluded by stating that an allegation as serious as contempt requires a thorough analysis. This had been achieved by scrutinising Saskatchewan's own precedents as well as those nationwide, and by examining the facts of the case. Based on this evidence he found that members were not impeded in the discharge of their parliamentary duties and that a *prima facie* case had not been established.

INDIA

Rajya Sabha

The Committee of Privileges in its 66th Report, while reconsidering its 61st Report on the direction of the House on a matter of alleged breach of privilege arising out of accessing of Call Data Records (CDRs) of the then Leader of

Opposition *inter alia* observed as follows:

> The Committee, in its Report, was of the opinion that the act of accessing CDRs in an unauthorised manner, though sinister and punishable in the eyes of the law, did not seem to cause any hindrance or obstruction in the functioning of a Member of Parliament so as to attract breach of his parliamentary privileges. But there was definitely a breach of right to privacy in such matters and for which remedies were available under the laws of land. However, the Committee was of the view that if unauthorised collection of CDRs of Members of Parliament causes any hindrance or obstruction in their parliamentary functions, it would tantamount to breach of privilege and breach of privacy under the criminal law.

STANDING ORDERS

AUSTRALIA

Senate

Standing Order 66, Formal motions

On 4 July 2019 the Senate adopted as a continuing order the requirement that motions to suspend standing orders moved during formal business (business that can be dealt with expeditiously) be put immediately without debate. This was initially implemented as a temporary order in November 2018.

Closing the Gap and Indigenous language (Standing Order 35, witnesses)

On 17 October 2019 the Senate agreed to the two recommendations made by the Procedure Committee in its second report of 2019. The first allows for a short suspension of the Senate so senators can attend the annual 'Closing the Gap' statement (a progress report delivered by the Prime Minister in the House of Representatives on targets to improve health, education and employment outcomes for Aboriginal and Torres Strait Islander peoples).

The second is an amendment to Standing Order 35 requiring that evidence heard by a Senate committee in an Indigenous Australian language is transcribed in Hansard in that language with an English translation.

Committee for the Scrutiny of Delegated Legislation

On 27 November the Senate agreed to a motion to amend the terms of reference for the Regulations and Ordinances Committee as recommended in the report of the committee's inquiry into Parliamentary Scrutiny of Delegated Legislation. The scrutiny principles under which the committee operates were initially set out in a report of the Senate Select Committee on the Standing Committee System in 1930 and adopted when the Regulations and Ordinances Committee was established in 1932.

The motion, which took effect from 4 December 2019, amended Standing Orders 23 and 25(2)(a). In addition to changing the name of the committee to the Senate Standing Committee for the Scrutiny of Delegated Legislation, the amendments:

- modernise language and procedures;
- clarify the standing orders to reflect existing committee practice, making it explicit that the remit of the Senate's legislation committees includes oversight of legislative instruments made in the portfolios allocated to them; and
- promote consistency with other Senate standing committees and equivalent

scrutiny committees in Westminster jurisdictions.

Trial changes

On 3 December the Senate adopted recommendations in the Procedure Committee's third report of 2019 for a trial of changes to the routine of business to streamline aspects of Senate business without reducing business time. The committee also proposed a trial of reduced speaking times on bills and during other general debates to give more senators the opportunity to participate in the available time. The trial changes included:

- Standing Order 55, Times of meeting

The dinner break on Monday evening (6.30 to 7.30pm) became an extra hour of debating time, undertaken on a 'no divisions' basis.

- Standing Order 54, Adjournment without motion

With one hour of business time added to proceedings on Mondays, the Thursday adjournment was bought forward to 6.00pm; an hour earlier than the average time observed over recent years. The total time for debate was reduced from 40 to 30 minutes, with individual speaking times of five to ten minutes.

- Standing Orders 57, 59, 61 and 62

The committee proposed new arrangements for the consideration of committee reports and other documents for up to 60 minutes on Thursdays. In recommending the trial of these arrangements, the committee noted that, although significant time is notionally allocated to the consideration of documents and reports on Thursday, in practice, the average time used is much less.

- Standing Order 189, Time limits on speeches

General debate on second reading motions and the like were reduced from 20 to 15 minutes, and contributions in committee of the whole (when bills are considered in detail) reduced from 15 to 10 minutes, noting that senators may make multiple contributions in committee.

The changes apply as a temporary order from the first sitting day in 2020 until the end of the first sitting week in August 2020.

Australian Capital Territory Legislative Assembly

New standing order providing leave of absence to pregnant MLAs

On Thursday 21 March 2019 the Speaker moved a motion to amend the standing orders to provide that, where an MLA who is pregnant has notified the Speaker, that Member shall, without a vote of the assembly, be entitled to 18 weeks maternity leave from the date the Speaker is notified. The new standing order was agreed to.

On Tuesday 4 June 2019 the Speaker informed the Assembly that, pursuant to standing order 22, she had maternity leave to an opposition MLA for a

period of 18 weeks commencing 3 June 2019, and presented a copy of the letter to the Speaker from the Member requesting the leave.

New South Wales Legislative Assembly

On 1 August 2019 the House resolved to adopt new Sessional Orders. The new Sessional Orders implemented the recommendations of the Standing Orders and Procedure Committee report, tabled on the same day, entitled *Modernisation and reform of practices and procedures*.

New timetable (Standing Order 97)

A new timetable was adopted, which included:

- Commencement of sittings at 9.30am on Wednesdays and Thursdays (previously 10.00 am) and lunch from 1.15 pm–2.15 pm each sitting day;
- Government Business commencing earlier and more time is allocated for its consideration, and;
- Changes to when Private Members' Statements and Community Recognition Statements happen, and when petitions and committee reports are debated.

Public Interest Debates (Standing Order 109)

Public Interest Debates replaced Motions Accorded Priority, Matters of Public Importance and the re-ordering of General Business Notices of Motions. They take place at 5.00pm on Tuesdays and Wednesdays and are 40 minutes in duration; and a Government Member nominates the debate topic on Tuesdays, and Opposition and cross-bench Members nominate the topic on a rotational basis on Wednesdays.

Written Community Recognition Statements (Standing Order 108A)

Members can now lodge one written Community Recognition Statement each sitting day, which is incorporated into Hansard. The same rules that apply to oral Community Recognition Statements apply to written Community Recognition Statements, and lodging a written Community Recognition Statement does not prevent a Member from giving oral Community Recognition Statements in the House.

Debates on petitions with more than 10,000 signatures (Standing Order 125A)

For all petitions with 10,000 or more signatures there is now a 30 minute debate on a Thursday at 4.00 pm on a motion to take note of the petition (this was previously a 16 minute discussion, without a question being put) and a Minister must respond to the terms of the petition during each debate.

The Speaker can pause the timing clock (Standing Order 49A)
The Speaker's discretion to pause the timing clock is now expressly provided for as part of the Speaker's responsibility to maintain order in the House. Previously, the only reference in the Standing Orders to the Speaker pausing the timing clock was in relation to Question Time.

New South Wales Legislative Council

At the commencement of the 57th Parliament a host of new procedures were adopted by way of Sessional Order. Sessional Orders are temporary rules used to override, vary or supplement the Standing Orders.
In previous parliaments, almost all of the Sessional Orders have come from the Government. This term however marked a significant departure from the status quo with the Opposition and a larger cross-bench (following the election there are now 11 cross-bench members which amounts to over a quarter of all members) using their combined vote to secure a variety of reforms. These changes include:

- Parliamentary secretaries: can be asked questions during Question Time relating to their portfolio responsibilities and may also be required to give evidence during Budget Estimates.
- Budget Estimates: the estimates process see Ministers and senior public servants attend an inquiry to answer questions about the expenditure, performance and effectiveness of their agencies. This process has been expanded and will now be held twice per year rather than annually.
- Committee power to produce documents: the House agreed to a motion that affirmed the power of Council committees to order the production of documents. The motion also set out a process for the production of documents under calls for papers by committees.
- Question time: a variety of changes have been made to the operation of question time. Immediately after question time, a mechanism now exists for the House to 'take note' of answers to questions. In effect, the Opposition and Cross-bench will have the ability to comment on answers provided by the Government. Answers to questions must now be directly relevant. Answers to both oral questions taken on notice and written questions must be provided within 21 days instead of 35 days. There is also an opportunity to ask supplementary questions for written answer by 10.00am the following morning.
- Private members' business: the time allocated to debate on private members' business has virtually doubled with the adjournment on private members' day pushed back until 10.00pm (from 4.30 pm in previous sessions). In early 2020, the House agreed to change private members' business day

from Thursday to Wednesday with earlier start times on Wednesdays. These changes were agreed to swap the order of business to allow the chamber to sit earlier into the day and not late into Thursday evenings. The objective being to allow regional members with young families to leave Sydney on Thursday night rather than the next morning. The time for debates has remained the same.

- Short form motions: With the objective of getting through more private members' business, a private member may move that their motion (excluding bills) be debated in a 'short-form' format with overall debate being limited to 30 minutes (the standard timeframe for private members' motions is two hours).
- Private members' statements: once a week private members are now able to give short three minute speeches on matters they choose to address without there being a question before the House.
- Debate on committee reports: during debate on committee reports, members can now debate both the report and the government response.

Queensland Legislative Assembly

Disclosure of committee documents

Evidence or documents presented to a committee which have not already been published or authorised for release by the House or a committee and the minutes of committee meetings may be disclosed to any person if the documents have been in the custody of the Clerk for at least 30 years; and in the opinion of the Speaker, it is appropriate that they be disclosed. The first committee minutes to be publicly released in April 2019 were the minutes of meetings of the Parliamentary Committee of Public Accounts held in 1988.

On 14 February 2019 the Legislative Assembly amended the Standing Orders to provide that the records of the Parliamentary Crime and Corruption Committee (and its predecessors) are exempt from disclosure for at least 100 years.

For the disclosure of Ethics Committee documents the Speaker is to apply the same criteria as the committee is required to consider under Standing Order 211B(4) relating to grounds for resolving that some of its proceedings remain confidential. For example, that publication is not in the public interest or would be procedurally unfair to any person, or publication is irrelevant to the matter.

Additional examples of contempt

On 14 February 2019, the Standing Orders were also amended to provide additional examples of contempt as follows:

- a member or officer involving themselves in planning or executing a disruption of a proceeding;

- making public statements inciting or encouraging disruption of the Legislative Assembly; and
- contravening the requirements and orders imposed by the Parliament of Queensland Act 2001.
- Amendments to reflect requirements of Human Rights Act 2019.

On 28 November 2019 the Legislative Assembly agreed to amend

Standing Orders effective from 1 January 2020 to coincide with the commencement of the Human Rights Act 2019. The amendments changed the process for introducing bills to include a requirement to table a statement of compatibility with human rights and any override declaration immediately upon introduction.

The amended Standing Orders also reflected a change to a portfolio committee's consideration of a bill to include the requirement to consider the bill and report to the Assembly about whether or not the bill is compatible with human rights and to consider the statement of compatibility tabled for the bill and report to the Assembly about the statement.

Further, the Standing Orders were amended to reflect that when a minister tables a copy of a declaration of incompatibility about a statutory provision, the declaration stands referred to the portfolio committee responsible for the minister's portfolio.

South Australia House of Assembly

Sessional Orders—Eligible petitions

On 15 October 2019 the House agreed to a new Sessional Order to give effect to a legislative change requiring petitions over 10,000 signatures to be referred to a parliamentary committee for report, and for the relevant Minister to provide a response and address the House.

The Sessional Order provides clarification for the referral, response and address process for eligible petitions which were not set out in the legislation, providing:

- a definition of an 'eligible petition' as a single petition signed by 10,000 or more persons and certified by the Clerk;
- a time limit for a Minister's address of 15 minutes; and
- that Members may move to note a Minister's address during Private Members Business.

Victoria Legislative Assembly

The Assembly agreed to change its standing and Sessional Orders in November 2019 following recommendations made by the Assembly Standing Orders Committee in a report tabled earlier that month. Noteworthy changes included those to condolence motions and the creation of a new Sessional Order on redactions.

A new provision has been added to SO 42 on condolences enabling current and former members to notify the Clerk if they do not want a condolence motion moved in the event of their death. This change allows members greater control and choice over how they are remembered in the House.

The Assembly also agreed to a new Sessional Order empowering the Standing Orders Committee to authorise redactions on Assembly documents, Hansard and official broadcasts on safety or security grounds. Any person, not just a member, can request such a redaction by writing to the Clerk and including details of the nature of the safety or security risk. This measure came about after the Committee was made aware of a small number of instances where members have inadvertently disclosed information during debate in the Chamber or a committee, or in documents tabled in the House that were later discovered to create safety or security risks. The only other way to remove information from the record is a motion in the House. It is hoped this new process would better address such security concerns by not drawing further attention to the information.

Victoria Legislative Council

Sessional Orders

New Sessional Orders for the 59th Parliament were agreed to by the Legislative Council in March 2019. The significant changes are outlined below:

- The Council will meet at 12 noon on Tuesdays rather than 2.00pm. An automatic one-hour dinner suspension will commence at 6.30pm on Tuesdays and Thursdays unless otherwise ordered by the House.
- Question Time will consist of eight questions from non-Government Members. A two-minute Minister's Statement may be given after every second question. Ministers now have 3 minutes to answer a question instead of four minutes.
- Lead speakers on motions and second reading debates are 30 minutes with a 15-minute limit on all other speakers.
- Non-government motions have a time limit of 90-minutes total debate time, with the question automatically put at the end of the 90 minutes. This does not apply to debate on private member bills.
- Speaking time limits have been introduced to Committee of the whole.
- Members may make brief statements of up to five minutes on petitions tabled in the House during Statements on Reports, Papers and Petitions on a Wednesday afternoon.

Resolution of Continuing Effect

On 30 April 2019 the House agreed to a resolution of continuing effect establishing the position of the Parliamentary Integrity Advisor (PIA) and

outlining a number of responsibilities of the PIA. Such responsibilities include the requirement that the PIA meet jointly with the Privileges Committees of both Houses every 12 months and report to Parliament on issues arising from the operation and application of the parliamentarian standards framework.

CANADA

House of Commons

On 11 December 2019 a motion adopted in the House changed amended the Standing Orders and changed how committees will operate for the duration of the 43rd Parliament. On the motion of Kevin Lamoureux (Parliamentary Secretary to the Leader of the Government in the House of Commons) the House agreed that the membership of each standing committee be increased such that committees chaired by members from the Government be comprised of 12 members and those six chaired by members from the opposition be comprised of 11 members. Prior to this change, the membership of all standing committees was fixed at 10. The motion also suspended those Standing Orders that limited parliamentary secretaries to appointment only as non-voting members of standing, legislative or special committees, and it modified the Standing Orders to ensure that any subcommittees created by standing committees include members from all four of the House's recognised parties. All of these changes were made in response to the new proportions of seats held in the House by each of the four recognised parties following the 2019 general election.

Alberta Legislative Assembly

Deferred Divisions (Recorded Votes)

Through the adoption of a new Standing Order, divisions may now be deferred in the case of a Government Bill, upon a request made by the Government House Leader or a member of the Executive Council acting of their behalf, or in the case of a Private Member's Public Bill, by the Bill sponsor. Divisions at third reading that have been deferred under Standing Order 32.1 will be called as the last item during the Daily Routine on the Thursday immediately following the day on which notice of the deferred division was provided. The division bells will be sounded only before the first division and the interval between the sounding of division bells is limited to one minute.

Notice Provision for Committee Motions and Amendments

Standing Order 52.041(1) provides that the Chair of a standing or special committee may establish deadlines by which a Member who wishes for the committee to consider a proposed substantive motion or a proposed amendment

to a substantive motion is required to file the proposed motion or amendment with the Committee Clerk.

Referral of all Private Members' Public Bills

Whereas formerly a Private Member's Bill was referred to a committee on a piecemeal basis, currently, following amendments to the Standing Orders, after a public Bill other than a Government Bill receives first reading, the Bill stands referred to the Standing Committee on Private Bills and Private Members' Public Bills (Standing Order 74.11(1)). The Committee must report back to the Assembly within eight sitting days of the day on which the Bill was referred to the Committee (Standing Order 74.11(2)).

When the Assembly has concurred in a report of the Committee that a Bill be proceeded with, the Bill shall be placed on the Order Paper for second reading and the Bill shall, subject to the precedence assigned to Bills standing on the Order Paper, be taken up on the next available Monday following the day on which the Assembly concurred in the report (Standing Order 74.2(2)).

Confidence in the Government

The Standing Orders have been amended to specify matters of confidence in the Government. Standing Order 31.1 provides as follows:

> The confidence of the Assembly in the Government may be raised by means of a vote on:
>
> - a motion explicitly worded to declare that the Assembly has, or has not, confidence in the Government,
> - a motion by the President of Treasury Board and Minister of Finance, "That the Assembly approve in general the business plans and fiscal policies of the Government",
> - a motion for the passage of an Appropriation Bill as defined in Standing Order 64,
> - a motion for an address in reply to the Lieutenant Governor's speech, or
> - other motion that the Government has expressly declared a question of confidence.

British Colombia Legislative Assembly

While significant changes to the Standing Orders of the Legislative Assembly have not been adopted since 1985, a number of Standing Orders have been amended or new ones adopted in this 41st Parliament which began in July 2017. Following a spring 2019 review of dress guidelines and expectations by the Acting Clerk, the Legislative Assembly amended several Standing Orders to better reflect the province's diversity, and evolving standards and expectations.

Standing Order 36 was amended to remove the word "uncovered" and now

reads "Every Member desiring to speak shall do so from their assigned place and address the Speaker." The reference to "uncovered" reflected a time when wearing top hats and such headwear were a standard feature of formal attire. The amendment formally affirms the rights of Members to wear religious and cultural head coverings while speaking in the House. A new Standing Order 17B regarding dress expectations was added and provides that Members shall dress in professional contemporary business attire for all proceedings of the House. It also explicitly states that Indigenous, traditional cultural and religious attire are appropriate dress. Lastly, Standing Orders 25 and 17A were amended to rename the proceeding of "Prayers" with "Prayers and Reflections" to acknowledge the range of faith-based, non-denominational, and non-religious traditions that Members and invited faith leaders may draw upon in delivering words of their choosing.

Ontario Legislative Assembly

The Standing Orders of the Legislative Assembly of Ontario were amended on December 4 and December 11, 2019. These changes came into force at 12:01 a.m. on February 18, 2020. The amendments included permanent changes as well as provisional changes for the duration of the current 42nd Parliament.
The Standing Orders were permanently altered to include a definition of the Board of Internal Economy as defined under the Legislative Assembly Act. The following Standing Order was also added with respect to the Board. That, "for greater certainty, the proceedings of the Board of Internal Economy are proceedings in Parliament" (S.0. 146).

Under the revised Standing Orders, any member of the Executive Council or any Parliamentary Assistant can now respond to any question during Question Period [S.O. 35(e)]. Previously, questions were directed to a specific member of the Executive Council, and needed to be referred to the minister who would be providing the response. A further change allows the Government House Leader, with notice, to propose a motion authorising the House to meet as late as midnight during the last 18 sessional days in the Fall and Spring sessional periods. [S.O. 7(c)]. This number increased from 12 sessional days.

An additional amendment was made, affecting debate on second or third of a government bill, debate on Address in Reply to the Speech from the Throne and debate on the Budget motion. Now, following the speech of each member, 10 minutes are allotted for members to ask questions on matters relevant to the speech. A member may ask a question for up to 1 minute and the member originally speaking will then have up to 1 minute to reply [S.O. 27].

The weekly meeting schedule for the House was also amended to eliminate the morning recess and replace it with "Members' Statements". These were previously given in the afternoons. The daily, sequential routine known as

"Routine Proceedings" was renamed the "Daily Routine" and the items under this heading were re-ordered.

Independent Members

Several provisional Standing Orders were introduced to enhance the ability of independent members to participate in House and committee proceedings. For the duration of the 42nd Parliament, independent members of the Assembly are now permitted to substitute for one another in Committee meetings as well as participate in debate on Opposition Day motions, and motions for the allocation of time. Additional time was also allotted for independent members to provide responses to Statements by the Ministry, another item of the aforementioned Daily Routine.

Other changes

Among the many changes introduced was a provision that following Prayers, the Canadian National Anthem along with the Royal Anthem be sung in the Chamber on the first sitting Monday of every month. A new Standing Order was also added, permitting the Speaker to alter the application of any Standing or special Order or practice of the House, in order to permit the full participation in the proceedings of the House of any member with a disability. Prior to this change, accommodation was typically provided by way of unanimous consent of the House. Along with this change was the addition of a new Standing Order, allowing for the use of laptops, tablets and smartphones in the Chamber and committee rooms provided they are operated silently, do not impair decorum and are not used as a telephone, recording device, camera or prop.

Finally, on 11 December 2019 one final change was made to the revised Standing Orders. This amendment provided that, without unanimous consent, no government bill shall be called during Orders of the Day during an evening meeting of the House if that same bill has been called on both the morning and afternoon meetings of the House on that same sessional day. Calling a bill during both the morning and afternoon Orders of the Day was previously prohibited, so this amendment addressed opposition concerns that bills would be passed more quickly under the new Standing Orders.

Saskatchewan Legislative Assembly

On 1 April 2019 Rule 1(2), which provides the authority for the Speaker to alter the rules and practices to accommodate members with a disability to fully participate in proceedings, was expanded to include members who are pregnant or ill. It also allows members to care for their infants in the Chamber.

Additionally, the Assembly adopted a rule to ensure that infants being cared for by a member are not regarded as strangers.

The Board of Internal Economy also amended the annual indemnity and allowance directive to state that when a member is absent from a sitting of the Legislature for maternity, paternity, or adoption leave, no deduction from the annual indemnity will be made.

INDIA

Rajya Sabha

The Hon'ble Chairman, Rajya Sabha constituted a two Member Committee headed by Dr. V. K. Agnihotri, former Secretary-General of the Rajya Sabha in May 2018 to recommend amendments to the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha) taking into account the Rules of Procedure of the other House (the Lok Sabha) and the best practices being followed by Parliaments in other countries. The Committee has submitted its report which is under consideration by the General Purposes Committee of the Rajya Sabha.

NEW ZEALAND HOUSE OF REPRESENTATIVES

There were no significant amendments to Standing Orders in 2019.
New Zealand Standing Orders are typically reviewed, and any changes implemented, before each general election (every three years). The next general election is in 2020, meaning the next review of Standing Orders is currently before the Standing Orders Committee.

In the meantime, the House has adopted Sessional Orders (temporary rules) as a way of trialling new procedures. There was one significant Sessional Order in 2019, which followed the review of use of Parliament TV coverage by the Standing Orders Committee. The Standing Orders Committee reviewed the use of official parliamentary television coverage after complaints were made to the Speaker about the use of coverage for political advertising. The Standing Orders specify that coverage may only be used for political advertising or election campaigning with the permission of any members shown. The Speaker directed members to remove this coverage but encouraged the Standing Orders Committee to review the broadcasting rules, which it subsequently did.

Following its review, the Standing Orders Committee recommended new rules for broadcasting that were adopted as a Sessional Order on 19 November 2019. The new requirements established by the Sessional Order remove the restriction on using parliamentary coverage for political advertising or election campaigning, but add a requirement that coverage must not be used in a way that is misleading. The Sessional Order also goes into more detail about the consequences of breaching conditions. It specifies that if the Speaker considers

coverage has been used in a manner that breaches any of the conditions, they may direct that the use of coverage be stopped or altered, or determine that the use of the coverage involves a question of privilege. Failure to comply with a direction by the Speaker under these rules may be treated as a contempt. Finally, the Sessional Order lays out the process by which the Privileges Committee can receive and consider a question of privilege relating to television coverage.

UNITED KINGDOM

House of Commons

Standing orders and the 2019 Parliament

As it became clear that the 2017 Parliament was drawing to a close, preparations were made for a new edition of the House of Commons Standing Orders, removing all those resolutions and temporary standing orders (and related textual changes) that were sessional, due to last only for the length of the closing Parliament, or otherwise time-limited and due to expire before the new Parliament was likely to begin. This is standard practice when there is such material to remove.

Political uncertainty at the time was still riding high, and it was unclear whether some of the temporary standing orders introduced during the 2017 Parliament—particularly with regard to new committees, namely the European Statutory Instruments Committee, the Committee on Exiting the European Union and the Selection Committee—would immediately be re-introduced or not.

Any new edition should not presume to know what the intentions of a new Government might be, notwithstanding the fact that there might be a likely political outcome (not the case in this instance, admittedly) and a clear sense of which expired material might be re-introduced. A new edition, shorn of the temporary impedimenta of the 2017 Parliament, was therefore issued to coincide with the Queen's Speech in December 2019.

Shortly after it was issued, there was a move by the Government to resuscitate the European Statutory Instruments Committee and the Committee on Exiting the European Union whose standing orders had been dropped from the new edition (as they had expired at the end of the previous Parliament), along with related changes to other standing orders as required. This was agreed to by the House and an addendum to standing orders issued. The Selection Committee was not however brought back to life (it had been introduced in 2017 to assist the Government with maintaining a majority on certain committees despite not having a majority in the House), as the new Government had a comfortable majority and could rely on the Committee of Selection, a committee founded on Private Business Standing Orders which had provided the mechanism for

nomination of members to committees prior to 2017.

One of the time-limited, but not time-expired, provisions which had not been removed from the new edition was that relating to the introduction of proxy voting (about which there was a piece in the last edition of The Table). These provisions, in the form of a resolution and a temporary standing order, were however due to expire in January 2020; and so a six-month extension was granted to both the resolution and standing order soon after Parliament convened to allow time for the Procedure Committee to undertake the review that it had intended to complete before the end of 2019 but which had been paused by the election. That committee hopes to report by May this year; and there will as a result no doubt be some, perhaps only small, changes to the resolution and standing order which are likely to be made permanent.

With the UK leaving the EU on 31 January 2020 (or at least entering the transitional phase on its way out), the House has also agreed to the Government's decision—subsequent to resurrecting the Committee on Exiting the European Union—to change the name and remit of that committee to the Committee on the Future Relationship with the European Union, charged now not with monitoring the expenditure, policy and administration of the Department for Exiting the European Union (which Department has also just been abolished by the Government—"job done") but rather with matters relating to the negotiations on the future relationship with the European Union.

After the relative procedural turmoil of the last eighteen months of the 2017 Parliament, there may well be other changes sought either by the Government or through the good offices of the Procedure Committee to refine and clarify areas of the standing orders which had been the cause of some of that turmoil and disputation among Members.

SITTING DAYS

Figures are for full sittings of each legislature in 2019. Sittings in that year only are shown. An asterisk indicates that sittings were interrupted by an election in 2019.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Australia ACT Legislative Assembly	0	6	3	3	4	3	2	7	6	3	3	0	40
Australia House of Representatives	0	7	0	3	0	0	10	1	8	8	4	4	45
Australia Legislative Council of Western Australia	0	6	6	6	9	6	0	9	9	9	8	3	71
Australia Northern Territory Legislative Assembly	0	3	6	0	6	1	0	6	3	3	3	0	31
Australia NSW Parliament*	0	0	0	0	5	6	0	6	6	6	6	0	35
Australia Parliament of South Australia	0	6	3	4	5	6	5	1	6	6	6	4	52
Australia Parliament of Victoria, Legislative Assembly	0	5	6	1	5	6	0	6	3	6	6	0	44
Australia Parliament of Victoria, Legislative Council	0	5	6	1	5	7	0	6	3	6	6	0	45
Australia Queensland Parliament	0	6	3	4	5	4	0	3	6	6	3	0	40
Australia Senate*	0	3	0	2	0	0	10	1	8	4	8	4	40
Australia Tasmanian House of Assembly	0	0	3	4	8	3	2	4	9	6	6	0	45
Canada House of Commons*	4	14	5	12	18	15	0	0	0	0	0	7	75
Canada Legislative Assembly of Alberta	0	0	1	0	6	15	2	0	0	14	12	3	53
Canada Legislative Assembly of British Colombia	0	10	8	10	14	0	0	0	0	12	8	0	62
Canada Legislative Assembly of Saskatchewan	0	0	16	14	10	0	0	0	0	6	15	4	65
Canada Legislative Council of Ontario	0	7	12	14	14	5	0	0	0	4	12	8	76
Candada Manitoba Legislative Assembly	3	0	13	15	15	1	0	0	1	8	8	4	68
Canada Quebec National Assembly	0	12	6	10	11	11	0	0	6	12	13	5	86
Canada Yukon Legislative Assembly	0	0	13	17	0	0	0	0	0	16	14	0	60
Canada Senate	0	6	5	7	13	14	0	0	0	0	0	4	49

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Cyprus House of Represenatatives	2	2	3	4	2	2	5	1	3	3	3	4	34
India, Lok Sabha*	1	9	0	0	0	10	23	4	0	0	10	10	67
India, Rajya Sabha	7	9	0	0	0	7	23	5	0	0	10	10	71
India, Rajasthan Legislative Assembly	9		0	0	0	21			0	0	2	0	32
Jamaica House of Representatives	1	4	1	2	4	5	4	1	3	4	4	2	35
Jamaica Senate	2	6	6	3	4	5	5	0	3	5	4	2	45
UK States of Jersey State Assembly	2	3	3	1	6	3	3	0	2	4	6	2	35
New Zealand House of Representatives	0	6	8	7	11	9	5	10	9	6	9	8	88
St Helena Legislative Council													6
UK House of Commons*	17	17	19	13	13	15	16	0	7	18	2	4	141
UK House of Lords*	17	17	18	12	13	16	17	0	8	18	2	1	139

UNPARLIAMENTARY EXPRESSIONS

AUSTRALIA

House of Representatives

Socialist, populist crap!	20 February
The member for Sturt says the ambassador to the US is doing a good job. What he really meant is: this is a tidy little earner for Liberal Party donors, for people who run companies who benefit from these government contracts.	21 February
…the Leader of the Opposition had his union thugs out there campaigning against us	3 April
In the ultimate insult to the integrity of the House of Representatives Economics Committee, the member for Mackellar over there held a fundraiser after one of the hearings…	4 April
Sir Taxalot!	1 August
…let's call them the dirty dozen…	12 September
I'll take the interjection from the member for Ballarat. When she was in charge of regional development, it was 'Balla-rort' at the time.	17 September
-people who sit there sucking on the public teat-	27 November
We know how it works on that side of the House. It always starts up the back in the cheap seats with one of the more extreme members of the backbench	27 November
…he's just the hypocrite people know him to be	3 December
I don't like the British royal family. I don't especially dislike them most days, though in the last few weeks the true elitist, out-of-touch character of the institution has been revealed. I could not give a hoot about their lives or their incestuous ancestry and traditions.	4 December
If we have to, amend the law to make the Governor-General the Queen—put him in drag, if needed!	4 December
The fact that the Labor Party has attached itself to anti-Semitic accusations shows you just how low they're prepared to go	5 December

Australian Capital Territory Legislative Assembly

Minister for reckless endangerment	19 February
Standing order Nazi	19 February
Shadow minister against the environment	19 March
Making things up and trying to paint a particular picture without factual evidence as part of it	20 March
Cock-up	3 April
Reaching the end of their useful life	5 June
Campaign of mistruths	6 June
Most useless minister in the government	31 July

Untrustworthy	15 August
Bloody	22 October
Hint of honesty	22 October
Bitch and moan	23 October
Misrepresentation	23 October

New South Wales Legislative Assembly

The member for Kremlin should sit down	30 May
low-life	1 August
You are a disgrace to your community	24 September
You guys are an effin' disgrace, every single one of you. You are an effin' disgrace.	25 September
You grub	15 October
inquisitive idiot	17 October

Queensland Legislative Assembly

… big fat whopper	14 February
… barely more respectable than that of a warlord dictatorship	26 February
Haven't seen a gutter you don't want to get into	27 February
… not like that rabble over there. They are thieves. All they do is take—	28 February
Why the hell are we going through these things?"	28 February
Sore loser	26 March
A bit like this clown from Thuringowa	28 March
Sit down, you dope	3 April
… if these lunatics get their way	4 April
Quoting from letter "As I passed, Bruce pulled on my shirt and said "you're supporting grubs, their nothing then a pack of grubs and you're supporting grubs", your grub. I replied the only grub is Paul Freyer who assaulted me and you did nothing to sort out the problem ..."	30 April
… get up on your hind quarters and say some words. Do not sook it up	30 April
"We get the balance of power, very simply that means that we have the testicles of the Government in our hand at every given stage" [quoting from a source]	14 May
… that we held this lazy Palaszczuk Labor government to account …	16 May
This government has its priorities wrong when they can spend $320,000 sucking up to Al Gore	14 June
you're pathetic	20 August
… what is always worse than the original sin is the cover-up …	20 August
… the Treasurer is a hypocrite	20 August
… we need 200 square metres but bugger it …	20 August

… not tell them BS …	5 September
Talking about pests and disease, the LNP is still infected with a cut, suck and sell disease	5 September
I think there is still a bit of bull left in here today too …	5 September
Some of those opposite are Neanderthals …	17 September
This is a complete bastardisation of and total disregard for the proper scientific method…	18 September
I know he prefers to sit in dark rooms with his little tin foil hat on …	19 September
… it is under bloody lock and key.	15 October
Steve then went on to use three angry emojis and two swearing emojis	15 October
… thank God that this time in 12 months that incompetent, shonky, dodgy mob on the other side of this House that call themselves the government will not be running the state	15 October
When they finally got control of the Treasury benches, what did they do about dams? Damn well nothing.	16 October
Opposition members interjected. "Order! Members, I have given you guidance before about interjecting before a member has even risen to their feet and uttered a world. It is unacceptable; it is unparliamentary."	23 October
The Minister for Health surely should be sacked for being so hopeless.	23 October
Queensland Labor's deliberate and, frankly, spineless betrayal of the union movement …	23 October
… or those idiots who climb up trees …	23 October
… or those who choose to act like a moron …	23 October
What we cannot say is, 'The weakest amendment was moved by the weakest deputy leader in this parliament's history.'	24 October
However, the LNP oppose it in its entirety, and so should members opposite if they give a toss at all about small business	26 November
… you cannot say 'gut wrenching' apparently …	27 November
They were exciting times in my household during that era because my son very proudly was the 'arse of the ass'	27 November
There is no getting around it: not having a Christmas as a family sucks	27 November
This legislation is a kick in the guts for a lot of mum-and-dad small businesses	27 November

South Australia House of Assembly

Traitor	12 February
Rat boy	13 February
Doing her dirty work	3 April
Protection racket	5 June
Jellyfish	29 October

Oh my God	13 November
Bloke	28 November
Bullshit	3 December

Victoria Legislative Assembly

A member read a number of unparliamentary expressions and coarse language into the record when quoting directly from violent online threats made to him, and other members. While the member was seeking to highlight a concern about member safety, the Speaker later ruled that quoting from a document was not a way around the rules about unparliamentary language, and advised members to convey their meaning without using coarse language.	21 March

Victoria Legislative Council

lie to the chamber	6 March
Member been “brought off”	20 March
Reflecting on the conduct of a former President	20 March
no interest in homelessness and just interested in having other very loud conversations in the chamber	7 June
lunatic	19 June
neo-Nazis	30 October
it is actually hard to decide whether you are lying or you are just stupid sometimes	26 November
jackboot	27 November

CANADA

House of Commons

While the Conservatives are busy Scheer-mongering, our government is busy accepting newcomers who are growing Atlantic Canada	7 February
Earlier today the member for St. John’s East did not have his tie on and the member for Timmins—James Bay called him a big dummy	20 March
Et would like to invite the member for Don Valley East to withdraw her comments, which were overhead by many people over here, when she referred to the member for Markham—Stouffville as “pathetic”.	20 March
That is being very kind. 1 was here when the NDP, including its previous leader, stole from Canadians	20 March
Mr. Speaker, I was particularly shocked yesterday when I heard that the Conservatives chose to mislead their constituents in their partisan taxpayer-funded tax guide	11 April
Mr. Speaker; Athéna Gervais’s death, caused by FCKD UP, a sweetened alcoholic beverage, should have raised a red flag	15 May
I have to congratulate the member opposite for his performance. I think post-politics; the Canada Council for the Arts may be interested in funding his acting career	3 June

They are goddamned right!	3 June
Sit down, kid	6 June

Senate

The Speaker ruled that "[T]he word "duplicitous", in and of itself, is not a taxing word; however, if it is applied to individuals, particularly members of this chamber, it is skating very close to the line. So I ask that words like that not be used in debate."	7 May

British Colombia Legislative Assembly

they don't seem to have the guts to stand up and defend this legislation	14 May
Accused perpetrator	28 October

Manitoba Legislative Assembly

not even true	17 April
I don't mind the simple-minded, dull, ill-informed comments of the member	15 May
the word dim-wit in describing the member's preamble	16 May
repeat the same falsehoods and pretend that they will be more successful this time	9 October

Ontario Legislative Council

I wish you had done your job a little earlier too	20 February
I'm getting effed around by the OPP, and I'm getting more pissed off	27 February
I'm happy you showed up today	19 March
perpetual cronyism party	26 March
talk out of both sides of their mouth	1 April
The other bag of shit that you put in here	1 April
this is the sort of thing you'd see in a dictatorship, but I think even dictators would be embarrassed	15 April
chicanery and skulduggery	1 May
They were filled with scandals, deceit, backroom deals	7 May
police-haters	9 May
Has this government declared war on children?	30 May
The government has stolen the subway system	5 June
Counterfactual	18 November
unctuous bloviator	27 November
hoodwinking over transparency	27 November
He's an embarrassment to the province and clearly not capable of carrying out his duties as a minister	28 November
bury the truth	2 December

	Sitting days
you can't suck and blow	9 December
Québec National Assembly	
Messed-up (referring to MNAs)	17 April
Hypocrisy	30 May
Goon	6 June
Petty politics	6 June
Fake news	18 September
Foul language	19 September
Farm team (sports reference: not the real team, but the team where they train future players)	2 October
Hoodwink Quebecers	3 October
To talk rubbish	10 October
To deceive	10 October
Undignified	10 October
Disparaging	30 October
On the sly	13 November
Cronies	20 November
Indecent	27 November
To insult	3 December
Conceal	4 December
Saskatchewan Legislative Assembly	
Mr. Speaker, in an exchange across the floor I used language referring to the Minister of Social Services' statements that was unparliamentary. I referred to his remarks as being bullshit, Mr. Speaker. That was clearly unparliamentary and for that I apologize and withdraw the remark.	17 April
Yukon Legislative Assembly	
there's a whopper for you	10 October
I am not sure where the member opposite is fabricating the numbers from	23 October
INDIA	
Lok Sabha	
You have taken the decision looking at that side… (Aspersion on the Chair)	5 February
Dung…	7 February
Insane…	7 February
Corrupt system…	7 February

Drama…	11 February, 19 and 28 November
Foolish…	12 February
Mafia don…	13 February
Do not compare Mother Ganges with dirty drain…	24 June
Psychic…	24 June
Corrupt…	25 June
Dirty drain…	25 June
For begging…	28 June
Were plundering the country…	8 July
Kill…	8 July
Gimmick…	8 July, 28 November, 5 December
Speaker Sir is torturing me…(Aspersion on the Chair)	8 July
Either the Government of Delhi be dismissed to teach them a lesson…	8 July
Prime Minister is saying sell whatever you want to, we will sell the country …	11 July
Uselessness…	11 July
Finger…	15 July
You do not be unkind to me, please be kind to me…(Aspersion on the Chair)	15 July
Shame…	16 July
Shameful…	16 July
Sir, you are allowing only the ruling party Members but not Members from Opposition to ask the question. The prefix is more there for ruling party… (Aspersion on the Chair)	17 July
Fraud…	17 July
Disguise…	17 July
Stockholm syndrome…	18 July
How can you say sit down to me?... (Aspersion on the Chair)	18 July
You are not a teacher…(Aspersion on the Chair)	18 July
Do not raise your voice…(Aspersion on the Chair)	18 July
Sucked all the blood…	18 July
Housemaid…	22 July
Handmaiden…	22 July
Dictatorship…	23 July
You choose not to speak…	23 July

The hon. Members did not quote the rule. You quoted the rule. He did not…(Aspersion on the Chair)	24 July
Fair…(Aspersion on the Chair)	24 July
Prick, a bluff master called Donald Duck has only two days your loving Donald Duck….	24 July
You are jumping the order…(Aspersion on the Chair)	25 July
I like you so much that I feel like keep staring at you…	25 July
I will never take my sight off you…	25 July
Ill-mannered…	25 July, 29 July
Letch…	26 July
Fuss…	26 July
Forefathers…	29 July
Scavenger…	29 July
Ringmaster…	2 August
Sycophancy…	2 August
Felony…	6 August
Cheating…	6 August, 18 November
Committed treachery, betrayed, pressurized, you have threatened with gun…	6 August
Henchmen…	18 November
Today you cannot cow me down…(Aspersion on the Chair)	18 November
Quarrelsome…	18 November
Cheaters…	18 November
Alibaba and Forty Thieves and criminal posing as judge	20 November
Sir, you too have joined hands with them…(Aspersion on the Chair)	21 November
Sir, you have allotted twenty minutes time. If it hurts you, then never mind, if it is all right then please listen to me…(Aspersion on the Chair)	21 November
Arbitrary moves…	21 November
Rubbish…	26 November
Sitting on pouches of the Government of India like Kangaroo babies…	27 November
Betrayal…	28 November
pretense…	28 November
He is inebriated…	28 November
Wait for your turn to speak…	28 November
deceit…	28 November
Chameleon, He is faking his identity as truthful man…	28 November

You are clustering everything. All the questions and all the answers are being taken together, Definitely, we are affected…(Aspersion on the Chair)	5 December
Chairman is our man…(Aspersion on the Chair)	12 December
Speaker…(Aspersion on the Chair)	12 December
Our Chairman…(Aspersion on the Chair)	12 December
You are minimizing the time allotted for the opposition members whereas you are lenient towards ruling party MPs. Such actions are not termed to be honest and democratic…(Aspersion on the Chair)	12 December

Rajya Sabha

महाभंगी (unprincipled/unethical/immaoral/ unscrupulous person(s)	2 July
Shame	3 July
धोखा (Cheating)	19 July, 4 December
छल (Deception)	19 July
साजशि (Conspiracy)	19 July
जघन्य पापो (Heinous sins/crimes)	19 July
पापों (Sins/crimes)	19 July
खूनी हाथ (Hands drenched in blood)	19 July
खूनी पंजा (Claw drenched in blood)	19 July
Clever jackal	5 August
Raped	5 August
Horribly misleading	5 December
Genocide	11 December

Rajasthan Legislative Assembly

Hooligan, insulted… arrogance of former speaker	16 January
There was huge corruption in the allotment of houses	16 January
Through this chair… this chair was so misused	16 January
One does not sign on the decision of the Governor no greater sin than this	16 January
Hooliganism	17 January
What do you think	17 January
Lalit Modi	18 January
Lie	18 January
Liar	18 January
Partiality	18 January
Manmohan Singh... Not Man Mohan Singh Narendra Modi	21 January
Rajeev Gandhi (three times)	21 January

	Sitting days
Sonia Gandhi Ji...	21 January
That's why the scandal like Bhanwari Devi happened... That's what was with Bhanwari Devi	21 January
Minister ... coming from Anta Minister of government also in love jihad	21 January
Lie	22 January
Snake and mongoose.... Even snakes with the mongoose	22 January
National President of Bhartiya Janta Party speaks of eating beef	22 January
For eating beef for the national president of the Bharatiya Janata Party	22 January
And the one who is Pappu will be Pappu	22 January
Pappu…Pappu	22 January
Beef eating	22 January
Under the rule of the queen	22 January
Your friend	22 January
your president is in exile	22 January
Congress President is out on bail in 500 crore scam	22 January
My questions that were starred, were stolen from lottery	22 January
Narendra Modi Ji.... Honorable Modi Ji..... Modi is a bluff	23 January
Sheer lies (Two Times)	23 January
You should talk impartially	23 January
Discrimination	11 February
Prime Minister Modi, the whole of India knows... Prime Minister is the biggest liar	11 February
Of Narendra Modi	11 February
Narendra Midi is a liar	11 February
This is about Rahul Gandhi	11 February
Partiality	13 February
Sunny Sebastian	13 February
To please the honourable Sonia Gandhi Ji, Honourable Rahul Gandhi Ji came and said to make them happy and tomorrow Priyanka ji told you, they did came in E D for investigation, Robert vadra told you	13 February
Great lie	13 February
Lie on lie	13 February
Ghosts were made to dance	13 February
Liar	18 June
Don't strangle like this	8 July
Bullying	8 July
Prime Minister does not speak the truth	8 July

You are trying to save the government	9 July
You used to take attendance of boys, now you want to take our attendance	9 July
Mr Modi on the basis of religion, communalism and by scam of EVM	9 July
Rahul Gandhi lies	9 July
This is our extortion	9 July
Our extortion	9 July
R.G. it was R.G. Gupta	9 July
Partiality (three times)	11 July
Goddess	11 July
Of two bulls	11 July
Abuses (two times)	11 July
Low	11 July
Narendra Modi… he conspired and killed our Indian soldiers on the border	11 July
Spooning	11 July
If there is reverence for Gandhi, Soniya Gandhi, Rahul Gandhi, have reverence for them, not for Mahatma Gandi	11 July
Santosh…Vimla	15 July
Vasundhra	15 July
King	16 July
Two bulls	16 July
The worst chief minister among them was Vasundhra Raje Sindhiya.... No one can be worse than her. It was ill fate of Rajasthan that Vasundhra became chief minster here.	16 July
These were all for Banging, cream was taken by Vasundhra	16 July
Vasundhra Ji..... ate cream.... vasundhra ji had done Ph.D to rob rajasthan	16 July
In that creamy thing, all the others were left unlucky	16 July
Banna Ram Meena	17 July
Omkar Lal	17 July
Shyam Lal	17 July
Barkat Ali Khan.... Master Barkat Ali Khan	18 July
Alok Khunteta	18 July
Health Minister was found peeing on the main road	18 July
If you have blessings then your work is done by discretion	18 July
Video Audio of 20-20 Lakh Rupees are viral, one should have blessings of the minister	18 July
If this attitude of the chair reminas… impartiality is not visible around here	18 July

	Sitting days
Mimics	19 July
Should be ashamed of	19 July
Placed agents all over in Rajasthan, with poor teacher took 2 to 3 lakh rupees	19 July
Professor J.P.Sharma	19 July
Rajesh Kumar Dubey	19 July
A debate is going on in Karnataka For the first time, even after four days of continuous debate, there was no voting on vote for confidence	22 July
Hooliganism (twice)	22 July
Hooligan (Twice)	22 July
Vasundhra Ji, Her Majesty	22 July
Jitendra Singh Charan	22 July
Jitendra Ji	22 July
Dr, Dubey	22 July
Mrs. Vasundhara Raje Sindhiya	22 July
Like General Dayer	22 July
Anandpal Ji, Manjeetpal	22 July
Two bearded	22 July
Renu Khandelwal Ji	24 July
For the title of this land, a case between JDA and former King of Jaipur, is pending before Supreme Court. Supreme court has appointed a Receiver on this land, this case is pending for 20 years.	24 July
Case in Supreme Court A Case is pending between JDA… JDA and the King	24 July
Bharat Rawat (four times)	26 July
Bhanwar Lal	26 July
Bidiyasar	26 July
Abusive words	26 July
Big Man	26 July
Men of the cast	26 July
Abuse	26 July
Helpless (twice)	26 July
Sanjay Godara Ji	30 July
Chudawat	30 July
Were you a mouse in last life, why popping up again and again	2 August
An unwanted person	2 August
Obsequious person	2 August
King…flattery	2 August

Immortal	2 August
Yogendra Aarya	5 August
Nathuram Godse is a terrorist (Two times)	5 August
Wife of Mr. Sibble	5 August
In 1984 in Delhi Riots, Sikhs were burnt, putting tyres in their neck	5 August
KARMATE	5 August
Harijan..Kothwal	5 August
impotent... Stupid to Rahul Gandhi	2 November
Rahul Gandhi to be slapped with slippers	2 November
If anybody has grossly misused Article 356, it is the congress party. Indira Gandhi misused Article 356 for 49 times. Jawahar Lal Nehru misused Article 356 for 19 times.	2 November
Article 356 was misused during the period of Indira Gandhi.	2 November
Why did Rahul Gandhi went to the temple wearing a dhoti, a dupatta, a coat over Janeu and tilak…	2 November
The matter of Janeu of Rahul Gandhi	2 November

NEW ZEALAND

House of Representatives

Mr Woodwork Teacher	14 February
Mr Arrogant	20 February
Suggesting a member is racist	2 April
he's a short-term traveller	3 April
being a little rat	10 April
he's too scared to go into Pike River Mine	1 May
You're the one under scrutiny, fella	2 May
References to a member's age	22 May
What a shabby, grubby, filthy National Party we've got	29 May
It's pretty simple, Simon	26 June
I'm not sure what crypt she was sleeping in	24 July
What are you hiding?	31 July
Describing member as "Myrtle Rust"	7 August
enthusiasm for communism	12 September
What a plonker	6 November
You're the puppet master	12 November
Lock him up	20 November
Good try, old man	5 December

You've sold your soul	11 December
That's a complete misleading of the truth. Stop being reckless with the truth	12 December
The National Party … held the Government to ransom	12 December

STATES OF JERSEY

I have never in this Assembly heard such a running stream of rancid bilge water since I was last on the Constable of Grouville's cow farm	29 January
I am not sure if he is a failed economist, or an economist	27 April
rogues	27 April
Blackmail	4 June
hell of a state	8 October
Ruse	22 October
women are physically different to men, having been designed as being able to have babies; men only need to deliver components at the start of the process	23 October
Rich mates	12 November
Deputy Morel seems to have this paranoid fear of anything to do with the U.K. He is fast turning into Jersey's answer to Nicola Sturgeon.	27 November
hell of a lot more	28 November
slush fund	28 November
Rant	29 November

BOOKS ON PARLIAMENT IN 2018

AUSTRALIA

Candidates Disease: The Minor Party Epidemic that Almost Saved Our Democracy, by Peter Breen, Melbourne: Wilkinson Publishing, ISBN: 9781925642667

The Constitution and Government of Australia, 1788 to 1919, by William Pitt Cobbett, Federation Press, $125.00, ISBN: 9781760022006

From Our Special Correspondent: Alfred Deakin's Letters to the London Morning Post, Vol. 1, 1900–1901, edited by Dianne Heriot, Canberra: Australian Parliamentary Library, Department of Parliamentary Services, ISBN: 9780987576408

The Manner of Their Going: Prime Ministerial Exits in Australia, by Norman Abjorensen, North Melbourne: Australian Scholarly Publishing, ISBN: 9781925984064

Odgers' Australian Senate practice: Supplement to the 14th edition, Updates to 30 June 2019, edited by Richard Pye, Canberra: Department of the Senate, ISBN: 9781760109974

Robert Cribb: A Short Biography, by Beth Johnson, Longleat House Publishing, ISBN: 9780464012788

Robust and resilient: a centenary of achievement - National Party of Australia, by Paul Davey, National Party of Australia, $20.00, ISBN: 9780648651505

CANADA

Après le naufrage: Refonder le Parti québécois, by Frédéric Bastien, Montréal: Boréal, ISBN: 9782764625842

La capacité de changement de l'État québécois: le test de la coopération interorganisationnelle et de la coordination et comparaisons avec sept pays de l'OCDE, by André Bazinet, Québec: Presses de l'Université du Québec, ISBN: 9782760548954

Le contrôle parlementaire des finances publiques dans les pays de la francophonie, by Louis M Imbeau and Rick Stapenhurst, Presses de l'Université Laval, Québec, $30.00, ISBN: 9782763737980

Democracy in Canada: The Disintegration of Our Institutions, by Donald J Savoie, McGill-Queen's University Press, Montreal, $34.95, ISBN: 9780773559028

Des élections à réinventer: un pouvoir à partager, by Mercédez Roberge, Montréal: Éditions Somme toute, ISBN: 9782924606926

Les lieux de pouvoir au Québec, by Marco Bélair-Cirino and Dave Noël, Montréal, Boréal, ISBN: 9782764625958

Nous n'irons plus aux urnes: plaidoyer pour l'abstention, by Francis Dupuis-Déri, Montréal: Lux Éditeur, ISBN: 9782895963080

Pavillon d'accueil de l'Assemblée nationale: Emblématique, by Québec (Province), Assemblée nationale. Québec: Assemblée nationale du Québec, Direction des communications, des programmes éducatifs et de l'accueil, ISBN: 9782550840992

Le pouvoir québécois menacé: non à la proportionnelle!, by Christian Dufour, Saint-Jean-sur-Richelieu: Les éditeurs réunis, ISBN: 9782897833169

Qui veut la peau du Parti québécois?: et autres secrets de la politique et des médias, by Jean-François Lisée, Québec: La boîte à Lisée, ISBN: 9782895903659

Reflecting on Our Past and Embracing Our Future: A Senate Initiative for Canada, edited by Serge Joyal and Judith Seidman, 3rd ed., McGill-Queen's University Press, Montréal, $39.95, ISBN: 9780773555396

Repenser la nation: l'histoire du suffrage féminin au Québec, by Denyse Baillargeon, Montréal: Les Éditions du remue-ménage, ISBN: 9782890916500

La télédiffusion parlementaire au Québec, by Alexandre Millier-Boucher. Montréal: Bouquinbec, ISBN: 9782981811905

INDIA

The Algebra of Warfare Welfare: a long view of India's 2014 Elections, edited by Irfan Ahmed and Pralay Kanungo Oxford University Press, New Delhi, Rs 1,195/-, ISBN: 9780199489626

The anatomy of an Indian General Election, by Pankaj Sharma and Saurav Sanyal, KW Publishers, New Delhi, Rs 599/-, ISBN: 9789389137002

Performing representation: Women members in the Indian Parliament, by Shirin M. Rai and Carloe Spray Oxford University Press, New Delhi, Rs 995/-, ISBN: 9780199489053

UNITED KINGDOM

Brexit and democracy: the role of Parliaments in the UK and the European Union, by Thomas Christiansen and Diane Fromage, Palgrave Macmillan, ISBN: 9783030060428

Cleaning up the mess: after the MPs' expenses scandal, by Ian Kennedy, Biteback Publishing, ISBN: 9781785904943

Dangerous seats: parliamentary violence in the United Kingdom, by Eugene L. Wolfe, Amberley Publishing, ISBN: 9781445689821

Dramas at Westminster Select Committees and the Quest for Accountability - Political Ethnography, by Marc Geddes, Manchester University Press, ISBN: 9781526136800

How to survive a select committee, by Scott Colvin, Biteback Publishing, ISBN: 9781785904516

The public affairs guide to Westminster: the handbook of effective and ethical lobbying, by Robert McGeachy, Welsh Academic Press, ISBN: 9781860571343

Women of Westminster: The MPs Who Changed Politics, by Rachel Reeves, Bloomsbury, ISBN: 9781788312202

CONSOLIDATED INDEX TO VOLUMES 83 (2015) – 87 (2019)

This index is in three parts: a geographical index; an index of subjects; and lists of members of the Society who have died or retired, of privilege cases, of the topics of the annual questionnaire and of books reviewed.

The following regular features are not indexed: books (unless substantially reviewed), sitting days, amendments to standing orders and unparliamentary expressions. Miscellaneous notes are not indexed in detail.

ABBREVIATIONS

ACT	Australian Capital Territory;
Austr.	Australia;
BC	British Columbia;
Can	Canada;
HA	House of Assembly;
HC	House of Commons;
HL	House of Lords;
LA	Legislative Assembly;
LC	Legislative Council;
LS	Lok Sabha;
Man	Manitoba;
NA	National Assembly;
NF and LB	Newfoundland and Labrador;
NI	Northern Ireland;
NSW	New South Wales;
N. Terr.	Northern Territory;
NZ	New Zealand;
PEI	Prince Edward Island;
Reps	House of Representatives;
RS	Rajya Sabha;
SA	South Africa;
S Austr.	South Australia;
Sask.	Saskatchewan;
Sen.	Senate;
WA	Western Australia.

GEOGRAPHICAL INDEX

SUBJECT INDEX

Sources and authors of articles are given in brackets.

Sources and authors of articles are given in brackets.

LISTS

Members of the Society

Abbreviations: R retirement, O obituary.

Privilege cases

* Marks cases when the House in question took substantive action.