The Table

BEING

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

EDITED BY

J. M. DAVIES AND G. CUBIE

VOLUME XLIV

for 1975

ISBN 0 904979 01 6

SOCIETY OF CLERKS-AT-THE-TABLE IN
COMMONWEALTH PARLIAMENTS,
HOUSES OF PARLIAMENT,
LONDON, S.W.1

1976

Price £3.50

USUAL PARLIAMENTARY SESSION MONTHS

	Parliament	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
	United Kingdom		⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙
	Northern Ireland						Suspended						
	Jersey	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙	⊙
	Isle of Man	⊙	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙
Canada	Federal Parliament	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙	⊙
	Ontario			⊙	⊙	⊙	⊙				⊙	⊙	⊙
	Quebec		⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙
	Nova Scotia		⊙	⊙	⊙								
	New Brunswick			⊙	⊙	⊙							
	Manitoba			⊙	⊙	⊙	⊙						
	British Columbia	⊙	⊙	⊙							⊙		
	Prince Edward Island		⊙	⊙	⊙						⊙	⊙	
	Saskatchewan	⊙	⊙	⊙	⊙							⊙	
	Alberta		⊙	⊙	⊙						⊙	⊙	
	Newfoundland			⊙	⊙	⊙	⊙						
	Northwest Territories	⊙					⊙				⊙		
Australian Commonwealth	Commonwealth Parliament		⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙	⊙
	New South Wales		⊙	⊙						⊙	⊙	⊙	⊙
	Queensland			⊙	⊙					⊙	⊙	⊙	⊙
	South Australia		⊙	⊙			⊙	⊙	⊙	⊙	⊙	⊙	
	Tasmania			⊙	⊙		⊙	⊙		⊙	⊙	⊙	⊙
	Victoria		⊙	⊙	⊙	⊙			⊙	⊙	⊙	⊙	⊙
	Western Australia				⊙	⊙		⊙	⊙	⊙	⊙	⊙	
	Northern Territory						No settled practice						
	Papua New Guinea		⊙	⊙		⊙	⊙		⊙	⊙		⊙	
	New Zealand		⊙	⊙		⊙	⊙	⊙	⊙	⊙	⊙	⊙	
	Western Samoa						⊙	⊙	⊙		⊙	⊙	⊙
	Sri Lanka	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
India	Central Legislature		⊙	⊙	⊙	⊙			⊙	⊙		⊙	⊙
	Andhra Pradesh		⊙	⊙			⊙	⊙				⊙	⊙
	Bihar		⊙	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙
	Gujarat		⊙	⊙	⊙					⊙	⊙	⊙	⊙
	Haryana						No settled practice						
	Kerala			⊙	⊙			⊙	⊙		⊙	⊙	⊙
	Madhya Pradesh		⊙	⊙	⊙			⊙	⊙			⊙	
	Tamil Nadu	⊙	⊙	⊙	⊙			⊙	⊙	⊙			⊙
	Maharashtra		⊙	⊙	⊙			⊙	⊙	⊙		⊙	⊙
	Karnataka		⊙	⊙	⊙			⊙	⊙		⊙	⊙	⊙
	Orissa		⊙	⊙	⊙				⊙	⊙			
	Punjab			⊙	⊙	⊙	⊙					⊙	⊙
	Rajasthan		⊙	⊙	⊙				⊙	⊙	⊙	⊙	
	Uttar Pradesh		⊙	⊙	⊙	⊙		⊙	⊙	⊙		⊙	⊙
	West Bengal		⊙	⊙	⊙			⊙		⊙		⊙	⊙
	Ghana			⊙			⊙			⊙			⊙
	Malaysia				⊙	⊙		⊙	⊙				
	Sarawak						No settled practice						
	Singapore						No settled practice						
	Sierra Leone			⊙	⊙			⊙				⊙	
	Tanzania		⊙		⊙		⊙	⊙			⊙		
	Jamaica			⊙	⊙	⊙						⊙	⊙
	Trinidad and Tobago	⊙	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	
	Uganda	⊙	⊙	⊙	⊙	⊙	⊙			⊙		⊙	⊙
	Kenya		⊙			⊙	⊙			⊙	⊙	⊙	
	Malawi						No settled practice						
	Zambia	⊙	⊙	⊙	⊙			⊙	⊙			⊙	⊙
	Bermuda						No settled practice						
	Guyana	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
	British Solomon Islands			⊙				⊙					
	Gibraltar	⊙	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙
	Malta, G.C.						No settled practice						
	Mauritius			⊙	⊙	⊙		⊙		⊙	⊙	⊙	⊙
	St. Vincent	⊙	⊙	⊙	⊙				⊙	⊙	⊙	⊙	⊙
	Belize		⊙	⊙		⊙	⊙	⊙		⊙	⊙	⊙	⊙
	Cayman Islands			⊙			⊙			⊙		⊙	
	Lesotho						Dissolved						
	Cook Islands						No settled practice						
	Seychelles						No settled practice						
	Grenada						No settled practice						
	St. Lucia	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
	Bahamas						No settled practice						
	Fiji			⊙				⊙			⊙	⊙	⊙
	Hong Kong	⊙	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙

CONTENTS

The Table

BEING

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

I. EDITORIAL

Roy A. Laurence, Q.C.—Mr. Roy Laurence, Chief Clerk of the House of Assembly of Nova Scotia for almost thirty years, died during the summer of 1975. The following tributes were paid to him in the House when it reassembled after the summer recess:—

The Premier (Hon. Gerald A. Regan, Q.C.,) said: "Mr. Speaker, it is with mixed feelings that I rise to pay tribute to the memory of Roy A. Laurence, Q.C., Chief Clerk of this House from 1946 until a mere three months ago. It is hard to believe that Roy is gone. He seemed even more a part of this House than the very fixtures, but which, alas, are much more permanent than any of us. It is hard to speak of Roy as being gone. He was here too recently and he was too much a part of us to really believe that he will not be back, but he will not be back and so for a few moments, let us recollect what we have lost and rejoice in the memories that we have. We are the last to honour Roy Laurence. His family, his closest friends and his neighbours of Annapolis Royal paid tribute to him during a memorial service on September 1st. His colleagues at the Bar observed his passing with appropriate ceremonies. The Cabinet requested that I convey the government's sincere sympathies to his family.

It remains for us in this chamber to take formal, yet personal note, of his death. It is perhaps fitting that it should be the members of the Legislative Assembly who pay the final tribute to our late Clerk, for it was us, and with us and our predecessors over 30 years, that he gave the public service for which he will be remembered by all Nova Scotians. He was at once our good and faithful servant, our wise counsellor and our firm friend. I think with Roy's example and guidance, we came a bit closer to Wordsworth's ideal of being "brothers all in honour as in one community, scholars and gentlemen." He was truly a scholar and gentleman. He was learned in the law and loved the law as the embodiment of reason, but most of all he was a human being—warm, witty, compassionate and delightfully irreverent. He loved his native

province and revered its traditions. In all my years in public life, I have known no one who commanded more respect and affection, and these are emotions that one person seldom inspires. In calling him "Sir Roy" as members sometimes did, we were trying to express to him both our admiration of his easy dignity and our love of his warm and earthy personality. We will miss him very much.

As lasting token of our esteem, I am pleased to announce that the Clerk's Office has been named the Laurence Room in keeping with the tradition that rooms in Province House be named after distinguished Nova Scotians. I would also draw your attention to the Clerk's table; in the centre has been placed a small tablet which says, 'In happy memory of Roy A. Laurence, Q.C., 1909 to 1975, Chief Clerk of the House of Assembly, 1946 to 1975. A good and faithful servant, a wise counsellor, a firm friend.' "

The Leader of the Opposition (Mr. John M. Buchanan) spoke as follows: "We join with the Premier in paying tribute to the late Chief Clerk of the Legislature. As the Premier said, Roy Laurence served this House and Province for almost thirty years as its Chief Clerk. But, in addition to his specific duties over these years, all members came to rely on his very wise counsel as he was an expert on the rules of the House and had a thorough knowledge through his experience in the Commonwealth Parliamentary Association of matters respecting Parliament. He was accepted, he gained wide acceptance, as a most knowledgeable person in that organization. He jealously guarded what he considered to be the decorum of Parliament and his knowledge will be sorely missed by all members of the Legislature, probably specifically you, Mr. Speaker, as all Speakers during his term looked to him for guidance. We will also miss his keen wit, as all will who knew him well. When Roy Laurence was the speaker at either a Parliamentary Conference dinner or a Bar Society meeting, his mixture of substance and short story telling was second to none. If possible, Mr. Speaker, for the record we on this side of the House would like to second the naming of the Clerk's Room as the Roy Laurence Room. We join with the Premier and all members of the House in extending a sincere sympathy to Mrs. Laurence and the family".

These tributes were endorsed by backbenchers from both sides of the House.

We also record with regret the deaths of:—

L. M. Khofi, Clerk of Parliament, Malawi, in a car accident on 9th December 1975; and

W. G. Harvey, Third Clerk-at-the-Table, House of Assembly, Tasmania, on 17th February 1976.

S. H. Belavadi.—The Editors regret that no retirement notice has

yet appeared in respect of Shri Shrinivas Hanamantrao Belavadi, formerly Secretary of the Maharashtra Legislature. Shri Belavadi retired as Secretary in March 1972. He was retained for a further six months as Special Secretary to the Maharashtra Legislature, before finally retiring after nearly twenty years parliamentary service. He had been successively Secretary to the Bombay Legislature, the Bigger Bombay Legislature and finally the Maharashtra Legislature. He was, throughout his parliamentary career, involved in the work of the Commonwealth Parliamentary Association. In 1957 he undertook an attachment in the House of Commons Clerk's Department.

J. C. Bartlett, D.F.M., J.P.—The retirement of Mr. J. C. Bartlett, from his position of Clerk of the Western Australian Legislative Assembly came after more than 44 years service to the House—service broken only by a period in the R.A.A.F. during World War II, when his ability, determination and courage did not go unnoticed.

"Joss", as he is known to his many friends in this Parliament, as well as in many other parts, has a happy disposition and a keen appreciation of the Parliamentary system. During his working career he was the confidant and adviser of many a Member, Minister and Speaker. His loyalty to his House was a by-word and his knowledge of the House's procedure matched by very few in the history of responsible Government in Western Australia. His fellow officers of the Parliament will miss his wide background and confident handling of the various matters that came before him and his absence from such gatherings as the conference of Presiding Officers and Clerks in the Australasian area will certainly be noticed.

At the close of session on 13th November 1975 the Premier, Sir Charles Court, paid the following tribute to Mr. Bartlett:

"This occasion, of course, has very special significance, because this is the last sitting of the Parliament when the Clerk of the Legislative Assembly will be in his position, as he is retiring soon. Joss Bartlett was here long before I became a member. He looked a little more fresh-faced and youthful when I first arrived, but he has always had that grin, and I want to say a very big "Thank you" to him because he, like so many people before him, have served in that position as Clerk in a way that is quite remarkable—always with a degree of detachment—and regardless of whether one is in Government or in Opposition one always felt one could take one's procedural and other problems to him and obtain sound and impartial advice. I would like him to know that we all wish him well in retirement. He seems far too young to retire. I found myself referring to him as "Young Joss" and I realised I was getting older, but he always seems young to me.

Mr. Bartlett, every good wish for the future, and thank you for all you have done in preserving the high dignity in the office you have filled".

The Leader of the Opposition added his tribute and the Speaker concluded as follows:—

"I, too, want to comment on the retirement of Joss Bartlett as Clerk of this Legislative Assembly. As has been said, Joss Bartlett has been here for a long period—for almost 46 years. He came here as a messenger boy in, I think, August, 1929, and at

that stage he was not quite 14. His father had died some three years previously and he and his mother and older brother had a great job to bring up a good family; and his whole life has been dedicated to his work at Parliament, and to looking after his family. He has done both jobs exceedingly well.

I have known him for many years; he has been a friend of mine. We were together, in RAAF Bomber Command although not in the same squadron, and his was a distinguished war service.

As a Clerk and Officer of Parliament he is a most knowledgeable man. His understanding of Standing Orders is wide and deep. He knows them almost like the back of his hand and fortunately he is on intimate terms with that learned gentleman, Erskine May.

We are all going to be very sorry to see him go; but I do not think any of us need have regrets on his behalf because he will not be displeased at leaving us. I think he is looking forward to his retirement.

In any case, as Speaker of the House, I wish to convey to Mr. Bartlett and his wife and family, the very best wishes of this House for a long and happy retired life".

(*Contributed by the Clerk of the Legislative Assembly*).

B. N. Banerjee.—Shri B. N. Banerjee, Secretary-General, Rajya Sabha, retired from the service of the Rajya Sabha on 1st April 1976. Shri Banerjee was associated with the Rajya Sabha for about 20 years. Born in 1916, and educated at the Scottish Church College, Calcutta University, Law College, Calcutta and London School of Economics, Shri Banerjee joined the Bengal Judicial Service in 1942. After a meritorious record of service there, Shri Banerjee joined the Ministry of Law, Government of India, as Assistant Solicitor. Thereafter he served as Assistant Legal Adviser and later as Legal Adviser to the High Commissioner for India in London. In 1956, Shri Banerjee joined the Rajya Sabha Secretariat as Deputy Secretary and in 1960, he became Joint Secretary. He was appointed Secretary of the Rajya Sabha in October 1963 and Secretary-General of the Rajya Sabha, in November 1973.

Announcing the retirement of Shri Banerjee in the Rajya Sabha on April 2nd, 1976, the Chairman, Shri B. D. Jatti, observed:

"Shri Banerjee worked as Secretary to this House for more than twelve years and his tenure was marked by considerable changes, both constitutional and procedural. He set a unique record of service to our House and helped in maintaining the highest traditions of Parliamentary systems. The Rules of Procedure went through several substantial changes during his term of office and he made important contributions to the same. His relationship with all members of the House was very cordial and he was always available to them for giving whatever assistance or advice asked, irrespective of their party affiliations.

He accompanied several Parliamentary Delegations abroad and attended many Presiding Officers' Conferences and Conferences of the Secretaries of various State Legislatures. He also actively participated in the Twenty-first Commonwealth Parliamentary Conference held in New Delhi in November last year wherein India played the host.

With his vast experience and sound knowledge, he has been of great help to me since I became the Chairman and he gave good advice on complicated procedural matters. His relationship with officers and his subordinates was also very cordial and he was sympathetic to all members of the staff whenever they had any difficulty. By his dealings,

he endeared himself to Ministers, Members and Officers alike and he enjoyed the love and confidence of them all.

On behalf of the House, I pray for his sound health and long life".

In appreciation of his long and distinguished record of service, the President of India was pleased to nominate Shri Banerjee as a Member of the Rajya Sabha.

Further tributes were paid to Shri Banerjee by all sections of the House. Describing Shri Banerjee as "a man of rare qualities and extreme modesty", Shri Om Mehta, Minister of State in the Ministry of Home Affairs and Department of Parliamentary Affairs, observed:—"During the last twenty years he had grown into an institution in this Parliament House and Members, irrespective of their party affiliations, always went to him for help and guidance in their parliamentary work. His advice was always correct and earned for him the respect and admiration of all Members, including Ministers".

J. Gordon Dubroy.—Mr. Gordon Dubroy, Clerk Assistant of the Canadian House of Commons, retired in the summer of 1975 after over twenty years' service first as Second Clerk Assistant and then as Clerk Assistant. Mr. Speaker paid the following tribute to him when the House of Commons reassembled on 14th October 1975:—

"Hon. members will notice for the first time, probably in the experience if not of all hon. members of the House, then of one or two, the absence from the table of Mr. Gordon Dubroy. Mr. Dubroy has been Clerk Assistant to this House and has served in other capacities with a quality that is so extraordinary as to escape adequate description by me. The fact that he is not here is the result of his retirement last spring. When I was first elected to this position he was ready then to retire, but I begged him to stay on because I valued his counsel and advice. Experience has taught me that persuading him to stay was one of the most important and salutary moves I ever could have made."

Sir David Lidderdale, KCB.—After two and a half years as Clerk of the House of Commons, Sir David Lidderdale retired at the end of June 1976.

Sir David joined the Department of the Clerk in 1934; his first years were spent in the Committee and Private Bill Office. Before his turn came for the circulation to other offices which is the normal lot of a junior Commons Clerk, the clouds of war had gathered over Europe, and Sir David accepted as his duty the relinquishment, for the time being, of the career upon which he had so recently embarked. He served in the Rifle Brigade throughout the war, distinguishing himself on active service in North Africa and Italy; thanks to this experience, on his return to the Department he was drawn, and always remained, especially close to those of his juniors who came there for the first time straight from the armed forces.

In the years immediately following 1945, he spent some time in the Journal Office, the Table Office and once again in the Committee Office. His interests, however, were never confined to the day-to-day

work of the Department; during this period he served as Joint Secretary of the Association of Secretaries-General of the Inter-Parliamentary Union, and made himself a master of the procedures, not only of the Parliaments re-formed in Europe after the years of oppression, but also of the Assemblies newly coming into being in those Colonies which were taking their first firm steps towards independence. His reputation in these spheres was established by the publication in 1951 of "The Parliament of France", which remains the most authoritative account of the legislature of the Fourth Republic; and it was no surprise to any of his colleagues when he was the first to be appointed to the new post of Fourth Clerk at the Table, created in 1953 for the express purpose of supplying to Commonwealth Parliaments that advice on procedure and organisation that the Clerk's Department at Westminster was at that time being increasingly asked to provide.

There followed six years of happy activity at home and abroad. As his new title implied, the Fourth Clerk when at home gave much-needed relief to the three historic occupants of the seats at the Table (the first time that this duty had ever been regularly shared by another); otherwise, he was constantly engaged in the drafting and amendment of Standing Orders for the legislatures of the developing Commonwealth. It was also during Lidderdale's Fourth Clerkship that the visits on attachment to Westminster of Clerks from Commonwealth parliaments, previously not very frequent, became a regular and welcomed feature of the life of the Clerk's Department. His travels abroad ranged over nearly all the territories of the new Commonwealth, and gained him (and Westminster) many warm friends among the servants of their legislatures. The post of Fourth Clerk had at the outset been created subject to the review of its usefulness after the first five years; Sir David laid the foundations and built the house soundly and well, and the end of the probationary period brought no whisper of a suggestion that it be demolished.

After a short period as Second Clerk Assistant Sir David became Clerk Assistant in 1962, and remained in that post for an unusually long tenure of twelve years. The position of Crown Prince is never easy, and too long an occupancy can serve to unfit its holder for the succession; any apprehension of such a danger in this case was, however, soon shown to be groundless. Shortly before Sir David became Clerk of the House in 1974, a distinguished public servant had been commissioned to enquire into the organisation and staffing of the House of Commons. It would be an exaggeration to say that the report of this enquiry was received with enthusiasm by any of the House's servants, and when that report was referred for examination to a Committee of Members, it fell to Sir David to represent the interests of the Department before them. While there is little doubt that the good sense and experience of the Committee would have led them unaided to a perception of the report's inadequacies, it is equally certain that the wise and constructive Report which they themselves produced owed much to Sir David's clear ex-

position of the requirements which the House makes of its staff, and the means by which the staff can most efficiently fulfil them.

Had Sir David during his Clerkship performed no other function than this, the House would have been forever in his debt. As it fell out, however, two general elections in 1974 resulted successively in a minority government and one with the slenderest of majorities. The stresses and unexpected procedural hazards to which such a situation gives rise call for the utmost clear-headedness, wisdom, and above all firmness of decision from those who advise the Chair; all of these qualities Sir David displayed in abundance. But despite the troubles of the times, he was never too busy, with Lady Lidderdale's help, to continue the tradition of hospitality to visiting colleagues from overseas which his earlier service as Fourth Clerk had done so much to foster.

Shortly before his retirement on 30th June, Sir David had the pleasure, not given to every Clerk of the House, of seeing his name upon the spine of the latest edition of Erskine May. To those who remain, the sight will continue to give equal pleasure, reminding them of a respected colleague and a good friend.

(*Contributed by the Clerk Assistant*).

Honours.—On behalf of our Members, we wish to congratulate the under mentioned Members of the Society who have been honoured by Her Majesty the Queen since the last issue of THE TABLE.

C.B.E.—N. J. Parkes, Clerk of the House of Representatives, Australia.

O.B.E.—D. J. Ayling, formerly Clerk of the House of Assembly, Papua New Guinea.

C.I.S.O.—T. E. Kermeen, formerly Clerk of Tynwald, Isle of Man.

II. PARLIAMENT AND RECENT CONSTITUTIONAL DEVELOPMENTS IN INDIA

By Dr. Subhash C. Kashyap

Director of the Parliament Library, Research, Documentation and Information Service, Lok Sabha

Republican and democratic in character, the Constitution of India provides broadly for a parliamentary form of government based on universal adult franchise and the accountability of the Executive to the elected representatives of the people. Parliament occupies a central position in the Indian polity and such powers as it possesses under the Constitution are immense enabling it to fulfil in very large measure the role that belongs to a sovereign and supreme legislature in a democratic set-up in the modern day. The extent of its legislative jurisdiction, its role in emergencies, and its relationship *vis-a-vis* the Executive, the Judiciary and other constitutional authorities are all indicative of the sweep and scope of its power and jurisdiction under the Constitution.

Parliament and Constitutional Amendment:

Parliament is the repository of the constituent power of the Union. The framers of the Constitution recognised that a democratic constitution must be responsive to changing conditions and societal needs of the times. It must be capable of being adapted and changed where necessary to serve as a dynamic instrument of national will. Accordingly, they laid down a relatively easy mode for the amendment of the constitutional document. Article 368 spelled out the procedure for the amendment of the Constitution.

In *Shankari Prasad* V. *Union of India*[1], the Supreme Court of India, by a unanimous decision held that the terms of article 368 were "perfectly general" and empowered Parliament "to amend the Constitution without any exception whatsoever". While ordinary laws found to be inconsistent with the fundamental rights were to be void, fundamental rights themselves could be modified by Parliament through a Constitution Amendment Act. This position was reaffirmed by the Supreme Court by a majority of 3:2 in *Sajjan Singh's* case.[2]

However, in *Golak Nath's* case,[3] decided on February 27th, 1967 the Supreme Court, by a 6:5 majority, reversed its earlier decisions and held that article 368 laid down only the procedure for the amendment of the Constitution and did not give to Parliament any substantive power to amend the Constitution or any constituent power distinct or separate from its ordinary legislative power; that a Constitution Amendment Act passed under article 368 would be void if it took away or abridged a fundamental right.

As a result of the ruling in *Golak Nath's* case, Parliament was to have no power to curtail the individual rights secured by one part of the Constitution even if it became necessary to do so to implement the socio-economic Directive Principles set out in another Part of the Constitution, and which the Constitution itself declared to be "fundamental in the governance of the country" and required to be applied in making laws. The difficulties were sought to be resolved by the Constitution (Twenty-fourth Amendment) Act, 1971 which amended article 368 to provide expressly that "Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article".

In *Kesavananda Bharati's*[4] case, a Full Bench of the Supreme Court, consisting of all the thirteen Judges, unanimously upheld the Twenty fourth Amendment to the Constitution. The primary question before the Court was whether under article 368, as it stood prior to the Twenty-fourth Amendment, Parliament had the power to abridge any of the fundamental rights. Ten of the 13 Judges held that article 368 (in its original form) itself contained the power to amend the Constitution and that 'law' in article 13(2) did not take in a constitutional amendment under article 368. The remaining three Judges, of whom two were parties to the leading majority judgment in *Golak Nath's* case, did not consider it necessary to express themselves on this question. The law declared in *Golak Nath's* case was accordingly overruled.

On the question whether the amending power under article 368 is absolute and unlimited, six Judges gave an affirmative reply. But seven Judges, constituting a majority, held that the amending power under article 368 was subject to an implied limitation: a limitation which arose by necessary implication from its being a power to "amend the Constitution". By a majority of 7:6 the Court ruled that "article 368 does not enable Parliament to alter the basic structure or framework of the Constitution". What constitutes the basic structure was, however, not clearly made out by the majority decision and still remains an open question.[5]

Parliament's Role in Emergencies:

Briefly, the Constitution (articles 352 to 360) envisages three kinds of emergencies, *viz.*, (i) an Emergency due to external aggression or internal disturbance, (ii) failure of constitutional machinery in a State and (iii) financial emergency.

Article 352(1) provides that "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened by war or external aggression or internal disturbance, he may by Proclamation, make a declaration to that effect". Under clause (2) of that article, every Proclamation of Emergency is required to be laid before each House of Parliament, and is to cease to operate at the expiration of two months from the date of its issue by the

President unless it has in the meantime been approved by resolutions of both the Houses. However, once approved by Parliament, the Proclamation continues in operation unless revoked by the President by a subsequent Proclamation.

A Proclamation of Emergency under article 352(1) has certain important consequences. As soon as such a Proclamation is issued and while it lasts, the Constitution vests the Union Government and Parliament with certain extraordinary powers which can be invoked as and when required to meet the needs of the situation. For instance, during the operation of a Proclamation, the Union Government can give directions to any State as to the manner in which the executive power thereof is to be exercised (article 353(a)), while at the same time the Union Parliament acquires power to make laws on any subject—including even matters enumerated in the State List (article 250(1))—as well as to make laws conferring powers or imposing duties upon the Union and Union authorities/officers as respects any matter even though it is not included in the Union List (article 353(b)). Moreover, while a Proclamation of Emergency is in force, the President may, by order, modify the operation of the constitutional provisions[6] governing the allocation of certain financial resources between the Union and the States, but, again, every such order is required to be laid before each House of Parliament (article 354). In other words, while a Proclamation of Emergency under article 352 is in operation, the limitations on Union powers stemming from the distribution of powers between the Union and the States, which hold good in normal times, are, so to say, withdrawn for the time being, so that, for all practical purposes, the Constitution can be worked "as though it was a unitary system."[7]

Another important effect of a Presidential Proclamation under article 352(1) is that during the operation of the Emergency the Legislature and the Executive enjoy a measure of freedom from the limitations imposed on their powers by the fundamental rights set out in Part III of the Constitution. As soon as a Proclamation of Emergency is issued, article 19 guaranteeing the seven basic freedoms (*viz.*, freedom of speech and expression, right to assemble peaceably, right to form associations, right to move freely throughout the territory of India, right to reside and settle in any part of India, right to acquire, hold and dispose of property and right to practise any profession or to carry out any trade, occupation or business) is automatically suspended and the power of Legislatures and the Executives is to that extent made wider (article 358).

The suspension of the provisions of Article 19, however, does not by itself mean a blanket ban on citizens enjoying freedom of speech, assembly, etc. It only means that if the Legislatures make laws or the Executive commits acts which are inconsistent with the rights guaranteed by article 19, their validity is not open to challenge either during the continuance of the Emergency or thereafter.

Further, article 359 empowers the President to suspend the right to

move the courts for the enforcement of *any* of the fundamental rights included in Part III of the Constitution.

Article 356, dealing with the failure of constitutional machinery in the States, provides that if the President "on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution" he may by Proclamation (a) assume to himself all or any of the functions of the Government of that State and (b) declare that the powers of the Legislature of that State shall be exercisable by or under the authority of Parliament. Every Proclamation issued under article 356 has to be laid before each House of Parliament and it ceases to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. A Proclamation so approved shall, unless revoked, cease to operate on the expiration of six months from the date of the second of the resolutions approving it. Under a proviso to article 356, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months, but no such Proclamation shall in any case remain in force for more than three years.

The third type of emergency—financial emergency— is dealt with in article 360. Under this provision, if the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect. Like a Proclamation of Emergency under article 352, a Proclamation under article 360, once approved by Parliament, continues in operation unless revoked by the President. During the period of a financial emergency, the executive authority of the Union extends to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions and also to the giving of such other directions as the President may deem necessary and adequate for the purpose.

A significant feature of the Emergency Provisions is that while the Constitution admits the possibility of a failure of the constitutional machinery in the States which may, *inter alia*, involve a temporary suspension of the State Legislature (article 356), it does not contemplate any such situation in regard to the Union or the Union Parliament. On the other hand, *in each of the three types of emergencies envisaged in the Constitution, Parliament is assigned a crucial role inasmuch as the continuance in force of a Presidential Proclamation beyond two months is expressly made subject to Parliamentary approval.* The Constitution thus ensures that at the earliest possible opportunity parliamentary scrutiny is brought to bear for testing the need and propriety of a Proclamation whether issued under article 352 or under article 356 or 360. If Parliament finds that the Proclamation is not called for, it can refuse its approval. Similarly, orders issued by the

President in exercise of his powers under the Emergency Provisions, for instance orders forbidding recourse to the Courts for enforcing certain fundamental rights, are required to be laid before each House of Parliament "as soon as may be" after they are made. It is open to Parliament to cancel or modify any such order by legislation or to otherwise express its disapproval of the order.

Defending the Emergency Provisions in the Constituent Assembly, Shri T. T. Krishnamachari, a member of the Constitution Drafting Committee, had said:

> They (i.e. the Drafting Committee) have bestowed great thought and care to see that the Government has adequate power to face an emergency, which may very well threaten this Constitution, which may practically make this country come under a rule which is entirely unconstitutional. They have at the same time provided enough safeguards to see that the popular voice would be heard, that the popular will will dominate, whatever might be the conditions under which we will have to function under these emergency provisions.
>
> Care has been taken in framing these articles that as soon as it would be physically possible the Parliament should be summoned and its ratification should be obtained . . . After all we are not suspending by means of these provisions sittings of Parliament. We are not suspending Parliament's powers over the Constitution and Parliament has always the right to call the executive to order; and if they find that the executive had exceeded their power in regard to the operation of any of the provisions enacted under the emergency laws, they can always pull them up; they can dismiss the Ministry and replace them, so that it would appear on examination that we have taken very great care to see that Parliament's power shall be kept intact and Parliament shall be summoned with the least possible delay . . . So long as we have safeguards that the ultimate control of Parliament will remain intact, these provisions really fall into their proper perspective, and there is nothing very seriously objectionable in them.[8]

Another member of the Drafting Committee, Shri Alladi Krishnaswami Ayyar, also emphasized that under the Constitution the Cabinet was responsible to Parliament in war as well as in peace. Parliament, he said could always "rescind any action" of the President or even "remove the Cabinet if it so chooses . . . The only question is how is the Parliament to govern. In times of peace it may govern by everyday interference with the executive; at another time it may govern by entrusting the power to the President or the Cabinet in whom it has confidence."[9]

Since the commencement of the Constitution on January 26th, 1950, there have been three occasions for the Proclamation of Emergency: (i) in October, 1962 following the Chinese aggression, (ii) in December, 1971 following the Pakistani aggression, and (iii) on June 25th, 1975 on ground of threatened internal disturbance. To recount the developments in the latest case, the President of India, Shri Fakhruddin Ali Ahmed, issued a Proclamation under clause (1) of Article 352 of the Constitution declaring that "a grave emergency exists whereby the security of India is threatened by internal disturbance." This was the first time in twenty-five years (since the commencement of the Constitution) that a state of emergency was declared on the ground of a threat to national security from internal disturbance. The 1971 Proclamation was still in operation

when the present Proclamation was issued. In fact, at the time of writing, both the 1971 and the June 1975 Proclamations are simultaneously in operation.

Following the Proclamation of Emergency by the President on the night of June 25th, the President issued an order under article 359(1) of the Constitution suspending the right to move the Courts for the enforcement of the fundamental rights to equal protection of the laws (article 14), protection of life and personal liberty (article 21) and protections and safeguards in respect of arrest and detention (article 22).

The Prime Minister, Shrimati Indira Gandhi, explained the circumstances leading to the declaration of emergency in a broadcast on the morning of June 26th. She said:

"I am sure you are all conscious of the deep and widespread conspiracy which has been brewing ever since I began introducing certain progressive measures of benefit to the common man and woman of India. In the name of democracy it has been sought to negate the very functioning of democracy.

Duly elected governments have not been allowed to function, and in some cases force has been used to compel members to resign in order to dissolve lawfully elected assemblies.[10] Agitations have surcharged the atmosphere, leading to violent incidents. The whole country was shocked at the brutal murder of my cabinet colleague, Mr. L. N. Mishra. We also deeply deplore the dastardly attack on the Chief Justice of India.

Certain persons have gone to the length of inciting our armed forces to mutiny and our police to rebel. The fact that our defence forces and the police are disciplined and deeply patriotic, and therefore will not be taken in, does not mitigate the seriousness of the provocation. The forces of disintegration are in full play, and communal passions are being aroused, threatening our unity.

We have watched these developments with the utmost patience for a long time. Now we learn of new programmes challenging law and order throughout the country with a view to disrupting normal functioning. How can any government worth the name stand by and allow the country's stability to be imperilled? The actions of a few are endangering the rights of the vast majority. Any situation which weakens the capacity of the national Government to act decisively inside the country is bound to encourage dangers from outside. It is our paramount duty to safeguard unity and stability. The nation's integrity demands firm action".

In a second broadcast on June 27th, the Prime Minister said:

"The opposition parties had chalked out a programme of countrywide bandhs, gheraos, agitations, disruption and incitement to industrial workers, police and defence forces in an attempt wholly to paralyse the Central Government . . . This programme was to begin from the 29th of this month. We had no doubt that such a programme would have resulted in grave threat to public order and damage to the economy beyond repair. This had to be prevented . . .

There should be realization that even in a democracy there are limits which cannot be crossed. Violent action and senseless satyagraha will pull down the whole edifice which has been built over the years with such labour and hope. I trust it will be possible to lift the emergency soon.

I have always believed in the freedom of the press, and I still do, but like all freedoms it has to be exercised with responsibility and restraint".

On July 9th, 1975 the President convened Parliament for its Monsoon Session, which began on July 21st. As it was in the nature of an emergency

session, the Question Hour was dispensed with and the normal procedures relating to Calling Attention and Private Members' business, etc. were suspended to facilitate transaction of "urgent and important" Government business.[11]

On the opening day of the Session, as per constitutional requirements, a copy each of the June 25th Proclamation of Emergency and the Presidential Order suspending the right to move the courts for the enforcement of certain fundamental rights was laid on the Table of the Rajya Sabha as well as the Lok Sabha, and a resolution seeking approval of the Proclamation was introduced in each House. In moving the resolution in the Lok Sabha, the Minister of Agriculture and Irrigation, Shri Jagjivan Ram, said that the declaration of Emergency was well within the framework of the Constitution, which empowered the Government to deal with extraordinary situations created by subversive activities within the country. Some Opposition parties he said, wanted to create disorder and anarchy in the country and so Government had to take certain measures to save the country and the people.[12] After a fourteen-hour debate in which several members, including those from the Opposition, participated, the Lok Sabha adopted on July 23rd by 336 votes to 59[13] the resolution approving the Proclamation of Emergency. The Rajya Sabha had already approved the Proclamation of Emergency on the previous day by 136 votes to 33.[14]

Besides approving the Proclamation of Emergency, Parliament passed during the 20-day Monsoon session a number of Government Bills, including two important Constitution amending measures which, after receiving the President's assent, became respectively, the Constitution (Thirty-eighth Amendment) Act, 1975 and the Constitution (Thirty-ninth Amendment) Act, 1975.

The Constitution (Thirty-Eigth Amendment) Act:[15]

Article 123 of the Constitution empowers the President to promulgate Ordinances when both the Houses of Parliament are not in session if "he is satisfied" that circumstances exist rendering it necessary to take immediate action. Corresponding powers to promulgate Ordinances are conferred on the State Governors under article 213 and on the Administrators of Union Territories under article 239B. On the plain language of articles 123, 213 and 239B, there could be no doubt that the satisfaction mentioned in those articles is subjective satisfaction and that it is not justiciable. This was also the intention of the makers of the Constitution. However, contentions had been raised in courts that the issue was subject to judicial scrutiny. Likewise, in regard to the President's power to proclaim an Emergency under article 352, or to assume to himself by Proclamation the functions of the Government of a State under article 356, or to declare a Financial Emergency under article 360, even though the issue regarding the President's satisfaction mentioned in these articles was, on the face of the provisions, clearly not justiciable,

the matter had been agitated in courts and there had been much litigation involving "waste of public time and money".[16]

To set these doubts and controversies at rest, the Act amends the relevant constitutional provisions—articles 123, 213 and 239B, 352, 356 and 360—to provide categorically that the satisfaction of the President or, as the case may be, of the Governor or Administrator in promulgating an Ordinance, as also the satisfaction of the President in issuing Proclamations in exercise of his emergency powers "shall be final and conclusive and shall not be questioned in any court on any ground". Moreover, since in relation to article 352 contentions had also been raised in certain proceedings that while the original Proclamation of Emergency was in operation no further Proclamation of Emergency could be made thereunder,[17] the Act further amends that article by inserting a new clause (4) which says, "The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or internal disturbance or imminent danger of war or external aggression or internal disturbance, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation."

The Act also amends article 359. It had been seen that when a Proclamation of Emergency was in operation, the President was empowered under article 359(1) to make an order suspending the right to move any Court for the enforcement of such of the fundamental rights conferred by Part III of the Constitution as might be mentioned in the order. On the other hand, article 358 renders the provisions of article 19 (conferring the seven 'basic freedoms') automatically inoperative while the Proclamation of Emergency was in operation so that during the duration of the Proclamation the power of the State (i.e., the Legislature and/or the Executive, as appropriate in a given context) to make any law or to take any executive action was not restricted by the provisions of article 19. The intention underlying article 359 appeared to be that a Presidential order barring recourse to courts for the enforcement of certain fundamental rights would have for all practical purposes the same effect in relation to those rights as article 358 had in relation to the rights secured by article 19.[18] The Act brings out this intention by inserting a new clause (1A) in article 359 on the lines of the provisions of article 358, enabling the State to make any law or take any executive action without being limited in any way by the provisions relating to fundamental rights.

The Constitution (Thirty-ninth Amendment) Act:[19]

Article 71 of the Constitution, as it stood originally, provided that disputes arising out of the election of the President or Vice-President shall be decided by the Supreme Court and that matters relating to their election shall be regulated by a parliamentary law. So far as the Prime Minister and the Speaker were concerned, matters relating to their

election were regulated by the provisions of the Representation of the People Act, 1951 and under that Act the High Court had jurisdiction to try an election petition presented against either of them. It was felt by the Government that the President, the Vice-President, the Prime Minister and the Speaker being holders of high offices, matters relating to their election should not be brought before a court of law but should be entrusted to a forum other than a court.[20]

The Constitution (Thirty-ninth Amendment) Act accordingly amends Article 71 to provide that (i) all disputes arising out of or in connection with the election of a President or Vice-President shall be determined by such authority or body and in such manner as might be provided by a law in that behalf made by Parliament and that (ii) the validity of any such law and the decision of any authority or body under such law shall not be called in question in any court. By inserting a new article 329A in the Constitution the Act makes similar provisions in regard to disputes concerning (i) the election to either House of Parliament of a person who holds the office of Prime Minister at the time of such election or is appointed as Prime Minister after such election and (ii) the election to the House of the People (Lok Sabha) of a person who holds the office of the Speaker of that House at the time of such election or who is chosen as the Speaker of that House after such election. As regards a person holding the office of Prime Minister at the time of the election or who is appointed as Prime Minister after the election, by clause (4) of new article 329A a further provision has been made, *viz.*, that no law made by Parliament before the commencement of the present amending Act, in so far as it related to election petitions and matters connected therewith, would apply or would be deemed ever to have applied to or in relation to the election of any such person to either House of Parliament and such election "shall not be deemed to be void or ever to have become void on any ground on which such election could be declared to be void or has, before such commencement, been declared to be void under any such law and notwithstanding any order made by any court, before such commencement, declaring such election to be void, such election shall continue to be valid in all respects and any such order and any finding on which such order is based shall be and shall be deemed always to have been void and of no effect."[21]

The Act also provides for the inclusion of certain enactments in the Ninth Schedule so as to make them immune from challenge on the ground of being inconsistent with any of the fundamental rights. The Acts so protected include, among others, certain recent amendments to the election law, some nationalisation and other socio-economic legislation enacted by Parliament and certain State laws relating to land reforms and ceiling on agricultural holdings.

The Constitution (Forty-first Amendment) Bill, 1975[22]

Also of significance is the Constitution (Forty-first Amendment) Bill,

1975, which was passed by the Rajya Sabha during the last Monsoon Session and is now pending before the Lok Sabha. The Bill seeks to amend article 361 so as to widen the existing immunities of the President and Governors in respect of judicial proceedings and to extend similar protection to the Prime Minister. The need for the amendments has been explained in the Statement of Objects and Reasons, appended to the Bill, as follows:

"Under clause (1) of article 361 of the Constitution, the President or the Governor is not answerable to any court for the exercise and performance of the powers and duties of his office and for acts done or purporting to be done by him in the exercise and performance of those powers and duties. Under our democratic and republican form of Government, the Prime Minister holds an equally high position and it is considered essential that the protection under the clause should also be extended to the Prime Minister.

Clauses (2) and (3) of article 361 of the Constitution provide for personal immunity of the President and Governors from Criminal proceedings and from process of arrest or imprisonment. This immunity is available to the President or a Governor in respect of acts done by him before he entered upon his office and also in respect of acts done by him during the term of his office. It is considered that the immunity in respect of such acts should be available to him after he demits office also and that the Prime Minister should also have the same immunity.

As regards civil proceedings in respect of personal acts of the President or the Governor clause (4) of article 361 provides for a limited protection in the shape of a requirement of notice for a period of two months prior to the institution of such proceedings. It is considered that the President, Prime Minister or Governor of a State should have immunity from civil proceedings during the term of his office.

The Bill seeks to amend article 361 of the Constitution to achieve the above objects".

Extension of the Term of the Lok Sabha:

Under the proviso to clause (2) of article 83 of the Constitution, while a Proclamation of Emergency is in operation, Parliament has the power to extend by law the normal five-year term of the Lok Sabha (House of the People) for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate, The term of the Fifth Lok Sabha was to expire on March 18th, 1976. Having regard to the Proclamations of Emergency which were in operation, it was considered necessary to extend the duration of the Lok Sabha by a period of one year. With this object in view, Government brought forward the House of the People (Extension of Duration) Bill, 1976. Commending the Bill to the Lok Sabha on February 4th, 1976 the Law Minister Shri H. R. Gokhale, said:

"The country was faced with a grave crisis at the time of the Proclamation of Emergency in 1975. The determined measures that have since been taken by the Government under the leadership of our Prime Minister have taken people out of despondency and restored confidence among them. The 20-point programme announced by the Prime Minister is being implemented vigorously and this and the other economic measures taken by the Government have led to marked improvement in the economic situation of the country. Law and order situation has also improved. There is also considerable improvement in discipline in all spheres of national life. We cannot yet afford

to relax in our efforts. The gains achieved by the nation have to be consolidated and preserved. For this purpose, it is necessary to avail of the powers under the proviso to article 83(2) of the Constitution and extend the life of the present House of the People by one year so that all round stability and continued progress is ensured. This is what the Bill seeks to do".[23]

The Bill was passed by the Lok Sabha on the same day and by the Rajya Sabha on February 6th, 1976 and became an Act on receiving the President's assent on February 16th, 1976.

Debate on Constitutional Reforms:

Of late, there has been a growing volume of opinion in the country favouring a fresh look at the Constitution in the light of the experience of its working so that it may be suitably modified and thereby continue to serve as a dynamic living instrument, effectively responding to the needs and aspirations of the people and the challenges of the fast-moving times. A wide-ranging national debate on constitutional reforms is on and, as was to be expected, it has thrown up a rich variety of ideas and opinions on the subject. While it is too early to predict or even to surmise about the final outcome of this debate, speculations that sweeping changes in the basic constitutional framework may be in the offing have been set at rest by the Prime Minister herself. Speaking on constitutional reforms at the 75th Congress session held at Chandigarh in December 1975, the Prime Minister said that while some changes may be necessary to safeguard democracy, these would be made only after discussing the various suggestions in depth and with an open mind. The Prime Minister added that Parliament's power would not be eroded.[24] Again, in a talk on the Radio and T.V. on 29th February, 1976, Shrimati Gandhi said:

"Frankly, I don't think there is any need to alter the structure. I think our Constitution is fairly well balanced. But, as you must have noticed we have had amendments from the very beginning, even a year after the Constitution started. I would say, in my father's time they had to do amendments because everybody cannot foresee all the eventualities which will arise. So when we come across such difficulties, that has to be changed. I think it is up to Parliament to see that the Constitution does not block any major social or economic reforms".[25]

More recently, in an interview with an American newspaper published on April 18th, 1976, the Prime Minister, in a reference to the issue of constitutional reforms, affirmed that "there is no basic change in our philosophy . . . We only wish to plug the loopholes and improve the functioning, specially of the legal system, so that major economic and social programmes go ahead". Explaining what she meant by 'loopholes' of the existing legal system, she said, "Two years ago, when we had a severe drought, we decided to buy rice from mills in two of our states but the courts blocked the programme by accepting thousands of writ petitions. Today also many of our programmes are blocked by what is called stay orders. Sometimes years are taken to decide a matter".[26]

It would thus appear that the Union Government's main concern with constitutional reforms is to devise within the framework of the Constitution—and in harmony with its democratic and egalitarian spirit—suitable ways and means to ensure that urgently needed socio-economic reforms are not held up indefinitely due to protracted litigation.

Meanwhile, certain *tentative* proposals for amendment of the Constitution have been put forward by the Congress Party panel on constitutional reforms, headed by Shri Swaran Singh.[27] The more important observations/recommendations of the panel are:

Systems of Government: "Suggestions have been put forward that the present parliamentary system may be replaced by the Presidential form of Government. The committee is of the view that it is unnecessary to abandon the parliamentary system in favour of the Presidential System. In a federal set-up, with the kind of regional diversity as we have, the parliamentary system is the best suited to preserve the unity and integrity of the country. It also ensures greater responsiveness to the voice of the people."

Constitutional Amendment: "Article 368 of the Constitution, as it stands at present, categorically lays down that Parliament may, in the exercise of its constituent power, amend by way of addition, variation or repeal "any provision of the Constitution" in accordance with the procedure laid down in the article. The language of the article is clear and does not, in any way, restrict the scope of amendment if the provisions relating to the requisite majority for passing an amendment are complied with.

"To place the matter beyond doubt, a new clause may be inserted in article 368 to the effect that any amendment of the Constitution shall not be called in question in any court on any ground. The Constitution is the supreme law of the country and any amendment thereof as provided in article 368 is as much a fundamental law as is the rest of the Constitution."

Power of Judicial Review: "The constitutional validity of a law may be challenged on the ground that the subject-matter of the legislation is not within the competence of the legislature which has passed the law or that the law, or some provision thereof, is repugnant to a provision of the Constitution. The validity of a law can also be challenged on the ground that it infringes one of the fundamental rights contained in the Constitution.

"It is the Committee's view that the constitutional validity of any legislation enacted by Parliament or a State Legislature should be decided only by the Supreme Court. The minimum number of judges of the Supreme Court who are to sit for the purpose of deciding any case involving a question of constitutional validity of a law shall be seven, and the decision of the court declaring a law invalid must have the support of not less than two-thirds of the number of judges constituting the bench.

"Article 226 gives very wide powers to the High Courts in the matter of Writ Jurisdiction. In fact, the High Courts enjoy in this matter a wider power than even the Supreme Court. While the jurisdiction conferred on the Supreme Court is restricted to the enforcement of fundamental rights, the High Courts have been given power to issue directions, orders or writs not only for the enforcement of fundamental rights but also for any other purpose. The words 'and for any other purpose' in Article 226 should be omitted, and the relevant provisions amended accordingly.

"Article 31C provides that no law giving effect to the directive principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it contravenes Article 14, 19 or 31. It is proposed that the scope of the present article 31C should be widened so as to cover legislation in respect of all or any of the directive principles enumerated in Part IV of the Constitution, and that such legislation should not be called in question on the ground of infringement of any of the fundamental rights contained in Part III. Provision should, however, be made that no such law shall

affect the special safeguards or rights conferred on the minorities, or the Scheduled Castes, the Scheduled Tribes or other backward classes under the Constitution".

"The Courts should have no jurisdiction in relation to service matters. Administrative Tribunals may be set up both at the State level and at the Centre to decide cases relating to the service matters. Provision may also be made for an all-India Appellate Tribunal to decide appeals".

"Provision may be made for setting up an all-India Labour Appellate Tribunal to decide appeals from Labour Courts and Industrial Courts, and the High Courts' jurisdiction under articles 226 and 227 in this matter may be taken away."

"No Writ Jurisdiction under article 32 or article 226 shall lie in relation to:

(i) any matter concerning the revenue or concerning any act ordered or done in the collection thereof;

(ii) any matter relating to land reforms, and procurement and distribution of foodgrains;

(iii) election matter."

Disqualification for Membership of Parliament/State Legislature: "Under article 329A of the Constitution, disputed elections in relation to the offices of President, Vice-President, Prime Minister and Speaker, are to be decided by an Authority or Body to be created by a law of Parliament. It is felt that all questions of disqualification (including the period of such disqualification) of members, both of Parliament and of State Legislatures, should be determined by this Body or Authority. At present, this power is exercised by the President/Governor after consulting the Election Commission and in accordance with the Commission's advice.

"The proposed Body or Authority may consist of nine members—three each to be chosen from the Rajya Sabha and the Lok Sabha in such manner as may be prescribed and three to be nominated by the President."

Centre-State Co-ordination: "Agriculture and Education are subjects of prime importance to the country's rapid progress towards achieving desired socio-economic changes. The need to evolve all-India policies in relation to these two subjects cannot be overemphasised. It is, therefore, suggested that Education and Agriculture should be placed in the Concurrent List.

"The Centre's help is often sought when there is a grave situation of law and order in a State. If the Centre is to be able to render help effectively to the States in such situations, it should have the power to deploy police or other similar forces under its own superintendence and control in any State. Suitable provisions may be made in the Constitution for this purpose also."[28]

It is thus clear that any change in the basic parliamentary system and the quasi-federal set-up enshrined in the Constitution is ruled out. The proposals of the Swaran Singh panel were discussed by the Congress Working Committee on April 13th, 1976. While broadly agreeing with the panel, the Working Committee did not take any decision on the 'tentative amendments' as some of these, it was felt, might need fresh examination in the light of the comments and suggestions of the Chief Ministers, State Congress Chiefs and others, including Judges and Lawyers' bodies, to whom the proposals had been sent for eliciting their reaction.[29] The panel is expected to submit its final recommendations before the AICC (All-India Congress Committee) meets in Delhi towards the end of May, 1976, to discuss the question of constitutional reforms and other important matters. Of course, what shape the constitutional reforms eventually take, will depend very largely, if not exclusively, on

Parliament exercising its constituent powers under article 368 of the Constitution.

1. A.I.R. 1951 S.C 458.
2. A.I.R 1965 S.C. 845.
3. A.I.R. 1967 S.C. 1643.
4. A.I.R. 1973, S.C. 1461.
5. In November 1975, another Full Bench of the Supreme Court was constituted to review the *Kesavananda Bharati* case decision and decide whether and how far Parliament's power to amend the Constitution was limited by the theory of basic structure as propounded by the Court in that case. However, after hearing preliminary arguments for and against the need for the review of the said decision, the Chief Justice, Shri A. N. Ray, dissolved the Bench on the third day of the hearing. Announcing the dissolution, the Chief Justice said "We find the arguments are in the air. Therefore, this Bench is dissolved" *Indian Express* (New Delhi), November 13th, 1975.
6. The relevant provisions are articles 268 to 279 which, *inter alia*, provide for the assignment of a number of Union taxes and duties wholly to the States, for 'obligatory or permissive' sharing of the proceeds of certain other Union taxes/duties and for Union financial assistance to the States by way of grants and loans.
7. *C.A. Debs.* Vol. VIII, pp. 34–35.
8. *Ibid*, Vol. IX, pp. 122–24.
9. *Ibid.*, pp. 546.47.
10. The reference is to the movements in Gujarat and Bihar. In the wake of agitations, the Gujarat Legislative Assembly was dissolved in February 1974.
11. This was done by both Houses adopting on the opening day a motion to the effect that "only Government business be transacted during the session and no other business whatsoever . . ." and that the relevant rules "do hereby stand suspended to that extent".
12. *L.S. Debs.*, July 21st, 1975, cc. 73–87.
13. *Ibid.*, July 23rd, 1975, c. 42.
14. *R.S. Debs.*, July 22nd, 1975, cc. 120–124.
15. Bill No. 54 of 1975. Introduced, Lok Sabha: July 22nd, 1975; Passed—Lok Sabha: July 23rd, 1975, Rajya Sabha: July 24th, 1975; President's assent: August 1st, 1975. The Bill was introduced in Lok Sabha as the "Constitution (Thirty-ninth Amendment) Bill, 1975". The short title of the Bill was changed to the "Constitution (Thirty-eighth Amendment) Bill, 1975" by Lok Sabha through an amendment to Clause 1.
16. Statement of Objects and Reasons appended to the Bill (as introduced).
17. *Ibid.*
18. *Ibid.*
19. Bill No. 60 of 1975. Introduced, Lok Sabha: August 7th, 1975; Passed by both the Houses August 7th, 1975; President's assent: August 10th, 1975. The Bill was introduced in Lok Sabha as the "Constitution (Fortieth Amendment) Bill, 1975". The short title of the Bill was changed to the "Constitution (Thirty-ninth Amendment) Bill, 1975" by Lok Sabha through an amendment to clause 1.
20. Statement of Objects and Reasons appended to the Bill (as introduced).
21. While *unanimously* upholding the election of Prime Minister, Shrimati Indira Gandhi to the Lok Sabha from Rae Bareli constituency, the Supreme Court, by a majority judgment delivered on November 7th, 1975, declared clause (4) of new article 329A as unconstitutional and void.
22. Bill No. XVIII of 1975: Introduced, Rajya Sabha; August 9th, 1975; Passed—Rajya Sabha: August 9th, 1975.
23. *L.S Debates*, February 4th, 1976, c. 103.
24. *Indian Express*, December 30th, 1975.
25. '*Prime Minister on the Constitution*', excerpts from the speeches of the Prime Minister, Shrimati Indira Gandhi, Research and Reference Division, Ministry of Information and Broadcasting, New Delhi, March 1976, p. 6.
26. *National Herald*, April 19th, 1976.
27. The ten-number panel (later raised to eleven) was appointed by the Congress President, Shri D. K. Barooah, on February 26th, 1976 with instructions to study and suggest amendments to the Constitution and to submit its report (containing the draft amendments) within two months.
28. *Hindustan Times*, April 14th, 1976.
29. *Times of India*, April 14th, 1976.

III. DISMISSAL OF A PRIME MINISTER

By J. A. Pettifer
Deputy Clerk of the House of Representatives, Australia

Introduction

At 2.34 p.m. on the afternoon of 11th November 1975 Mr. Malcolm Fraser, Leader of the Opposition when the House met at 11.45 a.m. that day, rose in the House of Representatives to announce that that afternoon the Governor-General had commissioned him to form a government. A few minutes before his announcement the House, by a vote of 63 to 56, had agreed to a motion censuring him as Leader of the Opposition for procuring the action of the Senators of non-Government parties in deferring debate on the Appropriation Bills. Then, within half an hour of Mr. Fraser's announcement, the House by a vote of 64 to 54 agreed to a further motion expressing its want of confidence in the new Prime Minister and requesting Mr. Speaker forthwith to advise the Governor-General to call the former Prime Minister (Mr. Whitlam) to form a Government. However, within the next hour and a half the Parliament had been dissolved and the way had been opened for a general election. For a Parliament which had always followed the traditional Westminster pattern of responsible Government it was a startling and dismaying experience.

The dismissal of Prime Minister Whitlam by the Governor-General arose primarily out of the refusal of the Australian Senate to pass the Appropriation Bills on which the Government depended for the supply of money to maintain governmental services. But in order to understand the events it is necessary to be aware of certain constitutional provisions relating to the Parliament and the political situation prevailing at the time.

The Constitution and the powers of the Houses

The Australian Constitution Act, established by an Act of the Imperial Parliament of 1900, brought the six Australian States together in a united Federation as from 1st January 1901. In the Constitution, provision was made for a Senate composed of Senators for each State directly chosen by the people of the State voting as one electorate and a House of Representatives composed of members directly chosen by the people of the Commonwealth, the number of members to be, as nearly as practicable, twice the number of the Senators.

Included also was the provision that the Houses would have equal powers in relation to all Bills except that Bills appropriating revenue or moneys, or imposing taxation, could not originate in the Senate and the Senate could not amend laws imposing taxation or appropriating revenue

or moneys for the ordinary annual services of the Government. However all Bills must be passed by both Houses before presentation to the Governor-General for the Queen's assent.

As to the form of Government, it was the clear intention of the Constitution framers that Australia should abide by the principle of responsible government. Australia's classic commentary on its Constitution by Quick & Garran published in 1901 states that:

> "Whilst the Constitution, in sec. 61, recognizes the ancient principle of the Government of England that the Executive power is vested in the Crown, it adds as a graft to that principle the modern political institution, known as responsible government, which shortly expressed means that the discretionary powers of the Crown are exercised by the wearer of the Crown or by its Representative according to the advice of ministers, having the confidence of that branch of the legislature which immediately represents the people".[1]

Although the system of responsible government as known to the British Constitution was practically embedded in the Australian document its inclusion was seen by some federalists of eminence at the time to be a possible future problem. It was contended "that the introduction of the Cabinet system of responsible government into a federation, in which the relations of the two branches of the legislature, having equal and co-ordinate authority, are quite different from those existing in a single autonomous State, is repugnant to the spirit and intention of a scheme of federal government. In the end it is predicted that either responsible government will kill the federation and change it into a unified State, or the federation will kill responsible government and substitute a new form of executive more compatible with the federal theory".[2] The events of 11th November would seem to have added weight to that view.

In 1975 the Senate consisted of 60 Senators (ten from each of the six States) and the House of Representatives comprised 127 Members elected on a population basis. In accordance with the pattern of the Westminster system the Government was formed from the party having a majority in the lower House. The Whitlam (Labor) Government, elected in 1974 for a three-year term, had, in November, 65 Members which gave it a working majority of two on the floor of the House.

The Labor Government did not possess a majority in the Senate. There it held only 28 of the 60 seats.

Because of the numerical strength of the parties in the Senate, the Opposition was in a strong position to negative the legislative program of the Government. Indeed, from the time of election of the Labor Government in May 1974 until November 1975 the Opposition, through its Senate majority, had defeated 51 bills and deferred consideration of 9 others.

On the political front, for some time prior to the Budget crisis, the Opposition had sensed that the Government was losing favour with the Australian electorate. Unemployment had increased, the inflationary

situation was causing concern, large sections of the media were taking a stand critical of the Government and there was some public disenchantment relating to attempts to procure overseas loans.

In this political climate the Opposition saw the opportunity to push the Government towards an election.

The Supply Confrontation

The Appropriation Bills having been passed by the House and forwarded to the Senate for its concurrence on 8th October, the Senate on 16th October resolved that the Bills be not further proceeded with until the Government agreed to submit itself to the judgment of the people.

Thereafter a series of messages relating to the Bills was exchanged between Houses—

- On 21st October the House asserted that the Senate's action was not contemplated within the terms of the Constitution and was contrary to established constitutional convention.
- On 22nd October the Senate asserted that its action in delaying the Bills was a lawful and proper exercise within the terms of the Constitution and added several statements to support this view.
- On 28th October the House, in dealing with the Senate's Message, denounced the Senate's action as a blatant attempt to violate S.28[3] of the Constitution for political purposes by itself endeavouring to force an early election for the House of Representatives and resolved that it would uphold the established right of the Government with a majority in the House of Representatives to be the Government of the nation.
- On 5th November the Senate rejected the House's claims and the House, when dealing with the Senate's reply, declared that the Constitution and its conventions vested in the House the control of the supply of moneys to the elected Government and that the action of the Senate constituted a gross violation of the roles of the respective Houses in relation to the appropriation of moneys. The House further declared its concern that the unprecedented and destructive stand taken by the Senate in continuing to defer the passage of the Bills was undermining public confidence in the parliamentary system of government.

Whilst the foregoing messages were being exchanged between the Houses, the House on 22nd October and again on 29th October, introduced and passed Appropriation Bills similar to the first Bills and the Senate, upon receipt of each set of new Bills, resolved that the Bills would not be further proceeded with until the Government agreed to submit itself to the judgment of the people.

Threats that the Opposition in the Senate might refuse to pass the Budget first began to circulate about September and throughout the crisis period the constitutional position of the two Houses in relation to money bills was the subject of much comment in the press by editorial writers, commentators and academics. Cases of the refusal of supply

by upper houses in the Australian States, Canada and the United Kingdom were canvassed. Meanwhile the Government and Opposition engaged in a game of political bluffing. It was suggested at one point that the Prime Minister might ask the Governor-General to call a half-Senate election, which is was constitutionally able to do, in the hope that, with the possible help of new Senators from the Australian Capital Territory and the Northern Territory, the Government might obtain a working majority in that House. Also, as concern about supply increased, the Government turned its attention to reducing expenditure and to means of securing money, at least temporarily, without the passage of the Bills—a contingency which created misapprehension in some minds.

As time passed and the end of the period of supply (the end of November) came into sight the Governor-General acted to dismiss Prime Minister Whitlam in circumstances which the media described as "the most extraordinary in the political life of this nation".

Prime Minister's dismissal

Following are the texts of the Governor-General's dismissal letter to Prime Minister Whitlam and the Leader of the Opposition's acceptance of the Governor-General's commission:

11 November 1975

Dear Mr. Whitlam,

In accordance with section 64 of the Constitution I hereby determine your appointment as my Chief Adviser and Head of the Government. It follows that I also hereby determine the appointments of all of the Ministers in your Government.

You have previously told me that you would never resign or advise an election of the House of Representatives or a double dissolution and that the only way in which such an election could be obtained would be by my dismissal of you and your ministerial colleagues. As it appeared likely that you would today persist in this attitude I decided that, if you did, I would determine your commission and state my reasons for doing so. You have persisted in your attitude and I have accordingly acted as indicated. I attach a statement of my reasons which I intend to publish immediately.

It is with a great deal of regret that I have taken this step both in respect of yourself and your colleagues.

I propose to send for the Leader of the Opposition and to commission him to form a new caretaker government until an election can be held.

Yours sincerely,

(sgd. John R. Kerr)

The Honourable E. G. Whitlam, Q.C., M.P.

11 November 1975

Your Excellency,

You have intimated to me that it is Your Excellency's pleasure that I should act as your Chief Adviser and Head of the Government.

In accepting your commission I confirm that I have given you an assurance that I shall immediately seek to secure the passage of the Appropriation Bills which are at present before the Senate, thus ensuring supply for the carrying on of the Public Service in all its branches. I further confirm that, upon the granting of supply, I shall immediately recommend to Your Excellency the dissolution of both Houses of the Parliament.

My Government will act as a caretaker government and will make no appointments or dismissals or initiate new policies before a general election is held.

Yours sincerely,

(sgd. J. M. Fraser)

His Excellency the Honourable Sir John Kerr,
A.C, K.C.M.G., K.St.J., Q.C.

(The Governor-General's statement of the reasons for his action is appended to this article).

Want of Confidence in new Prime Minister

Following the announcement in the House by Mr. Fraser that he had been called upon to form a government (the Senate had passed the Appropriation Bills some the minutes before) Mr. Whitlam moved the following motion:—

"That this House expresses its want of confidence in the Prime Minister and requests Mr. Speaker forthwith to advise His Excellency the Governor-General to call the Honourable Member for Werriwa (Mr. Whitlam) to form a government".

Debate on the motion was closured and the motion agreed to in fifteen minutes.

At 3.15 p.m. Mr. Speaker suspended the sitting and then endeavoured to convey the terms of the resolution to the Governor-General before the dissolution of the House. The double dissolution proclamation had, however, already been signed before he was able to present the House's resolution to His Excellency.

Speaker's letter to The Queen

On 12th November Mr. Speaker wrote to The Queen asking her to intervene and restore Mr. Whitlam to office as Prime Minister in accordance with the expressed resolution of the House. On 17th November, the Queen's Private Secretary, at the command of Her Majesty, replied that—

"the Australian Constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen of Australia. The only person competent to commission an Australian Prime Minister is the Governor-General, and The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution, Her Majesty, "as Queen of Australia," is watching events in Canberra with close interest and attention, but it would not be proper for her to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General by the Constitution Act".

The general reaction

Public, media and academic comment on the constitutional crisis and the dismissal of the Prime Minister ranged far and wide. Some of the comments, more pertinent to the Parliamentary sphere, are mentioned in brief.

- *Advice of the Chief Justice*—The Governor-General acknowledged that the Chief Justice had, upon his request, furnished certain legal advice on the Governor-General's constitutional rights and duties in relation to the existing situation. This action was criticised on the broad ground that the High Court should keep aloof from politics, that other members of the High Court might have entertained a different view from that of the Chief Justice and further that there was a case before the court relating to present electoral redistribution.
- *Opinion of the Law Officers*—Subsequent to the dismissal event it was revealed that a few days before the Governor-General took his dismissal action the Attorney-General and the Solicitor-General had furnished to His Excellency an opinion in answer to the assertion of a former Solicitor-General and sitting Member of the Opposition (Mr. R. J. Ellicott) that "if the Prime Minister proposed and insisted on means which were unlawful or which did not solve the problems of the disagreement between the Houses and left the Government without funds to carry on, it would be within the Governor-General's power and his duty to dismiss his Ministers and appoint others". The Law Officers whilst not disputing the existence of the Governor-General's reserve power to dismiss his Ministers disagreed with his view. The situation as they saw it was that "Section 61 (of the Constitution) affords no ground for the conclusion that upon the Senate deferring or rejecting supply solely to procure the resignation or dismissal of the Ministry possessing a majority in the House of Representatives, His Excellency is constitutionally obliged immediately to seek an explanation of the Prime Minister of how he proposes to overcome that situation.

  "Nor do we agree with the suggestion (by Mr. Ellicott) that were a Prime Minister unable to suggest means which would solve the disagreement between the Houses and left the Government without funds to carry on, it would be His Excellency's duty to dismiss his Ministers".

  This view the Governor-General obviously did not accept.

- *Precipitate action of the Governor-General*—Concern was expressed about the withdrawal of the Prime Minister's commission without warning which prevented him from conferring with The Queen and pre-empted several political options being exercised both by the Prime Minister and the Leader of the Opposition before supply finally ran out in a further three weeks time.
- *Electoral advantage to Prime Minister*—It was alleged that the switching of Prime Ministers had altered the electoral balance as there is an inherent advantage in going to the people as head of the Government. But the contrary view was also put that the ex-Prime Minister tended to gain significantly from a "sympathy vote".
- *The filling of Senate vacancies*—Both the Governor-General and the Chief Justice, in commenting on the need for the Prime Minister to secure the passage of supply through both Houses, pointed to the fact that the Senate was a popularly elected house. This fully elective character had been maintained when vacancies occurred (at least since 1949 when proportional representation was introduced) by State Parliaments appointing to the vacant positions Members of the same political party as the Senator who had died or resigned.

  In 1975, however, the elective character of the Senate was compromised by the appointment by the non-Labor Governments in New South Wales and Queensland of Senators who were not Labor Party nominees. Because these appointees had no obligation to support the Labor Party the effective voting strength of the Government in the Senate was reduced and this could have affected passage of the Appropriation Bills through that House.
- *Financial powers of the Senate*—Nearly all public comment made mention of the Senate's financial powers and much academic and press comment advocated the need to curb its power to reject supply. The following extract contains the gist of the argument:

> "What recent events have shown is that we cannot expect from the leaders of either party, once they are in the throes of political struggle, sufficient vision and self restraint to permit the bicameral system to function, if the Senate can block supply. They also show that we cannot be confident that elections called to break deadlocks will break them for very long.
>
> The only effective step for dealing with this weakness of our Constitution, so aggravated by the weakness of our politicians, is to amend the Constitution so as to remove temptations from the reach of politicians. The convention forbidding the Senate to block supply (whether by rejection or otherwise) should be written into the legal text".[4]

Much of the heat generated by the political situation, which was evidenced by large demonstrations and political rallies, was dissipated by the electoral result of 13th December 1975. The Liberal-Country Party caretaker government, sworn in by the Governor-General, was returned with a record electoral majority of 55 in the House of Representatives.

In addition, in the Senate, the Government obtained a secure working majority of 35 Senators.

In the light of these results the expectation of a repeat of the 1975

confrontation now seems unlikely for some time but the dismissal incident continues to draw comment from politicians, book writers and the media and the need to review and amend Australia's out-dated Constitution remains as urgent and vital as ever.

Statement by the Governor-General on Dismissal of Whitlam Government on 11 November 1975

"I have given careful consideration to the constitutional crisis and have made some decisions which I wish to explain.

Summary

It has been necessary for me to find a democratic and constitutional solution to the current crisis which will permit the people of Australia to decide as soon as possible what should be the outcome of the deadlock which developed over the supply between the two Houses of Parliament and between the Government and the Opposition parties. The only solution consistent with the Constitution and with my oath of office and my responsibilities, authority and duty as Governor-General is to terminate the commission as Prime Minister of Mr. Whitlam and to arrange for a caretaker government able to secure supply and willing to let the issue go to the people.

I shall summarise the elements of the problem and the reasons for my decision which places the matter before the people of Australia for prompt determination.

Because of the federal nature of our Constitution and because of its provisions the Senate undoubtedly has constitutional power to refuse or defer supply to the Government. Because of the principles of responsible government a Prime Minister who cannot obtain supply, including money for carrying on the ordinary services of government, must either advise a general election or resign. If he refuses to do this I have the authority and indeed the duty under the Constitution to withdraw his Commission as Prime Minister. The position in Australia is quite different from the position in the United Kingdom. Here the confidence of both Houses on supply is necessary to ensure its provision. In the United Kingdom the confidence of the House of Commons alone is necessary. But both here and in the United Kingdom the duty of the Prime Minister is the same in a most important respect—if he cannot get supply he must resign or advise an election.

If a Prime Minister refuses to resign or to advise an election, and this is the case with Mr. Whitlam, my constitutional authority and duty require me to do what I have now done—to withdraw his commission—and to invite the Leader of the Opposition to form a caretaker government —that is one that makes no appointments or dismissals and initiates no policies, until a general election is held. It is most desirable that he

should guarantee supply. Mr. Fraser will be asked to give the necessary undertakings and advise whether he is prepared to recommend a double dissolution. He will also be asked to guarantee supply.

The decisions I have made were made after I was satisfied that Mr. Whitlam could not obtain supply. No other decision open to me would enable the Australian people to decide for themselves what should be done.

Once I had made up my mind, for my own part, what I must do if Mr. Whitlam persisted in his stated intentions I consulted the Chief Justice of Australia, Sir Garfield Barwick. I have his permission to say that I consulted him in this way.

The result is that there will be an early general election for both Houses and the people can do what, in a democracy such as ours, is their responsibility and duty and theirs alone. It is for the people now to decide the issue which the two leaders have failed to settle.

Detailed Statement of Decisions

On 16th October the Senate deferred consideration of Appropriation Bills (Nos. 1 & 2) 1975–1976. In the time which elapsed since then events made it clear that the Senate was determined to refuse to grant supply to the Government. In that time the Senate on no less than two occasions resolved to proceed no further with fresh Appropriation Bills, in identical terms, which had been passed by the House of Representatives. The determination of the Senate to maintain its refusal to grant supply was confirmed by the public statements made by the Leader of the Opposition, the Opposition having control of the Senate.

By virtue of what has in fact happened there therefore came into existence a deadlock between the House of Representatives and the Senate on the central issue of supply without which all the ordinary services of the government cannot be maintained. I had the benefit of discussions with the Prime Minister and, with his approval, with the Leader of the Opposition and with the Treasurer and the Attorney-General. As a result of those discussions and having regard to the public statements of the Prime Minister and the Leader of the Opposition I have come regretfully to the conclusion that there is no likelihood of a compromise between the House of Representatives and the Senate nor for that matter between the Government and the Opposition.

The deadlock which arose was one which, in the interests of the nation, had to be resolved as promptly as possible and by means which are appropriate in our democratic system. In all the circumstances which have occurred the appropriate means is a dissolution of the Parliament and an election for both Houses. No other course offers a sufficient assurance of resolving the deadlock and resolving it promptly.

Parliamentary control of appropriation and accordingly of expenditure is a fundamental feature of our system of responsible government. In consequence it has been generally accepted that a government which has been denied supply by the Parliament cannot govern. So much at

least is clear in cases where a Ministry is refused supply by a popularly elected Lower House. In other systems where an Upper House is denied the right to reject a money bill denial of supply can occur only at the instance of the Lower House. When, however, an Upper House possesses the power to reject a money bill including an appropriation bill, and exercises the power by denying supply, the principle that a government which has been denied supply by the Parliament should resign or go to an election must still apply—it is a necessary consequence of Parliamentary control of appropriation and expenditure and of the expectation that the ordinary and necessary services of government will continue to be provided.

The Constitution combines the two elements of responsible government and federalism. The Senate is, like the House, a popularly elected chamber. It was designed to provide representation by States, not by electorates, and was given by Sec. 53, equal powers with the House with respect to proposed laws, except in the respects mentioned in the section. It was denied power to originate or amend appropriation bills but was left with power to reject them or defer consideration of them. The Senate accordingly has the power and has exercised the power to refuse to grant supply to the Government. The Government stands in the position that it has been denied supply by the Parliament with all the consequences which flow from that fact.

There have been public discussions about whether there is a convention deriving from the principles of responsible government that the Senate must never under any circumstances exercise the power to reject an appropriation bill. The Constitution must prevail over any convention because, in determining the question how far the conventions of responsible government have been grafted on to the federal compact, the Constitution itself must in the end control the situation.

Sec. 57 of the Constitution provides a means, perhaps the usual means, of resolving a disagreement between the Houses with respect to a proposed law. But the machinery which it provides necessarily entails a considerable time-lag which is quite inappropriate to a speedy resolution of the fundamental problems posed by the refusal of supply. Its presence in the Constitution does not cut down the reserve powers of the Governor-General.

I should be surprised if the Law Officers expressed the view that there is no reserve power in the Governor-General to dismiss a Ministry which has been refused supply by the Parliament and to commission a Ministry, as a caretaker ministry which will secure supply and recommend a dissolution, including where appropriate a double dissolution. This is a matter on which my own mind is quite clear and I am acting in accordance with my own clear view of the principles laid down by the Constitution and of the nature, powers and responsibility of my office.

There is one other point. There has been discussion of the possibility that a half-Senate election might be held under circumstances in which

the Government has not obtained supply. If such advice were given to me I should feel constrained to reject it because a half-Senate election held whilst supply continues to be denied does not guarantee a prompt or sufficiently clear prospect of the deadlock being resolved in accordance with proper principles. When I refer to rejection of such advice I mean that, as I would find it necessary in the circumstances I have envisaged to determine Mr. Whitlam's commission and, as things have turned out have done so, he would not be Prime Minister and not able to give or persist with such advice.

The announced proposals about financing public servants, suppliers, contractors and others do not amount to a satisfactory alternative to supply."

---

1. John Quick LL.D. and Robert Randolph Garran M.A. *The Annotated Constitution of the Australian Commonwealth* (Sydney, 1901), p. 703.
2. Quick and Garran, p. 706.
3. "28. Every House of Representatives shall continue for 3 years from the first meeting of the House, and no longer but may be sooner dissolved by the Governor-General".
4. Don Harding and Julius Stone, Professors of Law, University of N.S.W., Article, *Sydney Morning Herald*, 15th November 1975.

IV. THE NORTHERN IRELAND CONSTITUTIONAL CONVENTION: THE RULES OF PROCEDURE

By J. M. Steele

Sometime Second Clerk Assistant to the Northern Ireland Parliament, the Northern Ireland Assembly and the Northern Ireland Convention

When the Northern Ireland Constitutional Convention met for the first time on 8th May 1975 the Clerks-at-the-Table could have been forgiven for experiencing a mild sense of déjà vu; the Convention was using the Chamber formerly occupied by both the Northern Ireland House of Commons and the Northern Ireland Assembly and almost 70 per cent of its membership had served in one or both of those bodies. There were however, several important differences between the Convention and the parliamentary institutions which had gone before. The first and most important had been emphasised by a government discussion paper[1] as follows:—

"[The Convention] is not a permanent, governmental or legislative body. It is not an Assembly or a Parliament. It is a body elected to seek within a specific term an agreed solution to a specific problem".

The Northern Ireland Act 1974[2] specified an initial term of up to six months for the Convention's deliberations[3] and posed the specific problem in the following terms of reference:—

"2–(1) There shall be elected and held in Northern Ireland a Convention for the purpose of considering what provision for the government of Northern Ireland is likely to command the most widespread acceptance throughout the community there".

The second major difference between the Convention and the earlier bodies which had met in the same Chamber in Parliament Buildings, Stormont was that the 1974 Act[2] had provided that the Chairman of the Convention would be appointed by Her Majesty from outside the elected membership. It was therefore, the Rt. Hon. Sir Robert Lowry, Lord Chief Justice of Northern Ireland, who proceeded to the Chair of the Convention at the commencement of its first meeting.[4]

The final major difference was in the composition of the Convention. The United Ulster Unionist Coalition, who had been in opposition in the Assembly, had had 46 Members returned in the election on 1st May 1975, giving them an overall majority within the Convention.[5]

Apart from formal matters and an opening statement by the Chairman the only business at the first meeting was the appointment of a Committee to draw up draft rules of procedure for consideration by the Convention.[6] Twelve Members were appointed, in proportion to party strengths, and the Committee was instructed to report by 22nd May.

The author of this article was subsequently appointed Clerk to the Committee and at the first meeting the Rev. I. R. K. Paisley was elected Chairman.

The discussion paper on Convention Procedure[1] had provided the following general guidance for the Rules Committee:—

". . . the Convention may well think it undesirable to regulate its business in a rigid manner lest it be faced with the need to make continual changes. As an alternative to drawing up a set of comprehensive rules, the Convention might, therefore, feel it appropriate to adopt a few broad and simple rules (supported, perhaps, by an omnibus clause allowing relevant House of Commons rules to be applied when the Convention's specific rules are silent)."

In addition the discussion paper had referred to the possible use of committees by the Convention and to the desirability of establishing a "Steering Committee" to act in close consultation with the Chairman in maintaining a general oversight of Convention proceedings. The Clerk to the Convention, Mr. R. H. A. Blackburn, had borne this excellent advice in mind in preparing a set of possible draft rules for consideration by the Rules Committee and he had also had the benefit of the examples provided by the rules of a wide variety of other Constitutional Conventions.[7] The Committee met on six occasions, using Mr. Blackburn's draft as the basis for its discussions and taking oral evidence from him and the Clerk Assistant, Mr. J. A. D. Kennedy. It completed its deliberations on 19th May, in good time for its deadline of presenting its Report to the Convention on 22nd May. The printed Report[8] was delivered to Members' homes on 20th May.

The Rules Committee was seen by many Members, and the media, as a possible indicator for the success or otherwise of the Convention itself. As such it provided mixed portents. While there were wide areas of agreement within the Committee the discussions on a few subjects highlighted the existence of deep mutual suspicions between the parties, the main areas of disagreement centering on the role of the Chairman of the Convention and on the method of preparation of the Convention's final Report. The 1974 Act[2] had not attempted to define the Chairman's role, although his high judicial position and the method of his appointment clearly indicated that he would be something more than a Speaker or a presiding officer. The minority parties saw him as their safeguard against the United Ulster Unionist Coalition's majority and that group wished to make it clear in the Rules of the Convention that the Convention (i.e. a majority of Members) would have the final say. Similarly the minority parties feared that the United Ulster Unionist Coalition would use their majority to "steamroller" a Report which would not be fully representative of the views of all parties. Both these areas of disagreement remained in some degree of doubt and contention throughout the Convention, although in the end the Chairman more than satisfied all Members of his complete impartiality and the final Report of the Convention did contain, as an Appendix, the draft reports which had

been drawn up by those parties who disagreed with the Report[9] which had been prepared and voted through the Convention by the majority group.

The Convention considered the Report of the Rules Committee over eight Plenary Sessions, 27th May–12th June, during the course of which there were ten divisions and the outcome was the nineteen fairly brief rules which are reproduced in full in the Appendix to this note. The debate in the Convention, as in the Rules Committee, was particularly notable for the evident suspicion with which the parties viewed each other's, and the Chairman's, intentions.

In practice the Rules worked very well, a fact which must be attributed as much to the considerable expertise which the Chairman exhibited in their interpretation as to their intrinsic merit. As an aside I may say that after one particularly lengthy and impressive ruling the Chairman/Lord Chief Justice leaned forward to the Clerks and said, *sotto voce*, "Two hundred and fifty guineas!" He had however omitted to switch off his microphone and the remark was transmitted throughout the Chamber, to the considerable amusement of those present. In addition to the Chairman's skill, however, Rule 19 (Suspension of Rules) lent almost infinite procedural flexibility and was much employed.

It may be of interest to note that, although the Business Committee was set up, and operated successfully in accordance with Rule 11, the Committees envisaged by Rule 12 were never established, the Members preferring the more informal format of direct negotiation between the parties. During the first series of these meetings neither the Chairman nor his staff were present and no records were kept. This meant that when the talks broke down there was considerable controversy about the circumstances surrounding the breakdown. When the negotiations were resumed in the second stage of the Convention[3] it was agreed that the meetings should be chaired by the Chairman, with his advisers in attendance, and that minutes should be taken by a Clerk. Indeed it was arranged that "Hansard" staff should be on call to record significant parts of the discussions. Regrettably this arrangement was no more successful in producing a constitutional settlement than the earlier less structured approach.

It is not the purpose of this note to describe the Constitutional Convention in a political sense or to ascribe reasons for its failure. To do so would be most inappropriate (and dangerous!) even for an ex-Clerk. Nevertheless, it is a matter of record that, in spite of much evidence of goodwill during the early debates in Plenary Session and in spite of the achievement of agreement over a wide range of constitutional options, in the final analysis the Convention did not satisfy the United Kingdom Government and Parliament that its Report fulfilled the terms of reference contained in Section 2(1) of the 1974 Act.[2] Perhaps, however, the task of finding a constitutional formula which would be "likely to command the most widespread acceptance throughout the community" was never

an easy one and in practice it was made even more difficult by the continuing violence in the province.

With the end of the Convention, Northern Ireland entered a further period of direct rule from Westminster and the Clerks and other staff who had served the Northern Ireland Parliament, the Northern Ireland Assembly and the Convention were once again called upon to prove their versatility by taking up a wide variety of unaccustomed tasks. At the time of writing it seems as if their separation from parliamentary work may be prolonged.

Appendix

Rules of Procedure of the Northern Ireland Constitutional Convention

1. General Rule for the Conduct of Business

(1) The Convention shall be master of its own business. Subject thereto the Chairman's ruling shall be final on all questions of procedure and order. In all matters not provided for in these Rules or by Resolution of the Convention, he shall have regard to the rules, forms and practices of the House of Commons in so far as they can be applied appropriately.

2. Sittings of the Convention

(1) A sitting of the Convention shall be constituted when it is presided over by the Chairman. Bells shall be rung in the Convention precincts two minutes before the Chairman takes the Chair at a sitting or renewed sitting.

(2) Upon the Chairman taking the Chair each day and before the commencement of business the Convention shall repeat the following prayer:

Almighty God we humbly beseech Thee to bestow Thy blessing upon our Sovereign Lady Queen Elizabeth the Second and upon this Convention. Direct and prosper our deliberations to the advancement of Thy glory and the true welfare of the people of Northern Ireland;

and then the Convention will repeat the Lord's Prayer.

(3) Unless otherwise ordered on motion made after notice, the Convention shall meet at 2.15 p.m. on each sitting day and the transaction of Committee and other Convention business shall be conducted in the mornings or at such other times as are appointed.

(4) At 6.00 p.m. or at such earlier time as the state of business permits the Chairman shall interrupt the business under consideration and the Convention shall forthwith stand adjourned. Provided that at 6.00 p.m. a motion may be made, after notice and to be decided without amendment or debate, that the Convention sitting be extended by a specified period of time after 6.00 p.m.

(5) Notwithstanding the foregoing provisions, the Chairman may, after consultation with the Business Committee, postpone a meeting of

the Convention or call a meeting before the date or time to which it has been adjourned.

(6) The Chairman may under this Rule suspend a sitting of the Convention at any time for a period, not exceeding fifteen minutes except by leave of the Convention.

3. Business of the Convention

(1) Subject to the provisions of Rule 4 (Individual Members' Debates) the business of the Convention each day shall be such as the Business Committee, through the Chairman, may direct.

(2) The Clerk to the Convention shall prepare an Agenda for each sitting day showing the business to be taken, together with such other information as the Chairman may direct.

(3) Notice of future business shall be given in writing to the Clerk who shall prepare a Notice Paper from time to time listing the notices received by him.

(4) Except by leave or order of the Convention no motion may be proposed unless notice of it has appeared on a Notice Paper circulated at least one day before that on which the motion is to be taken.

4. Individual Members' Debates

(1) Notwithstanding any provision in these Rules relating to the sittings or business of the Convention, the first three hours of every third sitting of the Convention shall be reserved for the purpose of debate on motions set down by individual Members and not already designated by the Business Committee for discussion in the Convention.

(2) The order in which such motions shall be taken shall be determined by the Chairman who shall have regard to—

(*a*) the order in which the various motions first appeared on the Notice Paper;

(*b*) the wishes expressed to him by the Members in whose names the various motions appear;

(*c*) the public importance in relation to the terms of reference of the Convention in his opinion of the various motions; and

(*d*) the desirability of giving precedence to those motions which in his opinion are least likely to be debated in the Convention under the arrangements prescribed in Rule 3(1).

(3) Any general business which has been postponed under this Rule shall not be interrupted at 6.00 p.m. and may be proceeded with after that hour for a period of time equal to the duration of proceedings upon any motions made in accordance with paragraph (1) of this Rule.

5. Speeches in the Convention

(1) A Member may not speak more than once to the same question but a right of reply shall be allowed to a Member who has moved a substantive motion.

(2) Except by leave of the Convention a Member may speak in debate on any question for no longer than the appropriate time as set out below:

Member introducing a substantive motion	45 minutes
Each other Member (including a Member moving an amendment)	30 minutes
The mover of a substantive motion in reply	30 minutes

(3) Paragraphs (1) and (2) above shall not apply during a debate on any draft Report or Reports of the Convention to be transmitted to the Secretary of State for Northern Ireland under section 2(2) of the Northern Ireland Act 1974.

6. Voting

(1) Questions arising in the Convention, or in a Committee of the Convention, shall be decided by a majority of votes and each Member of the Convention or a Committee shall have one vote. If the votes are equal the Chairman of the Convention or the Committee shall declare the motion to be lost.

(2) If in the Convention the opinion of the Chairman as to the decision of a question is challenged he shall direct that the lobby be cleared and shall cause bells to be rung to summon Members to the Convention chamber.

(3) After the lapse of three minutes from this direction he shall put the question again and, if his opinion is again challenged, he shall nominate tellers, bells shall again be rung and the Convention shall vote in the manner provided below.

(4) Members of the Convention shall vote by going through the lobbies to each side of the Convention chamber, "ayes" to the right of the Chairman and "noes" to the left of the Chairman, where their names shall be recorded by a clerk. After the lapse of four minutes from putting the question again the Chairman shall direct that the doors giving access to the voting lobbies be locked. The tellers shall then bring the voting lists to the Chairman who will announce the result.

(5) If in the Convention fewer than forty Members vote the business under consideration and any other business for that day shall stand over until the next meeting.

7. Delaying Motions

(1) When a motion is made for the adjournment of a debate, or of the Convention during any debate, any debate thereupon shall be confined to the matter of such motion; and no Member, having moved any such motion, shall be entitled to move any similar motion during the same debate.

(2) If the Chairman shall be of opinion that a motion for the adjournment of a debate, or of the Convention during any debate, is an abuse of the Rules of the Convention, he may forthwith put the question thereupon from the Chair or he may decline to propose the question thereupon to the Convention.

8. Amendments

(1) When an amendment has been moved the question to be proposed shall be, That the amendment be made.

(2) In respect of any motion the Chairman shall have power to select the amendments to be proposed and may, if he thinks fit, call upon any Member who has given notice of an amendment to give such explanation of its objects as may enable the Chairman to form a judgement on it.

9. Closure of Debate

(1) After a question has been proposed a Member rising in his place may claim to move, That the question be now put, and, unless it shall appear to the Chairman that such motion is an abuse of the Rules of the Convention, or an infringement of the rights of a minority, the question, That the question be now put, shall be put forthwith. The question shall be decided without amendment or debate and to be carried on a division at least thirty Members must vote in the majority.

(2) When the motion, That the question be now put, has been carried, and the question consequent thereon has been decided, any further motion may be made (the assent of the Chairman, as aforesaid, not having been withheld) which may be requisite to bring to a decision any question already proposed. Such motion shall be put forthwith, and decided without amendment or debate.

10. Order in the Convention

(1) The Chairman, after having called the attention of the Convention to the conduct of a Member who persists in irrelevance or tedious repetition either of his own arguments or of the arguments used by other Members in debate may direct him to discontinue his speech.

(2) If any Member of the Convention

(*a*) persistently and wilfully obstructs the business of the Convention; or

(*b*) is guilty of disorderly conduct; or

(*c*) uses objectionable words which he refuses to withdraw; or

(*d*) wilfully refuses to conform to any Rule; or

(*e*) wilfully disregards the authority of the Chairman:—

the Chairman, having called the attention of the Convention to the conduct of the said Member, may direct the Member to discontinue his speech or to withdraw immediately from the Convention chamber and precincts and any Member so ordered to withdraw shall do so forthwith and shall absent himself from the Convention chamber and precincts during the remainder of that day's sitting.

(3) If the Chairman deems that the provisions of paragraph (2) are insufficient to deal with the words or conduct of any Member, when the Member has withdrawn from the Chamber, the question, That such Member be suspended from the service of the Convention, shall be put forthwith by the Chairman without a motion being necessary. Proceedings

in pursuance of this paragraph may be decided after the expiration of the time for business.

(4) When any Member is suspended under paragraph (3), his suspension on the first occasion shall be for one week and on any subsequent occasion the period of suspension may be increased by the Chairman to a maximum of four weeks. The un-completed portion of the day during which the Member was suspended shall not count for the purpose of this Rule. Provided that the Chairman may at any time review a period of suspension.

(5) In pursuance of his powers under paragraphs (2), (3) and (4) of this Rule or otherwise it shall be the duty of the Chairman to ensure that order is at all times preserved in the Convention chamber and its precincts and to that end he, or any member of the Convention staff authorised in writing by him in that behalf, may request such assistance from members of the Royal Ulster Constabulary as he, or such authorised member of the Convention staff, considers necessary.

(6) In the case of disorder arising in the Convention chamber or its precincts the Chairman may, if he thinks it necessary to do so, adjourn the Convention or suspend any sitting for a time to be named by him.

11. Business Committee

(1) There shall be a Committee of the Convention to be known as the "Business Committee" which shall arrange the business of the Convention and shall perform such other duties as the Chairman may request or the Convention determine.

(2) The Business Committee shall consist of twelve Members appointed by the Convention and the Chairman of the Convention shall act as Chairman of the Committee.

(3) The quorum of the Business Committee shall be eight.

(4) The procedures of the Business Committee shall be such as the Committee may determine.

12. Committees of the Convention

(1) Committees of the Whole Convention may be appointed by motion after notice for a purpose specified in the motion.

(2) A Committee of the Whole Convention shall, unless otherwise determined by the Convention, observe the Rules of the Convention except that Rule 5 shall not apply.

(3) Committees to assist the Convention in the discharge of its functions shall be appointed by motion of the Convention made after notice.

(4) A Committee appointed under paragraph (1) or (3) may sit at any time and may adjourn from place to place.

(5) (*a*) A Committee appointed under paragraph (1) or (3) may invite any person to address it or to be examined by it, or for both such purposes, concerning any topic relevant to the Committee's terms of reference. Questions shall be addressed by Members to

such a person only through the Chairman of the Committee.

(*b*) If a Member of a Committee appointed under paragraph (1) or (3) is dissatisfied with the Committee's choice of persons invited to address it or to be examined by it he shall have the right to draw the attention of the Chairman of the Convention to his dissatisfaction and a ruling upon the matter by the Chairman shall be binding upon that Committee and shall be final.

(6) The Chairman of the Convention shall be Chairman of a Committee of the Whole Convention and an ex officio member of every other Committee of the Convention appointed under this Rule.

(7) (*a*) On notice to the Clerk to a Committee appointed under paragraph (3) not later than the day previous to a sitting a Member of the Convention shall be granted access to the Committee and shall be permitted to ask questions through the Chairman.

(*b*) Members of the Press may be admitted at the discretion of a Committee appointed under paragraph (3).

(*c*) All persons other than Convention staff shall withdraw when a Committee appointed under paragraph (3) is deliberating.

(8) Subject to the foregoing provisions, the procedures of a Committee shall be such as the Committee determines or the Convention shall otherwise order.

13. Minutes of Proceedings of the Convention

(1) The proceedings of the Convention shall be noted by the Clerk and the Minutes of Proceedings after being perused and signed by the Chairman shall be circulated to all Members and published.

(2) The Minutes of Proceedings for each day's sitting shall include a list of names of all Members in attendance.

14. Verbatim Reports

(1) There shall be a verbatim Report of Debates in the Convention and Committees of the Whole Convention.

(2) When an examination of a witness takes place before a Committee appointed under paragraph (1) or (3) of Rule 12, the questions put to the witness, together with the answers and the contents of letters and papers read in evidence shall be recorded, except by leave of the Committee.

(3) The deliberations of a Committee appointed under paragraph (3) of Rule 12 shall not be recorded except as the Committee otherwise order.

15. Convention Papers

(1) The Chairman may authorise the printing, publication, distribution or sale of any paper, document or report in connection with the business of the Convention including any paper, document or report tabled for discussion in the Convention.

(2) Any paper, document or report presented to the Convention or a Committee thereof shall after being listed in the proceedings of the Convention or Committee and circulated to all Members, stand referred to the Business Committee who shall either order it to be printed and published or report to the Convention reasons why, in the opinion of the Committee, it should not be so printed and published.

16. Reports of the Convention

(1) The Chairman or any Member of the Convention may table a draft Report for consideration as a Report of the Convention.

(2) All draft Reports shall be submitted by the Business Committee to the Convention for its consideration and a Member may move, That the Draft Report proposed by . . . be considered, to which any other Member may move an amendment by proposing to leave out words and to insert others with the object of substituting the other draft Report or another of the draft Reports submitted for consideration.

(3) When the Convention has decided that the draft Report or one of the draft Reports as the case may be, shall be considered, the Report shall be considered by a Committee of the Whole Convention paragraph by paragraph. Amendments may be moved to each paragraph and new paragraphs inserted.

(4) When all the proposed amendments to a paragraph have been disposed of, or if no amendment is moved thereto, the Chairman shall propose the Question, That this paragraph (as amended) stand part of the proposed Report.

(5) After the several paragraphs of the draft Report have been considered and agreed to, with or without amendment, and whatever new paragraphs the Convention think proper have been inserted in or added to the draft Report, the Chairman shall propose the Question, That the proposed Report (as amended) be (a) (the) Report of the Convention.

(6) If this Question is affirmed the other draft Report or Reports submitted to the Convention for consideration shall be recorded in full in the proceedings of the Convention.

(7) The final Question on a Report considered by the Convention shall be, That the Chairman do make the said Report to the Secretary of State.

17. Visitors

Unless otherwise ordered visitors shall be admitted to such places in the Convention chamber and its precincts as may be specified by the Chairman. For the purposes of this Rule the term "visitors" includes members of the public and of the press.

18. Definitions

In these Rules:

"by leave" means leave of the Convention or a Committee granted with no dissenting voice.

"precincts" means all the accommodation provided for the Convention in addition to the Convention chamber under paragraph 12 of Schedule 2 to the Northern Ireland Act 1974.

19. Suspension of Rules

A Rule of the Convention may be suspended by leave or on motion without notice provided that it does not appear to the Chairman that such suspension would be an infringement of the rights of any Members.

---

1. Discussion Paper 2—"Constitutional Convention: Procedure", published by HM Stationery Office in November 1974. (The other papers in the series were "Finance and the Economy" published in September 1974 and "Government of Northern Ireland" published in February 1975).
2. 1974 Chapter 28.
3. The Convention Report was formally agreed on 7th November 1975, precisely six months from the first meeting but the Convention was also recalled for a period of a few weeks early in 1976.
4. Sir Robert's appointment had been announced on 21st February 1975 when it had been welcomed by spokesmen on behalf of all the main political groups.
5. The result of the election was—

United Ulster Unionist Coalition:		
Ulster Unionist Party	19	
Vanguard Unionist Party	14	
Ulster Democratic Unionist Party	12	
Independent Unionist	1	
		46
Social Democratic and Labour Party	17	
Alliance Party	8	
Unionist Party of Northern Ireland	5	
Northern Ireland Labour Party	1	
Independent Unionist	1	
		32
		78

6. The Northern Ireland Act 1974 had given the Secretary of State for Northern Ireland power to give directions for regulating the procedure of the Convention until it had agreed its own rules and the early meetings of the Convention were conducted on that basis.
7. Notably, the Irish Convention 1917/18, the Newfoundland Convention 1946/47 and the Australian Constitutional Convention which was then at work.
8. Northern Ireland Convention paper 1–1.
9. Ordered by the House of Commons to be printed 20th November 1975 and published by HM Stationery Office.

V. COMPUTER APPLICATIONS IN THE HOUSE OF LORDS

By M. F. Bond, M.V.O., O.B.E.
Principal Clerk, Information Services, House of Lords

Computers now constitute an everyday feature of life. They are widely used both in local and national government, they produce weather forecasts, and they have guided men to the moon. Although Parliament at Westminster has sometimes looked with suspicion on technological advances, waiting for instance nearly two centuries before making any general use of the printing press, consideration by Parliament of the usefulness of computers has been more immediate. It began in the early 1960's, and is now resulting in limited but potentially valuable applications in both Houses.

The background to current computer experiments in the House of Lords was the re-organisation of some aspects of its administration in 1974. In that year the authorities of the House, realising the increasing amount of information being demanded in Parliament and also the inefficiency of having several overlapping departments responsible for supplying information, designated a group of six offices as the 'Information Services' of the House under the co-ordination of a Clerk.[1] One of the first major tasks then assigned to the Information Services was to investigate further ways in which computers could be of assistance in retrieving data and in processing texts, e.g. of bills as they were amended. By that year a great deal of work had already been done on this subject at Westminster, almost entirely due to the initiative and effort of Mr. D. C. L. Holland and his colleagues in the House of Commons Library. Descriptions of their wide-ranging investigations have appeared in print.[2] In summary, they included (1) the preparation of a sample series of current awareness bulletins based on the Culham Research Laboratory computer of the U.K. Atomic Energy Authority in 1968; (2) a detailed feasibility study of computer support for Parliamentary Information Services by the Association of Special Libraries and Information Bureaux (ASLIB) in 1970; (3) a demonstration within the House of Commons Library of ICL's system entitled MEDHOC—Macro-economic data for the House of Commons—in 1973; (4)from 11th to 20th December 1973, a demonstration in the Upper Waiting Hall of the House of Commons by IBM. In this demonstration users were able to search a one-month run of oral questions and supplementaries, together with a section of text of volumes of *Statutes in Force* (computer-printed by ICL computer) which dealt with Agriculture and Compulsory Acquisition Acts. The programme packages used in the experiment were those known as STAIRS (Storage And Retrieval Systems) and ATMS (Advanced Text Management System); and (5) during June and July 1974, a demon-

stration in the Library of the STATUS system based on the Atomic Energy Authority's computer at Harwell which enabled the full texts of certain statutes to be searched and the long titles of some 18th century local acts to be entered and searched.

The STAIRS/ATMS demonstration of December 1973 was attended by Members and Officers of both Houses, Sir David Stephens, the then Clerk of the Parliaments, specifically inviting all Peers 'to inspect and to operate the computer' during the display and then to communicate to him, or to the present writer (who had previously been put in charge of computer developments in the Upper House) any comments or suggestions. The resulting reaction was so generally favourable that it was decided to advance a step further. It seemed reasonable that a more prolonged experiment should be undertaken, and that this should be carried out not as a public demonstration by a commercial firm but by the Lords' staff within their own offices as part of their day to day routine. Such an extended experiment would, in fact, be equivalent to a simple feasibility study if conducted under expert guidance. As a preliminary, therefore, an approach was made to the government body which had been established to advise on computer applications, the Central Computer Agency (CCA), and in May 1974 the CCA undertook a brief preliminary investigation of opportunities for computer experiment in the offices of the two Houses.

As an immediate result of the CCA investigation a Joint Computer Study Group was formed[3] in order to report not only on current experiments within the two Houses but also to gain external experience by visiting computers elsewhere in the United Kingdom. The three members of this group had all had computer experience themselves and their reports in the subsequent two years have proved of great value to the authorities in both Houses.

So far as the House of Lords was immediately concerned, the CCA investigation also resulted in a decision to mount an immediate internal office experiment entering data in two specific departments: the European section of the Printed Paper Office, and the Public Bill Office, again employing the IBM programme of STAIRS and ATMS. The Greater London Council kindly allowed their computer to be used and in the first part of the experiment the staff of the Public Bill Office were responsible for the input of data and manipulation of the text.

This experiment in the Lords Public Bill Office during June and July 1974 involved putting into store the complete texts of certain bills and then making amendments, producing marshalled lists and reprinting amended bills. This part of the work was of interest to Parliamentary Counsel since the greater number of reprints of the texts of bills frequently occur in the drafting, pre-Parliamentary, stage rather than during their passage through Parliament. The experiment was also of significance for members of the Committee appointed by the Lord President of the Council on 'The Preparation of Legislation' under the chairmanship

of Sir David Renton. When the Renton Committee reported in May 1975,[4] it drew attention to the possibility that 'the draftsman might make use of the computer as a mechanical aid to drafting as well as for research'.[5] It became clear, however, during the experiment in the Lords Public Bill Office that a proviso added by Renton was vital: this form of text management would only make sense in a Public Bill Office as part of a complete system of computerisation which began with the first departmental draft of the bill and then continued through to enactment. And in fact it seemed of relatively little use as a current substitute for scissors and paste for amendments in a single House. Nevertheless, if acts are to be printed by computer typesetting (and already the contents of *Statutes in Force* are being so printed) the Public Bill Offices would be able to retrieve earlier relevant data very usefully.[6]

The subsequent STAIRS/ATMS experiment in the Printed Paper Office was carried out within the House of Lords Information Services department itself, under the direction of one of its Clerks, Mr. C. H. Cumming-Bruce, the Clerk of Printed Papers. The experiment got under way by Easter 1975, and then had a somewhat more positive and immediate result than the previous investigation. The object was to index papers, then updating and altering entries. EEC papers were chosen for a number of reasons. They were relatively limited in number; a complete entry might be obtainable from the date of Britain's accession to the EEC; and the House was particularly concerned with consulting these papers, its main Select Committee on the European Communities having set up six sub-committees for the purpose of detailed investigation of EEC documents. All long titles of the Official Journal of the European Communities, Working Documents of the European Parliament, Commission legislative proposals, and Consultative Documents were therefore indexed in the computer from the date of Britain's entry into the Community, 1st January 1973. The staff, including clerical officers, secretaries and clerks found the input process as well as the retrieval of information relatively easy to master, and it soon proved possible to elicit in a second or two answers to questions such as 'what papers have been prepared and what references made in the European Parliament to Horticulture under glass, to Food Aid to other countries', etc. Enquiries could be made in very general terms and then narrowed down (e.g. Food Aid, Food Aid to country X, Food Aid to country X from the Red Cross) and enquiries could be limited to certain parts of documents (e.g. their reference numbers) or to documents between certain dates or reference numbers. Where answers were displayed on a screen it was then possible for the answers to be printed out so that the enquirer had a record of both the enquiry and the answer. These print-outs, it was realised, constituted an extremely useful addition to manual finding aids, and the more significant print-outs could be filed or bound for permanent use. This is a feature of computerisation likely to be of particular value to the Record Office and the Libraries. What was

found also to be very useful was that the entry of data was so complete that negative answers to searches could be stated with a confidence seldom felt by librarians and archivists using a battery of manual indexes.

The equipment employed for the EEC data—one typewriter, one visual display unit (VDU) and one printer—(as in the Public Bill experiment) was connected to the GLC computer. The experiment proved so successful that on its conclusion in August 1975 the Central Computer Agency agreed to support the retention of the equipment (which is still in use at the moment of writing). As a result, data have been entered continuously and now cover all legislation enacted in the Community from 1st January 1973 onwards, and the computer is now being updated daily. So far, some 3,100 documents have been stored in the computer for EEC papers. It is calculated that the size of the data base for 1973–1975, including concordance thesaurus and synonym dictionaries, will be approximately 6 million characters. After allowing for repealed legislation, as entry continues, the EEC file will increase at approximately 1½ million characters a year.

During March 1976 a second application began. The Registry Clerk of the House of Lords is entering the long titles of all files held in the Registry. These files, including letters, memoranda, *Hansard* and newspaper cuttings, etc., have been largely compiled by Clerks of the Journals in the post-1946 period, although some files date back to the late 19th century. Topics dealt with are represented by such general headings as 'Starred Questions in the House', 'Ministerial Statements', 'Procedure Committee memoranda and decisions', 'Historical Commemorations in Parliament', 'Officers of the House', etc. The Registry contains in all some 1,000 files many of them comprising ten to twenty separate papers. The long title of each paper in a file is being entered separately in the computer. This will soon make it possible to answer within a short time questions concerning Parliamentary procedure and history which hitherto, using manual indexes with minimum cross-references, have taken hours.

The nature of the Lords' experiment was referred to in the House of Commons by the then Leader, the Rt. Hon. Edward Short, who commented in a debate relating to Commons procedure on the Lords' 'interesting pilot scheme for the introduction of a computer-based information retrieval system for ready access to the growing volume of EEC secondary legislation' and remarked that if this system were adopted permanently 'it would be possible to extend it to various aspects of United Kingdom legislation and other forms of information', and this would be of interest to the Commons.[7]

A report on the experiment was made by the present Clerk of the Parliaments, Sir Peter Henderson, to the Administration sub-Committee of the House of Lords on 2nd March 1976. The approval given by the sub-Committee to a permanent computer installation in the Parliament Office and Library was subsequently communicated to the Offices

Committee. The report of the Offices Committee[8] was considered and agreed to by the House on 13th April following.[9]

The CCA then issued Operational Requirements (OR) for open competition by interested firms, and after a contract has been agreed (probably in July) the installation of permanent terminals is expected to take place in September, 1976. The main requirements for this permanent system include the applications already described, but several other features of the OR are of interest.

First, the specifications indicate that Parliamentary needs at the moment are not considered to demand the acquisition of a computer by way of a dedicated in-house installation but simply the use of a computer already in operation. This is beneficial in that it avoids the need for Parliamentary staff to acquire data processing expertise, although it will involve the agreement of the governmental or other owner of the computer chosen for the installation of Parliamentary terminals. Second, ahead of any likely use of computers for the textual processing of bills, it is required that the users should be able to modify data within a single document or to add new information (e.g. cross referencing or shelf location). Third, a dictionary of synonyms is required, since even in contemporary documents varying words may be used with almost similar meanings, and when documents (e.g. those in the Record Office) date back over centuries, a system of synonyms is vital.

Lastly, although the initial applications are within the European Office and the Registry, provision is to be made for the immediate installation of additional terminals elsewhere and the progressive entry during 1976–7 of several other classes of data. One of the most important of these will be in the Printed Paper Office. This office, which is responsible for the issue of papers to peers, proposes to index the full titles of all papers laid before Parliament. These are Command papers (600 per annum), Statutory Instruments (2,000 per annum) and Act Papers (1,000 per annum). All three types of papers are to be indexed under their published titles, together with their reference numbers in the case of Command papers and Statutory Instruments. When a Command paper incorporates the report of a committee or government comments upon such a report, the chairman's name is also to be recorded. In the case of Statutory Instruments, the dates on which the instrument was made and laid before the House will be entered together with an indication of the responsible Minister, any action that can be taken in respect of it in either House and the time limit for such action. The report of the Joint Committee will be recorded, together with a reference to any evidence written or oral, published or not, in respect of each instrument. Where an instrument is reported to both Houses for a technical defect in its drafting, the full text of the report is to be included with the title of the instrument (usually 200–500 words). Each year a Joint Committee makes one or more Special Reports (seldom more than 3) on its work during the session or on a particular issue that they wish to raise in detail.

The full text of such reports will be entered. References will also be included to proceedings in either House in respect of Command papers, Statutory Instruments or Act papers.

A second significant use of the computer will be made by the Lords Record Office which has charge of some 3 million records of both Houses of Parliament, dating from the 15th century and preserved on twelve floors in the Victoria Tower. This office has an immediate need for speedy reference to the long titles of all Acts of Parliament, as it is the custodian of the master copies. It therefore intends to undertake an index of the long titles, original Act numbers and printed chapter numbers of all Acts of Parliament, of which there are about 70,000. These Acts are required daily by researchers. They are difficult to index because of the length and the variety of words applied to the same subjects in their long titles at different periods. Reference is made still more difficult by the official use of two sets of numeration applied to Acts between 1497–1902. These problems would be overcome by full text retrieval used in conjunction with a dictionary of synonyms.

When the Acts have been indexed the staff of the Record Office propose to select other significant classes for similar treatment. At the moment, although a general *Guide* has been published,[10] further reference aids include some 124 manuscript or typewritten lists, 25 volumes of calendars and the complete range of indexes to the Lords and Commons Journals. It will be long before a computer can cut its way through so dense a jungle of finding-aids, but with the appearance of a terminal in the office every effort will be made to allocate sufficient staff time to progressive indexing—probably beginning with accessions and gifts of documents received since the *Guide* was published in 1971.

The whole of the input data so far discussed will be available for search in a further terminal placed in the Lords Library. The Librarians intend also to take advantage of computer facilities to index 'Deposited Papers' (50 per annum), 'Information Papers' (250 per annum), pamphlet material and a selection of HMSO publications (250 per annum). And it is likely that the Library as well as the Information Services will in due course seek through their terminals access to statistical and reference material entered on external data-banks, thus eventually making a wide range of non-Parliamentary reference material available to Members and officials.

Other tasks for the computer are also under consideration in the Parliament Office. Of these perhaps the most important is that relating to the compilation of the Minutes of Proceedings of the Lords, which are published for each day on which the House sits. The Minute records the proceedings in the chamber of the House and the language used to describe the various kinds of proceedings is regulated by precedent. Compilation of the Minute often requires reference to an index of precedents currently kept in the Minute Room and updated manually whenever a new form of words is introduced. This is the one application

where the terminals will be used exclusively by senior Clerks of the House.

The planning of these developments in the Lords, as has been indicated, owed much to guidance received from the Librarians and other authorities in the Commons, and a further aspect of this joint action is that CCA has agreed to install terminals (linked to the computer used by the Lords) in the Commons Vote Office and in the Commons Library. In this way the data available in the Lords will also be accessible to the staff of the Commons and, through them, to Members.

It is hoped that the planned schedule will be observed by which a permanent computer service will be available by October 1976. Between 1976 and 1978 it should be possible for fairly wide experience in both the input and the retrieval of information to be gained by the staff of the House. It is then likely that a much wider extension of information retrieval will become feasible. H.M. Stationery Office have already introduced computer typesetting in printing a new edition of *Statutes Revised*—a publication of some 50,000 pages. So far, legislation concerning eight major groups of subjects has been dealt with in 5,000 pages, and the aim is to complete the whole work in 1980.[11] The whole 'Statute book' is estimated to contain about 20 million words or 100 million characters. (This considerable amount of data can, however, be stored on half a disc and computers of normal size may contain as many as 14 disc units). The computerised *Statutes Revised* will provide machine readable data of the utmost importance for the new Parliamentary computer terminals. Moreover, as the Renton Committee has pointed out HMSO also 'have plans for the substitution of computerised composition for hot-metal typesetting throughout the whole range of Parliamentary printing'. On this there is a firm, if general agreement between HMSO and Parliamentary officials, and Renton speaks of the 'immense advantages' likely.[12] Copies of input file, i.e. without printing instructions, could be supplied on discs to the computer and this would immediately make available to members and officials full texts for information purposes. Thus, in due course it would be possible to make such searches as, for example, what references in debates, questions or papers, have been made to Canada, or to the export of motor vehicles, or to the preservation of historic buildings, etc. This application would be possible without involving increases in Parliamentary staff, but if it is desired to computerise previous, i.e. 'historic', papers it will be necessary to make special arrangements for additional Parliamentary staff to handle the input of papers printed before the changeover to computer typesetting.

The introduction of a completely new piece of technology on however small a scale at Westminster is not without its difficulties, but the length of the exploratory experiment, the very ready co-operation of the staff concerned, and the step-by-step progress in selected departments over a number of years should help to ease the transition. Meanwhile, parallel with the present developments in the Lords, a separate application in the Commons Library, primarily relating to indexing, is under active

consideration in conjunction with CCA. Thus, in each House a start is being made. Computer technology, however, is developing so rapidly that it would be rash to prophesy exactly what degree of immediate progress will be made. The fullest use at Westminster of computers may perhaps have to wait decades, but it is at least clear that the use of this technological development is likely to be more positive than it was in the case of the printing press, and it may be hoped that the long term effects of computerisation may not be dissimilar in improving internal efficiency within Parliament and the speed and effectiveness of communication between Parliament and the public.

1. see THE TABLE, xliii (1975), pp. 142–3, for a brief description of this group of Lords' departments.
2. In particular, full accounts of the ASLIB report and the MEDHOC experiment mentioned below are given by Dr. J. B. Poole, Deputy Assistant Librarian of the House of Commons in 'Computers in the House of Commons: Retrospect and Prospect', *The Parliamentarian*, 54, (1973), 214–222.
3. The members of this Group comprised Mr. C. A. J. Mitchell of the Parliament Office, Mr. F. A. Cranmer of the Clerk of the House of Commons Department, and Mrs. A. M. Gould, Computer Officer in the House of Commons Library.
4. The Preparation of Legislation. Cmnd. 6053.
5. Op. cit., p. 107.
6. Cf. F. A. R. Bennion, 'A computer experiment in legislative drafting' *Computers and Law*, 6 (1975).
7. H.C. Deb., 2nd February 1976, col. 972.
8. Third Report from the Offices Committee (H.L. 137), 1975–6.
9. H.L. Deb., 13th April 1976, col. 2034–7.
10. M. F. Bond, *Guide to the Records of Parliament* (1971), HMSO.
11. H. W. Leader, 'Computer typesetting for HMSO', *Computers and Law* (Feb. 1976), p. 8.
12. The Preparation of Legislation, p. 106.

VI. THE ONTARIO COMMISSION ON THE LEGISLATURE: NEW INITIATIVES FOR THE PRIVATE MEMBER

By J. A. HOLTBY
First Clerk Assistant, Legislative Assembly, Ontario

On 9th June, 1972, the Ontario Legislature ordered that a "Commission be appointed to study the function of the Legislative Assembly with a view to making such recommendations as it deems advisable with respect thereto with particular reference to the role of the Private Members and how their participation in the process of Government may be enlarged including the services, facilities and benefits provided to the Members of the Assembly." The chairman was Dalton K. Camp, a former President of the Progressive Conservative Party of Canada. Named as Commissioners were—Douglas M. Fisher, a former member of the House of Commons for the New Democratic Party, and Farquhar R. Oliver, a former Leader of the Opposition and long time member of the Ontario Legislature for the Liberal Party.

The appointment of the Commission followed one of the widest reorganizations of the Executive Branch of Government in Ontario's history, which flowed from the reports of the Committee on Government Productivity. In 1971 and 1972 the Legislature had authorized the consolidation of the ministries and the creation of Cabinet Policy Secretariats, which it was felt would assist the Executive in the modernization of the functioning of Government.

Speaking to his Resolution to establish the Commission, the Premier, the Honourable William G. Davis, stated that the appointment of the Commission was "A recognition that we feel there should be an assessment of the role of the Private Members within the legislative process. The question of the functioning of the committees of this House and of course the question of services for Private Members by way of office accommodation and other benefits, are, in my view, included in this Resolution".

The Leader of the Opposition, Mr. Robert F. Nixon, was stronger in his language—"The ministry and the ministers outweigh, in the importance of the jobs that they have, the individual members of the Legislature. And whether it be true or not, there is a sense that the Government keeps the Legislature around—a sort of a mongrel dog that it is nice to pat from time to time, or if the ministry wants to use this as a forum for certain statements . . . Because of the increased time that is necessary for the ministers to perform their jobs, and particularly for the Premier to lead the Government and to do all of the things that are necessary for him to plan and carry out personally, the Legislature more and more is becoming sort of the poor cousin in the whole role of govern-

ment. This is a role that is harder and harder to bear whether the Member is in opposition or in back bench support of the Government."

Mr. Nixon continued to outline his dissatisfaction with the committee system and the lack of facilities for Members to carry out their legislative functions both in their constituencies and the Legislature building itself.

The Leader of the New Democratic Party, Mr. Stephen Lewis, expressed his hope that the Commission would revitalize the legislative process—"I hope it is seen as implicit in the Resolution that that is one of the objects; because at the moment this place is characterized by a kind of gradual and desultory suffocation. One would hope that the Commission can reverse that."

Mr. Lewis and other Members expressed the hope that reform of the committee system would take place and that proposals would be brought forth to strengthen the role of the Private Member with greater secretarial resources, as well as a greater ability to communicate with his constituents.

The Commission presented its first report in May 1973, and since that time has presented to the House a total of five reports dealing with Members' indemnities, the internal administrative structure of the Assembly, election financing reform, procedural reform, and the final report presented in October of 1975 deals with the physical conditions of the Legislature, television, constituency offices for Members and an information reference service.

The purpose of this article is to survey a number of the procedural changes recommended by the Commission. At the time of writing (May 1976) the fourth and fifth reports are presently being studied by a committee of the Legislature which has yet to make procedural recommendations but which has recommended the admission of the electronic media to the Legislative Chamber, and the provision of publicly funded constituency offices and the provision of staff for each Member in his constituency.

Throughout the Commission's report, one theme is clear. The Commissioners felt that there was a great need to strengthen the scrutinizing role of the Members of the House.

In the Ontario Legislature there is a daily 45 minute oral question period, during which Members of the House may place questions to the Ministry without notice. Normally the Minister will respond but he is not required to do so. If a Member is dissatisfied with the answer given to him, he may, after giving notice to the Chair, raise the matter on the adjournment of the House on Tuesday evening. The aggrieved Member may then speak for 5 minutes, and the Minister may respond for 5 minutes. Surprisingly, this device is infrequently used. The Commissioners recommend that the so-called "late show" be held each sitting day except Friday, and that they should be held at an earlier hour, starting at 5.30 p.m. This arrangement would provide more incentive for the Members to take advantage of the opportunity provided by the adjourn-

ment debate, and encourage attendance by more Members of the Legislature, and just as importantly by more members of the Press gallery.

The Commissioners noted that the ministry had failed to comply with the statutory requirement to table reports of ministry activities and agencies in 28 of the 77 annual reports which the law required be placed before the House in a recent session. In order that both ministers and Members may have an accurate accounting of which reports were required to be tabled, it was suggested that the Office of the Clerk of the House should circulate an up-to-date listing of all reports required by statute and the current status of compliance.

Each Monday the time from 5 p.m. until 6.00 p.m. is devoted to consideration of Private Members' business. Each week a Bill or Resolution is debated for one hour and it has for a number of years been tacitly agreed that nothing dealt with during Private Members' Hour would come to a vote. No Private Members' Bill has passed in Ontario for over two decades. However, the Commission noted that participation in the Private Members' Hour and the attendance of Members is strong. The Commission felt that this was one aspect of the Legislature which could be developed and encouraged. They propose a lottery system for precedence on the Order Paper and a meeting of the House Leaders and Whips to review Bills from the point of view of determining which ones ought to be referred to committee for a study of the subject matter. Other Bills and Resolutions would be debated in the House from 11.00 a.m. to 12.30 p.m. and from 2.00 p.m. to 5.00 p.m. each Friday. Each item of business would be allocated one and a half hours for discussion, and no Member would speak for longer than ten minutes. A division would be mandatory and the division bells would be limited to ringing for ten minutes. Every second Friday morning would be allotted to a debate on motions for the production of papers. (Needless to say this proposal would keep the whips rather busy).

As indicated earlier there was widespread dissatisfaction in the House with the committee system. The Commissioners met with many Members of the House, as well as others, and determined that there was a desire for stronger committees with some initiating power. By devoting themselves to work on legislative committees it was felt that Members could make a greater impact in the legislative process; and particularly in the case of Government backbenchers, Members would have a greater ability to participate in the business before the House. It was proposed that a number of small committees (7 or 8 Members) of permanent non-substitutable membership, be established which would be specialized in functions. The Committees would parallel the present Cabinet Policy Secretariats—Justice, Social Development and Resources Development, as well as Public Accounts and a Committee on Petitions and Government Undertakings. This latter committee would examine those petitions presented to the Assembly which are referred to the committee, the reports

to the Legislature by the Provincial Ombudsman, and any undertaking made by the Minister to a Member of the Assembly which is not fulfilled within 10 days of its being made, subject to the Speaker's ruling in favour of referral to the committee. In addition, these small specialist committees would study annual reports which would be referred to the appropriate committee on the petition of one-third of the membership of the House.

The Commissioners anticipated that the small size and permanent nature of the committees would make positions on them much sought after. They saw this as "a useful counterweight to the present situation, particularly on the Government side in which the most attractive positions are ministerial ones, not legislative".

In order that the House might study legislation, larger committees were suggested of twenty to twenty-five members. A new committee would be formed for each piece of legislation referred, and these committees would be presided over by chairmen chosen from a panel of chairmen under the supervision of the Speaker. It was felt that the establishment of such a panel would assist members in acquiring a greater knowledge of procedure, and develop a consistent and modern body of procedure for the Ontario Legislature.

It is almost trite to criticize the growing public bureaucracy in today's society. The modern legislator rarely has an opportunity directly to influence this growth. The Commissioners felt that there was an early need for the specialist committees to examine the increasing number of agencies, boards and commissions of government in Ontario. There are well over 300 such agencies, and while the Commission was not raising the question about the need for such agencies, or the responsibility of Government in asking the Legislature to approve them, they did feel that some of the agencies deserved some re-examination in the light of the increasing scale of public business now being conducted by such agencies. The committee would examine the agencies in terms of redundancy and overlapping "Is an agency now necessary? Is it doing the task it was supposed to do at its creation? Has the nature of its work and spending changed since it was created? What are, and what should be the relationships of the various categories of these "special purpose" bodies to the Legislature".

It can easily be seen that the proposed changes in a House of 125 members would severely tax the time of any person. One need not detail the every day constituency duties of a Member. Although Ontario has provided Members with secretarial assistance, offices in both the Legislature and their constituencies and, through the creation of an Ombudsman, has enabled Members to refer to that agent the more difficult "cases", the pressure of the legislative workload is indeed great. The Commissioners brought forward some interesting statistics. In 1867 the Legislature of Ontario was composed of 82 Members. The population of Ontario at the time was 1.5 million. The average population per riding would have been just over 18,000. The annual expenditures were slightly over $1.3 million. The Cabinet consisted of five ministers, in-

cluding the Premier. In 1974, the annual expenditures were over $10 billion. The population was almost 8 million, and the number of provincial employees was about 140,000. There were 27 Ministers of the Crown, aided by 12 parliamentary assistants; 300 boards, agencies and commissions were in existence, and in 1975 the Legislature has 125 members. While the commission cautioned against the argument that bigger and bigger government should be matched by a bigger legislature, they did feel that 180 members would not be inordinately large for a province of this size. However, they were not naive—

"We can foresee the outcry about more drones to draw on the honey pot of the taxpayers money and reiterations that we already have too may politicians and politics. What we really need is more efficiency and less politics. In each report of the Commission we have argued, then argued again, that the elected representatives must devote more time, energy, thought and skill, to their legislative and scrutinizing functions. We have regretted the apotheosis for the constituency function and the gigantic growth in the constituency 'caseload' of the MPP at the expense of his role as both legislator and partisan at Queen's Park . . . In political theory, our government—i.e. the ministry, the departments, the officials, and the diverse agencies—has its first cause or sky-hook in the legislature of the people's representatives. It is the approval of the legislature which creates the government fabric and which approves the spending done. It is in the legislature that the government answers, or should answer, for its actions and performance as raiser and spender of the public funds. Unfortunately, this creator of government institutions, this watchdog on government operations and spending, has drawn neither the interest in its own relative efficiency nor a comparative concern about how it should adjust to the realities of big government and big spending.

"The politicians and the parties bear much of the responsibility for this nearly total lack of analysis or suggestions for modernizing and reforming the central and basic institution of parliamentary democracy . . .

"To those who will decry the expense of such expansion we ask for some appreciation of relativity . . . The cost of the Legislature and of elections and the whole party process is truly a pittance compared with the recent, present, and future costs of government in Ontario. Does it make sense to enlarge the Legislature only marginally over many years while the scale and complexity of government steadily rise?"

The Commission's work is now complete. Their recommendations, however, have not been adopted by the House as yet. Observers wait with some interest the outcome of the deliberations of a Select Committee considering the Commission's report. In the end it must be the elected representatives who determine their own procedures and judge the manner in which they will act as a watchdog of the public's business.

VII. THE OFFICE OF THE CLERK OF THE PARLIAMENTS, NEW SOUTH WALES

By A. W. Saxon
Clerk of the Parliaments, New South Wales

During a visit to the Palace of Westminster in 1975, it was suggested that an article on the Office of Clerk of the Parliaments in New South Wales might be of interest to Clerks-at-the-Table, in view of some unusual incidents associated with the position.

The New South Wales Legislature developed in the same pattern as many in the Colonial Legislatures, the Colony originally being under the control of a Governor initially commissioned and later appointed by Letters Patent and operating under Instructions passed under the Royal Sign Manual and Signet. Local agitation for a more representative form of government led to the passing of an Act by the Imperial Parliament on 19th July, 1823, appointing a Council to advise the Governor of New South Wales in making laws and ordinances for the peace, welfare and good government of the Colony. The new Council met for the first time at Government House on 24th August, 1824, the Clerk being Francis Stephen.

In 1843 the Legislative Council was increased in size and made partly elective and it was this Council which passed in 1853 a new Constitution providing for a bicameral parliament. This new Constitution Act, as amended by the Imperial Parliament, became Schedule One of Imperial Act 18 and 19 Vic. Cap. 54, which was proclaimed in Sydney on 24th November, 1855. Elections were held for the Legislative Assembly and summonses issued to 36 members of the Legislative Council and the new Parliament met for the first time on 22nd May, 1856.

The title, "Clerk of the Council", had been used since 1824 and William Macpherson who was Clerk of the Council from 1837 to 1856, prior to responsible government, was appointed Clerk of the Council under the bicameral system. A sum of five guineas was deducted from the first moneys due to him as the fee payable to the public on the Commission appointing him Clerk. His former Clerk Assistant, Richard O'Connor, was appointed Clerk of the new Legislative Assembly. The first reference to the title, "Clerk of the Parliaments" appears in a memorandum written about 24th June, 1858, setting out the duties of the several officers of the Legislative Council Department. Under Clerk of the Council appears the following—"As Acting Clerk of Parliaments, to authenticate for Royal Assent, and, after Assent or Reservation, to transmit (or otherwise) for registration and publication, such Acts so assented to, reserved or otherwise disposed of."

On Macpherson's resignation, on 31st December, 1859, Richard

O'Connor returned to the Legislative Council as its Clerk. The President claimed the right to recommend, and did recommend, a person for the vacant office but the Government of the Day disregarded his claim, and the question of the appointment and removal of officers and Clerks of the Legislative Council was referred to the Standing Orders Committee of that Council for consideration and report. In the report which was tabled on 29th February, 1860, the Committee stated that, while fully approving of the appointments themselves, it thought, nevertheless, there was an unbecoming neglect of courtesy towards the President in not communicating with him before the final decision. The Committee suggested a modification of the system of appointment and removal and that the Clerk should, henceforth, be styled "Clerk of the Parliaments". The recommendations were adopted by the House and a copy of them forwarded by Address to the Governor-General, with a request they be carried into effect. A Message was received from the Governor-General on 25th April, 1860, to the effect that, since by the Constitution Act the appointment of all officers with the exception of minor appointments was vested in the Governor and the Executive Council, it did not appear desirable that the Government should divest itself of the responsibility imposed upon it by law. An assurance was also given that no appointment would, in future, be made without consulting the President. The Message also stated that there did not appear to be any adequate reason for altering the designation of the Clerk of the Legislative Council, and that the course adopted in the removal of government officers was that defined by the Queen's Instruction and it seemed to be inexpedient to make an exception in the case of officers of the Legislative Council.

The Message was referred to the Standing Orders Committee and the report which was tabled on 7th June expressed the agreed opinion that officers and clerks of the House should not be considered as holders of public offices under the Government of the Colony and should be entirely independent of the Executive Government in the conduct of their business. Reference was made to Imperial Act 5 Geo. IV, Cap. 82, "An Act for better regulating the Office of Clerk of the Parliaments", re-asserting the observation that there was nothing in the Constitution Act that was at all inconsistent with the adoption of observances similar to those which regulate analogous cases in the Department of the Clerk of Parliaments in England. The report also stated that the interpretation of the status of the officers in the Governor-General's Message was such that they could not recommend that the House pass over it, without asserting and maintaining in the independence of its officers, the dignity and privileges of the House.

The report further submitted as a sufficient reason for the proper designation of "Clerk of the Parliaments" being given to the Clerk of the Legislative Council, that he performed the duties of Clerk of the Parliaments, and ought to have that designation. Secondly, the duties referred to were not duties belonging to that officer as Clerk of the Legis-

lative Council. In the neighbouring Colony of Victoria, the Clerk of the Legislative Council, who performed precisely analogous duties as the Clerk of this House, was already designated Clerk of Parliaments.

The report was adopted and a copy transmitted by Address to the Governor-General on 28th June. On the following day a Resolution was adopted that two Members be a Committee to prepare and present a Bill in accordance with the recommendations contained in the report. The Bill was presented and read a first time on 3rd July but was interrupted by the prorogation and not re-introduced in the following Session. No reply was received from the Governor-General.

Towards the close of the 1861–62 Session the Attorney-General stated it was the intention of the Government to introduce a Bill to place the salaries of the officers and servants of the Council upon an independent and permanent basis. In the following Session the Legislative Council Act of 1862 was introduced, which provided that the present and every future Clerk of the Legislative Council should be styled "Clerk of the Parliaments" and that the salaries of the President, Chairman and officers of the Legislative Council should be at least equal in all respects to the salary and allowances of the Speaker, Chairman and officers of the Legislative Assembly. This Act also provided for an elected Legislative Council. It was referred to a Select Committee of the Legislative Council which made minor amendments, passed all stages in the Council and was forwarded to the Legislative Assembly for concurrence on 8th October, 1862. On 26th November, 1862, the Colonial Secretary moved for the postponement of the Assembly Committee stage of the Bill. This motion was debated and as it appeared there was a general preference for the existing nominated Upper House, the Bill was, on division, discharged from the Business Paper. (*Sydney Morning Herald, 27th November*, 1862, p.3).

On 31st December, 1862, in a letter to the President of the Legislative Council, the Clerk stated—

> "I noticed you addressed me as 'Chief Clerk of the Legislative Council'. I am sure you will not take it amiss if I suggest that that address is not only inaccurate but, in my opinion, calculated to injure the office I have the honour to hold under Her Majesty's Commission, which is that of 'Clerk of the Legislative Council'—whilst injury to my office can in no way elevate any other in connection with the Department.
>
> "I mention this, I assure you, only from the simplest desire to preserve for the office what my successors will look upon as its true and proper designation, subordinate only to that of 'Clerk of Parliaments' by which it will sooner or later be seen right and expedient to style it."

On 21st January, 1864, the Hon. T. A. Murray, M.L.C., President of the Legislative Council, wrote to the Colonial Secretary recommending that the Clerk of the Legislative Council be authorised also to bear the designation of "Clerk of the Parliaments", in conformity with constitutional analogy. He referred to the Clerk of the House of Lords also being styled Clerk of the Parliaments and the distinct duties in

regard to passed Acts of Parliament and other matters which were exercised by the Clerk of the Legislative Council and the circumstances that he did not bear the title of Clerk of the Parliaments was due to the fact that those who made the first appointments to the New South Wales Parliamentary Offices were under the impression that the Clerk of the Parliaments and the Clerk of the House of Lords were two distinct and separate officers. He referred to the Legislative Council Officers' Appointment Bill and the Legislative Council Bill introduced in 1860 and 1862 respectively, and to the fact that in Victoria and Queensland the Clerk of the Legislative Council was also officially styled "Clerk of the Parliament".

The President reported to the House on 16th February, 1864, that he had received a letter from Mr. W. Elyard, Under Secretary, Colonial Secretary's Office, dated the previous day, informing him that His Excellency the Governor with the advice of the Executive Council had been pleased to authorise the Clerk of the Legislative Council henceforth to be also officially styled and to use the designation of Clerk of the Parliaments and that a notice to this effect would be inserted in the next Government Gazette.

The joint title, "Clerk of the Parliaments and Clerk of the Legislative Council", was henceforth conferred by Commission on every incumbent of the office until the appointment of the present Clerk. However, due to objections raised by the late Speaker, Sir Kevin Ellis, K.B.E., Cabinet decided that the title "Clerk of the Parliaments" should be discontinued and the present incumbent was appointed as from 5th July, 1971, as Clerk of the Legislative Council. It was intended that any references to "Clerk of the Parliaments" should be removed from any statutes in which it appeared. For instance, under the Constitution (Legislative Council Elections) Act, 1932, the Clerk of the Parliaments is the Returning Officer for elections of Members of the Legislative Council and that Act would need amendment before a by-election or a triennial election could be held. The title also appears in other New South Wales Statutes.

Enquiries were made of the Clerk as to the titles of such Acts. The Clerk replied that, as he was not a legal officer, it would be more appropriate for such inquiries to be made of the Crown Solicitor and the Parliamentary Counsel who both had a much wider knowledge of the statutes of New South Wales generally and should be able to ascertain where there were references which would require adjustment.

The Premier's letter of advice to the President of the Legislative Council stated the Speaker had expressed the view that the use of the title, Clerk of the Parliaments, by an officer of the Legislative Council was anomalous, particularly as the officer concerned had no status or authority in the Legislative Assembly and that it had caused continued concern among Members of that House. The Speaker also intimated that anything that suggested the Legislative Council was superior, or senior, to the Assembly was not only invalid constitutionally but tended to

denigrate the importance of the elected House. The Speaker proposed that the Clerk of the Legislative Council and the Clerk of the Legislative Assembly should be known only by those titles. The Premier appreciated that legislation would no doubt be necessary if the title were to be done away with but he had advised the Speaker that immediate action towards discontinuance would not be desirable in the absence of a full examination of its legal implications, and careful consideration of any views of the President.

It was proposed, therefore, that the officer to be appointed to fill the vacancy should be appointed as Clerk of the Parliaments and Clerk of the Legislative Council, in accordance with normal practice. However, he should be informed that, notwithstanding such appointment, consideration was being given to the question of discontinuing the use of the title, Clerk of the Parliaments.

The following day a further letter was received by the President stating that it had been decided that the appointment should be only, Clerk of the Legislative Council. The President replied, making reference to the interpretation based on the title, and stated it had never occurred to him that there would be any misunderstanding, as the title had been adopted in 1864, following the precedent set by the British Parliament and he thought it had always been understood that the title meant that the Clerk was Clerk of successive Parliaments and not of the two Houses in any one Parliament; also it in no way indicated any superiority of one House over the other. He stated if any change were to be made, amending legislation would be necessary and Members of the Government parties in each House would need to be brought into consultation. In view of that, he thought there was no point in pursuing the matter further, pending a reference to the members of the Government parties.

A reply was received from the Premier that the various submissions that had been made to him in regard to the matter had been placed before Cabinet on 27th July, 1971, and after careful consideration of all the views expressed, it was decided that the Clerk of the Legislative Council should be appointed Clerk of the Parliaments. A further Commission dated 26th August, 1971, was issued and the Clerk was sworn in as Clerk of the Parliaments, the only Clerk in the history of New South Wales to hold two Commissions from the Governor.

An interesting development which could have caused complications was the death on 10th August, 1971, of a Government supporter in the Legislative Council. The writ for the by-election, dated 18th August, 1971, was addressed to the Clerk of the Parliaments. No doubt this incident also influenced Cabinet in its decision as the Government was in the minority in the Legislative Council at that time, although normally supported by a splinter party whose Members were, however, very conscious of and strong supporters of, the rights and privileges of the Council.

VIII. A WESTMINSTER CLERK IN NOVA SCOTIA

By Michael Ryle
A Deputy Principal Clerk, House of Commons

In the Autumn of 1975 the Legislative Assembly of Nova Scotia which is the oldest Parliament in Canada suffered a tragic loss, in the sudden death of the then Clerk, Mr. Roy Laurence, Q.C., who had been Clerk of the Legislature for nearly 30 years. Indeed, at the time of his death, he was, I believe, the doyen of all Clerks at the Table throughout the Commonwealth. Roy Laurence was clearly going to be greatly missed because, for longer than any of the present Members of the Legislature could remember, they had relied on him as the source of procedural wisdom and for the daily organisation of their Assembly. Unfortunately Roy Laurence had carried all he knew in his head, and no experienced Parliamentary Clerk was available to succeed him as Clerk of the Assembly (being only a small body, and normally meeting only for about three months in the year, they have few permanent staff, and indeed both the Clerk and the very recently appointed Clerk Assistant were part-time). Furthermore, at the time of this sad blow, the annual Session of the Assembly was approaching. A temporary solution had to be found pending the recruitment and period of induction of a new Clerk.

The Premier of Nova Scotia is Hon. Gerald Regan and he was Chairman of the Executive Committee of the General Council of the C.P.A. when the C.P.A. held their annual Conference in New Delhi in October 1976. There he met Sir David Lidderdale, Clerk of the House of Commons, Westminster, and asked him if he could spare an experienced Clerk to go to Halifax and help with the running of the forthcoming Session of the Legislature and also introduce whomever they chose as their next Clerk to the mysteries of his new calling, Parliamentary procedure. Sir David readily agreed, provided someone could be spared. By fortunate chance I was the lucky man, and so on 12th January I said goodbye to wife and family and flew to Canada for what turned out to be one of the most enjoyable and rewarding three months of my life.

In the old days British visitors to Canada would normally arrive in Halifax by boat and so see something of Nova Scotia and the other Maritime Provinces before heading further West. But today Maritimers look enviously at the jet vapour trails as tourists and business-men from Europe wing their way to Montreal or Toronto. The Maritimers tend to feel theirs are the forgotten Provinces. I confess that I too flew to Montreal and changed planes there for Ottawa for I was anxious to pay my regards to the Clerks of the House of Commons, to see once more that beautiful Parliamentary building and, especially, to pick the brains

of my old friend Bev Koester (recently appointed Clerk Assistant of the House of Commons but formerly Clerk of the Saskatchewan Legislature) on the special customs, problems and features of Canadian Provincial Assemblies. This I succeeded in doing and I also enjoyed the kind hospitality of the Koester family.

Three days later I left the snows of Ontario and found the brown grass, the rocks and the trees of a Nova Scotia winter. The weather is a serious matter for all Canadians, and rightly so; it conditions their whole economy and lives. Therefore, as I have mentioned it, I will say a little about the extraordinary (to an Englishman) climate of Nova Scotia at least in the winter. The weather is always changing. In a period of about ten days it would go through very cold, dry and sunny; cold and snowing; warmer and raining (washing most of the snow away); warm and sunny; and round to cold again (as a result, I believe, of the wind moving round the compass). In one period of 36 hours the temperature ranged from —12°C (Celsis as it is now called) to +10°C! All of which means that the weather is a frequent topic of conversation (as it is in England) and not too boring.

When I arrived in Halifax, the cycle had reached the thaw and rain stage, everything looked a little bleak and grim and not at all welcoming. But how different was my personal greeting! From the moment I entered Province House (the beautiful early XIX Century building which houses the Legislature itself and the lovely Legislative Library as well as the Premier's offices) I was, by everyone from Premier Regan and Mr. Speaker Vince MacLean down, made to feel welcome and accepted.

From my point of view, however, the most important immediate contact was with the new Clerk of the House, Dr. Henry Muggah, Q.C., whom I discovered had been formally appointed a few days before my arrival. This could have proved an awkward relationship. Henry Muggah is a very experienced public servant in Nova Scotia who has held a number of senior posts, including that of Legislative Counsel (responsible for drafting and advising on Government Bills and other legislation) and who had recently returned from full-time work in the public service (though continuing a part-time responsibility as Secretary to the Council of Maritime Premiers). He knew the Legislature, its ways and many of its Members well; he was well known to, and much respected by, them; and he had served briefly as temporary Clerk after Roy Laurence's death. I, on the other hand was totally unknown, a non-Canadian and furthermore was presuming to be an "expert" in Parliamentary procedure.

In practice there was, from the beginning, no difficulty. Henry was anxious to learn anything I could teach him; I found I learned daily more and more from Henry—about the ways and way of life of Nova Scotians, about their history (very important in this oldest of the English-speaking provinces of Canada) and about the Assembly, its Members and its traditions. Above all, perhaps I learned—or at least observed—the inestimable virtues of facing every problem with calmness and a quiet

sense of humour. I was fortunate to work with Henry Muggah, and I will always be grateful to him—and to his wife Ella who proved an excellent hostess on several occasions.

I also enjoyed working with Rod MacArthur, the Deputy Clerk, who saved me from taking life too seriously and showed me where the best food in Halifax was to be found (there is good material there for the gourmet, especially the sea food—lobsters, clams, scallops etc.). And I received much help and kindness from Miss Shirley Elliot, the Librarian, who is rightly proud of her beautiful and well-stocked Library, and from many others.

Then there were the Members. I am sure that at first they wondered why this strange "Brit" had suddenly appeared at the Table. But from the Premier, from the Speaker, from the leader of the three parties of the Assembly (the Liberals were the majority, the Progressive Conservatives were the largest opposition party and there were three Members of the New Democratic Party, i.e. socialists) and from all Members of the Assembly I received nothing but kindness and encouragement—not unmixed with a necessary degree of patience while I learned their ways.

For at first I did find the procedures and practices of the Assembly strange. This was because the main procedures of the Legislature are much nearer the original or what might be called "natural law" of Parliament than we, at Westminster (or indeed most Commonwealth Parliaments) have been for many years. This meant that I could not rely on my knowledge of much of our current procedures, which is prescribed by Standing Orders. Especially on matters not provided for in the Assembly's Rules and Forms of Procedure, I had to go back to first principles. I found this a salutary and stimulating experience.

Let me illustrate. All notices of motions were given orally in the House for a future day. This was the Westminster practice until 1854, but since about 1875 it has been largely supplanted by written notices given to the Clerks at the Table (or in one of their offices). Members seeking factual information did not use written Questions but—as used to be the regular practice at Westminster in the XVIII Century—they moved motions for returns, all of which could, of course, be debated and frequently were. There was, of course, no Supply guillotine. Every Estimate was examined in detail in Committee of Supply and a motion had to be made, which was usually debated, for the Speaker to leave the Chair and for the House to resolve itself into a Committee of Supply. And finally there was no time limit on Questions to Ministers and Members of the Legislature were anxious to test and criticise Ministers on matters for which they were responsible and to take up issue as soon as they arose. As a result Question time twice a week was a lively and sometimes lengthy Parliamentary occasion—often lasting two hours or more—when oral Questions (without notice as is the practice throughout Canada) were fired at any Minister, like machine guns firing at sitting ranks of the enemy.

As I worked at the Assembly on their day-to-day problems, sitting at the Table for all meetings and also attending committees, I became increasingly concerned that the Assembly's procedures were not fully attuned to the pressures and requirements of modern legislative business. I also made a study of the procedures and practices of other Provincial Legislatures in Canada which reinforced my view that a formal review of the Assembly's Rules etc. (which were last revised in 1955) would be timely. I expressed my anxieties to the Premier and the Speaker and they asked me to carry out a review of the procedures and practices of the House and to recommend which changes might be desirable in the light of modern circumstances. This I was glad to do.

I worked closely with the Clerk, Dr. Muggah, in this review. We were both much helped by a few days spent in Ottawa where we had extensive talks with Mr. Alistair Fraser, the Clerk of the House of Commons (himself a Nova Scotian), and much useful guidance from him and many members of his Department. This was invaluable material for our review, especially as the Nova Scotian Legislature naturally models many of its procedures on those of the Canadian House. But as a Westminster Clerk I was also particularly interested to study, at first hand, recent procedural developments at Ottawa. I discussed, in particular, the way bills are now examined by specialist committees which, where necessary, have public hearings and take evidence on the operation of the Bill. This system has been recommended—but not yet tried—at Westminster, and I was glad to learn it has worked successfully in Canada; indeed I also saw it working well in Nova Scotia.

In my study of Canadian procedures I frequently referred to that great work by a former Clerk of the House of Commons at Ottawa, Sir John Bourinot's (also a Nova Scotian) 'Parliamentary Procedure'. It is a beautifully written book—now sadly long out of date as the last edition was that of 1914 and it sets out most clearly the basic purposes and principles of Parliamentary procedure. I believe the following summary is particularly lucid and of relevance to all our Parliaments throughout the Commonwealth—

> "The principles that lie at the basis of English parliamentary law, have, however, been always kept steadily in view by the Canadian Parliament; these are: To protect a minority and restrain the improvidence or tyranny of a majority; to secure the transaction of public business in an orderly manner; to enable every member to express his opinions within limits necessary to preserve decorum and prevent an unnecessary waste of time; to give abundant opportunity for the consideration of every measure, and to prevent any legislative action being taken upon sudden impulse."
> (Bourinot, 4th edition, p. 200).

If Parliaments follow that guidance they will never go far wrong.

Several things struck me favourably about the Nova Scotia Legislature. First, the attendance was good—nearly every Member was present nearly all the time (certainly another contrast with Westminster). Secondly, its debates were alive and vigorous and yet most of the debate

was conducted in high good humour (and humour is an asset in any Assembly). And lastly the Legislature was quickly responsive to the issues of the day. However my review clearly suggested that there was a need for reform in certain respects: there was a lack of clarity on some of the Rules, the operation of some of the procedures was uncertain (especially regarding the rights of non-Government Members) and some of the older forms of procedure were unnecessarily elaborate. I therefore made a number of detailed proposals for changes in procedures and practices. These included new Rules regarding sitting hours, Rules designed to clarify the priority to be given to Government and Opposition business and guaranteeing the Opposition one full day each week), the use of written questions, a time limit on oral questions, more advance warning of business, the giving of notices of motions in writing, and clarification of the Rules regarding financial business and money bills. My Report combining these recommendations was laid on the Table by the Premier and was published just before Easter, and is now being considered by Ministers and Members of the Legislature. Clearly only they can decide what changes, if any, they wish to make. But I am hopeful that this review by an outsider may have been of some help in clarifying the issues.

I found Nova Scotians to be very interested in history—where people came from, how their institutions were formed etc.—and I, too, was particularly intrigued by the evolution of the Legislature and its procedures. For example, by the early part of the XIX Century the Assembly had established the right to vote certain expenditures—notably on highways—on their own initiative, without waiting for the Governor's recommendation. And so, today, the Lieutenant-Governor's recommendation is normally only required for the Estimates and bills imposing financial charges or taxation can be introduced, but only by Ministers, without the formal recommendation. Elsewhere in Canada history has pushed procedure in different directions. In British Columbia, I understand, the Lieutenant-Governor's recommendation is required for all bills, whether they purport to increase or decrease expenditure. In such variety, flowing from history and reflecting local requirements, lies the fascination of Parliamentary procedure.

There were many other things I enjoyed in Nova Scotia. I heard a lot of good music and saw several plays (Halifax, having four universities, is very culturally active). I watched hockey and also played for the MLAs' team. Together with good friends from the university (led by the Professor of Political Science) I "hiked" over many miles of lovely coastline—very rocky and backed by forest. I received much hospitality and enjoyed good food and good talk with a wide range of people. And, above all, my wife was able to come over for the last two weeks and share my enjoyment. This greatly added to the pleasure of the visit for we now share many happy memories—reinforced by a film I made.

However, from a Clerk's point of view, the overriding benefit for me

was the opportunity to study at close quarters and in some detail the working of another Parliament, the need to go back to first principles and to look critically at both British and Canadian procedures, and, in general, the stimulation of applying my own knowledge and experience to a new situation. This sort of opportunity may, I hope, in this age of easy travel, be enjoyed more and more widely throughout the Commonwealth. I thank all those, both in Britain and Canada, who made my visit possible.

IX. CONSTITUTIONAL ADVANCES IN NORTHERN TERRITORY, AUSTRALIA

By F. H. Walker
Clerk of the Legislative Assembly

On 19th October 1974 the Legislative Council for the Northern Territory, with its old colonial-style, mixed elected and nominated membership, ceased to exist. In its place was created the Legislative Assembly for the Northern Territory, a no less curious legislative animal. Whereas the old Council consisted of 11 elected and 6 nominated members the Assembly has 19 elected members from single member electorates covering the whole of the Northern Territory. In keeping with the change of name from "Council" to "Assembly" the title of the presiding officer was changed from "President" to "Speaker" but no changes were made in the method of appointment or of the powers and responsibilities.

No change was made to the legislative authority formerly held by the Council and now by the Assembly. It remains as the apparently comprehensive "power to make Ordinances for the peace, order and good government of the Territory" but there also remain the veto provisions vested in the Governor-General. A joint committee of the Federal Houses of Parliament had inquired into ". . . measures which might be taken in the long and the short term to provide the Northern Territory with responsible self-government in relation to local affairs—including appropriate divisions of legislative and executive responsibility at the National and Territorial or other level . . ." but its report was not tabled until 26th November 1974, over a month after the constitution of the new Assembly. Its recommendations, which have not yet been acted on, included a recommendation that executive responsibility for "state type" matters be transferred from the Federal Government to a Territory Government formed from the Legislative Assembly".

Under the present constitution the Territory does not have a government and all executive powers and functions are under Federal control through the Commonwealth Public Service. There is no Territory Treasury and the Assembly does not have any power to vote moneys for any purpose. Thus there exists the curious position of a legislature making laws but having no responsibility for the executive and administrative functions relating to those laws. When the nature of the new constitution became known in mid 1974 the President of the Legislative Council requested the Clerk to prepare a statement indicating how the new Assembly might operate. This was required because there had been no indication from the Federal Government as to how it was proposed the new body would operate and with the removal of the nominated

members it was going to be necessary to provide some means of introducing legislation from the Federal authorities and to accept some responsibilities for the provision of information. The Clerk's statement was tabled on 23rd July 1974 and debated on a motion "that the paper be noted".

The paper is as follows:—

THE OPERATION OF THE LEGISLATIVE ASSEMBLY

When the poll has been declared, or earlier, if the result is sufficiently clear, the Administrator will look for a member to come forward and announce that he has the support of sufficient members to command a majority of votes in the House. When the Administrator has established to his satisfaction that the member is in fact the majority leader, he may seek from him advice on two matters: Firstly as to when the Assembly should be called into session and secondly as to whom he should recommend to the Governor-General for appointment as members of the Administrator's Council It should be noted that members should be sworn as members of the Assembly before being appointed to the Administrator's Council and therefore a meeting of the Assembly will probably be needed with the least possible delay after the return of the writ.

The titles to be given to these senior members are not important, they should not be called Ministers because they will have no executive control other than what belongs to the Administrator's Council. Responsibility will be limited until true executive powers are granted and departments of the Northern Territory Public Service begin to operate.

At the first meeting of the Assembly, after the formalities such as the swearing of members and the election of a Speaker have been completed, the Administrator can address the House in the usual manner except that on this occasion he will be expressing the legislative programme of the "Majority Group". It can be expected that some consultation will have taken place between the "Majority Leader" and the Federal Government and it is more than likely that the speech will contain reference to legislation to be introduced on behalf of the Government.

As his first action after the Adminstrator's speech, the "Majority Leader" will table a draft of standing orders and move their adoption. Debate and voting on the draft orders could provide the first evidence of the support claimed by him.

The leader of the group having the support of the greatest number of members outside of the majority group can claim for himself the title of "Leader of the Opposition" and if in fact he does have the necessary support this should be recognised by the Speaker. It is possible that there will be more than one group in opposition and if these are evenly divided it may be necessary to have joint leaders of the opposition. This should be avoided if possible as a stable and effective opposition is just as important as a stable and effective majority.

The only vehicle for the passage of government bills (that is bills originating from the various departments of the Commonwealth Public Service and eventually from the Northern Territory Public Service) will be through the majority group.

The "Majority Leader" will delegate to the more senior members of his group specific functions of government. The number and extent of these "portfolios" will depend on the attitude of the majority group toward the subject. It will be desirable that the 5 members of the Adminstrator's Council should be holders of "portfolios" and should in fact be a type of cabinet.

Because the "Majority Group" will be in control of the business of the House and the facilities for the introduction of private members' legislation greatly reduced, it will be proper for the standing orders to provide for "Grievance Days" and for motions of no confidence to test the support being claimed by the "Majority Leader".

In order to provide more involvement of the back-bench supporters of the majority group and of the opposition it is possible that there will be an extensive use of committees. The number and functions of these will have to be determined by the majority group. They could include standing committees on subjects representing various functions of

government, to which bills could be referred for scrutiny. They could also include standing committees for subordinate legislation and even public works. Without some further constitutional change it does not seem possible to include finance as a subject for examination by a committee, or for that matter by the House. Nevertheless the Adminstrator's Council will probably provide the "Cabinet" of the majority party with the opportunity to exercise some influence in the examination of estimates and the establishment of priorities.

It will be necessary at an early stage to establish the extent to which the leaders of the "Majority Group" are to be assisted by and involved with the public service. If they are to be Quasi-ministers it is essential that the Northern Territory Public Service supply them with the facilities and staff.

As the constitutional provisions relating to the presiding officer are to remain unchanged and he is provided with a deliberative as well as a casting vote, there should be no difficulty in the majority group providing a Speaker. Even if the numbers in the House are 10 in the majority group and 9 in the opposition the majority of one will not be reduced by the appointment of the Speaker.

Much mention has been made of the need to have some system of parliamentary questions. The need is accepted as being most important and there appears to be no reason why the present system of written and oral questions cannot be continued. Answers will be provided by the members with "portfolios" who will have to receive the assistance of the various public service officers in charge of the department concerned. There is at present no statutory basis for any relationship between these members and the public service but no reason can be seen as to why full co-operation should not be given. To forestall criticism of his department it will be in the best interests of any public servant to see that the member holding the portfolio relating to the functioning of his department or branch is fully briefed on the activities of the department.

As mentioned earlier, the "Majority Group" will control the business of the House and if the Federal Government, through its Public Service departments, wishes to introduce bills, it will have to have this done for them by the majority group. To use members of the "Opposition" to introduce bills will be to invite defeat at the hands of the "Majority Group". Some form of compromise is going to be needed such as for years existed in the Tasmanian Parliament where it was necessary for Government legislation to be introduced into the Upper House by members who were not members of the Government party. It is only because of the willingness of elected members over the past 15 years to compromise that any legislation has been made. There is no reason why this should suddenly disappear now. In practice the "Cabinet" of the "Majority Group" should be able to operate as any other cabinet operates. Bills to go to the House will have to come before it for endorsement and allocation of priority. The members designated to introduce the bill will have to be provided with the same departmental advice and assistance that any Minister in charge of a bill in any other parliament would get.

If the Cabinet is unwilling to accept a bill from the Federal Government and no compromise is possible then it should be in order for the Government to introduce it through an "Opposition" member. If such a bill is subsequently defeated then it will have been defeated by the Assembly as a whole and as that body will be representative of the people of the Territory, democracy will have been served. It is difficult to see the possibility that a bill declined by "Cabinet" would not be accepted by an "Opposition" member, but if it did happen it would surely indicate that the measure was completely abhorrent to the Territory and not worthy of consideration."

As will have been seen, the paper envisaged a "Majority Group" supporting a "Majority Leader" in much the same manner as a "Government Party" would be led by a "Premier" in a normal parliament with sovereign rights. It was out of the question to use the term "Minister" as there were no executive powers to be exercised but as certain members of the Majority Group were to specialize in particular fields of legis-

lation, the term "Executive Member" has been used to describe their positions. Recognition of the "Majority Leader" was to be conceded by the Administrator in much the same way as a Premier is recognised by a Governor. Once recognised as the "Majority Leader" that member was then to designate his team of "Executive Members". In the present instance there are six such members in addition to the Majority Leader. They carry titles such as "Executive Member for Transport" and undertake to answer questions relating to their area of government and to introduce legislation from the departments administering those areas. The resemblance between these positions and that of a Minister is only superficial as the "Executive Member" has no authority over the department for which he accepts "responsibility" in the House.

The first elections under the new constitution produced a result that was hardly conducive to the development of a Westminster style legislature. One party won 17 of the 19 seats and the remaining 2 seats went to "Independents". The party expected to provide the "Opposition" failed to win a seat and the only opposition is provided by the 2 Independents neither of whom will concede that the other is "Leader of the Opposition".

The new Assembly has operated as is suggested in the paper prepared by the Clerk and can be said to have performed satisfactorily within the limitations imposed on it by the constitution, the unbalanced election results and the hardship resulting from the damage to the legislative building by the cyclone of 1974. Discussions between the Majority Leader and Ministers of the Federal Government are in progress and it is expected that before long some executive powers will be transferred from the Commonwealth to the Territory and that "Executive Members" will indeed have some executive functions for which they can be responsible to the Assembly.

X. DELEGATED LEGISLATION: THE SCRUTINY COMMITTEES AT WESTMINSTER

By W. R. McKay
An Acting Deputy Principal Clerk, House of Commons,
formerly Commons Clerk to the Joint Committee on Statutory Instruments

In 1973, in response to the recommendations of the Joint Committee on Delegated Legislation, both Houses of the U.K. Parliament agreed to appoint a Joint Committee on Statutory Instruments, to undertake the formal scrutiny of statutory instruments until then principally the concern of a Commons Committee. The order of reference of the Joint Committee is set out as an appendix to this article, the purpose of which is to trace the development of the scrutiny of statutory instruments from the point of view of the House of Commons through the changes in the order of reference, and to assess the changes which have come about since the appointment of the Joint Committee.

Statutory Instruments

The principal determinant in the work of the committees has of course always been the numbers of instruments which confront them. In the 1950's, academic commentators tended to throw up their hands at the doubtful future of the Commons committee, faced as it was by what appeared to be a rising number of instruments.[1] In fact, increases in previous decades do not appear to have been of a permanent nature. Reconstruction in the post-war period had a lot to do with the initial upsurge of instruments[2] and many more were then included which, though by law general, were in effect local and largely repetitive.[3]

For example, figures given to the Joint Committee on Delegated Legislation by Mr. Speaker's Counsel indicate the following[4]—

	Affirmative	*Negative*	*Total*
1950	56	703	759
1955–56	78	508	586
1960–61	65	552	617

When subsequently general instruments were added[5], the table reads[6]—

	Affirmative	*Negative*	*General*	*Total*
1967–68	102	663	282	1047
1968–69	82	488	317	887
1969–70	58	381	217	656
1970–71	151	865	556	1572
1971–72	105	678	298	1081

This total of instruments is to be seen against a frequency of committee meetings of something like once a fortnight. Indeed Sir Herbert

Williams in his evidence to the Clement Davies Committee in 1952 spoke of the Committee's reluctance to meet more frequently[7].

Though the scope of the new Joint Committee's inquiries and those of the surviving Commons Select Committee (for which see below) in terms both of type of instrument and ground of reporting is very similar to that of the old Commons Committee, the increase in workload is significant[8].

SESSION 1972–73 (part only)

	Joint Committee	*Select Committee*
Instruments requiring affirmative approval	33	8
Draft Instruments requiring affirmative approval	41	12
Instruments subject to annulment	279	63
Instruments subject to annulment (Northern Ireland)	22	–
Draft Instruments subject to annulment	4	–
General Instruments (Laid)	22	–
General Instruments (Not Laid)	156	–
Special Procedure Orders	27	–
TOTAL	584	83

SESSION 1973–74 (Short session)

	Joint Committee	*Select Committee*
Instruments requiring affirmative approval	8	8
Draft Instruments requiring affirmative approval	21	3
Instruments subject to annulment	300	53
Instruments subject to annulment (Northern Ireland)	28	–
Draft Instruments subject to annulment	15	–
General Instruments (Laid)	29	–
General Instruments (Not Laid)	189	–
Special Procedure Orders	21	–
TOTAL	611	64

SESSION 1974 (Short session)

	Joint Committee	*Select Committee*
Instruments requiring affirmative approval	19	6
Draft Instruments requiring affirmative approval	33	17
Instruments subject to annulment	370	42
Instruments subject to annulment (Northern Ireland)	15	–
Draft Instruments subject to annulment	6	–
General Instruments (Laid)	25	–
General Instruments (Not Laid)	174	–
Special Procedure Orders	22	–
TOTAL	664	65

SESSION 1974–75

	Joint Committee	*Select Committee*
Instruments requring affirmative approval	32	22
Draft Instruments requiring affirmative approval	72	21
Instruments subject to annulment	841	110
Instruments subject to annulment (Northern Ireland)	77	–
Draft Instruments subject to annulment	11	–
General Instruments (Laid)	90	–
General Instruments (Not Laid)	380	–
Special Procedure Orders	35	–
TOTAL	1,538	153

Orders of reference

The Joint and Commons Select Committees are formally distinct in that by means of an Instruction given by the Commons to their members nominated to the Joint Committee, those members do not join with the Lords in the consideration of such instruments as may be laid before and subject to proceedings in the House of Commons only.

The grounds on which the new committees may draw an instrument to the special attention of both Houses or of the Commons only, as the case may be, vary from those of the previous Commons committees which the post-Brooke arrangements superseded only so far as the new scrutiny committees may report an instrument where they have doubts whether or not it is *intra vires*. This was a recommendation of the Brooke Committee, but in practice the change seems of little significance since such a doubt was certainly concealed behind one or other of the existing grounds under the previous arrangements.[9]

In order to understand, therefore, the order of reference as it now stands, it will be necessary to look at the coral-like growth of the order since 1944, when the Commons first set up a scrutiny committee. In effect, it is a history of the attempt to state the ambit of the scrutiny committee's concern in as broad a form as possible without at the same time tempting the committees into the consideration of merits.

One of the first significant attempts in the House of Commons to define the general area open to such a scrutiny committee was the debate in 1944 on a motion which complained of the obscurity of instruments and their possibly controversial nature. The important issue of a committee's powers was however glossed over by use of a phrase to the effect that concern should be directed to instruments which "should for any other reason be brought to the special attention of the House". Indeed Mr. Molson admitted that the distinction between form and merits was a difficult one to draw[10]. Nevertheless, this approach was a significant advance on the Donoughmore-Scott report of 1932[11] which simply spoke of the "special features" or "circumstances" attaching to an "exceptional" instrument which should lead to its being drawn to the special attention of the House. When the matter was further developed

during the war, largely at the instance of Sir Herbert Williams, little progress in defining the role of a committee seemed to have been made and in a debate in 1943 there was a widespread feeling that merits might in some degree have to come before a scrutiny committee. No doubt for this reason the idea of a committee did not initially commend itself to the government. Mr. Herbert Morrison believed that a committee "would be a mistake and would not work", because it would either duplicate the consideration already given to instruments prior to publication or would be bound to form a provisional opinion on the merits.[12]

By the time of Mr. Molson's debate in 1944, however, opinion had shifted in favour of an attempt to distinguish between form and merits. Mr. Morrison said of the judicial spirit of the committee—and his modified view has been borne out by developments—that "it is a question of building up a tradition. If the tradition behind this committee is all right, then after two or three years we need not worry any further about the committee going astray."[13] It was from this debate that there emerged the basic requirement that the scrutiny committee should not report an instrument adversely until it had heard evidence. Mr. Morrison also prophetically observed that a joint committee had much to be said for it, "though that aspect could be reviewed later".

In June 1944, while the Commons still met in Church House, a Select Committee on Statutory Rules and Orders &c. was appointed. [14] It was empowered to draw attention to instruments imposing charges or requiring payments; made in pursuance of an enactment containing specific provision excluding them from challenge in the courts; including an unusual or unexpected use of powers; unjustifiably delayed in publication; or in need of elucidation as to form or purport. The first and second of these grounds derived from Donoughmore-Scott concerns and the third from an earlier hint of Mr. Morrison's, when he spoke of the House being interested in "whether the subordinate legislation contains any matter . . . foreign to the intention of Parliament in conferring the enabling power". The assistance to be given to the Committee by Mr. Speaker's Counsel (as it is now given by Sir Robert Speed Q.C. present holder of that office and by Mr. T. G. Talbot Q.C. Counsel to the Lord Chairman of Committees) also sprang, if indirectly, from Donoughmore-Scott.

The phrase "unusual or unexpected use of powers" seems to have been a particularly happy one. As the 1945–46 Procedure Committee shrewdly pointed out, it permitted the consideration of matters which, though not *per se* merits, were not far removed.[15] Sir Cecil Carr described it as "an ingenious formula", catching cases which might be *ultra vires*, sub-delegation without authority, and sins of omission or commission which would have been pounced on in a Bill.[16] Hanson's view that the committee was conservative in its interpretation of the power was not indicative of future developments.[17]

The process of filling out the order of reference, partly to avoid an over-strained interpretation of certain of the grounds of reporting instruments, partly it seems in an attempt to arrive at a broad, more general statement, began almost at once. Other powers were added as the need for them was appreciated.

In 1944, the Committee's Special Report complained that on the basis of their practical experience, the Rules Publication Act of 1896 was "ripe for review" principally in connection with praying time and laying formalities,[18] which in due course led to the Statutory Instruments Act 1946. More immediately, the Committee grasped at once the importance of being able to inform the House of exactly why they objected to an instrument. They were obliged to make a Special Report on such occasions but could not report their evidence, so that it was impossible fairly to canvass the issues in the House. This was put right by giving the committee the appropriate power to report their evidence.[19]

Following the comment of the 1945–46 Procedure Committee that the order of reference might be redefined "for greater clarity or with altered scope" there were a series of small clarifications and extensions. The Committee were empowered specifically to take evidence from H.M.S.O. on the printing and publication of evidence.[20] Members complained that they should be allowed to notice delay not only in the publication of instruments, but also in their laying before Parliament and this too was put right.[21] A separate ground of reporting to cover the unjustifiable retrospective effect of an instrument was asked for and obtained, as a clarification of "unusual or unexpected use of powers", under which such reports had previously been made.[22] A reference was included to delay in notifying Mr. Speaker under the 1946 Act that an instrument had come into effect before being laid.[23]

Perhaps most significant of all in the immediate post-war period of the committee's work is the way in which topics began to emerge which still, 30 years later, concern the Joint Committee—consolidation, illicit self-delegation, retrospection, explanatory notes which do not explain, the need to cite exact statutory authority, or the obscurity of "a severely concise style of drafting". Indeed this initial phase of solving the major problems may be said to have lasted a decade since it was not till 1958 that the committee felt that standards had been formulated, and it would then be a matter of maintaining them.[24]

The need to explain the committee's decisions was a continuing one. In 1951, the Committee began the practice of asking Departments to repeat the point in dispute at the head of each departmental memorandum of explanation, with a view to possible publication. Though the Clement Davies Committee made no specific recommendation about the extension of the powers of the committee, they did suggest that the Committee clerk's letter to the Department be printed with the departmental memorandum. Even this required to be superseded because the committee came to believe that there were cases which they ought to bring to the

notice of the House even where an instrument was not formally criticised under their order of reference,[25] where they had doubts not about one instrument but about a group or class, or where they thought it important to say how their doubts had been resolved.[26] In the end the Committee were given power to report their reasons in any particular case.[27] Mr. Morrison's hope that in the end the House would allow the Committee fully to make its own decisions between merits and form had been realised.

The 1960's saw a slowing down in the evolution of the order of reference, but further additions to the instruments within the Committee's competence.[28] First, Special Procedure Orders were added as a result of a case in which it was felt that some Orders had gone beyond the limited scope intended in the Statutory Orders (Special Procedure) Act 1945, an attempt to provide a speedier and cheaper means of enacting certain local legislation. When the 1945 Act was deemed no longer to apply to the type of Orders in question, parliamentary scrutiny of the Orders as a whole was to be increased as compensation. The Committee considered such Orders a useful addition to their functions, no doubt because the points to which they gave rise were very similar to those in statutory instruments.[29] The other additional instruments were the more substantial category of general statutory instruments whether or not required to be laid, which were referred to the Committee as a result of evidence given by the Chairman to the Procedure Committee in 1966–67.[30] Finally the Joint Committee on its first appointment was authorised to consider "instruments" which though not necessarily under the Statutory Instruments Act, nevertheless required an affirmative resolution, such as the Highway Code or the Code of Agricultural Practice.

A further refinement of the more general grounds of reporting instruments occurred when the Chairman of the scrutiny committee convinced the government in 1967 that there had been difficulty in squeezing bad drafting into the grounds of reference relating to "purport calling for elucidation"[31] and the Procedure Committee had recommended the creation of a separate ground of reporting to cover defective drafting, also regarding it as in some way a compensation for the committee's inability to amend instruments.

The final step was taken in 1971. All previous attempts to define a "catch-all" ground on which the committee could adversely report an instrument were superseded by the grant of authority to report "on any ground not impinging on the merits of or the policy behind" an instrument on which the committee had doubts. This was done at the instance of the committee itself with the agreement of a Procedure Committee.[32] The Joint Committee then inherited the fruits of the long apprenticeship of the Commons Committee—an order of reference as wide as could possibly be necessary for the task they had been set to do.

Working Methods

The *modus operandi* of the post-Brooke committees followed closely that

of the old Commons committee. The new committee generally speaking, however, meets more nearly weekly than fortnightly while Parliament is sitting. The meetings of the Select Committee normally follow immediately after those of the Joint Committee. It may also be instructive to follow the use of the several grounds of report in order of reference.

PREVIOUS COMMONS COMMITTEE[33] 1963–70

	Reports
Unusual or unexpected use of powers[34]	36
In need of elucidation	15
Requiring payment to be made to a department for services	1
Unjustifiable delay in publication and laying	4
Imposes a charge	2
Excluded from challenge in the courts[35]	–
Retrospection without authority	4
Defective drafting	16
TOTAL	78

JOINT AND SELECT COMMITTEES, 1972–75

	Reports
Unusual or unexpected use of powers[34]	24
In need of elucidation[34]	19
Unjustifiable delay in notification and/or laying	3
Retrospective without authority[34]	2
Defective drafting[34]	14
Doubts concerning *vires*[34]	5
Other grounds	35
TOTAL	102

It will be seen that the ability of the Committee to escape from any strait jacket of limited grounds of reference—no doubt at the expense of "unusual or unexpected use of powers"—has been of considerable importance recently. There has also been a substantial increase in the number of instruments reported: in roughly half the number of sessions, the post-Brooke committees have increased the number of adverse reports. This must of course be partly due to the increase in the number of instruments, but it probably owes something to the increase in evidence sessions. In the period 1963–70 memoranda were asked for on 205 occasions and evidence given on 20. In the first (short) session of the Joint Committee's activities, they called for Memoranda on 101 instruments and took oral evidence on 31. The Joint Committee have in fact made a formal request for Memoranda beyond that made by the old Commons committee. All instruments are to be accompanied by a Memorandum of explanation, unless they are of a purely recurrent variety or self-explanatory.[36]

What future developments there may be is difficult to predict. Possibly the order of reference might be considered with a view to eliminating

the particular grounds of reporting an instrument adversely and relying only on the general ground. Were this to be done, it does not seem likely that it would result in a real change in the committee's outlook since their practice is fairly securely settled by now. So far as increasing numbers of instruments are concerned, the Joint Committee has power to appoint sub-committees, and would no doubt do so if the burden on a unitary committee became too great. The only other outstanding issue is how far the scrutiny committee's dialogue with Departments—who are in reality the audience for most of their reports—is enough, or whether it is possible or necessary to involve the Houses to a greater extent in the more important cases reported by attaching an automatic or more rigorous procedure to such instruments.

APPENDIX

(COMMONS JOURNALS, 3RD DECEMBER 1975)

Ordered, That a Select Committee be appointed to join with a Committee appointed by the Lords to consider:—

(1) Every instrument which is laid before each House of Parliament and upon which proceedings may be or might have been taken in either House of Parliament, in pursuance of an Act of Parliament; being

(*a*) a statutory instrument, or a draft of a statutory instrument;

(*b*) a scheme, or an amendment of a scheme, or a draft thereof, requiring approval by statutory instrument;

(*c*) any other instrument (whether or not in draft), where the proceedings in pursuance of an Act of Parliament are proceedings by way of an affirmative resolution; or

(*d*) an order subject to special parliamentary procedure.

(2) Every general statutory instrument not within the foregoing classes, and not required to be laid before or to be subject to proceedings in this House only, but not including Measures under the Church of England Assembly (Powers) Act 1919 and instruments made under such Measures,

with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds—

(i) that it imposes a charge on the public revenues or contains provisions requiring payments to be made to the Exchequer or any Government Department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;

(ii) that it is made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts, either at all times or after the expiration of a specific period;

(iii) that it purports to have retrospective effect where the parent Statute confers no express authority so to provide;

(iv) that there appears to have been unjustifiable delay in the publication or in the laying of it before Parliament;
(v) that there appears to have been unjustifiable delay in sending a notification under the proviso to subsection (1) of section four of the Statutory Instruments Act 1946, where an Instrument has come into operation before it has been laid before Parliament;
(vi) that there appears to be a doubt whether it is *intra vires* or that it appears to make some unusual or unexpected use of the powers conferred by the Statute under which it is made;
(vii) that for any special reason its form or purport call for elucidation;
(viii) that its drafting appears to be defective; or

on any other ground which does not impinge on its merits or on the policy behind it; and to report their decision with the reasons thereof in any particular case.

Ordered, That Two be the Quorum of the Committee.

Ordered, That the Committee have power to appoint one or more Sub-committees severally to join with any Sub-committee or Sub-committees appointed by the Committee appointed by the Lords; and to refer to such Sub-committee or Sub-committees any of the matters referred to the Committee.

Ordered, That the Committee and any Sub-committee appointed by them shall have the assistance of the Counsel to Mr. Speaker and, if their Lordships think fit, of the Counsel to the Lord Chairman of Committees.

Ordered, That the Committee have power to sit notwithstanding any adjournment of the House and to report from time to time, and that any Sub-committee appointed by them have power to sit notwithstanding any adjournment of the House.

Ordered, That the Committee and any Sub-committee appointed by them have power to require any Government department concerned to submit a memorandum explaining any instrument which may be under their consideration or to depute a representative to appear before them as a Witness for the purpose of explaining any such instrument.

Ordered, That the Committee and any Sub-committee appointed by them have power to take evidence, written or oral, from Her Majesty's Stationery Office, relating to the printing and publication of any instrument.

Ordered, That the Committee have power to report to the House from time to time any Memorandum submitted to them or other evidence taken before them or any Sub-committee appointed by them from any Government department in explanation of any instrument.

Ordered, That it be an Instruction to the Committee that before reporting that the special attention of the House be drawn to any instrument the Committee do afford to any Government department concerned therewith an opportunity of furnishing orally or in writing to them or to any Sub-committee appointed by them such explanations as the department think fit.

Ordered, That it be an Instruction to the Committee that they do consider any instrument which is directed by Act of Parliament to be laid before and to be subject to proceedings in this House only, being—

(*a*) statutory instruments, or drafts of statutory instruments;

(*b*) schemes, or amendments of schemes, or drafts thereof, requiring approval by statutory instrument; or

(*c*) any other instrument (whether or not in draft), where the proceedings in pursuance of an Act of Parliament are proceedings by way of an affirmative resolution;

and that they have power to draw such instruments to the special attention of the House on any of the grounds on which the Joint Committee are empowered so to draw the special attention of the House; and that in considering any such instrument the Committee do not join with the Committee appointed by the Lords.

---

1 See for example *Gelhorn & Byse*, Administrative Law, Comment and Cases (1954) p. 157, quoted in *Public Law*, Autumn 1956, p. 200. It is doubtful how far in fact the workload was increasing. Sir Cecil Carr, then the Committee's adviser, did not believe it was (*ibid*).

2. See Third Report from the Procedure Committee, H.C. (1945–46) 189–i, p. 244. The Special Report from the Statutory Instruments Committee of 1946–47 showed that of 795 instruments, 565 arose from emergency legislation. The point had been taken before the appointment of the Committee by Mr. Hugh (later Lord) Molson.

3. Such as London Traffic Regulations, Special Report from the Statutory Instruments Committee, H.C. (1966–67) 266, para. 6.

4. Second Report, para. 6, H.C. (1972–73) 468, pp. 41 and 66.

5. Though Special Procedure Orders were added in 1962, the figures have never been a significant part of the total (see for example Joint Committee on Delegated Legislation, H.C. (1971–72) 475, para. 54.

6. Special Report from the Select Committee on Statutory Instruments, H.C. (1970–71) 260, para 4.

7. Select Committee on Delegated Legislation, H.C. (1952–53) 310, Q. 1382.

8. Especially if sessions 1973–74 and 1974 are regarded as equivalent to one session of normal length.

9. Sir Cecil Carr, Mr. Speaker's Counsel, agreed that reporting an instrument for "unusual and unexpected use of powers" in the days of the old Commons Select Committee covered doubts on *vires* (Select Committee on Delegated Legislation H.C. (1952–53) 310, p. 162) and the Committee themselves later confirmed it (Special Report, H.C. (1960–61) 5–vi, para. 3. The Chairman of the Committee indicated as much to the Procedure Committee in 1967 (H.C. (1966–67) 539 Q. 118 (Sixth Report)).

10. H.C. Deb. (1943–44) 400, c. 210.

11. Committee on Ministers' Powers, Cmd. 4060 (1932 but—significantly—reprinted 1943).

12. H.C. Deb. (1942–43) 389, c. 1593 ff; and H.C. Deb. (1942–43) 391, c. 491.

13. H.C. Deb. (1943–44) 400, c. 268.

14. C. J. (1943–44) 135.

15. Third Report, H.C. (1945–46) 189–i.

16. *Public Law*, Autumn 1956.

17. "Select Committee on Statutory Instruments" in *Public Administration*, Winter 1949.

18. H.C. (1944–45) 113, para. 9. Other Special Reports in 1945 reiterated similar points.

19. Second Special Report (1944–45) 83; H.C. Deb. (1944–45) 410, c. 2148–50.

20. C.J. (1945–46) 182.

21. First Special Report, H.C. (1945–46) 187, p. xxii.

22. Third Special Report, H.C. (1945–46) 187, p. xxiii.

23. A problem then appreciated that some formal contact might be needed between Mr. Speaker and the Scrutiny Committee when a notification had been given has not so far been solved (H.C. Deb. (1945–46) 417, c. 1176).

24. Special Report, H.C. (1957–58) 11–vii, para. 2.

25. Special Report, H.C. (1953–54) 7–iv..

26. Special Report, H.C. (1970–71) 260, para. 13.

27. C.J. (1971–72) 23. This power has been actively taken up by the Joint Committee (First Special Report, H.C. (1972–73) 184, para. 9).

28. Church of England Assembly Measures had been removed from the Committee's ambit, a result of the latter's doubts on the status of instruments made thereunder (Second Special Report, (1953–54) 7–v)

29. H.C. Deb. (1961–62) 653, c. 1453ff and Special Report (1963–64) 10–i.
30. Select Committee on Procedure, Sixth Report H.C. (1966–67) 539.
31. H.C. Deb. (1967–68) 754, c. 342 ff.
32. Special Report, H.C. (1970–71) 260, para. 13; Procedure Committee, Second Report, H.C. (1970–71) 538, para. 47.
33. Special Reports, H.C. (1966–67) 266; H.C. (1970–71) 260.
34. Including cases where this is the first but not exclusive reason.
35. There is no known case of this ground being used, and statutes are not now so drafted as to call it into use (see Sixth Report from Procedure Committee, H.C. (1966–67) 539, Q. 150*n*).
36. First Special Report from the Joint Committee, H.C. (1972–73) 184.

XI. VACANCIES IN THE AUSTRALIAN SENATE: JOINT SITTINGS OF THE NEW SOUTH WALES PARLIAMENT

By A. W. Saxon
Clerk of the Parliaments, New South Wales

The filling of casual vacancies in the Senate is provided for by the Commonwealth of Australia Constitution Act. Section 11 provides that the Senate may proceed to the despatch of business notwithstanding the failure of any State to provide for its representation in the Senate. Section 15 sets out the procedure for filling casual vacancies, provides that the Houses of Parliament for the State for which the Senator is to be chosen, sitting and voting together, may choose a person to hold the place until the expiration of the term or the election of a successor. If the State Parliament is not in session when the vacancy is notified to the State Governor, he may, with the advice of the Executive Council, appoint a person to hold the place until the expiration of 14 days after the beginning of the next session of the Parliament of the State or until the election of a successor. Section 21 provides that whenever a vacancy happens in the Senate, the President, or if there is no President, or in his absence from the Commonwealth, the Governor-General shall notify the vacancy to the Governor of the State concerned who in turn notifies each House of the State Parliament.

This article concerns mainly the holding of a joint sitting in New South Wales to appoint a Senator and refers in particular to the joint sitting held on 27th February, 1975.

Since the inauguration of the Commonwealth on 1st January, 1901, there have been 13 occasions in New South Wales when joint sittings have filled casual vacancies; in two of these instances the Governor had previously appointed a Senator who was subsequently confirmed. On one other occasion a vacancy occurred shortly before the Senator's term expired and no action was taken to select a successor on a casual basis. It is interesting to note that the first N.S.W. Senate vacancy was caused by the resignation in 1903 of Senator Richard Edward O'Connor, Q.C. He became one of the initial appointees to the bench of the High Court of Australia. In pre-Federation days, Senator O'Connor had been a Member of the New South Wales Legislative Council and a Minister of Justice. His parliamentary links were further extended by his employment as a clerk in the Council Office in 1871 and the fact that he was the son of a Clerk of the Parliaments.

The first Joint Sitting on 8th October, 1903, established a basic pattern for the conduct of proceedings, which was followed until the joint sitting in February, 1975. On this occasion both Houses met to elect a person

in the place of Senator Lionel Keith Murphy, Q.C., who had also been elevated to the High Court. On receipt of the Governor's message, the Legislative Council usually resolves that it be taken into consideration on the receipt of a message on the same subject from the Assembly. The Assembly's message contains a resolution to meet the Council in joint sitting and requests the Council to name the place and hour. Previously the first act of the joint sitting has been the election of a President, the nomination being received and the question put by the Clerk of the Parliaments. Usually, the President of the Legislative Council has been nominated with the proviso that, in his absence, the Speaker of the Legislative Assembly take the Chair. It has also been the practice for the Premier to propose draft rules for the joint sitting. Over the years, these have followed the same pattern, and on occasions have been debated with the sitting dividing on whether there should be a ballot or open voting. In cases not specifically provided for in the rules, provision has been made for the application of parliamentary usage only, the Standing Orders of either the Legislative Council or the Assembly, or both parliamentary usage and the Standing Orders. After the adoption of rules, the Chair then called for nominations. On the first six occasions the voting was by ballot. In 1931, a motion for a secret ballot was negatived and as there were only two candidates, the sitting divided. In 1935, there were six candidates and a ballot was conducted in accordance with the Parliamentary Electorates and Elections Act, 1912. In 1949, the system of proportional representation was introduced for the election of Senators and on the four occasions between that time and 1971, only one candidate was nominated at joint sittings in New South Wales, in each case being of the same political party as the deceased Senator.

The 1975 joint sitting referred to earlier, was brought about due to the resignation of Senator Murphy, who was, at that time, the Attorney-General in the Whitlam Labor Government. Following his appointment to the Australian High Court, there was considerable controversy concerning the filling of the vacancy with some person of the same political persuasion. On one side, it was claimed that since the introduction of proportional representation in 1949, a convention had existed between political parties whereby casual vacancies were filled by the States in this way. The other side contended that Senator Murphy's vacancy was hardly "casual" in the same sense as a vacancy caused by death or retirement because of ill-health; rather, that it was deliberately created for political expediency.

It was in this atmosphere that the Murphy vacancy came before the New South Wales Parliament. The first "skirmish" occurred in the Assembly when that House met on 19th February, 1975, after the Christmas adjournment. An endeavour was made by the Labor Opposition to have a joint committee appointed to draw up rules for the expected joint sitting. The Opposition referred to the Premier's announcement that the vacancy would be filled by a non-Labor candidate, thus

flouting the existing "convention". The motion was defeated on division (*Parl. Deb. Vol.* 115 p. 3611). On the following day, the Labor Opposition in the Legislative Council proposed a similar motion which was ruled out of order. The President ruled, *inter alia*, that the House had not been advised by message from the Governor that there was a Senate vacancy, also that the motion contained an instruction which constituted a direction to Assembly members on the Joint Committee. This was regarded as an infringement of the rights and privileges of the Legislative Assembly (p. 3697). A move which expressed some of the Government's feelings on the appointment of Senator Murphy to the High Court was the appointment on 19th February of an Assembly Select Committee to consider the present system of appointing such Judges. The committee was to recommend amendments to the Commonwealth Constitution which would ensure that such appointments were made in a more equitable and acceptable manner. The motion for the Committee was moved by a Government private member and though opposed by the Opposition, was carried on division (p. 3615).

In the meantime, the Clerk of the Parliaments had been asked to submit to the Premier proposed rules for the joint sitting. The first draft was based on the 1965 rules, but it was requested that they be redrafted to include provision for the appointment of the President of the Legislative Council as the President of the Joint Sitting, (or in his absence, the Speaker of the Legislative Assembly), a time limitation for speeches by the proposer and members, and, if possible, a closure clause, and that the amended draft be discussed with the Clerk of the Legislative Assembly.

On 21st February, the Clerks met and agreed to an amended draft, providing for a five minute limitation on speeches and the closure in the following form:—

> "At any time during the proceedings of the joint sitting, any member may move without notice or debate 'That the Question be now put'. Such motion, shall then be put and decided without amendment or debate. If such motion be carried, the President shall forthwith put the Question to the vote".

It will be seen, this was a "vicious" closure, which could easily have been the subject of abuse. Attention was drawn to this danger and it was omitted from the rules as submitted. The time limit was also extended to ten minutes.

Preliminaries to the joint sitting moved to a climax on 25th February when in the Assembly a resolution was agreed to, after several divisions, to meet the Council to choose Senator Murphy's successor. The resolution included the rules for the conduct of proceedings at the joint sitting. The Council was requested to concur in the proposed rules and to name the place and hour for the meeting. A Message conveying the Assembly resolution was dealt with in the Council on the same day immediately following the receipt of a Message from the Governor notifying the existence of a vacancy in the Senate. In the face of Labor Party oppo-

sition, the Council concurred in the rules and set Thursday, 27th February, at 11 a.m., in the Legislative Council Chamber as the time and place. In establishing rules for a joint sitting by prior resolution of both Houses, rather than by the Members present at a joint sitting, there was a departure from the practice established at the first such sitting in 1903 and followed on every occasion afterwards.

Thursday, 27th February, was bright and clear as Members of both Houses gathered in the Council Chamber. By one minute past eleven, however, clouds of discontent had descended on the meeting. Flashes of disorder were soon to follow. In accordance with the rules agreed upon, the President took the Chair. Ignoring the President and the rules, the Assembly Leader of the Opposition addressed himself to the Clerk of the Parliaments and proposed a motion that the President take the Chair. The President thereupon ordered the Leader of the Opposition to resume his seat (which he did under protest), declared the joint sitting open and sought nominations for the vacant senatorial position. Under points of order, Opposition Members strongly protested that there were no rules governing the sitting unless they were adopted by the Members themselves at the sitting. Interruption of proceedings was frequent. At times, pandemonium reigned and the President was unable to be heard by Members, nor they, by him. The Hansard staff strained to perform its task. The Table Officers of both Houses sat impassively in their places while discord erupted around them. The President's order for removal of a Member met with uproar and was not put into effect. At one stage, two members of the Police Force entered a side door of the Chamber but left shortly afterwards.

In a speech, little of which was able to be heard throughout the Chamber, the Premier proceeded to nominate the Government's candidate for the vacancy. Two other nominations were put forward, one by the Opposition. Further points of order were sought to be raised and an unsuccessful endeavour made to substitute rules for the sitting before the President finally put the question for appointment of the first candidate. A division was called for and bells rung. The figures were 86 to 70, resulting in the selection of the Government candidate and the President thereupon declared him elected and closed the proceedings.

Minutes of the joint sitting were tabled in both Houses the next sitting day and ordered to be printed. Like all such records, they bear little evidence of the atmosphere of the occasion—perhaps the most unruly proceedings ever gazed upon by the mute busts of those distinguished Presidents and colonists which stand around the 120-year old Chamber. As an aftermath of the disorderly meeting, the Legislative Assembly Standing Orders Committee proposed a new Standing Order No. 413, to provide for rules at future joint sittings to elect a Senator. A copy was submitted to an *ad hoc* Committee of Joint Government Members of the Legislative Council, then sitting to review certain Council Standing Orders. This latter Committee sought the opinion of the Clerk of the

Parliaments, who advised against its adoption as section 15(1) of the Constitution Act, 1902 restricted the preparation and adoption of Standing Rules and Orders concerning communication between the Houses to:—

> "the mode in which such Council and Assembly shall confer, correspond, and communicate with each other relative to Votes or Bills passed by or pending in, such Council and Assembly respectively;"

Though the reference to section 15 of both the Commonwealth and the State Constitutions seemed to confound some members, the Clerk's opinion was concurred with by Assembly officers, and as a result, the proposal was abandoned.

XII. THE MEETING PLACES OF THE HOUSES OF PARLIAMENT AT WESTMINSTER

By J. C. Sainty
Reading Clerk, House of Lords

The object of this article is to put together the available information about the meeting places of Parliament at Westminster. The salient facts are not particularly difficult of access in themselves. What is lacking is chronological framework to which they can be related. Miss Ivy Cooper in an article published in 1939 described the meeting places of Parliament in the ancient Palace of Westminster.* The main focus of her interest, however, was the mediaeval period and, naturally enough, she did not deal with developments after the fire of 1834.

Miss Cooper established clearly that any survey of the meeting places of Parliament at Westminster must take into account the fact that there were originally three different types of meeting place involved since the opening ceremony customarily took place in a Chamber distinct from the Chambers occupied by the Lords and the Commons.

There is no doubt that, when Parliament was summoned to meet at Westminster, it assembled in the Palace. The evidence suggests that the opening ceremony took place in the Painted Chamber as early as 1259 and that it became customary for the ceremony to take place in that Chamber thereafter until the reign of Henry VIII.

It is not until 1343 that it is possible to identify positively a separate meeting place for the House of Lords. In that year Parliament was opened in the Painted Chamber. After the causes of summons had been communicated, the Lords were directed to repair to the White Chamber in order to deliberate amongst themselves. The White Chamber remained the customary meeting place of the Lords until the union with Ireland in 1800.

The arrangements made for the Commons were, in the earlier stages, a good deal less permanent. The Commons were directed to hold their deliberations in the Painted Chamber in 1343 and in the lesser Chamber (Court of Requests) in 1368. The first reference to their association with Westminster Abbey occurs in 1376 when the Chapter House was described as their "ancient place". For a period thereafter they seem to have used either the Chapter House or the Refectory of the Abbey. From 1394, however, the Refectory appears to have been accepted as their customary meeting place until the middle of the 16th Century.

---

*I. M. Cooper, 'The Meeting places of Parliament in the ancient Palace of Westminster', *Journal of the British Archaeological Association*, 3rd series, iii (1939), 97–138, to which reference should be made for developments before 1800. For a schematic plan of the relationships between the Chambers occupied by the two Houses of Parliament in the Old Palace of Westminster, see page 98.

No changes in these arrangements appear to have taken place until the reign of Henry VIII when the practice of holding the opening ceremony in a distinct chamber was abandoned. It is not possible to date this change precisely. The last occasion on which Parliament is said to have opened in the Painted Chamber was in 1512. By 1536 the ceremony had been transferred to the House of Lords Chamber. Possibly the fire that took place in the Palace in 1512 was in some way responsible for this change.

The Commons appear to have continued to meet in the Refectory of Westminster Abbey until the end of the reign of Henry VIII. At some point between 1548 and 1552 St. Stephen's Chapel was assigned to them. They evidently took possession of this new meeting place during this period or very shortly afterwards.

From the middle of the sixteenth century until the Union with Ireland in 1800 no changes occurred in the meeting places of either House. Thereafter the developments can be much more pecisely dated than is the case before and may be most conveniently illustrated by means of a chronological table:

1801 House of Lords moves from White Chamber to Court of Requests

The last meeting of the Lords in the White Chamber appears to have taken place on 31 December 1800, when the final session of the parliament of Great Britain was prorogued. The first meeting in the Court of Requests appears to have taken place on 22 January 1801, when the first session of the United Kingdom parliament was opened (*Lords Journals*, xlii, 636, 711; ibid. xliii, 3. See also *The Times*, 21 January 1801, p.3).

1835 House of Lords moves from Court of Requests to Painted Chamber; House of Commons moves from St. Stephen's Chapel to Court of Requests

The Lords and Commons last met in the Court of Requests and St. Stephen's Chapel respectively at the prorogation on 25 September 1834 (*Lords Journals*, lxvi, 996; *Commons Journals*, lxxxix, 604). Both Chambers were rendered unfit for use by the fire on 16 October 1834. At the prorogations on 23 October, 25 November and 18 December 1834 the Lords assembled in the House of Lords Library and the Commons in an adjoining committee room (*London Gazette*, nos. 19204, 19215, 19222; *Lords Journals*, lxvi, 997–9; *Commons Journals*, lxxxix, 605). At the opening of the next session on 19 February 1835 the Lords took possession of the Painted Chamber and the Commons of the Court of Requests (*London Gazette*, no. 19241; *Lords Journals*, lxvii, 3; *Commons Journals*, xc, 3).

1847 House of Lords moves from Painted Chamber to Barry Chamber

The Lords last met in the Painted Chamber on the eve of the Easter

recess 30 March 1847 and took possession of the Barry Chamber after the recess on 15 April 1847 (*Lords Journals*, cix, 119, 123, 124).

1852 House of Commons moves from Court of Requests to Barry Chamber

The Commons last met in the Court of Requests at the prorogation on 15 January 1852 and moved permanently to the Barry Chamber at the opening of the session on 3 February 1852 (*Commons Journals*, cvi, 451; ibid. cvii, 3). The Commons had already met experimentally in the Barry Chamber on 30 May, 5, 7, 11, 12 and 13 June, 31 July, 7, 8, 9, 10, 12 and 15 August 1850 and 24 and 28 July and 7 and 8 August 1851 (ibid. cv, 377, 400, 407, 418, 423, 425, 595, 623, 627, 633, 638, 641, 671; ibid. cvi, 391, 405, 440, 447).

1941 House of Lords moves from its own Chamber to King's Robing Room; House of Commons moves from its own Chamber to House of Lords Chamber

On the night of 10–11 May 1941 the Lords Chamber was seriously damaged and the Commons Chamber destroyed by enemy action. Before this the Lords and Commons had last met in these Chambers on 9 and 8 May respectively (*Lords Journals*, clxxiii, 111, *Commons Journals*, cxcvi, 119). It was not until 24 June 1941 that the two Houses took possession of fresh permanent accommodation, the Lords of the King's Robing Room and the Commons of the former Lords Chamber. (*Commons Journals*, cxcvi, 144).

Provision had already been made for the two Houses to meet at some place at Westminster other than the Palace. An enabling resolution to this effect was agreed to by the Commons on 6 November 1940 (ibid. cxcv, 249). No corresponding procedural step was taken by the Lords. The place selected was Church House. When the Commons met in Church House, known as 'the Annexe', the fact was recorded in their Journals. It may be presumed that, when the Commons met in the Annexe, the Lords did likewise but the fact is not recorded in their Journals.

The Commons met in the Annexe 7–19 & 21 November, and 10–19 December 1940 and 22 April–1 May 1941 (ibid. 249–55; ibid. cxcvi; 3, 17–25, 107–15) and continuously during the period from the destruction of their former Chamber and their removal to the Lords Chamber: 13 May–19 June 1941 (ibid. cxcvi, 121–42). The Commons again met in the Annexe from 20 June to 3 August 1944 (ibid. cxcix, 133–75).

One other point should be noted about the period during which the Lords and Commons occupied the Chambers assigned to them in June 1941. After the end of the War certain ceremonial events took place, not in the King's Robing Room as had been the case when the War was in progress, but in the Lords former Chamber. On these occasions the Lords assembled in that Chamber and the Commons in St. Stephen's

Hall. This procedure was observed at the Opening of Parliament on 15 August 1945, 12 November 1946, 21 October 1947, 26 October 1948 and 6 March 1950 (*Commons Journals*, cci, 15, 243, 247; ibid. ccii, 3, 377, 379; ibid. cciii, 3, 411, 412; ibid. cciv, 3; ibid. ccf, 13) and at the prorogations on 20 October 1947 and 25 October 1948 (ibid. ccii, 377, 379; ibid. ccii, 411, 412, 413).

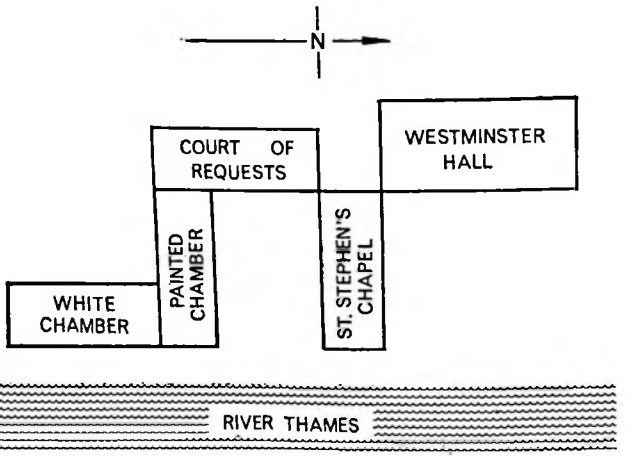
1950 House of Commons moves from Lords Chamber to its own restored Chamber

The Commons last met in the Lords Chamber on 25 October 1950 and moved to their restored Chamber on 26 October 1950 (*Commons Journals*, ccv, 242–3).

1951 House of Lords moves from King's Robing Room to its own former Chamber

The Lords last met in the King's Robing Room on 10 May 1951 and returned to their own former Chamber on 29 May 1951 (*Lords Debates*, clxxi, cols. 807, 860; *Lords Journals*, clxxxiii, 172).

Schematic plan showing the relationship between chambers occupied by the two Houses of Parliament in the old Palace of Westminster.



XIII. REVIEW OF THE ADMINISTRATIVE SERVICES OF THE BRITISH HOUSE OF COMMONS

By Michael Ryle
A Deputy Principal Clerk, House of Commons

The Compton Review

On 22nd October 1973 the Speaker of the House of Commons at Westminster, made a statement to the House about administrative services. He began by saying "The arrangements for organising and staffing the administration of the House of Commons have grown up over a very long period. It has become increasingly clear in recent years that they are in some ways ill-fitted for providing the House with a thoroughly efficient and effective service". And he went on to announce the appointment of Sir Edmund Compton (a retired civil servant who had also served as Comptroller and Auditor General and as the first Parliamentary Commissioner for Administration (the British 'Ombudsman')) to undertake a review of the organisation and staff of the five Departments of the House, i.e. the Departments of the Clerk of the House, the Serjeant at Arms, the Library, the Speaker (including Hansard and the Vote Office) and the Administration Department.

Thus began a period of intensive examination of – and self-examination by – the various Departments of the House. The principal feature of Sir Edmund Compton's review was that, for the first time, the various Departments were not looked at separately but as a whole, and attention was focused on their relations with one another and on the extent to which the services they provided for the House were effectively co-ordinated.

Sir Edmund's Report,[1] which was completed in July 1974, concluded that "at day-to-day level, the working of the Departments is generally satisfactory and co-ordinated, except in the area of the provision and maintenance of accommodation". He found, however, "a need for co-ordination at the higher level of policy formulation and execution, and . . . a need for co-ordinated control of disposition of resources especially staff". This led him to recommend a unified House of Commons Service with a central personnel and career management authority. This would involve, he believed, the virtual abolition of the present separate Departments and the creation of a single service under a Chief Officer, with four principal subordinates or deputies. Deputy "A" would be in immediate charge of procedural services, namely those of the Clerk's Department at present; Deputy "B" would be in immediate charge of finance, administration, establishment matters, Hansard, and the Vote Office and would also take over the accommodation and housekeeping functions which are presently the responsibility of the Serjeant at Arms; the Librarian who would retain his present responsibilities; and the

Serjeant at Arms would be responsible for order-keeping and ceremonial. Other matters on which Sir Edmund made recommendations included the method of appointment of senior staff and the need, as he saw it, for "a move towards retirement at 60 compared with the present expectation of service to age 65".

The Bottomley Report

The Compton Report was referred by the Speaker to a committee of eight Members (four Labour, three Conservative and one Liberal) under the Chairmanship of Mr Arthur Bottomley, a senior Member with wide experience both in British public life and in the Commonwealth. The Committee took evidence from the Speaker, Members of the House, Heads of Departments and other senior staff, trades unions representing House of Commons staff and other staff associations, the Civil Service Department and Sir Edmund Compton. Their Report was laid before the House by the Speaker on 7th August 1975.[2]

The Committee's evidence reveals that the Compton Report received little support from Members of the House and was adversely criticised by the Departments and by staff at all levels. While there was widespread, though not unanimous, agreement that closer co-ordination between Departments in both policy and staffing matters was desirable, there was substantial criticism of the rigidly centralised organisation proposed by Sir Edmund Compton. The proposed breaking-up of the Serjeant's Department was also criticised by several witnesses. A number of alternative schemes were also proposed by witnesses before the Committee.

The Committee themselves emphasised that overall control over the services of the House must remain with the House and its Members and that the staff of the House must continue to be wholly distinct from the Civil Service. They considered that organisational changes should foster the development of co-ordinated services and a unified staffing policy, and that this would require a central authority. They rejected, however, Sir Edmund Compton's proposals on several counts. They were not convinced of the need for a Chief Officer, whose creation might cut off the Speaker's contacts with Heads of Departments. He had not had sufficient regard for the need for Members to exercise a proper degree of control over the services of the House. They disagreed with his proposals regarding housekeeping and accommodation. His proposals made inadequate provision for regular consideration of longer-term development of services. And the extent of opposition, amongst those affected, to a number of Sir Edmund's proposals made it unlikely that they could be successfully implemented. Nor did they find other schemes wholly acceptable. They accordingly advanced their own proposals, which to a considerable extent incorporated the most attractive features of these other proposals – including a "federal" reorganisation proposed by the Clerk of the House – and those of the Compton Report.

The Bottomley Committee were convinced of the need for an ultimate

authority in the House which could express the will of the House in respect of its own services, organisation and staff and oversee and care for the interests of Members of all parties, and this role could not readily be played by the Speaker alone. They therefore recommended that the present House of Commons (Offices) Commission, which is a largely defunct body comprising the Speaker, the Chancellor of the Exchequer and all the Secretaries of State, and whose responsibilities had been largely delegated to Officers of the House, should be disbanded but that it should be replaced by a new *House of Commons Commission* with wider powers. This should consist of the Speaker (as Chairman), the Leader of the House, a representative of the official Opposition front-bench and three senior back-benchers (including one representative of minority parties). The Commission would approve the Estimates for the House of Commons Vote and would thus be concerned with reviewing the future needs and development of the services of the House; and they would be consulted by the Speaker and the Leader of the House on major decisions affecting the House.

The Speaker and the Commission would be advised – as is the Speaker at present – by *the Services Committee* in matters directly affecting Members. But on all matters affecting the work of more than one Department and on staff matters the Speaker and Commission would also be advised by *a Board of Management* comprising the Heads of four Departments, namely the Clerk of the House (as Chairman), the Serjeant at Arms, the Librarian and the Head of the Administration Department. This Board of Management, the Committee believed, would be a more effective body for ensuring improved co-ordination of the work of the Departments than any one officer. It would be collectively responsible for implementing decisions of the Commission and for the administration of matters referred to it, for the formulation of policy on matters concerning more than one Department, and for carrying out a co-ordinated House of Commons staffing policy.

As far as the *organisation of the Departments* was concerned, the Committee recommended that the Speaker's Department be disbanded by placing the Official Report (Hansard) under the general administrative control of the Clerk of the House (though with the same degree of operating autonomy as at present) and by similarly placing the Vote Office under the general administrative control of the Librarian. Otherwise, however, the present Departments should continue in being with their present responsibilities and with autonomy in day to day operations. Each Head of Department would continue to have access to the Speaker on matters for which he was responsible.

For establishment purposes the Committee recommended that all staff employed in the present five Departments should be employed by the House of Commons Commission and not by the separate Heads of Departments. There would thus be a *unified House of Commons Service.* It ws envisaged, however, that the Commission would delegate to the

Board of Management general responsibility for the control of staff and the formulation of establishment policy. Continuing responsibility for staff matters throughout the Service would be exercised by the Head of the Administration Department, as Principal Establishment Officer, but Heads of Departments would retain operational control.

The Bottomley Committee also made a number of suggestions as to the first steps that should be taken to create a unified Service. They considered a comprehensive grading review was needed. They urged common recruitment and promotion processes. They considered it essential for all the senior positions in the Service (excluding certain "specialists" but including that of the Serjeant at Arms) to be filled by appointments from within the Service. They made proposals for facilitating the transfer of staff between Departments. They recommended extended training arrangements. Finally they emphasised that good staff relations would be critical to the development of a unified service and made suggestions to achieve these ends.

The Bottomley Committee also looked at the *system of appointment of senior Officers of the House*. They recommended that the Clerk of the House should continue to be appointed by the Crown on the advice of the Prime Minister after consultation with the Speaker, and that the Clerk Assistant should continue to be similarly appointed on the advice of the Speaker who might consult, informally, the Prime Minister and Members of the Commission. Likewise, while the appointment of the Serjeant at Arms remained in the gift of The Queen, the informal discussions that would be held with the Speaker on such an appointment could be extended by him to Members of the Commission. Other senior Officers, such as the Deputy Serjeant, the Librarian and Deputy Librarian, the Head of the Administration Department, the Accountant, the Editor of Hansard and the Deliverer of the Vote should be appointed by the Speaker after consultation with the Commission. Thus, for these senior appointments, the Committee recognised the right of Members to be involved, but recommended that this be done through the Speaker and the Commission. For certain posts immediately below those referred to above the Committee believed that the Speaker might wish to be satisfied, on behalf of Members, that a suitable Officer was being appointed. Beyond this, however, they thought that Members should not be involved (except in the most unusual circumstances) in the appointment, promotion, discipline or dismissal of individuals.

One other point may be of interest to Clerks in the Commonwealth. The Committee approved the long-standing practice whereby the Clerk Assistant has normally succeeded as Clerk of the House, and they believed that the appointment of the Clerk Assistant should be made with this in mind. However, they did not favour the system, also applied for a number of years, whereby the Second Clerk Assistant is normally promoted to be Clerk Assistant. The Committee believed that the choice of a Clerk Assistant should be made from a wider field. They therefore welcomed

the proposal made to them by the Clerk of the House that, in future the post of Second Clerk Assistant, as a Crown appointee, might be allowed to lapse.[3]

The Bottomley Committee also considered the question of the *age of retirement*, which had been raised by Sir Edmund Compton. In the light of their evidence they did not consider a move towards compulsory retirement at 60 would be welcome generally to the staff of the House. Nor would it be justified on other grounds; they shared the view expressed by the Clerk of the House that "to cause its more senior officers to retire at 60, instead of at 65, would deprive the House of their experience and skill at its most valuable". However they did recommend that in future Clerks of the House, on appointment, should be required to give an undertaking not to remain in office (which nominally is an appointment for life) beyond the age of 65 (recent Clerks had retired at 66 or 67), and that a like understanding should be reached with regard to retirement of future Serjeants at Arms.

The Committee recognised that some of their recommendations – notably the abolition of the present House of Commons (Offices) Commission and the creation of the new Commission as a statutory employer – would involve *legislation*. They recommended, however, that this should be kept to a minimum, and that details of organisation and administration should be left to the Commission to decide.

The aftermath of the Bottomley Report

There was a short debate, when the House "took note" of the Bottomley Report, in December 1975. In this debate there was significantly little criticism of the conclusions of the Report, and nearly all who spoke expressed their agreement. No support was given to Sir Edmund Compton's scheme. Mr. Gerry Fowler, speaking for the Government, said that the Government's interest was mainly in the establishment of the new Commission; other recommendations would be for the Commission itself to consider. The Government therefore hoped it would be possible to make progress fairly rapidly on the broad lines of the Bottomley Committee's recommendations.

So far no legislation has been introduced, but much preliminary consideration is being given to the matter. The end of this story must therefore be postponed. What is clear is that major changes in the organisation of the administrative services of the House will eventually ensue, and then a long period of uncertainty will be brought to an end. The challenge – for Members, and for Officers and staff at all levels – will then be to ensure, as the Bottomley Committee concluded, that "the new framework of authority for the services of the House and the establishment of a unified Service will further the efficient working of the House of Commons".

1. H.C. (1973–74) 254.
2. H.C. (1974–75) 624.
3. On the retirement of Sir David Lidderdale as Clerk of the House, Mr. R. D. Barlas (previously Clerk Assistant) has been appointed Clerk and Mr. C. A. S. S. Gordon (previously Second Clerk Assistant) has been appointed Clerk Assistant. The post of Second Clerk Assistant has not been filled; its duties have been transferred to a new post of Principal Clerk of the Table office, to which Mr. K. A. Bradshaw has been appointed.

XIV. PARLIAMENTARY QUESTIONS

The Questionnaire for Vol. XLIV of *The Table* asked the following question:

> "What are the rules and what is the current practice in your House regarding parliamentary questions".

The material received in response to this question has been very large indeed, probably because the rules governing questions in any parliamentary assembly are very elaborate. Many of the returns have merely referred us to the respective Standing Orders and these are, of course, in many respects identical. The Editors feel that it would be inappropriate to reproduce these Standing Orders in extenso; this would certainly be repetitive and probably of little interest to those seeking to compare practice in various parliaments. They have therefore excluded the vast majority of Standing Orders and have instead sought to highlight by means of selection particular features of parliamentary questions in the different legislative assemblies of the Commonwealth. If sometimes the Editors have wrongly summarised the effect of a Standing Order they apologise; and if some legislative assemblies have received greater coverage than others, the reason lies partly in editorial selection but partly in the contribution made by those clerks who provided a commentary on the bare bones of their Standing Orders.

The Editors have taken the procedure followed in the Westminster House of Commons as a base line from which to draw comparisons, and they have been struck by a number of differences in various parts of the Commonwealth. The first is that in Canada the oral question period is generally conducted without Ministers having received notice of the questions they are to answer. This procedure is followed in both the Senate and the House of Commons, as well as in several of the provincial legislatures. The bulk of questioning is however done by means of written questions.

In Australia questions can be asked of Ministers with, or without, notice. In some state assemblies those asked without notice appear to be more numerous, perhaps because they do not have to conform to the rules about Private Notice Questions (i.e. to be of an urgent character) applicable at Westminster and elsewhere in the Commonwealth. India has, in some ways, the most elaborately arranged procedures for parliamentary questions. The rules are precise and generally allow for Starred (oral) Questions, Unstarred (written) Questions and Short Notice Questions.

Elsewhere the returns tend to show that Westminster practice is closely followed, especially with regard to the content of questions and the manner of asking them. In the smaller assemblies, question time is usually held on one day a week and may last for less than an hour.

House of Commons

The extensive system of rules and practice that has evolved in the House of Commons for dealing with Questions is comprehensively set out in the recently published Nineteenth Edition of Erskine May's Parliamentary Practice (pp. 323–36).

The main rules relate to notice of questions and to their content. The following paragraphs outline some of the main provisions.

Time for asking Questions

After prayers at half-past two o'clock and after any private business and motions for unopposed returns have been disposed of, and not later than a quarter to three on Mondays, Tuesdays, Wednesdays, and Thursdays, the Speaker calls on the Members who have given notices of questions to which oral answers are desired. No questions may be taken after half-past three o'clock except for private notice questions. On Fridays only private notice questions may be asked.

Notice of Questions

Notice of a question to a Minister or other Member is placed upon the notice paper, unless the question relates to a matter of urgency or to the course of public business. A Member who wishes an oral answer to his question must distinguish it by an asterisk, and the notice of any such question must appear at latest on the notice paper circulated two days (excluding any Sunday) before that on which an answer is desired; except that questions received before half-past two on Mondays and Tuesdays, may, if so desired, be put down for oral answer on the following Wednesdays and Thursdays respectively. Questions for Monday must be received before 10.30 p.m. on the preceding Thursday (S. O. No. 8A). Notice of a question for oral answer cannot be given for more than ten sitting days ahead.

The order in which Ministers and other Members answer oral questions is decided by the Government. Some Ministers (*e.g.* the Lord President of the Council) answer at fixed points of time and at fixed intervals; the Prime Minister answers on Tuesdays and Thursdays each week at 3.15 p.m. The remaining Ministers appear on the list on one day each week, and rotate in ascending order on the day in question, moving up one place each week. When a Minister has reached the top of the list, he goes to the bottom in the following week and the sequence is then repeated. Ministers may expect to be at the top of the list once every four weeks on average.

Under a new procedure for written questions recommended by the Select Committee on Parliamentary Questions of Session 1971–72, a Member who wishes to receive a written answer on a named day may indicate this by marking the question with the letter W and the specified date, having given the same minimum amount of notice as is required for an oral question.

In the absence of any such indication, written questions are put down for the second sitting day after the day on which they are handed in, unless the Member gives a special instruction that a question be put down for the following day. The answer will not necessarily appear on that date, but the House has expressed the view that Government departments should endeavour to answer unmarked questions within a working week of their being tabled.

The number of *oral* questions which may be asked by any one Member is now limited to eight during any period of ten sitting days. Within this period there is a further limitation to two questions in any one day, of which not more than one may be addressed to any one Minister.

There is however no limit to the number of questions for written answer (whether or not marked with a W) which a Member may ask on the same day.

Transfer of questions

Questions addressed to Ministers should relate to the public affairs with which they are officially connected, to proceedings pending in Parliament, or to matters of administration for which they are responsible. A question should be addressed to the Minister who is primarily responsible, and misdirected questions are transferred by the clerks at the table on the notification of the departments concerned.

Form and contents of questions

The purpose of a question is to obtain information or press for action; it should not be limited to giving information, or framed so as to suggest its own answer or convey a particular point of view, and it should not be in effect a short speech. Excessively long questions are not permitted.

The content of a question must comply with the general rules which apply to the content of speeches, and is subject to a series of more detailed limitations.

The Select Committee on Parliamentary Questions of Session 1971–72 expressed their concern that the cumulative effect of previous decisions relating to the orderliness of questions should not be allowed to become unduly restrictive. They therefore recommended that, while the Speaker should continue to have regard to the basic rules concerning the form and content of questions, he should not consider himself bound, when interpreting these rules, to disallow a question solely on the ground that it conflicted with any previous individual ruling.

The basic rules set out in Erskine May relate to the disallowance of questions seeking an expression of opinion; the necessity for questions to have a factual basis; the avoidance of references to or reflections on the Royal Family; the advice given by Ministers to the Crown; statements made by Ministers and others outside Parliament; the need for questions to relate to matters for which Ministers are officially responsible; parliamentary business; questions already answered; questions relating to

decisions of either House; questions touching on matters that are *sub-judice*; and to a variety of other matters. The most important, and certainly in view of the number of rulings of the Chair, the most elaborate, series of rules relate to ministerial responsibility.

Answers

If a Member does not distinguish his question by an asterisk, or if he is not present to ask it, or if it is not reached by half-past three, the Minister to whom it is addressed causes an answer to be printed in the Official Report of Debates (Hansard). An answer should be confined to the points contained in the question, with such explanation only as renders the answer intelligible, though a certain latitude is permitted to Ministers, and supplementary questions may be addressed to them.

The Speaker has indicated that he would not necessarily call for a supplementary question every Member who had placed an identical question on the order paper. Supplementary questions may be asked by any Member who succeeds in catching the Speaker's eye.

A supplementary question may refer only to the answer out of which it arise, must not be read or be too long, must not refer to an earlier answer or be addressed to another Minister and is governed by the general rules of order affecting all questions. Since however it is only *after* a question has been asked that the Speaker knows what its content is it is more difficult for these rules to be strictly enforced.

Private Notice questions

Questions which have not appeared on the paper, but which are of an urgent character and relate either to matters of public importance, or to the arrangement of business, may be taken after half-past three, provided they have been submitted to the Speaker before noon on the day on which they are to be asked (or, on a day on which the House meets at 11 o'clock, before 10 o'clock), and have been accepted by him as satisfying the conditions imposed by S. O. No. 8(3), and provided notice has been given to the Minister concerned.

For many years a weekly private notice question on the business for the following week has been asked on Thursdays, normally by the Leader of the Opposition, after any other private notice questions have been disposed of and supplementary questions covering a wide field are subsequently allowed. On other days only business questions relating to the business of the day, or to any change in the business for the week already announced, are permitted. Apart from the weekly business questions some 52 private notice questions were allowed in the last complete parliamentary session, 1974–75.

A question cannot be asked by private notice in order to anticipate a question for oral answer of which notice has been given and which in the Speaker's opinion is likely to be reached for oral answer on a reasonably early date. Questions which are asked without appearing on the

paper are governed by the same rules of order as questions of which notice has been given.

As a matter of practice, the Leader of the Opposition never puts a question on the paper for oral answer, but always asks it by private notice and the factor of urgency is not insisted on.

Conclusion

The fact that there has to be a rationing of the number of oral questions that Members may ask, and that the rules relating to the orderliness of questions cover so many matters has not apparently inhibited the desire of Members to ask Questions. In the present Parliament the increase in Questions discernible over recent years has continued. In the parliamentary session 1974–75 over 36,000 questions were tabled.

The present session began with a record number of 1,047 questions being tabled on the first day – more than double the number tabled on the corresponding day in the previous session. If the popularity of asking questions seems not to be affected either by rationing of oral questions or by the rules on the content of questions neither does it appear to be affected by considerations of the cost of the process itself. A written answer to a question on 20 January 1976 revealed that the estimated average cost of a question for oral answer was £26 and for written answer was £16. The value which Members have long attached to the process of questioning Ministers, at a time in the parliamentary day which ensures maximum coverage by the media, obviously remains and seems likely to remain very high.

House of Lords

There are three principal types of questions – Starred Questions, Unstarred Questions and Questions for Written Answer. There are also Private Notice Questions. They are all addressed to Her Majesty's Government and not to a particular Minister. Questions may however also be addressed to certain Peers as holders of official positions but not as members of the Government. Thus, for instance, the Leader of the House has been questioned on matters concerning procedure, and the Chairman of Committees concerning any matters within the duties of his office.

Starred Questions are asked for information only, and not with a view to making a speech or to raising a debate. They may be put upon the Order Paper for any day on which the House is sitting, and are entered before other business. The number of Starred Questions for any one day is limited to four, and to two for any individual Peer. Starred Questions are asked by leave of the House, and may be disallowed by the House.

If a Peer is not present to ask a Question standing in his name, the Question may be asked by another Peer on his behalf but only with his authority.

Supplementary questions may be asked provided they are confined to

the subject of the original Question, but debate may not take place.

Where the Minister's answer contains material which is too lengthy or too complicated to be given orally in the House this may be published in the Official Report (Hansard). The rule against the reading of speeches applies also to the reading of supplementary questions.

A Question which may give rise to discussion, known as an Unstarred Question, may be put down upon the Order Paper for any day on which the House is sitting. An Unstarred Question is entered last on the Order Paper.

Speeches may be made upon an Unstarred Question, but no Peer may speak more than once except, with the leave of the House, for the purpose of explaining himself in some material point (no new matter being introduced). It is considered undesirable for Peers to continue the Debate after the Government's reply has been given, save for questions to the Minister before he sits down.

Questions for Written Answer

A Peer who wishes to ask a Question but does not desire an oral reply may enter it on the Order Paper under the heading "Questions for Written Answer". The answer to such a Question is printed in the Official Report (Hansard) and a copy is sent to the Peer. Answers are issued to the Press Gallery at 4.30 p.m. without an embargo on use and publication. There is no limit to the number of Questions which may be put down; they should be answered within a fortnight; and, where appropriate, they may be answered on the day on which they are tabled.

There are no fixed rules governing the framing of Questions, nor is there any Peer or officer in whom authority is vested to refuse Questions on the grounds of irregularity. The wording of these is the responsibility of the Lord who hands them in, and it is his discretion which governs the form in which they appear on the Order Paper. The Clerks at the Table are available to give help to any Peer in the drafting of a Question, but they act in an advisory capacity only. The decision whether or not a Question is "in order" and may properly be asked is in the last resort one for the House itself.

There are certain categories of Question which are generally regarded as not being in accordance with the traditions of the House (i.e. are considered inadmissible). Such Questions are:

(*a*) those casting reflections on the Sovereign or Royal Family;
(*b*) those relating to matters *sub judice*;
(*c*) those phrased offensively.

The principles embodied in S.O. 29 (Asperity of speech) also apply.

It is considered undesirable to incorporate statements of opinion or the demonstration of a point of view in the text of Starred Questions or Questions for Written Answer. Words in the text of Questions should not be italicized or underlined in order to give them emphasis.

It is open to any Peer to call attention to a Question which has appeared

on the Order Paper and to move that leave to ask the Question be not given or that it be removed from the Order Paper. The matter, which is debatable, is then decided by the vote or opinion of the House.

Private Notice Questions

A Peer who wishes to give Her Majesty's Government private notice of his intention to ask a Question on a matter of urgency should submit his Question in writing to the Leader of the House by Twelve noon on the day on which he proposes to ask the Question (by 10 a.m. on days when the House sits before 1 p.m.). The decision whether the Question is of sufficient urgency to justify an immediate reply rests in the first place with the Leader of the House and ultimately with the general sense of the House.

If a Peer challenges the preliminary decision of the Leader of the House on the question of urgency, he should, as a matter of courtesy—

(*a*) give notice to the Leader that he proposes to challenge his preliminary decision in the House; and

(*b*) make clear to the House, when he rises to ask his Question, that he is appealing to the House to support him against the preliminary decision of the Leader.

Private Notice Questions are taken immediately after Starred Questions. They may be used to elicit Ministerial statements from the Government.

During the 1974/75 Session of Parliament a total of 560 Starred Questions were asked, out of a possible total of 644, if four had been asked every day. The average time spent on them was 20 minutes daily. Thirty-five Unstarred Questions, occupying about 50 hours debate, were also asked. Six Private Notice Questions and 350 Questions for Written Answer were asked.

Isle of Man

The responsibility of a Minister is delegated to a Board, usually of three or five members, one of whom is Chairman and acts as spokesman in Tynwald. The Governor of the Isle of Man acts as Presiding Officer of Tynwald and he is responsible for applying the rules regarding questions, which are, in most respects, similar to those at Westminster. Questions may be put to the Governor, Chairmen of Boards referred to above (or in their absence members of Boards) or to any other member of Tynwald on a matter relating to a motion or any other public matter in which such member may be concerned. The Governor may disallow questions which infringe the Standing Orders or which in his opinion are an abuse of the right of questioning or affect prejudicially the procedure of Tynwald. He must inform the member, whose question he disallows, of his reason in writing.

Canada: Senate

The following Rules of the Senate apply to oral questions:

"20. When the Speaker calls the question period, a Senator may ask any question of the Government Leader relating to matters of urgency or importance to the nation or the Senate. A Senator may also ask any question of a Senator who is a Minister of the Crown relating to his ministerial responsibility or any question of the chairman of a committee relating to the activities of that committee. No notice of such questions is required. Supplementary questions may be asked."

"32. A debate shall not be in order on an oral question, but brief explanatory remarks may be made by the senator making the interrogation and by the senator answering the same. Observations upon any such answer shall not be allowed."

The above-mentioned rules are not always followed to the letter. In practice a debate is often allowed on certain oral questions with the unanimous consent of the Senate.

A written question is an "Inquiry" according to the Rules, which are as follows:

"43. (1) When a senator wishes to give notice of an inquiry or a substantive motion, he shall reduce the notice to writing, sign it, read it from his place during a sitting of the Senate, and send it forthwith to the Clerk at the Table."

"43. (3) Notice under this rule may be given by one senator for any other senator not then present, with the permission of the absent senator, by inserting the name of such senator on the notice in addition to his own."

A notice of Inquiry is given by a Senator as follows:

"Honourable Senators, I give notice that on . . . (date) . . . I will inquire of the Government . . . (Question follows) . . . "

"44. (2) Two days' notice is required of any inquiry not relating to a bill or other matter appearing among the orders of the day or on the notice paper."

"22. A motion on inquiry prefaced by a written preamble shall not be received by the Senate."

"23. A senator who has made a motion or presented an inquiry may withdraw or modify the same by leave of the Senate."

"48. A notice containing unbecoming expressions or offending against any rule or order of the Senate shall not be allowed by the Speaker to appear on the notice paper."

There are forty different categories of questions listed in Beauchesne's Parliamentary Rules and Forms (4th edition) which would not be admissible. These restrictions are similar to those found elsewhere in the Commonwealth.

An answer to a question cannot be insisted upon if the answer be refused by a minister on the ground of public interest, nor can the question be replaced upon the notice paper, nor the refusal of the minister to

answer be raised as a question of privilege. A minister may decline to answer a question without stating the reason for his refusal and insistance on an answer is out of order, no debate being allowed. Any question asked by the Government is usually directed to the Leader of the Government in the Senate, who is usually a minister without portfolio.

Canada: House of Commons

On 14th April 1975 the Speaker made the following statement about the Question period:

"The question period is a unique feature of the Canadian House of Commons where the ministry is required to be accountable to the House on a daily basis without advance notice. It is an excellent feature of our parliament, and while we have much to learn from other governmental systems, the question period is one area in which we are in the forefront of responsible government, and every effort must be made to preserve the excellence of this practice.

The opportunity of members to put questions has developed in a rather haphazard way, but is now enshrined in Standing Order 39 and if it ever was considered to be a privilege of members, it certainly now enjoys the status of a right. Much has been said in the precedents about restrictions and disqualifications or interferences with the right of members to put questions. This is not the approach I prefer to take in attempting to establish a rational approach and understanding concerning how the question period should operate. I much prefer to take the positive approach of attempting to arrive at a statement of principle within which questions can be put, and to reduce to an absolute minimum the negative disqualifications that may limit or restrict a member's right so to do.

In so doing, I should say that there seems to be no question that the Speaker enjoys discretion in allowing a question and certainly in allowing a supplementary. I think it is also important to begin with the rather wide latitude of discretion that is given ministers to whom questions are put. The fact is that ministers are able to make an answer, of course. They may also defer a question for further consideration or take it as notice. Ministers are able to make an explanation if for some reason they are unable to make an answer at that moment; or, finally, they may say nothing.

It therefore seems to me that any basic principle governing the question period ought to be such that it will enable members to put questions with a minimum of interference. In examining the many precedents, I feel that the principle can best be stated as follows: a brief question seeking information about an important matter of some urgency which falls within the administrative responsibility of the government or of the specific minister to whom it is addressed is in order. This statement bears some explanation. First, it must be a question. That seems to be too self-evident to be worth consideration. However, the fact of the matter is that that statement is put right at the beginning because it opposes such things

as expressions of opinion, representations, argumentation or debate.

Second, the question must be brief. There can be no doubt that the greatest enemy of the question period is the member who offends this most important principle. In putting the original question on any subject, a member may require an explanatory remark, but there is no reason for such a preamble to exceed one carefully drawn sentence. It is my proposal to ask all hon. members to pay close attention to this admonition and to bring them to order if they fail to do so. It bears repeating that the long preamble or long question takes an unfair share of the time, and invariably, in provoking the same kind of response, only compounds the difficulty.

Replies ought to be subject to precisely the same admonition. On the subject of supplementaries, I again suggest to hon. members the adoption of a practice which recently was suggested by one of our provincial colleagues which is, if and when supplementary questions are allowed, there ought to be no need whatsoever for any preamble. The supplementary question is a follow-up device flowing from the response, and ought to be a precise question put directly and immediately to the minister, without any further statement.

Third, the question ought to seek information, and therefore cannot be based upon a hypothesis, it cannot seek an opinion either legal or otherwise, and must not suggest its own answer, be argumentative or make a representation.

Fourth, it ought to be on an important matter which, again, is self-evident but it is stressed here in order to rule out frivolous questions.

Fifth, the matter ought to be of some urgency. This is not included to intend in any way to be similar to those questions of urgency which are included within the Standing Orders surrounding special debates. It is here only to stress the fact that there must be some present value in seeking the information during the question period, as opposed to seeking it through the order paper or through correspondence with the minister or the department.

The fact that questions on the order paper also have been changed in the experimental order to daily responses, I am sure, is to all hon. members an indication of the good will and good intentions of the government in making more prompt answers to the questions on the order paper. If the government will do so, undoubtedly this will have a beneficial effect on the conduct of the oral question period.

At the same time, it goes without saying that the vexatious or frivolous use of the right of putting questions on the order paper by way of putting questions which do not seek the kind of information which can be available within a reasonable time, reasonable effort and expense, seems to me to be only a waste of the time of the House and to invite the government to use the excuse that it would take too long or cost too much money to make replies. In other words, a serious and conscientious attitude on both sides about the use of the order paper for information will certainly

go a long way toward improving the oral question period.

Sixth, a question must be within the administrative responsibility of the government or the minister. Obviously, the government in general cannot be responsible for those areas which are beyond its own administrative responsibility. Furthermore, the minister to whom the question is directed is responsible to the House for his ministry; that is, his present ministry. He is responsible to the limits of that ministry, but not beyond that. In this regard I find no reason to change the earlier decision I made in respect of the capacities which ministers enjoyed in previously-held portfolios.

It seems to me that a question which conforms with this basic principle ought not to be interfered with without clear reason. One or two are well known. Obviously, the question must adhere to the proprieties of the House in respect of inference, imputing motives or casting aspersions upon persons within the House, or out of it for that matter, but this is no more a rule of decorum in the question period than it is out of it. The same rules surround polite language and things of that nature.

There is a clear precedent that if a question has previously been answered, it ought not to be asked again. A question cannot deal with a matter that is before a court. Those are clear restrictions. There are three others which seems to me lend themselves to some confusion. I may be able to clarify them, but I am not sure. The first deals with statements made by ministers outside the House. This, it seems to me, is a matter of form rather than one of substance, for indeed if a question otherwise conforms with the principles I have set out, then it ought not to be disqualified simply because in its preamble some reference is made to a minister or a statement made by a minister somewhere other than here.

For the life of me, I cannot understand why in the case of a valid question a member would want to tie it to a statement made outside the House and therefore risk having it disqualified, when in fact the simple device is to put the question directly without any reference to the statement. Second is the question which seeks an opinion about government policy. The whole area of questions about government policy seems to be one of general confusion. There have been restrictions related to questions about government policy. It seems to me that a question which seeks an opinion about government policy probably is out of order because it seeks an opinion rather than information. A question which seeks a general statement of government policy may be out of order because it requires the kind of long answer that ought to be given on statements during motions or in debate. But this is the kind of qualification which is referred to in the statement of principle. Otherwise, it seems to me that every question that is asked and answered and which has been held in order for as long as the question period goes back, has in one way or another a connection with government policy.

The third area of confusion is in respect of anticipating orders of the

day. It is a restriction that is not well understood. If I might express it in my own terms, it simply means that if the subject of debate for today concerns, for example, housing policy, then questions on housing policy ought not to be taken during the question period. That simply, it seems to me, has obvious reference to the currency or importance of the question being taken at that time rather than at some other time.

Similarly, if a special debate has been ordered for later in the day because obviously the topic is very important and very topical, the proper course would be for the Chair to defer questions until that debate is on, rather than to permit them during the question period.

Beyond that, I think a word should be said about points of order and questions of privilege. One of the most significant features of our experimental order is the suggestion to the Chair that points of order and questions of privilege be deferred until three o'clock. I say this is most significant because it is obvious by an expression of the consensus of hon. members that those who prolong their share of the question period by arguing points of order and questions of privilege are really doing nothing more than extending the time that has already been granted to them to put questions. There is no need for a full exposé of questions of privilege and points of order.

Suffice it to say that for the purpose of the question period all hon. members know, and know well, that complaints about the failure of a minister to give an answer, about the quality of the answer that any minister has given, or about discrepancies in answers given by different ministers or by the same minister on different occasions may be valid comments for debate at the appropriate time, but do not by any stretch of the rules constitute a question of privilege or a point of order. Even in handling these matters when they are deferred until three o'clock, it seems to me to be in the best interests of the House, unless a member is able to establish at the beginning when addressing himself to these points that he has a point of order or question of privilege that has some basis in procedure other than a mere complaint of that sort, to discourage members from raising such complaints at the start.

Finally, I should like to add, in respect of hon. members' rights about questions which they feel have not been adequately dealt with during the question period, that there is provision for an adjournment debate. Consideration may be given by the committee to expanding that; certainly it has been recently considered. In any case, it is an excellent way for members who feel that the answer has been too brief or that they have not had the opportunity to fully develop a question, to seek to raise it again in the 'late show'.

After six sitting days under the experimental order, there can be no doubt that it has been successful, but in my view the success is attributable, as it always is, not so much to the rules themselves or to the power or discretion of the Chair but, rather, to the attitude of members of the House. It is not possible to say too much about the importance of this,

because when members in their questions and ministers in their replies choose to abide by these principles that I have tried to set out here, the question period runs smoothly, with maximum participation. On the other hand, when members or ministers choose to disregard these principles, they can be called to order by the Chair but the question period cannot be saved from the damage that has been done to it.

In the first six days it has been obvious that members have looked upon this experiment with a positive and conscientious attitude which, if it continues, will ensure that this very worth-while experiment will become a permanent Standing Order. My authority is simply an expression of the desire of members that the proceedings run well and have maximum value, but I am sure members understand very clearly that the less the Chair is called upon to interfere in the proceedings, the better."

Ontario

Written Questions. Questions may be placed on the Notice Paper seeking information from the ministry relating to the public affairs of the Province. The answers are printed in the Official Reports of the Debates or if the answers are of a lengthy and voluminous nature they are made a Return.

Oral Questions. Immediately following prayers and statements by the ministry, oral questions are posed for 45 minutes, including supplementary questions. In these periods questions on matters of urgency may be addressed orally to Ministers of the Crown provided that Mr. Speaker shall disallow any question which he does not consider urgent or of public importance. No notice is required for the posing of oral questions. In the discretion of Mr. Speaker a reasonable number of supplementary questions arising from the minister's reply may be asked by Members. Mr. Speaker's rulings during question period are not debatable and are not subject to appeal. However, a Member who is not satisfied with the response to an oral question may give notice that he intends to raise the subject matter of the question on the adjournment of the House. The Member gives such notice in writing to Mr. Speaker not later than 4 o'clock on the same day. These matters are then debated for ten minutes; five minutes allotted to the questioner, five minutes allotted to the responding minister at the adjournment of the House each Tuesday. Not more than three matters can be raised on any Tuesday.

Quebec

Any Member may address questions to a Minister to obtain information which he cannot normally acquire by consulting public documents. Any question addressed to a Minister must relate to some affair of public interest within the jurisdiction of the Legislature and of the Government, to some act for which such Minister is responsible to the House or to some intention of such Minister or of the Government as to a legislative or administrative measure. Questions may be written or oral – written

if the answers require research. In the course of routine business, questions of public interest on urgent matters may be asked orally. Every day there is an oral question period lasting 30 minutes. Every answer to a question must be confined to the points of the question, be brief and distinct and contain no argument or expression of opinion. However, a certain latitude shall be permitted to Ministers. Any answer shall be regarded as final.

A Minister to whom a question is addressed may decline to answer:

(*a*) If he considers it against the public interest to give the information sought;

(*b*) If the information can only be gathered through considerable effort, out of proportion with the purpose sought;

(*c*) If the question refers to proceedings in a committee of the House or in an inquiry commission the report of which has not been tabled in the Assembly;

(*d*) If the question has already been asked or refers to a debate which has occurred during the current session;

(*e*) If the question refers to a matter before the courts or a quasi-judicial body. Moreover, a Minister may always decline to answer a question without giving any reason and his refusal cannot be discussed in any way. Furthermore, the Speaker has all the discretion and authority to judge whether a question is receivable or not.

Nova Scotia

Oral questions without notice are permitted on Tuesdays and Thursdays immediately following the routine orders. In the current session of the Assembly the practice of tabling written questions for written answers was resumed on an experimental basis. A decision respecting continuance or abandonment of the practice has not yet been made.

New Brunswick

Oral questions are put without notice and relate to urgent, public affairs. The Minister to whom they are put may answer them forthwith but may also answer either in writing, or orally on a subsequent day or decline to answer. Two supplementary questions only may be asked following an oral reply.

Generally questions are asked in writing on forms supplied by the Clerk. Seven copies of the question must be filed with the Clerk and the Minister must furnish six copies of his answer. If the reply to a question is likely to be lengthy the Speaker may direct that the question stand as a Notice of Motion or, if because of the nature of the question, the reply is likely to be in the form of a Return, the question is converted into an Order for a Return.

British Columbia

On 27th February 1973, a Report of the Select Standing Committee

on Standing Orders and Private Bills was adopted, which Report recommended that a 15-minute oral question period be implemented at the opening of each day's session, except on Fridays.

On 2nd March 1973, on the motion of the Provincial Secretary, it was Ordered:

"That our Orders of the Day be amended by the following sessional Order, namely: That after the word 'Prayers' the following words be inserted: 'Oral Questions by Members' and that Oral Questions by Members be given precedence on the Order Paper over all other business next after 'Introduction of Bills'."

The first Oral Questions Period was held on Monday 5th March 1973, governed by the following Standing Order:

Questions. 47. (1) Questions may be placed on the Order Paper seeking information from the Ministers of the Crown relating to public affairs; and from other members relating to any Bill, motion, or other public matter connected with the business of the House, in which such members may be concerned; but in putting any such question no argument or opinion is to be offered, nor any fact stated. And in answering such question the matter to which the same refers shall not be debated, and the substance of all replies made by Ministers of the Crown to questions put to them shall be in writing and handed to the Clerk of the House, and entered in the Journals of the Session.

Questions to stand as notice. (2) If in the opinion of Mr. Speaker a question on the Order Paper put to a Minister of the Crown is of such a nature as to require a lengthy reply, he may, upon the request of the Government, direct the same to stand as a notice of motion, and to be transferred to its proper place as such upon the Order Paper, the Clerk of the House being authorized to amend the same as to matters of form.

Questions made order for return. (3) If a question is of such a nature that, in the opinion of the Minister who is to furnish the reply, such reply should be in the form of a return, and the Minister states that he has no objection to laying such return upon the table of the House, his statement shall, unless otherwise ordered by the House, be deemed an order of the House to that effect, and the same shall be entered in the Votes and Proceedings as such.

The Speaker does not often intervene on the matter of the urgency or importance of the questions.

Saskatchewan

The Legislature has not yet recognised a formal oral question period in the Rules. Rule 35 sets out procedure on Questions for Written Answer.

However on 27th November 1975 the Speaker made the following statement about an oral question period:

"Within the last few days several points of order have arisen pertaining to the oral question period. I would like to make a statement at this time to clarify the situation for all Members.

I first want to remind all Hon. Members that there is no Saskatchewan Rule which governs or makes provision for an oral question period before Orders of the Day.

A practice of the Assembly has developed over the years that approximately three oral questions with two supplementaries per question are allowed each day before Orders of the Day. I am prepared to allow four oral questions with two supplementaries per question due to the composition of the Assembly.

Although this practice of the Assembly is quite informal, I would remind all Hon. Members that certain guidelines must be followed. It is in order for a Member to ask an oral question regarding any Saskatchewan Crown Corporation or Department of Government. The question is to be brief and to the point without a preamble or speech. The question must relate to an urgent and important matter.

The answer from the Minister must be, in like manner, short and to the point without a speech. The purpose of the oral question period is to have a quick exchange of questions and answers on topics that need to be cleared up before the Assembly begins its other business.

The Minister, in replying to an oral question, has several choices. First, he may give a brief answer. Second, the Minister may ask the Member to submit a written notice of the question. Third, the Minister may take the question as notice and reply to the question at a later sitting of the Assembly. Fourth, the Minister may reply that the information sought is 'not in the public interest'. (*Beauchesne's Parliamentary Rules and Forms*, 4th edition, p. 153). Fifth, the Minister may ask for a written notice and then refer this written question to the Crown Corporations Committee. I wish to stress though, that oral questions pertaining to Crown Corporations are in order in the Assembly and can be answered in the Assembly, if the Minister so wishes. The practice of allowing Members to ask questions in the Assembly on Crown Corporations is important because the question can then pertain to the current operations of the Crown Corporation. The proceedings in the Crown Corporations Committee must pertain to the past year under review and all written questions referred to the Committee by the Assembly. By referring a question on current operations of the Crown Corporation to the Crown Corporations Committee, the Committee is thereby authorized to examine that matter in the current year.

Regarding supplementary questions, two are allowed per oral question. The purpose of a supplementary question is to seek specific clarification of the answer to the main question. The supplementary question must

also be brief and to the point and must seek and not offer information to the Assembly.

It is therefore reasonable that if a Minister replies that he will take the question as notice or asks the Member to submit a written question, a supplementary question would then be out of order. A supplementary question can only be asked if an answer is given.

I have outlined the practices of the Assembly regarding oral questions in some detail so as to try to clarify this matter. I would ask all Hon. Members on both sides of the Assembly to adhere to the these guidelines so that the oral question period can be a productive period of time in the Assembly i.e. a quick exchange of questions and answers."

This was followed on 22nd December 1975 by a resolution to appoint a Special Committee to consider inter alia the advisability of amending the Rules and Procedures of the Assembly to provide for an oral question period similar to that in the House of Commons.

The recommendations of this Committee are not yet available.

Australia: Senate

Questions can be asked of Ministers without notice, or upon notice, at the time set down for the purpose. The time set down for the purpose is after Prayers have been said, Petitions presented, and Notices of Motion given. The Standing Orders prescribe no limit to the duration of questions without notice, though "Question Time" usually lasts between three quarters of an hour and an hour. It has been normal procedure in recent years for the Leader of the Government in the Senate to ask that "further Questions be placed on Notice" if Question Time exceeds one hour. Standing Order 98 reads as follows:

"98. After Notices have been given Questions may be put to Ministers of the Crown relating to public affairs; and to other Senators, relating to any Bill, Motion, or other public matter connected with the business on the Notice Paper, of which such Senators may have charge."

RULES

The following Rules are set out on the "Notice of Question" forms for the guidance of honorable Senators:

"Questions addressed to a Minister should relate to the public affairs with which he is officially connected, to proceedings pending in Parliament, or to any matter of administration for which the Minister is responsible.

Questions addressed to Senators other than Ministers must relate to a Bill, Motion, or other matter connected with the business of the Senate of which such Senators have charge.

The purpose of a question is to obtain and not to supply information; questions, therefore, should ask directly for the information sought.

Questions should not contain—

(1) Statements of facts or names of persons unless they are strictly necessary to render the question intelligible and can be authenticated.
(2) Arguments.
(3) Inferences.
(4) Imputations.
(5) Epithets.
(6) Ironical expressions.
(7) Hypothetical matter.

Questions should not ask—

(1) For an expression of opinion.
(2) For a statement of Government Policy.
(3) For legal opinion.
(4) For information regarding proceedings in a Committee not reported to the Senate.

Questions should not refer to Debates of the current Session.

Discussion, in anticipation, upon an Order of the Day or other matter, by means of a question, is not permitted.

It is not in order to ask whether certain things, such as statements made in a newspaper, are true, but attention may be drawn to such statements if the Senator who puts the question makes himself responsible for their accuracy.

N.B.—Questions, unless they relate to the course of public business or to matters of urgency, should not be asked without notice, but should be placed upon the Notice Paper."

Call from the Chair

It is the practice to give the Leader of the Opposition an opportunity to secure the first call from the Chair when questions without notice have been announced by the President.

Questions to Ministers

Questions may be put to a Minister of the Crown relating to the public affairs with which he is officially connected, to proceedings pending in Parliament, or to any matter of administration for which the Minister is responsible. This is an overriding rule – that a Question must seek for information, or press for action, within a Minister's responsibility. The Chair will disallow any question where it is clear that it is not within a Minister's responsibility. There are occasions, however, when it is difficult for the Chair to decide whether a matter comes within Ministerial responsibility; in such cases, the Minister concerned may decide whether a question comes within his Ministerial responsibility.

Replies

In answering any question, a Senator must not debate the matter to

which the same refers. Questions with or without notice are only permissible for the purpose of obtaining information and answers are subject to exactly the same limitation, that is, they are limited to supplying the information asked for by the questions. Thus an answer should be confined to giving the information asked for, and should not contain any argument or comments. However, where the Senate desires a full statement of a case, latitude is allowed to a Minister in answering a question; but if it is desired to debate the matter, such should only be done on a specific motion.

When given, replies to questions upon notice are handed to the Clerk, in writing, and copies are supplied to the Senator who asked the question. Answers to questions upon notice, which Senators indicate they desire be dealt with orally, are, if leave is granted, read to the Senate by the Ministers to whom such questions are addressed.

Reply Optional

It is a well established rule of procedure that there is no obligation upon a Minister to answer a question. It is entirely discretionary with Ministers as to whether or not they answer questions.

Second Question

When a Minister has given his official reply to a question on notice, he should not be asked for more information, except on further notice, but a question which has been fully replied to cannot be put on the Notice Paper a second time.

Supplementary Questions

During the Presidency of Sir Magnus Cormack (1971–74), supplementary questions were allowed for the first time. The practice has continued under the Presidencies of Senators O'Byrne and Laucke, although there is no Standing Order covering the practice.

The usual procedure is that, if a Senator is unsatisfied with the reply he receives to a question without notice from a Minister, he rises to his feet and states to the President that he wishes to ask a supplementary question, whereupon the President usually allows him to do so. The Chair does not allow a new question – it must only seek clarification of, or elucidation on, the answer to the first question.

Questions not Answered when Parliament Adjourns

In cases where final answers to questions on notice have not been given before Parliament adjourns, arrangements are made by Departments to furnish replies by letter to the Senators or Members concerned.

On the resumption of the next sittings of Parliament, the text of any such reply which has been furnished by letter in the interim is submitted by the appropriate Minister to the Senate or House of Representatives, as the case may be, with a view to its incorporation in *Hansard*.

No Time Limit for Reply

There is no requirement that a Minister must answer a question on notice or without notice at all, nor is there any time limit within which he must answer questions on notice.

Australia: House of Representatives

Questions seeking information are governed by rules contained in standing orders 142 to 153 and, where applicable, May's *Parliamentary Practice:*

Standing orders—

Questions to Ministers.

142. Questions may be put to a Minister relating to public affairs with which he is officially connected, to proceedings pending in the House, or to any matter of administration for which he is responsible.

Questions to other Members.

143. Questions may be put to a Member, not being a Minister or an Assistant Minister, relating to any bill, motion, or other public matter connected with the business of the House, of which the Member has charge.

Rules for questions.

144. The following general rules shall apply to questions:

Questions cannot be debated.

Questions should not contain—

(*a*) statements of facts or names of persons unless they are strictly necessary to render the question intelligible and can be authenticated;
(*b*) arguments;
(*c*) inferences;
(*d*) imputations;
(*e*) epithets;
(*f*) ironical expressions; or
(*g*) hypothetical matter.

Questions should not ask Ministers—

(*a*) for an expression of opinion;
(*b*) to announce the Government's policy, but may seek an explanation regarding the policy of the Government and its application and may ask the Prime Minister whether a Minister's statement in the House represents Government policy; or
(*c*) for legal opinion.

Questions cannot refer to—

(*a*) debates in the current session; or
(*b*) proceedings in committee not reported to the House.

Questions cannot anticipate discussion upon an order of the day or other matter.

Answer to be relevant.

145. An answer shall be relevant to the question.

Question answered.

146. A question fully answered cannot be renewed.

Alteration of question.

147. The Speaker may direct that the language of a question be changed if it seems to him unbecoming or not in conformity with the standing orders of the House.

Notice of question.

148. Notice of question shall be given by a Member delivering the same to the Clerk within such time as, in the opinion of the Speaker, will enable the question to be fairly printed. The question shall be fairly written, signed by the Member, and shall show the day proposed for asking such question.

Order of questions.

149. The Clerk shall place notices of questions on the Notice Paper in the order in which they were received by him.

Replies to questions.

150. The reply to a question on notice shall be given by delivering the same to the Clerk. A copy thereof shall be supplied to the Member who has asked the question, and such question and reply shall be printed in *Hansard*.

Questions without notice. Supplementary questions.

151. Questions may be asked without notice. At the discretion of the Speaker supplementary questions may be asked to elucidate an answer.

Question to Speaker.

152. A question without notice may be put to the Speaker relating to any matter of administration for which he is responsible.

Questions regarding persons.

153. Questions shall not be asked which reflect on or are critical of the character or conduct of those persons whose conduct may only be challenged on a substantive motion, and notice must be given of questions critical of the character or conduct of other persons.

Questions seeking information may be either addressed to Ministers without notice or be placed on notice. At Question Time in the House of Representatives, the only questions addressed to Ministers (and rarely to other Members – see standing order 143 above) are questions without notice, which are addressed orally. The period is called on shortly after the commencement of the sitting, usually extends for approximately 45 minutes, and ends when the Prime Minister requests that further questions be placed on the Notice Paper. The Speaker first calls an Opposition Member and then the call alternates from right to left of the Chair. With

Opposition calls, priority is given to the Leader(s) and Deputy Leader(s) of the Opposition Party(ies). The Speaker keeps a record of the number of calls given to each Member and with the exception of the Opposition Leaders, allocates questions as evenly as possible. In the recent Twenty-eighth and Twenty-ninth Parliaments, when the Liberal Party of Australia and the National Country Party of Australia formed a coalition Opposition, the ratio within Opposition calls was 2 to the Liberal Party to 1 to the Country Party, approximating to the ratio of Party strengths in the House.

Certain rules, peculiar to questions without notice, are applied by the Speaker during Question Time.

(*a*) A question should not in effect be a short speech, or limited to giving information, or framed so as to suggest its own answer or convey a particular point of view. Questions of excessive length are not permitted. The facts on which a question is based may be stated briefly provided the Member asking the question makes himself responsible for their accuracy. Subject to this condition, a Member may direct attention to a statement (e.g., in a newspaper, news report, etc.) but may not ask whether the statement is true and may not quote extracts. Statements not strictly necessary to render a question intelligible should not be included.

(*b*) Lengthy questions seeking detailed answers or which call for the quotation of figures should be placed on the Notice Paper.

(*c*) A Minister cannot be required to answer a question and, within reasonable limits, is entitled to answer a question in such a way as he thinks fit. However, an answer should be relevant to the question and should not develop into a statement. If it is necessary for a long answer to be given, the proper procedure is for the Minister to indicate that at the end of question time he will seek leave to make a statement.

The average annual number of questions without notice over the last 10 years has been 1,081. The average number of questions per sitting at which questions without notice were asked over the last 10 years has been 17. (Question Time occurs at most sittings of the House of Representatives. When for particular reasons Question Time does not occur, the Prime Minister rises when Questions are called on by the Speaker and asks that questions be placed on the Notice Paper. This most commonly occurs on days on which a censure or want of confidence motion is given precedence over other business. Over the last 10 years the House has sat on average for 65 days annually and Question Time has not occurred on average 3 times per year).

Questions placed on notice appear on the Notice Paper for the next available sitting. Questions are to be clearly written or typed, preferably on forms, available to Members, on the back of which are listed the rules governing questions. Questions on notice may be handed to the Clerks at the Table or in their offices or to officers staffing the Table Office, or

may be forwarded to officers of the House with the Member's signature affixed. To enable the questions to be printed on the next day's Notice Paper, the Speaker has determined that questions should, in normal circumstances, be lodged by 5.30 p.m. In the case of a Friday sitting where the House adjourns to the following week, this close-down time is advanced to 2.15 p.m.

The questions continue to appear on the Notice Paper, retaining the same question numbers, until such time as written replies are received by the Clerk. One copy of the reply is immediately handed or forwarded to the Member who asked the question, one copy is supplied to the Reporting Staff for inclusion in *Hansard*, and copies are forwarded to the Parliamentary Press Gallery. For ready identification, the question number is also cited in *Hansard*. Neither the question nor the answer is actually read in the House.

While under the standing orders questions without notice may be put to the Speaker relating to any matter of administration for which he is responsible, it is not the practice of the House to permit questions on notice to be put to the Speaker. In some circumstances, questions on notice which come within the jurisdiction of the Speaker may be addressed to the Prime Minister or the Leader of the House.

There is much greater opportunity for questions submitted in written form to be examined closely for conformity with the rules regarding questions. This is done by the Clerks, who re-address questions to Ministers where appropriate and edit where necessary to eliminate unnecessary wording and put questions into proper interrogative form. The Clerks often consult the Member and, where required, matters may be referred to the Speaker for decision.

The average annual number of questions on notice over the last 10 years has been 1,605. The average number of questions placed on notice per sitting over the last 10 years has been 25. The number of questions answered fluctuates widely on sitting days, varying from none answered to well in excess of 200 answered. *Hansard* pages containing answers for any one sitting have reached 400. The average number of *Hansard* pages containing answers is 10 per sitting day.

New South Wales: Legislative Council

Legislative Council Standing Orders Nos 29 to 32A (set out below), provide for questions on notice and without notice:

29. Questions may be put to Ministers of the Crown relating to public affairs; and to other Members, relating to any Bill, Motion, or other public matter connected with the business of the House, in which such Members may be concerned, and the Clerk shall enter upon the Minutes of Proceedings the Questions of which formal notice shall have been given, with the answers returned to the same.

30. In putting any such Question, no argument or opinion shall be

offered, nor any facts stated, except so far as may be necessary to explain such Question.

31. In answering any such Question, a Member shall not debate the matter to which the same refers.

32. Questions put without notice are subject to the same rules as Questions upon notice, but neither the Question nor reply shall be recorded in the minutes of Proceedings.

32A. Notices of Questions shall not be openly read, but shall be handed to one of the Clerks at the Table during the sitting of the House, duly signed, and specifying thereon the date on which answers thereto are desired. Such answers need not be read, but shall be tabled and appear in the Minutes of Proceedings.

After the commencement of proceedings each sitting day, when formal business has been disposed of, the President calls for Papers, Petitions, Notices of Motions, and Questions in that order. It is irregular to ask a question after the House has proceeded to Orders of the Day. Questions may be addressed to the two Ministers in the Council in regard to matters coming within the administration of their respective portfolios. Questions on matters of Government policy and in relation to matters within the responsibility of the other sixteen Ministers who are members of the Legislative Assembly, are answered by the Minister designated as the Leader of the Government in the Legislative Council.

There are no Legislative Council Standing or Sessional Orders limiting the time which may be taken up by questions each sitting day but rarely does this time exceed 30 minutes. In selecting a Member from those who rise to ask questions, the Chair usually gives precedence to the Leader of the Opposition and thereafter endeavours to alternate between Government and Opposition Members. Standing Orders 30 and 31 place restrictions on the content of questions and the nature of answers. Presidents have ruled that Ministers may answer questions in their own way and that Ministers may refuse to answer a question. It is out of order to ask a question concerning a Bill to be dealt with at a later stage by the House. Detailed answers are often deferred until a subsequent sitting and then usually given after the cessation of questions asked without notice. On such occasions the leave of the House is often sought, and given, to include a lengthy answer in Hansard, to save the time of the House.

It has been ruled by the Chair that questions without notice which are of a lengthy or involved nature, or which necessitate a lengthy reply, and which are outside the immediate knowledge of Ministers, should be placed on the Notice Paper.

Questions on notice are handed to one of the Clerks at the Table (as required by Standing Order 32A) and until answered are then printed at the head of the daily Notice Paper for subsequent sittings. When an answer is supplied, the Question and Answer are printed and copies are made available to Members in the Chamber. The Question is also printed

in the Minutes of Proceedings of the Council (see Standing Orders 29 and 32A).

No record is made in the Minutes of Proceedings of questions without notice; these are contained in the record of parliamentary debates.

Questions remaining on the Notice Paper lapse on prorogation but notice may be given again in the following session. The specification of a date upon which an answer is desired to a question on notice is not observed in practice (Standing Order 32A). The Chair has ruled that matters affecting the character of a person should not be the subject of a question but should be dealt with by way of a motion, which may be debated. In accordance with Standing Order 29, questions have been asked of a Chairman (other than a Minister), in relation to a Select Committee, and also of a Member in relation to an industry in which he was involved.

New South Wales: Legislative Assembly

Members of the Legislative Assembly of New South Wales have two avenues open to them for asking questions of Ministers:

(1) *Questions without Notice*

Standing Order 79 provides for a "Question Time" of 45 minutes on each sitting day. Pursuant to Standing Order 74 Questions are taken after presentation of petitions, notice of motions and presentation of papers. Neither the question nor the reply are entered in the Votes and Proceedings and supplementary questions are not allowable. Questions must not contain argument or opinion and should only reveal facts sufficient to explain the question. Ministers may on subsequent sitting days, with the leave of the House, table additional information concerning a question without notice asked at a previous sitting and this material is then incorporated in Hansard.

Proceedings of the Legislative Assembly over many years have established practices concerning questions. Questions without Notice must be short and uninvolved and Ministers should restrict their replies. In effect these questions should not be a short speech. Questions should not ask for legal opinions, be hypothetical or request confirmation of rumours or press reports.

(2) *Questions on Notice*

Pursuant to Standing Orders a Questions and Answers Paper is printed on each sitting day. Members are entitled to forward to the Clerks-at-the-Table, before Formal Business is finally dealt with, any question which they desire to have printed on this Question Paper. The Clerks check that the Question asked is in order. Questions addressed to Ministers should relate to public affairs with which they are officially connected; to proceedings in Parliament; or to any matter of administration for which the Minister is responsible. The same restrictions apply to Questions on Notice as apply to Questions without Notice. The major difference is that the Question Paper allows Mem-

bers to ask more detailed technical and statistical questions which would normally require detailed Departmental investigation before a Minister can give a satisfactory answer.

Queensland

Rules for Questions to Members are laid down partly in the Standing Orders and partly by Sessional Orders. The Standing Orders are:

"S.O. 68

At the time appointed for giving Notices of Motion a Member may put any question of which Notice has been given to any other Member of the House relating to any Bill, Motion, or other public matter connected with the Business of the House.

S.O. 69

In putting a Question, no argument or opinion shall be offered, or any fact stated, except so far as is necessary to explain the Question.

S.O. 70

In answering a Question, a Member shall not Debate the matter to which the Question refers."

Standing Order 333 provides that in all cases not specifically provided for in the Standing Rules and Orders, or by Sessional or other Orders, resort shall be had to the Rules, Forms and Usages of the House of Commons. By Sessional Order agreed to by the House at the commencement of each Session, Questions may be asked without notice being given. The period allotted each day for the asking of Questions upon notice and without notice and for the answering of Questions shall not exceed one hour. Members are restricted to asking three Questions each day without, or upon, notice. One supplementary question is permissible, but it is regarded as one of the three allowable Questions. Question time commences after the tabling of Ministerial Papers and the giving of Notices of Motion and formal motions. On days allotted for "Address in Reply" and "Supply", Question time is terminated at noon by Mr. Speaker. The House meets at 11 a.m.

Questions are almost invariably answered the next day; however, Questions on the Notice Paper not answered within the hour are placed on the paper for the next sitting day. The number of Questions asked each day is governed by the balance of time which remains after Answers have been given to the previous day's Questions. Questions are read aloud and Answers are given orally. Very lengthy or complicated statistical Answers may be tabled by leave and incorporated in *Hansard.*

Since 1863, Questions on Notice and the Answers thereto, were printed in the Votes and Proceedings. However, due to the ever-increasing volume of Questions being asked, this practice was discontinued at the commencement of the Session, which commenced on 19th August, 1975. They are still printed, together with Questions without Notice, in *Hansard.*

South Australia: Legislative Council

Chapter XII relates to the Giving of Notices of Question or of Motion

and those Standing Orders dealing with Questions on notice are set out hereunder:

"98. Notice of Question or of Motion shall be given at the time of giving Notices, unless otherwise provided, by a Member reading it aloud and delivering at the Table a copy thereof fairly written, signed by himself and showing the day proposed for bringing on such question or motion.

99. No Notice of a question addressed to the President shall be given for entry on the Notice Paper.

100. A Member may give Notice for another Member not then present by putting the name of such Member upon the Notice in addition to his own.

101. A Member desiring to change the day for bringing on a question or motion, may give fresh Notice for any day subsequent to that first named.

102. After a Notice has been given, the terms thereof may be altered by the Member reading aloud and delivering at the Table, at the usual time of giving Notices, an amended Notice, any day prior to that appointed for proceeding with the question or motion; but such amended Notice must not exceed the scope of the original Notice.

103. No Notice shall be received after the Council shall have proceeded to the Business of the Day.

104. If any Notice contains unbecoming expressions or offends against any Standing or other Order of the Council, the President shall amend the same or order that it be not printed; or it may be expunged from the Notice Paper by order of the Council.

Current practice accords with the above rules. Notice of the question is recorded at the end of the Minutes of Proceedings for the day on which such notice is given but the reply given is not recorded in the Minutes but is recorded in Hansard on the day on which the reply is given.

The Minister reads aloud the answer to the question, which is listed as the first item of Business and a written copy of the reply is handed to the questioner. Complicated or lengthy questions asked without notice are often required by Ministers to be placed on notice but by far the greater number of questions asked are without notice.

South Australia: House of Assembly

Rules governing parliamentary questions to Ministers are set out in Standing Orders Nos. 123–130.

In practice the question time of one hour is allowed for questions without notice each sitting day, soon after the House sits. A Member must ask the specific question and, by leave, may then explain briefly the purpose of the question. No argument or comment is allowed in the explanation and the call of "question" by any Member terminates the leave. The appropriate Minister may then reply to the question but if he has not the information sought or the question should be more

properly answered by a colleague in the Legislative Council, he will offer to bring down a reply as soon as possible.

Subsequently replies are forwarded to the Clerk and at the commencement of the next sitting the Speaker directs that a copy be supplied to the Member and the answer printed in *Hansard*. Thus replies to questions earlier asked are dealt with in a few seconds prior to question time. Questions supplementary to the reply are allowed in the normal process and form of questioning.

Questions on notice are delivered, in writing, to the Clerk Assistant at least two hours before the sitting of the House and by practice are answered on the following Tuesday. Replies are in writing and the procedure followed is identical to that for questions without notice previously asked but not then answered.

Tasmania: Legislative Council

Question procedure is prescribed by Standing Orders Nos. 84, 85 and 86 as follows:

"Question to Minister or Private Member. 84. A Member may put any Question, of which Notice has been given, to a Minister of the Crown, relating to public affairs; and to other Members relating to any Bill, Motion, or other public matter connected with the business of the Council in which such Members may be concerned.

"No Debate on Putting Question. 85. In putting any such Question, no argument or opinion shall be offered, nor inferences or imputations made, nor any fact stated, except so far as may be necessary to explain such Question.

"Nor on Answering. 86. In answering any such Question, the matter to which the Question refers shall not be debated."

Time allocated for Notices of Question is given in accordance with Standing Order No. 47 which is stated below:

"Order of Business. 47. The Council, unless otherwise ordered, shall proceed with business each day in the following order:

1. Presentation of Petitions.
2. Giving Notices of Question and Notices of Motion.
3. (*a*) Answering Questions; (*b*) Tabling Papers; (*c*) Motions and Orders of the Day, in the order in which they are set down on the Notice Paper."

There are usually only one or two Ministers in the Legislative Council and so Questions are almost always asked of the Leader for the Government in the Council, who may or may not be a Minister. In the previous Parliament the Leader for the Government was an Independent and not a member of the Government party, which had no representation in the Council.

It is usual for Questions to be answered by the Leader for the Government in the Council on the Tuesday following the week in which they

were put down. Questions asked of Private Members or of the President are extremely rare.

Tasmania: House of Assembly

Standing Orders provide as follows:

"Questions Seeking Information

85. Before the Orders of the Day or Motions are called on, Questions may be put to Ministers of the Crown relating to public affairs, and to other Members relating to any Bill, Motion, or other public matter connected with the business of the House, in which such Members may be concerned, but a Minister or other Member may decline to answer a Question except upon Notice given for a subsequent day.

86. In putting any such question no argument or opinion shall be offered, nor inferences or imputations made, nor any facts stated, except so far as may be necessary to explain such Question.

87. In answering any such Question a Member shall not Debate the matter to which the same refers.

88. When Notices of such Questions are given, the Clerk of the House shall place them at the commencement of the Notice Paper, and the reply when given shall be handed to him in writing for entry in the Journals."

The procedure of the Westminster House of Commons as described in May's *Parliamentary Practice* is followed closely. Most Questions are asked on Notice, and answered on Tuesday evenings, at the beginning of the Parliamentary week. Since Tasmania does not yet have a Hansard service, Members tend to ask more Questions on Notice, in order that the reply may be recorded. All Notices of Question are examined at the Table in order to ensure that none is placed on the Notice Paper which is defective in form or content. The Chair does not allow any matter of argument to be introduced into a Question, since the view is taken that in a small Chamber there are many opportunities for speeches to be made, for example, on the question "That the House do now adjourn".

Victoria: Legislative Assembly

Standing Orders Nos. 121–127 inclusive provide for both written and oral questions. Questions for which a written answer is desired are handed in at the Table and are printed on the Notice Paper. A reply is given by delivering the same to the Clerk at the Table and a copy of this reply is handed to the Member concerned and is also incorporated in *Hansard*. Oral questions are asked during a thirty minute period immediately following the Prayer. Supplementary questions, either written or oral, are permitted in respect of answers to any questions. Normally, the average number of new written questions appearing on the Notice Paper each day is thirty and there is an average of twenty oral questions asked each sitting day. The rules applicable to the form and content of

both oral and written questions are as detailed in *May*, 18th Edition.

Western Australia: Legislative Council

The procedure in the Legislative Council is for a member to give notice of a question seeking information by presenting his draft to the Table Clerk who checks to ensure that it is admissible. Reference is made to *May* where there is any doubt. The notice is then typed and the member stands in his place and reads the notice to the House prefacing his question with: "Mr. President, I desire to give notice that at the next (or some subsequent) sitting of the House, I will ask the Minister for . . . the following question."

Questions appear on the Notice Paper in the order that they are given to the Table, and, together with the replies, are printed in the Minutes of Proceedings and also in *Hansard*.

At the moment a report is being prepared by the Standing Orders Committee embracing several amendments for consideration by the House and one proposal is to list in the Standing Orders certain rules in regard to questions indicating what they should not contain, and not ask.

Western Australia: Legislative Assembly

In the Legislative Assembly of the Parliament of Western Australia questions on notice are asked of Ministers each day. Broadly speaking the restrictions on the types of questions that are considered inadmissible are as laid down in "Erskine May – Parliamentary Practice". Questions are handed in to the Clerk daily and close half an hour after the House sits. They are then printed on the Notice Paper for the next sitting day. The next day Ministers answer the questions, which can mean that a period of less than 24 hours has expired from the time notice has been given of the question to the Minister supplying the answer.

Questions in the Legislative Assembly have grown in number substantially in recent years. They usually average about 50 to 60 per day and have been known to exceed 100 in total.

In addition to questions on notice the Speaker has discretionary powers to allow questions without notice following the normal question time. Questions without notice present some problems because, as they are asked virtually "off the cuff", the Speaker has not been given the opportunity, as with questions on notice, to ensure that they conform to the standards laid down in "Erskine May" and the practices and standing orders of the Legislative Assembly.

Northern Territory

Questions on notice may be addressed to the Majority Leader or any of the Members designated by the Majority Leader as Executive Members but they must relate to public affairs for which the Member to whom the question is addressed accepts responsibility, to proceedings

pending in the Assembly or to any matter of administration for which the Member accepts responsibility. Members not being Executive Members may also have questions addressed to them relating to any bill, motion or other public matter connected with the business of the Assembly of which the Member has charge.

The general rules applying to the content of questions asked in the Assembly are very similar to those used in other Australian parliaments, with the Speaker having the power to direct the changing of the language of a question should it be considered unbecoming, or not in conformity with standing orders. The Clerk has notices of questions placed on the Question Paper in the order in which they are received. The answers to questions are directed through the Clerk who is responsible for passing a copy to the originating Member and publishing the answer in the Question Paper. Questions on notice must be clearly written, signed by the Member and must show the day proposed for asking such questions. Generally the questions must be in the hands of the Clerk or his deputy at least twenty-four hours before the day on which they are to appear on the Question Paper.

A time is set aside each sitting day for the asking of questions without notice. In former years it was necessary to limit question time to 30 minutes but with only two independent Members now forming the opposition, question time rarely exceeds a reasonable period. Questions may be put to the Speaker at question time on matters of administration for which he is responsible. Questions without notice are published in a section of the Question Paper.

The Question Paper is published as a separate document, daily if need be; but if new questions are not put on notice or answers provided daily, then as often as is necessary. At the end of each sitting all the question papers are combined into a single document showing the questions on notice unanswered together with the dates on which they were asked, the questions answered and the questions asked without notice. All questions are numbered and indexed and the combined Question Paper for the sittings printed as part of the "Record of the Sittings". As far as is known the Record of the Sittings is a document unique to this legislature in Australia. It contains The Debates being the *Hansard* record, The Question Paper, The Minutes of Proceedings and The Bills Introduced. Should the amount of material be too great for binding in one volume then it is divided into separate volumes for each week of the sittings.

India: Rajya Sabha

Procedure with regard to questions is very similar to that in Lok Sabha (see below). Members are, however, allowed to ask three oral questions per day compared with only one each in the lower House.

India: Lok Sabha

The first hour of a sitting of Lok Sabha is devoted to questions and is

called the Question Hour. A question may be asked mainly to seek information and elicit facts on a particular subject within the special cognizance of the Minister to whom it is addressed.

There are three types of questions asked of the Ministers in the House, namely, Starred, Unstarred and Short Notice Questions. A Starred Question is one to which a Member desires an oral answer in the House and which is distinguished by an asterisk mark. An Unstarred Question is one which is not called for oral answer in the House and on which no supplementary questions can consequently be asked. To such a question, a written answer is deemed to have been laid on the Table by the Minister to whom it is addressed. It is printed in the Official Report of the sitting of the House for which it is put down. A Short Notice Question is one which relates to a matter of urgent public importance and can be asked with shorter notice than the period of notice prescribed for an ordinary question. A Member has to give notice in writing addressed to the Secretary-General Lok Sabha, intimating his intention to ask a question. Besides the text of the question, the notice states clearly the official designation of the Minister to whom the question is addressed as also the date on which the question is desired to be placed on the list of questions for answer. For questions other than Short Notice Questions the period of notice is not more than twenty-one and not less than ten clear days. For Short Notice Questions there is no such time limit for giving notice.

When a Short Notice Question is to be admitted an enquiry in writing is made from the Minister concerned as to whether he accepts short notice and if so on what date it will be convenient for him to answer the question. If the Minister accepts the short notice, it is put down for a convenient date for answer and is taken up after the questions for oral answers are disposed of on that date. Normally not more than one Short Notice Question is put on the list on any one day. If the Minister is unable to answer the question at short notice and the Speaker is of opinion that the question is of sufficient public importance to be orally answered in the House, he may direct that the question be placed as the first question on the list of questions for the day on which it would be due for answer.

Provided that not more than one such question shall be accorded first priority on the list of questions for any one day.

A question is primarily asked for the purpose of obtaining information on a matter of public importance. Questions that contain arguments, inferences or defamatory statements or otherwise refer to the character or conduct of any person except in his official or public capacity are not admitted. Questions which are in substance repetitions of those that have been answered previously or in regard to which information is available in accessible documents or in ordinary works of reference are also not admitted. Besides, if the subject matter of a question is pending for judgement before any court of law or any other tribunal or body set up under law or is under consideration before a Parliamentary Committee,

the same is not permitted to be asked. Questions making discourteous references to foreign countries with whom India has friendly relations are disallowed. Similarly, questions raising larger issues of policy are not allowed for it is not possible to enunciate policies within the compass of an answer to a question. The admissibility of a question is governed by the provisions of Rule 41 of Rules of Procedure and Conduct of Business in Lok Sabha set out on p. 137. The Speaker of Lok Sahba is the final authority to decide about the admissibility or otherwise of a question.

Usually the following types of questions are admitted for written answer and not for oral answer.

(*a*) Questions asking for information of a statistical nature;

(*b*) Questions going into details; where it is obvious that the reply will be long, e.g. questions about resolutions of a conference or recommendations of an expert committee and action taken thereon etc.;

(*c*) Questions which raise only matters of local interest, e.g. the opening of a level crossing, flag station or public call offices;

(*d*) Questions relating to representation in the Services of communities protected under the Constitution such as Scheduled Castes and Scheduled Tribes, in which no question of policy is involved for elucidation on the floor of the House;

(*e*) Questions relating to administrative details, e.g. the strength of staff in a Government Office or Department;

(*f*) Questions on which prima facie there could be no scope for supplementaries, such as when matters are under correspondence or diplomatic negotiations or sub-judice;

(*g*) Questions asking for statements to be laid on the Table; and

(*h*) Questions of interest only to a limited section of people, e.g. provision of creches in mines or rest houses for ticket examiners on railways etc.

This list is, however, not exhaustive but only illustrative of the types of questions which may be admitted for written answer. The Speaker can in his discretion admit a question for written answer for any other reason.

For the purpose of answering questions the various Ministries are divided into five Groups of Ministries and fixed days are allotted to Groups of Ministries during the week. There is no Question Hour on Saturday, if a sitting is fixed for that day. Separate lists of admitted questions for oral and written answer are prepared. Not more than five questions are admitted in the name of a Member for each sitting of which not more than one is put down for oral answer. Normally not more than twenty questions are placed on the Lists of Question for oral answer and not more than two hundred questions are placed on the Lists of Questions for written answer on any one day.

Conditions of admissibility of questions.

41. (1) Subject to the provisions of sub-rule (2), a question may be asked for the purpose of obtaining information on a matter of public importance within the special cognizance of the Minister to whom it is addressed.

(2) The right to ask a question is governed by the following conditions, namely:

(i) it shall not bring in any name or statement not strictly necessary to make the question intelligible;

(ii) if it contains a statement the member shall make himself responsible for the accuracy of the statement;

(iii) it shall not contain arguments, inferences, ironical expressions, imputations, epithets or defamatory statements;

(vi) it shall not ask for an expression of opinion or the solution of an abstract legal question or of a hypothetical proposition;

(v) it shall not ask as to the character or conduct of any person except in his official or public capacity;

(vi) it shall not ordinarily exceed 150 words;

(vii) it shall not relate to a matter which is not primarily the concern of the Government of India;

(viii) it shall not ask about proceedings in a Committee which have not been placed before the House by a report from the Committee;

(ix) it shall not reflect on the character or conduct of any person whose conduct can only be challenged on a substantive motion;

(x) it shall not make or imply a charge of a personal character;

(xi) it shall not raise questions of policy too large to be dealt with within the limits of an answer to a question;

(xii) it shall not repeat in substance questions already answered or to which an answer has been refused;

(xiii) it shall not ask for information on trivial matters;

(xiv) it shall not ordinarily ask for information on matters of past history;

(xv) it shall not ask for information set forth in accessible documents or in ordinary works of reference;

(xvi) it shall not raise matters under the control of bodies or persons not primarily responsible to the Government of India;

(xvii) it shall not ask for information on a matter which is under adjudication by a court of law having jurisdiction in any part of India;

(xviii) it shall not relate to a matter with which a Minister is not officially connected;

(xix) it shall not refer discourteously to a friendly foreign country;

(xx) it shall not ask for information regarding Cabinet discussion, or advice given to the President in relation to any matter in respect of which there is a constitutional, statutory or conventional obligation not to disclose information;

(xxi) it shall not ordinarily ask for information on matters which are under consideration of a Parliamentary Committee; and

(xxii) it shall not ordinarily ask about matters pending before any statutory tribunal or statutory authority performing any judicial or quasi-judicial functions or any commission or court of enquiry appointed to enquire into, or investigate, any matter but may refer to matters concerned with procedure or subject or stage of enquiry, if it is not likely to prejudice the consideration of the matter by the tribunal or commission of court of enquiry.

Bihar

The rules are broadly those governing questions in Lok Sabha. The first hour of each day's business is available for questions, which are of three types, Starred, Unstarred and Short Notice Questions.

Gujarat

The Legislative Assembly Rules follow those in Lok Sabha. Three oral questions by each member are allowed on any one day. A question may be addressed to a private member for the purpose of obtaining information on a matter relating to a Bill or a motion of which such member has given notice.

Haryana

The practice with regard to the number of Starred Questions and their order of priority appears to be changing. Standing Order 44 indicates that no Member may ask more than three oral questions on one day with no limit on the number in each session and that the order in which they are placed on the Order Paper is determined by the priority of their receipt by the Secretariat. However the Speaker has issued a direction as follows:

"Not more than twenty starred questions in all and not more than two starred questions of any one Member shall be placed for oral answer on the list of questions for a day. Questions in the name of a Member in the list of questions for oral answer on a day shall be printed in two rounds or less according to the number of questions admitted. Thus, all Members who have questions in the list of any day

shall have one question each entered in the first round and after completing all the Members on the list, their second question, if any, shall be appropriately placed in the second round. Priority of questions inter-se shall be determined according to the time and date of receipt of the notices."

Otherwise the practice is similar to that found elsewhere in India.

Karnataka

Procedure on questions is similar to that followed in Lok Sabha. However, a member is allowed to table only ten Starred Questions for oral answer in any one session.

Punjab: Vidhan Sabha

Fifteen clear days notice is required of questions. Members are entitled to ask two oral questions and four questions for written answer on each day. Five supplementary questions only may be asked following an oral answer. The rules as to content and admissibility of questions are similar to those in Lok Sabha.

Rajasthan

Rules are similar to those in Lok Sabha.

Tamil Nadu: Legislative Council

The Standing Orders provide for questions; and procedure is broadly the same as elsewhere in India.

Tamil Nadu: Legislative Assembly

Rules Nos. 28 to 40 of the Tamil Nadu Legislative Assembly Rules govern the admission of and the answering of questions in the State Legislative Assembly. These are broadly the same as in Lok Sabha.

Members may table notices of questions on non-session days. Copies of admitted questions are communicated to the Departments of Secretariat as, and when, they are admitted by the Speaker.

On receipt of answers from the Departments of the Secretariat, the questions are included in the Order Paper for answering. The number of questions to be included in the list of questions for each day is determined by the Speaker.

Answers to unstarred questions received in the Department are placed on the Table of the Assembly from time to time during the course of the meetings of the Assembly.

Uttar Pradesh

Two Starred Questions for oral answer is the maximum a member may ask each day. In other respects the rules governing questions are similar to those described above.

Malaysia

Standing Order 21 of the House of Representatives provides as follows:

(1) Questions may be put to Ministers relating to:
  (*a*) affairs within their official functions; or
  (*b*) a Bill, motion or other public matter connected with the business of the House for which such Minister is responsible.

(2) Questions may also be put to members other than Ministers, relating to a Bill, motion or other public matter connected with the business of the House for which such members are responsible.

(3) The proper object of a question is to obtain information on a matter of fact within the special cognisance of the member to whom it is addressed.

Sabah

Questions may be put to Ministers and to other Members in connection with matters connected with the business of the Assembly for which such Members may be responsible. Oral questions are marked with an asterisk and seven days' notice is required for them. The Rules as to content of Questions and the manner of asking them are similar to those elsewhere in the Commonwealth.

Sarawak

Question time is restricted to one hour. Any oral question not reached in that time is given a written answer. Members are allowed to ask three oral questions at each sitting. The Rules as to content and the manner of asking questions are broadly the same as in Sabah.

Tanzania

Up to four oral questions may be asked by each member at any meeting of the Assembly except during the Budget session. Four days' notice is required of all questions. Question time is limited to one hour and the Speaker has power to limit the number of questions on the Order Paper to what he considers can be answered in the time available. Other questions are postponed to a later date. The rules as to content of questions are generally the same as those at Westminster.

Malawi

Questions from Members are forwarded to the Clerk of Parliament for editing and forwarding to various Ministries for answers. Six clear days notice is usually allowed between the time the questions have been

sent to Ministries for answers and date the questions are to be asked in Parliament.

Malta

Question time is limited to one hour and procedure closely follows that in the House of Commons at Westminster. Members are allowed to ask up to six oral questions on any day.

Zambia

The Rules governing Parliamentary Questions to Ministers are set out in Standing Orders 27 and 28. Standing Order 27 states that:

"(1) Questions shall be put only to Ministers and then only relative to public affairs with which they are officially connected, proceedings pending in the Assembly, or any matter of administration for which they are responsible.

(2) Notice of every question shall be given except those under Standing Order twenty-eight.

(3) In giving notice of a question a Member shall deliver at the Table, or to the office of the Clerk before 1100 hours, a copy of such notice, fair written, subscribed with his name indicating whether an oral or a written answer is required. Such notice shall not be read to the House.

(4) Replies to oral questions submitted by Members shall be given by Ministers within fourteen days from the date of receipt of questions in the Clerk's office.

Standing Order 28 states that:

(1) Questions which have not appeared on the Order Paper but which are, in Mr. Speaker's opinion, of an urgent character and relate either to matters of public importance or to the arrangement of business may, with leave of Mr. Speaker, be asked without notice on any day.

(2) Such a question shall be delivered in writing to Mr. Speaker before 0930 hours on the day on which a Member desires to ask it if that is Tuesday, Wednesday or Thursday and before 0830 hours of the day on which the Member desires to ask it if that day is Friday.

(3) Private notice questions must conform to the ordinary rules governing questions.

Members are free to ask supplementary questions on matters arising from the Minister's reply to a Question for oral answer.

In accordance with Standing Order 22 (f), Questions to Ministers are taken immediately after Private business, if any, has been disposed of by the House.

Guyana

Standing Orders No. 15–18 govern the nature, content and manner

of asking Questions in the National Assembly. Questions may not be asked without notice save in urgent circumstances or in relation to the business of the Day. As far as the content of Questions is concerned, the rules are similar to those elsewhere in the Commonwealth. Members are allowed a maximum of three oral questions per day and no question may be asked after 2.45 p.m. Questions for Written Answer are allowed and an oral question not reached is treated as such, unless the Member has postponed it to a later sitting or withdrawn it.

Barbados

The rules relating to questions are very similar to those in Guyana but there is a limit on the number of supplementary questions any member may ask following a reply, namely three. Question time runs from 2.45 p.m. to 3.15 p.m.; in certain circumstances questions may be taken after 3.15 p.m. Questions for Written Answer are allowed.

Mauritius

The practice is similar to that at Westminster.

Bermuda

The Rules of the House of Assembly pertaining to Parliamentary Questions are set out in Rule 11. The rules governing the form and content of questions are similar to those which apply at Westminster, and as at Westminster the Speaker's responsibility in regard to questions is limited to their compliance with the Rules of the House.

Written notices of questions are usually handed in to the Clerk between 10.00 a.m. and 12.00 noon on a Friday (which is the normal sitting day of the House when Parliament is in session) for answer the following Friday. Notices of questions are rarely transmitted by post.

A Member who desires an oral answer to his question must mark it with an asterisk and questions not disposed of orally are answered in writing, such answers being incorporated in the Minutes.

The number of questions for oral answer which may be asked by a Member on the same day is limited to three. A Member asking a question, or any other Member, is allowed to ask supplementary questions arising out of the answer received. A Minister is not bound to answer a question but unless there are obvious reasons for not doing so, a refusal to answer a question would create a most unfavourable impression.

Questions addressed to a Minister may be answered by another Minister or by a Parliamentary Secretary. Misdirected questions may be transferred by the Clerk.

The number of parliamentary questions put down by Members of the House during a session is relatively small. The Clerk vets each question which is required to be submitted to the Speaker for his approval.

The pressure of parliamentary business has not yet reached the stage when question time in the House has had to be made subject to a time

limit. Moreover, there is no requirement that notice of a question cannot be in advance of a prescribed number of days.

Belize

Questions may not be asked without notice, save in the usual circumstances found throughout the Commonwealth. Oral questions require five days' notice. The rules relating to content of questions are similar to those elsewhere. Members are limited to three oral questions on any one day. Any in excess of this number or any not answered within the question period are answered in writing.

Gibraltar

Five days' notice of questions is required. If any question remains unanswered when the Assembly adjourns on the last day of a session, a written answer is sent to the Member. As far as content is concerned, the rules of the Assembly are very similar to those elsewhere in the Commonwealth.

Western Samoa

Except in the case of questions which, in the opinion of Mr. Speaker, are of an urgent character, all questions must be asked with three days' notice. These are answered on Thursdays only. All questions and replies are in written form. Supplementary questions may be asked without notice for further elucidation.

Standing Order 33 provides for questions to conform to rules similar to those elsewhere in the Commonwealth.

Cook Islands

The rules as to content of questions and to whom they may be addressed are similar to those elsewhere. Four days' (exclusive of those when the Assembly is not sitting) notice is required for questions save those of an urgent character. It appears that all questions are answered orally on Thursdays. Supplementary questions may be asked.

St. Vincent

Questions are governed by Standing Orders 19 (Contents of Question) and 20 (Manner of asking and answering Questions) which are similar to those elsewhere in the Commonwealth. Members are allowed to ask three oral questions and four questions for written reply on any one day.

Fiji: Senate

Questions may be put to Ministers and to other Senators, relating to business of the House for which such Senators are responsible. Questions require seven days' notice, save those of an urgent character which are covered by rules similar to those elsewhere. Question time is limited to

one hour and any oral questions not answered in that period are given written answers.

Fiji: House of Representatives

A Member who is not a Minister may address a question to the Government relating to a public matter for which the Government is officially responsible, in which he seeks information on that matter or asks for official action. These questions shall be designated either for oral answer in the House or for written answer.

Cayman Islands

Current practice is similar to that of the House of Commons. However, during the November sitting Members were restricted from asking questions dealing with limited liability companies, etc. (such as Cayman Airways Ltd, a local airline in which the Government is a majority shareholder).

XV. APPLICATIONS OF PRIVILEGE

At Westminster

House of Commons (Complaint concerning a resolution of the Area Council of a Trade Union).—On 27th June 1975 the House referred to the Committee of Privileges a complaint by Mr. George Cunningham, the Labour Member for Islington South and Finsbury, about words alleged to have been spoken by Mr. Arthur Scargill the President of the Yorkshire Area of the National Union of Mineworkers and about a resolution of the Yorkshire Area Council of that Union.

The Resolution complained of was in the following terms:—

"That we can no longer tolerate the position where a 'sponsored' M.P. can oppose his Union's policy on major issues.

Therefore it is agreed that the following guidelines shall apply to M.P.'s sponsored by the Yorkshire Area.

1. No Miners' M.P. shall vote or speak against Union policy on any issue which affects the Coal Mining industry.
2. No Miners' M.P. shall actively campaign or work against the Union policy on any other major issue.
3. If any Miners' M.P. refuses to agree to the 'guidelines' or violates these guidelines the Area Council shall withdraw sponsorship from that M.P.

We wish to make it clear that the Yorkshire Area will no longer tolerate a situation where a Miners' M.P. accepts the 'Privilege' of sponsorship and then demands the 'Luxury' of independence from Union policy."

Mr. Scargill explained in a letter to the Committee of Privileges that in response to a question at a Press Conference following the meeting of the Area Council he had made the following statement:—

"The miners who sponsor a candidate are entitled to claim the right to tell him he must not act or vote against Union policy on issues which affect the coalmining industry."

The Committee were given an explanation of the circumstances in which the resolution came to be passed but having considered it they concluded that the Area Council "may not have been aware of the distinction between the acceptable and the unacceptable exercise of a sponsorship agreement as it affects the freedom of Members of Parliament". The Committee referred to the case of Mr. W. J. Brown in 1947. In that case, the House agreed with the Report of the Committee of Privileges which had recognised the arrangements that existed between some Members and Associations of constituents or other outside bodies involving the giving of financial assistance to Members. The Committee in 1947 however went on to say—"What, on the other hand, an outside body is certainly not entitled to do is to use the agreement or the payment as an instrument by which it controls or seeks to control the conduct of a Member or to punish him for what he has done as a Member."

In the circumstances the Committee of Privileges were "in no doubt that the Resolution of the Yorkshire Area Council constituted a serious contempt, which represented a continuing threat to Members' freedom of speech and action and which could not be allowed to remain in existence".

The Committee therefore wrote to the President of the National Union of Mineworkers whose National Executive Committee exercises control over the various Area Councils and asked that the Executive Committee take steps to repudiate the resolution of the Yorkshire Area Council and to ensure that it was rendered ineffective. The President of the Union subsequently replied to the Committee saying that the National Executive Committee had agreed to pass a resolution nullifying the decision of the Yorkshire Area Council. The Committee of Privileges in their Report to the House considered that in view of this action by the Union no further action needed to be taken by the House.

House of Commons (Matter of privilege to be raised at earliest opportunity).—On 26th March 1976 the Speaker dealt with a matter of privilege which had been raised the previous day by Mr. Skinner, the Member for Bolsover. In raising the matter Mr. Skinner had made no reference to the time when the alleged breach of privilege had arisen, but the documents he submitted to the Speaker showed that it had been public knowledge for about a month. The Speaker therefore said:—

"As is made clear on page 343 of (the Eighteenth Edition of) "Erskine May", before I allow a complaint of Privilege to be made to me in the House I am bound to satisfy myself that the matter has been raised at the earliest opportunity. Had I known yesterday the facts about this document which I have explained to the House, I would not have been able to permit the Hon. Member for Bolsover to raise the matter as a complaint of breach of Privilege, and, clearly, I cannot now allow priority over the Orders of the Day to a motion relating to the matter of the complaint. If he so wishes, the Hon. Member may pursue the matter by other means."

House of Commons (Publication by a newspaper of a Draft Report circulated to a Select Committee).—On 14th October 1975 the House agreed to refer to the Committee of Privileges a complaint by Mr. J. W. Rooker, Member for Birmingham, Perry Barr, of the publication in *The Economist* newspaper of an article purporting to give an account of proceedings in a Select Committee not yet reported to the House.

The Committee concerned was the Select Committee on a Wealth Tax which had been set up to consider proposals for legislation put forward in a Government "Green Paper". The Chairman's Draft Report came into the possession of *The Economist* through its correspondent in the House.

The Committee of Privileges in their Report on the matter said that the publication of documents in the possession of a Committee which had not been reported to the House was contrary to the rules of the

House and may constitute a contempt. They also drew a clear distinction between the situation where a committee was in the course of taking evidence in public and where it was engaged in private deliberation, saying "Members of a Select Committee may welcome and rely upon outside advice when taking evidence in the course of an inquiry, but their deliberations in Committee must be conducted in the knowledge that they are and will remain private, and free from outside pressure".

The Committee considered that the principal offender in the case was the person who provided the information to the journalists concerned. They were not however able to establish who the informant was. The Committee recommended that Mr. Schreiber, the author of the article, and Mr. Knight, the editor of *The Economist* should both be excluded from the precincts of the House for six months (except for the sole purpose of interviewing in their capacity as constituents, their Members of Parliament).

The House considered the Report on 16th December 1975 and agreed to an amendment to the motion endorsing this recommendation of the Committee by 64 votes to 55. As amended the motion merely expressed the regret of the House at the leakage of information and its publication, but concluded that no further action need be taken.

House of Commons (Complaint about case where potential witnesses declined to give evidence and criticised a Select Committee).—On 3rd March 1976 the House agreed to refer to the Committee of Privileges a complaint made by Sir Bernard Braine, Member for South-East Essex, of words alleged to have been used by a spokesman of the National Abortion Campaign Steering Committee and reported in *The Times* and *The Guardian* newspapers. The passages complained of were as follows:—

"We will boycott the Select Committee and encourage other organisations to boycott the Committee . . .

We hope to discredit the illusion of a fair Select Committee. There is no way that this Committee can look at our evidence logically and fairly"

and

"The National Abortion Campaign bluntly said 'We believe that it will serve no purpose to talk to MPs who are already poised to restrict the existing abortion legislation'."

In their Report to the House the Committee first considered whether the refusal of the National Abortion Campaign to give evidence to the Select Committee on Abortion constituted a contempt. They found that the question did not arise, since the National Abortion Campaign had merely been *invited* to give evidence. The Committee had not made any formal use of its powers to send for persons, papers and records.

The Committee of Privileges also considered the reported words about the Select Committee's lack of fairness. They considered the words in the context that some six Members of the Select Committee had

publicly stated that they would not take part in its proceedings. Drawing on the approach adopted by a previous Committee of Privileges the Committee said that they did "not consider that the reported passages that relate to the Select Committee's ability to be fair should be construed as a contempt of the House".

Finally the Committee considered the reported intention to encourage other organisations to boycott the Select Committee. Again, since the Select Committee had merely been *inviting* other organisations to give evidence, and since it was no offence to decline an informal invitation the Committee considered that they would not regard the encouragement by the National Abortion Campaign of persons like minded with themselves to decline such invitations as being an offence either. The Committee did however point out that it was open to the Select Committee to issue formal summonses to witnesses and that any attempts to deter witnesses who might later be formally summoned would no doubt be reported by the Committee to the House.

Australia: House of Representatives

Speaker's consideration of matters of privilege.—The Committee of Privileges of the House of Representatives did not meet during the Twenty-ninth Parliament as no complaint of breach of privilege was referred to the committee by the House. Several matters were raised in the House, but either the Speaker at that time ruled that a *prima facie* case of breach of privilege had not been made out, that the matter had not been raised at the earliest opportunity, or that the matter raised should not be accorded precedence over other business.

Although S.O. 96 of the House of Representatives provides that a motion to refer a matter to the Committee of Privileges shall not be given precedence over other business if, in the opinion of the Speaker, a *prima facie* case of breach of privilege has not been made out, it is interesting to note that, in his last privilege ruling in the Twenty-ninth Parliament, Speaker Scholes employed terminology similar to that preferred by Speaker Selwyn Lloyd of the House of Commons. Rather than rule that a *prima facie* case had or had not been made out, Mr. Speaker expressed the opinion that the matter raised should not be accorded precedence over other business (see Hans. H. of R. 21st August 1975, p. 373). This is consistent with the ruling of the Speaker of the House of Commons in which he expressed a dislike for the term "*prima facie* case" because it implied a judgment on the merits of a case (see The Table, Vol. XLIII, pp. 106–7).

The question of removing from the relevant standing order reference to the Speaker's opinion of a *prima facie* case of breach of privilege being made out was considered at a meeting of the Standing Orders Committee toward the end of the Twenty-ninth Parliament but the Committee had

not reported to the House when the Parliament was dissolved on 11th November 1975.

(Contributed by the Clerk of the House of Representatives).

CANADA: HOUSE OF COMMONS

Newspaper article alleging Budget leak.—Allegations that a Member of the House of Commons had advance knowledge of the Budget of November 18th 1974, and had conveyed that knowledge to businessmen, were considered by the Standing Committee on Privileges and Elections. The Committee in their Sixth Report presented on 17th October 1975 found that there was no evidence to support these allegations.

INDIA: RAJYA SABHA

Alleged assault on a Member by some Policemen.—On August 26th, 1974, notices were given seeking the consent of the Chairman to raise a question involving breach of privilege of Shri Niren Ghosh, Member of the Rajya Sabha, and of the House, arising from the alleged assault on Shri Ghosh by some policemen on February 2nd, 1974, in the residential quarters of the workers of the Alliance Jute Mills in Jagatdal area in West Bengal, when Shri Ghosh, it was alleged, was holding a meeting in violation of an order under section 144 of the Code of Criminal Procedure prohibiting an assembly of five or more persons.

On the directions of the Chairman, Rajya Sabha, the Minister of State in the Ministry of Home Affairs made a statement on this incident in the House on August 26th, 1974. The Minister stated that the allegation that Shri Ghosh had been assaulted by some policemen on February 2nd, 1974 had been denied by the West Bengal Government. Shri Ghosh characterised the denial of the West Bengal Government as 'utterly false' and 'a white lie'. The Chairman, after considering the matter, referred the question of privilege to the Committee of Privileges for examination, investigation and report.

The Committee formulated the following two issues for its examination:

(1) Whether an assault on Shri Niren Ghosh, Member, Rajya Sabha, on February 2nd, 1974, when he was "talking to the workers" of the Alliance Jute Mills in Jagatdal area, constituted a breach of privilege of the member, and of the House?

(2) Whether the report on the incident received from the West Bengal Government was factually incorrect and if so, whether the same was sent to the Rajya Sabha Secretariat with the knowledge that it was so and with the intention of misleading the House and the Committee of Privileges?

The Committee came to the following conclusion on the first issue:

"On the evidence adduced before the Committee it is clear that the alleged incident took place when Shri Niren Ghosh was talking to the workers near the Alliance Jute Mills Labour Lines in Jagatdal area. It cannot, therefore, be said that Shri Niren

Ghosh was performing any parliamentary duty at the time of the incident and as such, his arrest and the alleged assault on him, in these circumstances do not involve any breach of privilege or contempt of the House or of the Member."

While considering the second issue, the Committee took note of the following facts that emerged from the evidence on record:

(i) The Jute Mill workers were on strike and an order under section 144, Cr. P.C. prohibiting an assembly of five or more persons within the area of Jagatdal Police Station, was in force at this relevant point of time.
(ii) The police authorities knew that a Member of Parliament and a trade union leader of eminence was going to address the jute mill workers in the Jagatdal area.
(iii) When the police party rushed to the spot and found an assembly of 300/400 persons, they got down from the police van, chased the mob brandishing lathis to disperse them.
(iv) In spite of the categorical denial by the West Bengal Government in their report and by the officers in their evidence before the Committee, Shri Niren Ghosh reiterated that one blow from a lathi was struck against him by a policeman.

On a perusal of the evidence before it, the Committee was of the view that in the melée it was quite possible that Shri Ghosh might have received a lathi blow from a policeman. The Committee saw no reason to disbelieve the testimony of Shri Ghosh in this behalf.

The Committee then considered the question whether the West Bengal Government had sent their report on the incident with the knowledge that it was incorrect and with the intention of misleading the House and the Committee made the following observations:

"Acts which mislead or tend to mislead must be done wilfully with the intention to mislead or deceive and that the element of deliberateness is an essential ingredient of the offence. There may be a number of statements or depositions coming up before the House or its Committees which may not be wholly true and many statements so made, may, in the end, be found to be based on wrong information given to those who had made them. Such statements will not constitute contempt of the House unless they were incorrect and also with the intention of deliberately misleading the House. In the present case it is difficult to hold that the West Bengal Government had forwarded the report of the District Magistrate in the matter with the knowledge that it was incorrect or with the intention to mislead the House or the Committee of Privileges. So, on this score, the Committee came to the conclusion that no breach of privilege or contempt of the House was involved."

The Committee however took a serious view of the fact that the matter, which concerned a member of Parliament and raised more than once in the House, was not treated by the West Bengal Government with the gravity that it deserved and made the following observations:

"However unwarranted and open to censure the action of the police authorities may be, the Committee finds it difficult to spell out any breach of privilege from the findings arrived at in this case. The Committee, however, considers it necessary to emphasise that Members of Parliament are entitled to the utmost consideration and respect at the hands of the public servants and as such police or any other authority should not do anything or act in a manner as will hamper them in their functioning as public men. The authorities, when dealing with Members of Parliament, should act with great

restraint and circumspection and show all courtesy which is legitimately due to the representatives of the people."

In the view taken by the Committee and in the circumstances of the case, the Committee recommended that no further action be taken by the House in the matter.

The report was presented to the House on May 14th, 1975.

LOK SABHA

Pre-mature publicity of notice of a motion of no-confidence against Speaker by a newspaper.—On the 14th March, 1975, Shri H. K. L. Bhagat, a member, sought to raise a question of privilege against the *Indian Express* and the United News of India, a News Agency, for giving premature publicity to notice of a motion of no-confidence against the Speaker, Lok Sabha, tabled by Shri Madhu Limaye, another member, in its issue dated the 14th March, 1975, under the heading "No-Confidence move against the Speaker", before the said motion had been admitted by the Speaker and circulated to members.

Thereupon, the Speaker (Dr. G. S. Dhillon) observed *inter alia* as follows:—

"I have seen this privilege motion. The news has appeared in various newspapers. The no-confidence motion is against the Speaker . . . I must say that the procedure we follow is:

'Rule 334A. A notice shall not be given publicity by any member or other person until it has been admitted by the Speaker and circulated to members:

Provided that a notice of a question shall not be given any publicity until the day on which the question is answered in the House.'

If you allow this practice, any gentleman may come, give a motion and then go out to the press. With all these campaigns against the Speaker, it is very difficult for the Chair to function".

On the 17th March, 1975, the Speaker informed the House that the Editor of the *United News of India* in his letter dated the 17th March, 1975, had apologised unreservedly for the release of the details to which objection had been taken. In view of the unconditional apology tendered by the Editor, the matter was treated as closed.

Summons to the Chairman, Committee on Public Accounts, from a Court regarding certain observations made in a Report of that Committee.—On the 1st August, 1975, the Speaker (Dr. G. S. Dhillon) informed the House *inter alia* as follows:—

". . . on the 30th July, 1975, a summons has been received from the City Civil Court, Registrar Branch, Calcutta, addressed to the Committee on Public Accounts of Lok Sabha represented by its Chairman in Title Suit No. 1428 of 1973 filed in that Court by one Shri Gobinda Ram Sinha, Preventive Officer, Grade I, attached to the Calcutta Customs under the Government of India, for declaration and mandatory injunction

as consequential relief valued at Rs.25/- in respect of certain observations made in the seventy-first Report of the Committee on Public Accounts (Fifth Lok Sabha).

The constitutional position that no such suit or proceedings is maintainable in any court of law is quite clear as provided in Article 105(2) of the Constitution which reads as follows:—

'No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.'

Since this matter relates to the proceedings of a Parliamentary Committee and the powers, privileges and immunities of members and Committees of Parliament, I am placing this matter before the House. As has been the practice of this House, I am asking the Chairman, Committee on Public Accounts, to ignore this summons and not to put in any appearance in the court.

I am, however, passing on the relevant papers to the Minister of Law for taking such action as he may deem fit to apprise the court of the correct constitutional position in this regard."

The Ministry of Law intimated in a communication dated the 26th September, 1975, that the Title Suit No. 1428/73 in the City Civil Court at Calcutta—Gobindaram Sinha *vs.* Chairman, Public Accounts Committee of Parliament had been *dismissed*, by the Second Judge, City Civil Court, Calcutta, on the 23rd September, 1975, as it was not maintainable.

GUJARAT

Censorship on newspapers reporting parliamentary proceedings.— On 14th August 1975 the Speaker referred a question of privilege regarding the censorship imposed on newspapers on reporting parliamentary proceedings to the Committee of Privileges for examination, investigation and report. In a statement to the House the Speaker said:—

"The Honourable Members have complained that the Government of India have declared emergency from the 26th June, 1975 and thereafter have issued censorship orders under rule 48 of the Defence of India Rules, 1971 which require certain categories of writings to be submitted to the Censor Officer appointed for the purpose for pre-censorship. They have further said that the Censor Officer of the Government of India for Gujarat, Shri H. D. Mehta had issued a circular on 21st July, 1975, which *inter alia* says that "pre-censorship is mandatory on the part of the Editors, correspondents and news agencies in regard to editorials, reports, comments or features relating to parliamentary or legislative proceedings and decisions."

While saying that no doubt it was difficult to say whether there had been a *prima facie* breach of privilege, the Speaker said that he would make use of Rule 263 to refer the case to the Committee of Privileges. Under that rule, without coming to any conclusion that there was a *prima facie* case of breach of privilege, the Speaker is given power to refer cases to the Committee.

Since complicated questions of constitutional law and the law of privileges as well as the question of the powers, privileges and immunities of

the House *vis-à-vis* the powers of the Government of India were involved the Speaker said that the Advocate General should be a member of the Committee and that the Committee should also obtain the opinion of constitutional experts.

At the time of writing the matter was still pending before the Committee of Privileges.

Haryana

Reflections on the House and its Members.—On 12th November, 1973 Sarvshri Jagjit Singh Tikka and G. C. Joshi members of the Haryana Vidhan Sabha, raised a question of privilege against Ch. Hardwari Lal, another member of the House alleging that he, by publishing two booklets entitled "A Chief Minister Runs Amuck" and "Emergence of Rough and Corrupt Politics in India" which contained remarks lowering the dignity of the Speaker, the House and members of the Haryana Vidhan Sabha in the eyes of the public, libellous reflection on the House and thereby obstructing the members in the discharge of their day-to-day functions, had committed a breach of privilege and Contempt of the House. The matter was referred by the House to the Committee of Privileges for examination and report.

The Committee took evidence from both the complainants and the person complained against. In addition the Committee afforded an opportunity to Ch. Hardwari Lal to submit to the Committee his written statement explaining the contents of the two booklets objected to, the Committee held the view that his writings were not a fair comment on the working of the House. In the opinion of the Committee his writings were deliberately libellous, brought the high office of the Speaker into disrepute and cast uncalled for reflections and precluded the members from acting freely and independently in the discharge of their duties as members of the august House and as such committed a breach of privilege and Contempt of the House and, therefore, deserved exemplary punishment.

The Committee recommended to the House that Shri Hardwari Lal be expelled from the House and his seat be declared vacant.

The Report of the Committee of Privileges was presented to and adopted by the House on the 8th January, 1975.

Karnataka

Reflections on a Member.—On 13th March, 1975 Sri H. M. Channabasappa, Minister for Public Works, sought the consent of the Speaker under Rule 177 of the Rules of Procedure and Conduct of Business to raise a question involving a breach of privilege and contempt of members of the Legislative Assembly and stated that a letter written by one Sri M. R. A. Swamy, Proprietor, Nirmala Engineering Company

addressed to the Minister for Public Works and copied to all the members of the Legislative Assembly constituted a breach of privilege. Objection was taken to the following passages in particular:

"You (meaning the Minister for Public Works) have reported the matter to the Assembly only on a personal vengeance and vindictive attitude for reasons not known to us.

You have given a fictitious statement in the Assembly that the pipes and other materials for NRWS and other Water Supply Schemes have been supplied by presenting bogus bills."

Sri H. D. Deve Gowda (who had also given notice) contended that the letter written to the Minister would cast aspersion on the Minister in the discharge of his duties on the floor of the House, and it amounted to a breach of privilege of the members of the House and a serious contempt of the House.

The Speaker gave her consent to move the motion and it was referred to a Committee of Privileges.

The Committee after examining Sri M. R. A. Swamy came to the following conclusion:

"It is well established that written imputations affecting Members of Parliament may amount to a breach of privilege without being libels under common law, provided such imputations concern the character or conduct of a member in that capacity. It is also established that reflections upon members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House.

In the light of the law on the subject as set out above the Committee came to the conclusion that the tone and tenor of the letter written by Sri M. R. A. Swamy would cast reflections on members and was therefore a breach of privilege of the Members of the House and the House itself. However, in view of the fact that Sri M. R. A. Swamy tendered an unconditional apology before the Committee when he gave evidence, the Committee feel that no action need be taken in the matter."

The report of the Committee of Privileges was presented to the House on 20th July, 1975.

Punjab Vidhan Sabha

Disorderly behaviour in the House.—On the 30th January, 1975, the notice of the following privilege Motion was received:—

"Since the following Members during the sitting of the Vidhan Sabha held yesterday accused the Chair, deliberately obstructed the proceedings of the House, hurled paper missiles on the Chair, and rushed towards the podium of the Speaker in a bid to prevent him from the discharge of his constitutional duties, they have thereby lowered the dignity of the House and have thus committed a grave breach of Privilege of this august House and its Honourable Members:—

[*The names of ten Members were then listed*].

I also move that this motion may be referred to the Privileges Committee with a direction to submit the report to the House within three months."

This matter was referred to the Committee of Privileges on the 3rd February, 1975. The Committee presented its report to the Punjab

Vidhan Sabha on the 21st January, 1976, with the following recommendation:—

"The Speaker is the guardian of the dignity of the House and of its rights and privileges. Within the walls of the House, the Speaker's authority is supreme. His primary duty or fundamental function is to regulate the business of the House and ensure that its proceedings are conducted undisturbed. His conduct cannot be criticised except on a Substantive Motion. Nor can any ruling given by him be criticised. In the present case the aforesaid Members accused the Chair, obstructed the Proceedings of the House, hurled paper missiles on the Chair and rushed towards the podium of the Speaker in a bid to prevent him from the discharge of his constitutional duties. This incident indeed is very grave and it has lowered the dignity of the House and tarnished its image and these Members, by casting reflection on the Speaker and offering obstruction, have committed a grave breach of privilege of the House and its other Members. The Committee feels that if this tendency of hooliganism is not checked, the extent and incidence of indiscipline in the House may still increase further and some Members may, when tempers run high or in the heat of moment, be tempted to attack, with impunity, the Chair in future, thereby making it impossible for the House to function smoothly and properly and threatening the very democratic structure. Strictly speaking and keeping in view the gravity of the incident, the Committee would have recommended their expulsion from the House. However, taking a lenient view, the Committee recommends that all the aforesaid ten Members should be suspended from the service of the House for a period of two months. The Committee feels that this would serve as deterrent to those Members who tend to behave irresponsibly and prevent the recurrence of such ugly incidents in future."

The Report was considered by the House on the 22nd January, 1976 but the matter was dropped after the House had passed the following motion the same day:—

"This House having considered the findings and recommendations made in the Third Report of the Committee of Privileges and the deep regrets tendered by Acting Leader of Akali Party on behalf of the ten Members mentioned in the Privilege Motion and also the assurance on their part that they would conduct themselves properly in future, resolves that the matter be dropped.

This House further resolves that the Rules, if any, of its Rules of Procedure, which are inconsistent with the above Motion/Resolution will stand suspended to that extent."

MALTA

Press reporting of Parliament.—During the sitting of the 4th June 1975 the Minister of Health, the Hon. Dr. Albert V. Hyzler, raised as a breach of privilege an article with the title "Minister of Health declares that they want trouble" which appeared in a daily newspaper *In-Nazzjon Taghna*. The article, which was very short, stated that the "Government wanted work and trouble because on this it thrived and won". The Minister complained that the writer of the article had quoted what he said in Parliament in a way which imputed that the Minister was so irresponsible as to state that the Government wanted to win the political struggle through fomenting trouble.

This plea was upheld by the Speaker, the Hon. E. Attard Bezzina,

who ruled that the article in question was *prima facie* a breach of privilege of the House in accordance with Section 11(1) (e) of the House of Representatives (Powers and Privileges) Ordinance which stated that "The House shall have the power to punish with a reprimand or with imprisonment for a period not exceeding sixty days or with a fine not exceeding one hundred pounds or with both such fine and such imprisonment, any person, whether a Member of the House or not, guilty of any . . . insult of a Member . . . on account of his conduct in the House . . ."

The Speaker stated that the Chair was very jealous of Press freedom, so much so, that it never interpreted the House of Representatives (Powers and Privileges) Ordinance to mean that a newspaper report of a parliamentary debate constituted a breach of privilege just because it was not a fair and faithful account of what happened in the House.

But in this case, the Speaker went on to say, there was no attempt at any sort of reporting. There was just a heading in capitals and a short report more or less with the same words, on the front page of the newspaper. It was very clear that the writer had no other message to give.

On the motion that the House consider the article as a breach of privilege, the Minister for Justice and Parliamentary Affairs, the Hon. Anton Buttigieg, M.P., said that according to previous rulings unfair account of parliamentary reports did not amount to a breach of privilege, although this did not do anybody any good.

In this case, however, the Minister asserted that the article could not be classified as a parliamentary report. The newspaper had in fact reported extensively on the debate of the previous sitting, but except for those dozen words complained of in the article under review before the House, it had carried no report of that sitting.

The article was injurious in nature towards the Minister and the Government as a whole. The press had to shoulder its responsibility towards the country and Parliament.

The motion on the breach of privilege was carried. The Editor of the newspaper was later brought before the bar of the House to answer the charge. He was assisted by counsel. The editor admitted his guilt and begged pardon. In view of this he was fined a multa of £25, which had to be paid within two days.

Zambia

Imputations against Members.—On Tuesday, 11th February, 1975 the Hon. Dr. H. K. Matipa, MP, Minister of State for Local Government and Housing raised a point of order on a matter of breach of Parliamentary Privilege on an article which appeared in the *Sunday Times of Zambia* of 9th February, 1975 entitled "'Malice' MP's face barrage". The Hon. Minister of State argued that the contents of the article were against the provisions of sections 3 and 19 of the National Assembly (Powers and Privileges) Act, Cap. 17 in that it had made bad

imputations against the Chair and Hon. Members of Parliament. The article was attributed to Mr. Samson Mukando, Central Province Political Secretary.

In his considered ruling on 12th February, 1975, Mr. Speaker *inter alia* stated that it was unfortunate that the statement had been made and that Hon. Members of Parliament had been attacked on various statements they had made in the House. This statement, he pointed out, might unfortunately lead to further dissension between leaders in the Party and Hon. Members of Parliament, as such, who were also members of the Party.

He quoted provisions of Article 87 of the Constitution which states:

"Members of the National Assembly shall be free to speak and vote on any issue in the Assembly" and,

section 3 of the National Assembly (Powers and Privileges) Act, Cap. 17 states:—

"There shall be freedom of speech and debate in the Assembly, such freedom of speech and debate shall not be liable to be questioned, in any court or place outside the Assembly."

Section 19 (e) of the same Act states that:

"Any person shall be guilty of an offence who—commits any other act of intentional disrespect to or with the proceedings of the Assembly or of a Committee of the Assembly or to any person presiding at such proceedings."

Mr. Speaker ruled that in his submission the Minister of State for Local Government and Housing had made out a *prima facie* case of breach of Parliamentary privilege.

On a Motion moved by the Right Hon. Prime Minister and Leader of the House, the House *Resolved*, That the matter of complaint be referred to the Standing Orders Committee.

On Wednesday, 19th February, 1975, Mr. Speaker informed the House that the Standing Orders Committee had carefully considered the alleged breach of Parliamentary privilege by Mr. Samson Mukando and that:—

"The Standing Orders Committee adjudged Samson Mukando guilty of gross contempt of the House by using threatening words against the integrity of the Chair and the House—thus contravening the provisions of the Constitution of Zambia and the National Assembly (Powers and Privileges) Act, Cap. 17 of the Laws of the Republic in article under the heading " 'Malice' MP's face barrage" which appeared in the *Sunday Times of Zambia* of 9th February, 1975."

Mr. Speaker further informed the House that the Committee had decided to instruct Samson Mukando to write a letter of apology to the Chair and the House and that such a letter be read in the House.

XVI. MISCELLANEOUS NOTES

1. Constitutional

United Kingdom (Referendum on the European Communities).—The idea of holding referenda on constitutional issues is not new. It was raised during the 1890's in the debates on Home Rule for Ireland and in 1911 it was put forward as a means for resolving differences between two Houses. For the last purpose it was further considered by the Bryce Conference on the Reform of the Second Chamber in 1918. The Conference rejected the idea on the ground (among others) that its use could not be confined to cases for which it was introduced and that it might tend to lower the authority and dignity of Parliament.

The first referendum to be held in the United Kingdom was the Northern Ireland Border Poll which enabled voters in Northern Ireland to say whether they wanted to be joined with the Republic of Ireland. This referendum was provided for in the Northern Ireland (Border Poll) Act 1972 and was held on 8th March, 1973.

By that time the proposal to hold a referendum on the question of United Kingdom membership of the European Community had been raised in Private Members' Bills and in the debates on the European Communities Bill. During those debates the Labour Party, then in opposition, lost several members of its Shadow Cabinet by the Shadow Cabinet's support for an amendment to this end. The Labour Party promised that a future Labour Government would renegotiate the Treaty of Accession to the Community and would insist that the people of Britain should decide the matter by a consultative referendum or further general election. The Party's manifesto for the general elections of February 1974 (which returned them to power) and of October 1974 reaffirmed this commitment.

Although the government subsequently recommended the electorate to vote for continued membership on the renegotiated terms, the Cabinet itself was divided. This unusual situation of public disagreement within the Cabinet was met by its decision to allow members of the government, including its own members, not to support the government's recommendation.

If the issue of membership divided the government and Conservative opposition, the proposal to hold a referendum divided opinions still further. Although most "pro-marketeers" were against the proposal and most "anit-marketeers" for it, there were pro-marketeers who supported it.

The government case for holding a referendum rested on the uniqueness of the issue which consisted of, among other things, the fundamental implications for the constitutional position of Parliament. In answer to the charge that parliamentary sovereignty was being undermined it

was claimed that this had already happened in practice on entry to the Community. The effect on Parliament, it was contended, of continued membership made it essential that Government and Parliament consult the British people. By voting in favour of continued membership the electorate would be approving a change in their relationship with their representatives in the House of Commons. For the anti-referendum cause it was argued that Parliament exercised its sovereignty on behalf of constituents, that Parliament had already decided on two occasions in favour of membership and that the holding of a referendum itself represented a dangerous change in the relationship between the people and Parliament. Some feared—and others hoped—that the referendum would become a precedent for consulting the people on such issues as devolution, proportional representation and capital punishment.

The Referendum Bill was presented on 26th March, 1975. It provided for: the holding of a referendum on whether the United Kingdom should continue as a member of the European Community; the form of the ballot paper; the appointment of a Counting Officer and for grants to the two "umbrella" organisations which had come to be identified as representing those campaigning for and against. The Bill also sought to adapt existing electoral machinery and procedures to suit the peculiar circumstances, not the least being the short time before the poll was to take place.

The Bill as presented restricted the vote to those eligible at general elections and to peers. This provision was later extended to allow servicemen and their wives to vote in their units abroad. British civilians abroad were not enfranchised on the ground of insuperable administrative difficulties in the proposed timetable. It was noted that changes were being made to electoral law by legislation for a particular purpose. The usual machinery of the all-party Speaker's Conference was not being used.

The Bill proposed that votes in the referendum should be counted in one place and the outcome declared as a single count on the ground that the United Kingdom should be considered as a single constituency. This provision was amended to provide for counting to take place locally and for the results to be declared by county and by region. Votes cast abroad were to be included in Greater London.

Clause 4 of the Bill excluded all possibility of challenging the result of the referendum in the courts, to force a recount or to obtain a fresh poll because of alleged inadequacies or improprieties. The government regarded this provision as essential to prevent frivolous challenge to or delay in the result. But this argument was not sustained and the Bill as enacted excluded only proceedings for questioning the number of ballot papers counted or answers given.

The Bill received Royal Assent on 8th May, 1975. Several features distinguished the ensuing campaign from a general election. The ballot concerned not a choice of candidate but a choice on a course of action. The ballot was to be counted by administrative counties or regions

not by constituency. The outcome was to be determined not by local counts but by the national result. The "umbrella" organisations which filled the vacuum left by divided Parties each received public funds to finance their campaigns, and there was to be no limit on the sums spent by organisations or individuals.

The vote, which took place on 5th June, 1975, gave a decisive and uniform (except for two areas) answer "yes" to continued membership of the Community.

(*Contributed by C. A. J. Mitchell, a Senior Clerk in the House of Lords*).

Isle of Man (Change in Membership of Legislative Council).—The First Deemster (Chief Judge) by an order made under the terms of the Isle of Man Constitution (Amendment) Act 1975 ceased to be a member of the Legislative Council on 20th October 1975. He was replaced by a person elected by the House of Keys. As is the custom, this person was a member of that House and a by-election ensued. The Upper House now consists of The Lieutenant Governor (with a casting vote only), the Lord Bishop, H.M. Attorney General (non-voting) and 8 members elected by the House of Keys.

Canada (Increase in number of Senators).—The British North America Act 1967 was amended to provide for an increase in the number of Senators as follows:—

(*a*) the number of Senators was increased from one hundred and two to one hundred and four;

(*b*) the maximum number of Senators was increased from one hundred and ten to one hundred and twelve; and

(*c*) the Yukon Territory and the North-west Territories are entitled to be represented in the Senate by one member each.

Australia (Senate representation for the Territories).—In his article on the Joint Sitting of the Senate and the House of Representatives (THE TABLE, Vol. XLIII, pp. 10–24) the Deputy-Clerk of the Senate, Mr. R. E. Bullock, mentioned that, at the time of writting, writs had been issued in respect of three electoral laws affirmed at the Joint Sitting of the two Houses of Parliament in August 1975, pursuant to the double dissolution. These were the *Senate* (*Representation of Territories*) *Act* 1973, the *Commonwealth Electoral Act* (*No.* 2) 1973 and the *Representation Act* 1973.

There is no need to detail the aguments put forward in the High Court challenge, as the central argument against the *Senate* (*Representation of Territories*) *Act* 1973 and the *Representation Act* 1973 hinged upon constitutional provisions peculiar to Australia, and the challenges failed.

The point is, however, that numerically, the Senate has been enlarged from 60 Senators to 64, the Territories gaining, for the first time, representation in the Senate. Both the Australian Capital Territory and the Northern Territory now have a voice (two Senators each) in the Senate.

The Bills to provide Senators to represent Territories were presented to the Parliament by the Government, pursuant, it was argued, to section 122 of the Constitution.

Section 122 reads as follows:

"122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any Territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit".

The inclusion of Territory Senators seemed at first to negate the concept of the Senate as a State's House—there being equal representation in the Senate from each State regardless of population.

Pursuant to Section 122 of the Constitution, the extent and terms on which the Territories have been given representation, differ from those pertaining to State Senators.

While the sixty State Senators have terms of six years (unless after a double dissolution, when half have three year terms), the new Territory Senators have to face their respective electorates every time the House of Representatives is dissolved. The maximum term of the House of Representatives, and therefore of Territory Senators, is three years.

Any casual vacancy occurring in the representation of a Territory due to retirement, absence or death is determined by a by-election, there being no need to wait, as in the case with casual vacancies in respect of State Senators, until the next Senate or House of Representatives election; nor is there a provision whereby the Governor or Legislature of the Territory can appoint a person to fill a casual vacancy before an election is held, as is the case with State Senators.

Australia (Constitution Alteration (Simultaneous Elections) Bills).—On 11th February 1975, a Constitution Alteration (Simultaneous Elections) Bill 1975 was, by leave, introduced in the House of Representatives by the Prime Minister (the Hon. E. G. Whitlam, Q.C.). The Bill sought to alter the Constitution so as to ensure that elections of one half of the Senate were held at the same time as each House of Representatives election. The Bill was similar to the Constitution Alteration (Simultaneous Elections) Bill 1974 which had failed to meet the constitutional requirements for referenda when submitted to the Australian people at the same time as the 1974 general elections. (See THE TABLE, Vol. XLIII, p. 119). The 1975 Bill was passed in the House with the absolute majority required by the Constitution, and transmitted to the Senate for concurrence. The Bill was refused a second reading in the Senate on 25th February 1975.

On 27th May 1975, the Prime Minister introduced, pursuant to notice, an identical Bill. This Bill was also passed by the House with the required

absolute majority, and was transmitted to the Senate for its concurrence. The Senate refused this Bill a second reading also.

Previous articles in THE TABLE have described the operation of section 128 of the Australian Constitution (Vol. XLII, pp. 134–5 and Vol. XLIII, pp. 118–9). Part of that section provides that if either House passes a proposed law to alter the Constitution by an absolute majority and the other House rejects or fails to pass it, or passes it with unacceptable amendments and if after an interval of three months the first House again passes the proposal and the second House again rejects or fails to pass it or passes it with unacceptable amendments, the Governor-General may submit the proposal to referendum. An article in THE TABLE (Vol. XLIII, pp. 118–9) also described the way in which the Constitution Alteration (Simultaneous Elections) Bill 1974, together with other proposals to change the Constitution, was, under the terms of section 128 of the Constitution submitted to the electors by the Governor-General, acting on the advice of the Prime Minister.

As the period between the first rejection of the 1975 Bill by the Senate, and its second passage in the House and rejection in the Senate exceeded three months, the Bill was capable of being submitted to the electors by the Governor-General. This had not occurred when Parliament was dissolved on 11th November 1975.

(*Contributed by the Clerk of the House of Representatives*).

Australia (Privy Council (Appeals from the High Court) Bill).— On 11th February 1975 the Prime Minister, Mr. Whitlam, by leave, presented a Privy Council (Appeals from the High Court) Bill 1975.

A previous article in THE TABLE (Vol. XXXVII pp. 136–7) described the passage of the *Privy Council* (*Limitation of Appeals*) *Act* 1968. In introducing the Privy Council (Appeals from the High Court) Bill, the Prime Minister said that it took the 1968 legislation to its logical conclusion insofar as appeals from the High Court were concerned. The effect of the Bill was to preclude appeals to the Privy Council from the High Court in matters of a wholly State character, a matter not touched in the 1968 Act.

The Bill, supported by all parties, passed both Houses. Section 58 of the Australian Constitution, which provides for the Governor-General's assent, in the Queen's name, or otherwise, of proposed laws, or his reservation of proposed laws for Royal Assent, also provides that the Governor-General may return with recommended amendments to the originating House any proposed law so presented to him. This procedure, rarely called on, was used on this occasion to correct a minor drafting error. Both Houses agreed to the amendment.

In accordance with the Constitutional requirements, the Governor-General reserved the Bill for Her Majesty's pleasure, and Her Majesty

assented to the Bill on 30th April 1975. The Act took effect from 8th July 1975.

(*Contributed by the Clerk of the House of Representatives*).

New South Wales (Constitutional changes).—The *Constitution and Other Acts (Amendment) Act* (No. 67 of 1975) had four main objectives; First, to amend the Constitution Act, 1902, to clarify the position relating to performance of the powers, authorities, duties and functions of an Executive Councillor by another Executive Councillor during the absence or unavailability of the former.

Secondly, to make legislative provision for the appointment of Parliamentary Secretaries and the payment of such office holders. Prior to the passing of the Act there had been a Parliamentary Secretary appointed to assist the Premier but his status and renumeration remained that of an ordinary Member of the Legislative Assembly. In a reply given on 20th February, 1975, to a question concerning Parliamentary Secretarie[1], Mr. Speaker had outlined the pre-legislative position.

Thirdly, the Act amended the Parliamentary Remuneration Tribunal Act (No. 25 of 1975) to ensure that a person elected to the Legislative Assembly should receive parliamentary remuneration from the day of his election until the polling day for the next general election.

Fourthly, the Parliamentary Contributory Superannuation Act, 1971, was amended to recognise changes in the method of determining salaries of Members and Ministers insofar as superannuation was concerned.

(*Contributed by the Clerk of the Legislative Council*).

New South Wales (Committees sitting during prorogation).—By the *Parliamentary Committees Enabling Act* (No. 36 of 1975), certain Committees appointed by the Legislative Council and Legislative Assembly during the second (1974–75) session of the forty-fourth Parliament (the proceedings of which would have lapsed on prorogation of that session) were authorised to continue deliberations until the termination of the third session of the same Parliament.

(*Contributed by the Clerk of the Legislative Council*).

South Australia (Appointment of Ministers).—Acts No. 67 and 68 of 1975 removed the limitation which previously existed in respect of the number of Ministers to be appointed from Members in the House of Assembly and the total number of Ministers was increased from eleven to twelve respectively.

(*Contributed by the Clerk of the Legislative Council*).

Tasmania (Appointment and payment of Ministers).—The Parliamentary Salaries and Allowances Act 1975 and the Ministers

of the Crown Act 1975 have effectively permitted an increase in the number of Ministers who may be appointed. By virtue of the financial provisions of the Parliamentary Salaries and Allowances Act 1973 the number of Ministers was restricted to 9. This provision has now been removed from this Act and the Ministers of the Crown Act 1923 has been amended to limit the possible number of Ministers to 10. A maximum of 9 Members of the House of Assembly may now be appointed Ministers but there may be a total of 10 if the Leader for the Government in the Legislative Council is also appointed a Minister. The Parliamentary Salaries and Allowances Act now permits the Leader for the Government to be paid as a Minister if appointed as such, and not just as Leader for the Government as was previously the case.

The Ministers of the Crown Act 1975 also removes previously extant restrictions on the allocation of ministerial functions and titles.

(*Contributed by the Clerk of the Legislative Council*).

India (Change in status of Union Territory).—The Union territory of Arunachal Pradesh used to be adminstered through a Chief Commissioner. It had a Pradesh Council which functioned as an advisory body on important matters relating to the administration of the Union territory. Some members of the Council were also associated with the Chief Commissioner in the day-to-day administration as Councillors. Under the Constitution (Thirty-seventh amendment) Act 1975, the Pradesh Council was replaced by a Legislative Assembly and the Councillors were replaced by a Council of Ministers, as in other Union territories.

Under article 240 of the Constitution of India the President was empowered to make regulations for the peace, progress and good government of the Union territory of Arunachal Pradesh. With the constitution of a Legislative Assembly for Arunachal Pradesh, this power as in the case of other Union territories with legislatures, will now under this Act be exercised only when the Assembly is either dissolved or its functioning remains suspended.

(*Contributed by the Secretary General of the Rajya Sabha*).

India (Proclamations of Emergencies).—The Constitution (Thirty-eighth Amendment) Act, 1975 amended articles 123, 213, 239B, 352, 356, 359 and 360 of the Constitution.

Article 123 of the Constitution empowers the President to promulgate Ordinances when both the Houses of Parliament are not in session, if he is satisfied that circumstances exist rendering it necessary to take immediate action. Similar powers have been conferred by the Constitution on the Governor in respect of a State under article 213 and on the Administrator in respect of a Union territory under article 239B. Although

the language of articles 123, 213 and 239B made it clear that the satisfaction mentioned in these articles is subjective satisfaction and is not justiciable, yet litigation was pending involving the justiciability of this issue and it was contended that the issue was subject to judicial scrutiny. To place the matter beyond doubt, these articles were amended to provide that the satisfaction of the President, Governor or Adminstrator shall be final and conclusive and shall not be questioned in any court of law on any ground.

Article 352 of the Constitution empowers the President to declare an Emergency if he is satisfied that the security of India or any part of it is threatened by war, external aggression or internal disturbance. Article 356 empowers the President to assume to himself the functions of the Government of a State if the Constitutional machinery in any State fails and the Government in the State cannot be carried on. Likewise article 360 empowers the President to declare a Financial Emergency if he is satisfied that the financial stability of India is threatened. Here again, the issue regarding satisfaction, is, on the face of the articles clearly not justiciable. To place the matter beyond doubt these three articles were amended so as to make the satisfaction of the President final and conclusive and not justiciable on any ground.

In relation to article 352, it had been contended in certain writ petitions in courts that while the original Proclamation of Emergency was in operation no further proclamation of Emergency could be made thereunder. In order to place the matter beyond doubt article 352 has been amended to make it clear that the President may issue different Proclamations on different grounds, whether or not there was a Proclamation already in existence and in operation.

When a Proclamation of Emergency is in operation, the President is empowered under article 359 of the Constitution to make an order suspending the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in that order. It was intended that the powers conferred by this article should be exercised during an emergency according to the needs of the situation. On the other hand, article 358 renders the provisions of article 19 automatically inoperative while the Proclamation of Emergency is in operation, and the power to make any law or to take any executive action is not restricted by the provisions of that article. The intention underlying article 359 appears to be that when an order is made under clause (1) of that article in relation to any of the rights conferred by Part III and mentioned in the order, the order so made would have for all practical purposes the same effect in relation to those rights as article 358 has in relation to article 19. It was, therefore, proposed not to have any differences in language between article 358 and the language in respect of those rights only which may be mentioned in the Presidential Order under clause (1) of article 359. Article 359 has been amended accordingly.

(*Contributed by the Secretary-General of the Rajya Sabha*).

India (Provisions for including Sikkim within the Union).—The Constitution (Thirty-fifth Amendment) Act, 1974 was enacted to provide for the inclusion of Sikkim as a fully-fledged State within the Indian Union. The Sikkim Assembly unanimously adopted a resolution on the 10th April, 1975 which *inter alia* noted the persistent harmful activities of the Chogyal of Sikkim which were aimed at undermining the responsible democratic government set up under the provisions of the Agreement of 8th May 1973 and the Government of Sikkim Act, 1974, and solemnly declared and resolved that "the institution of the Chogyal is hereby abolished and Sikkim shall henceforth be a constituent unit of India, enjoying a democratic and fully responsible Government". The Assembly also resolved that this Resolution be submitted to the people of Sikkim for their approval.

A special opinion poll was then conducted by the Government of Sikkim on 14th April, 1975 which resulted in a total of 59,637 votes in favour and 1,496 votes against the Resolution, out of a total electorate of approximately 97,000.

The Chief Minister of Sikkim on behalf of the Council of Ministers thereafter urged the Government of India to take immediate action in this behalf. Accordingly, the First Schedule to the Constitution of India was amended to include Sikkim as a fully-fledged State within the Indian Union. Sikkim was allotted one seat in the Rajya Sabha and one seat in the Lok Sabha. A new article 371F containing the provisions considered necessary to meet the special circumstances and needs of Sikkim was also inserted.

Since the provisions of the Act affected *inter alia* representation in Parliament, the Act was ratified, under the proviso to clause (2) of article 368 of the Constitution by the Legislatures of not less than one-half of the States before it was presented to the President for his assent.

(*Contributed by the Secretary-General of Rajya Sabha*).

India (Election of President and Vice-President).—Article 71 of the Constitution provides that disputes arising out of the election of President or Vice-President of India shall be decided by the Supreme Court of India and that matters relating to their election shall be regulated by a parliamentary law. So far as the Prime Minister and the Speaker of the Lok Sabha are concerned, matters relating to their election are regulated by the provisions of the Representation of the People Act 1951. Under this Act, the High Court had jurisdiction to try an election petition presented against either of them.

As the President, the Vice-President, the Prime Minister and the Speaker are holders of high offices it was felt that matters relating to their election should not be brought before a court of law but should be entrusted to a forum other than a court. Accordingly, article 71 was amended to provide that disputes relating to the election of President or Vice-President shall be enquired into and decided by such authority

as may be provided by a law made by Parliament. By inserting a new article 328A, a similar provision was made in the case of the election to either House of Parliament of a person holding the office of Prime Minister or to the House of People of a person who holds the office of Speaker at the time of such election.

Provision has also been made to render proceedings pending in respect of such election null and void. This Act also provides that parliamentary law creating a new forum for trial of election matters relating to the incumbents of these high offices should not be called in question in any court. The Representation of the People Act, 1951, the Representation of the People (Amendment) Act, 1974, and the Election Laws (Amendment) Act, 1975 were *inter alia* included in the Ninth Schedule to the Constitution thereby giving them constitutional protection under article 31B. Since the amendments to the Constitution fell within the purview of the proviso to clause (2) of article 368 thereof, these were ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill was presented to the President for his assent.

(*Contributed by the Secretary-General of the Rajya Sabha*).

Tanzania (Increase in constituency members).—Under the Interim Constitution (Increase of Numbers of Constituency Members) Act 1975 the number of constituency members was increased from eighty-eight to ninety-six.

Mauritius (Voting Age).—The voting age in elections to the Legislative Assembly has been reduced to eighteen.

Saint Vincent (Appointment of the Leader of the Opposition).—The Constitution was amended to provide that if there are two or more such Elected Members who do not support the Government but none of them commands the support of the other or others, the Governor may, acting in his own deliberate judgment, appoint any one of them as Leader of the Opposition. Provided further that in the exercise of his judgment the Governor shall be guided by the seniority based on length of service of the Elected Member and or by the number of votes polled by the Member at the General Election.

2. Procedure

House of Commons (Miscount by tellers in division).—On a division on 11th February 1976 before the result was announced the Government Chief Whip said on a point of order that there had been a miscount. This view was supported by one of the Tellers, who later said that the Tellers from both sides agreed that there had been a mistake. The figures of the division were not reported to the House. The Speaker ruled, in accordance with precedent, that the House should immediately

proceed to another division, despite arguments from the Government Chief Whip that many Members had already gone home and that another Division would lead to an "unrealistic vote". In fact to judge by the result —the Government lost the "second" Division by five votes—many Members had apparently gone home.

House of Commons (Timing of time-limited Debates).—In a number of aspects of the procedure of the House provisions are made for debates on certain matters to last for no more than a specified period. On one occasion, on 18th May 1976, when a Motion to approve a Statutory Instrument was being debated (a Motion subject to a limit of one and a half hours on that occasion) immediately after the Deputy Speaker called the Minister to move the Motion almost ten minutes were taken up by points of order on a quite separate matter. When the Deputy Speaker was asked whether the time taken by these points of order should be taken from the debate on the statutory instrument he ruled quite clearly "The duration of this debate started from the moment when I called the first speaker . . ."

House of Commons (Quorum).—Standing Order No. 29(2) provides that

> "If at any time it shall appear, on a division, that forty Members are not present, the business under consideration shall stand over until the next sitting of the House and the next business shall be taken".

Questions were raised about the interpretation to be placed on the standing order in a case where some Members voted in both lobbies in the same division. On 28th July 1975 Mr. Speaker said:—

> "It is clear from Standing Order No. 29(2) that on a Division there must be 40 Members present for the decision to count. Included in those 40 Members are the occupant of the Chair and the four Tellers. If 20 Members each vote in both Lobbies, that does not constitute a quorum. If the matter were reported to the Chair, the Chair would order another Division and would rule, but if that moment is allowed to pass, and if the matter is raised on a subsequent occasion, that must be a matter for the House. It seems that this is the kind of thing that always crops up in July. Last July we had a somewhat similar occurrence, which was resolved by the decision of the House. I hope we can leave the matter there."

House of Commons (Restrictions on the length of Speeches).—A frequent suggestion for change in the procedures of the House has been that the length of Members' speeches should be subject to some restriction. The Fourth Report of the Select Committee on Procedure (HC (1974–75) 671) dealt with this matter and unanimously came to the conclusion that they could not recommend any proposal which artificially restricted the length of speeches. They also concluded that the matter should be left to the self-discipline of Members and their sensitivity to the general atmosphere of the House and the wishes of their fellow Members, reinforced by the ultimate power of the Chair to

refrain from calling Members who have flagrantly abused this power of debate.

The House has as yet not debated the report.

Australia (Joint Committee on the Parliamentary Committee system).—Articles in previous issues of THE TABLE have outlined the formation of a Joint Committee on the Parliamentary Committee System to inquire into, report on and make recommendations for—

(*a*) a balanced system of committees for the Parliament;
(*b*) the integration of the committee system into the procedures of the Parliament, and
(*c*) arrangements for committee meetings which will best suit the convenience of Senators and Members.

(THE TABLE, Vol. XLII pp. 157–8 and Vol. XLIII pp. 146–7).

On 15th October 1975, the committee presented an interim report (incorporating a sub-committee report). In its initial year of inquiry, the committee concentrated almost entirely on part (*a*) of its terms of reference.

A sub-committee, consisting of four members, after visiting Ottawa and Westminster, made eleven principal recommendations in its report to the joint committee, viz.:

(1) in both Houses there be established a number of legislation committees to consider Bills clause by clause after they have passed the second reading;
(2) both Houses be enabled to use legislation committees to take the second reading stages of Bills where appropriate;
(3) the Senate and the House apply the appropriate standing order which enables a Bill to be referred to a select committee immediately after the second reading whenever it is considered that there should be further inquiry into the principles of legislation;
(4) the Government adopt the practice of referring white papers or green papers containing legislative proposals to select committees appointed specifically for the task of recommending on the most satisfactory method of legislative control in the areas in question;
(5) a new Public Accounts Committee be appointed, consisting of Members of the House of Representatives only;
(6) the practice of the Senate of committing the estimates of Government departments and statutory authorities which are contained in major Appropriation Bills to estimates committees be continued;
(7) a set of functional standing committees be appointed in both Houses and that each committee have a clearly specified jurisdiction which corresponds to a specific area of activity of government or to a specific number of Government departments and instrumentalities;
(8) the Senate establish a standing committee specifically empowered to carry out the roles, so far as it may be deemed necessary, that

are currently assigned to the Joint Committee on Public Works, the Joint Committee on the Australian Capital Territory and the Joint Committee on the Northern Territory;

(9) there be appointed a Senate Standing Committee on Delegated Legislation;

(10) each House retain the right to appoint select committees to conduct long term inquiries into issues of concern to the Houses, and

(11) the standing orders committees of the two Houses be given specific terms of reference to review and report continually on desirable changes in practices and procedures of the Parliament.

The sub-committee recommended, and the committee agreed, that its report be transmitted to both Houses of Parliament in order to allow comment and criticism from Members of Parliament and others for the consideration of the whole joint committee. No further action had occurred before Parliament was dissolved on 11th November 1975.

(*Contributed by the Clerk of the House of Representatives*).

Australia: House of Representatives (Petition for leave to issue and serve subpoena for the production of official records in court and attendance in court of Parliamentary Officers).— Standing order 368 of the House of Representatives states, "No officer of the House, or shorthand writer employed to take minutes of evidence before the House or any committee thereof, may give evidence elsewhere in respect of any proceedings or examination of any witness without the special leave of the House". Erskine May (18th Edition p. 86) indicates that the normal practice of parties to a suit who desire to produce parliamentary records in court or subpoena an officer of the House to attend in court, is to petition the House, praying that the officer be granted leave to attend and produce the relevant official documents.

On 21st October 1975 a petition was presented to the House by a private Member on behalf of a Sydney solicitor, Mr. D. Sankey. Having set out the circumstances of the proposed suit and the rights of individuals under the Crimes Act to institute proceedings for the commitment to trial of any person in respect of any indictable offence against the law of the Commonwealth, the petition concluded with the prayer that the House grant leave to the petitioner and his legal representatives to issue and serve subpoena for the production of official records of the proceedings of the House held between 2.55 p.m. and 10.09 p.m. on 9th July 1975 and of documents tabled therein and further to issue and serve subpoena for the attendance in Court of those persons who took the record of such proceedings.

Having thus petitioned the House, the normal practice would be for a substantive motion, granting the required leave, to be moved in the House. No action could be taken on the petition itself.

When the Parliament was dissolved by the Governor-General on

11th November 1975, no notice of any motion had been given and consequently no further action had been taken with respect to the granting of the leave sought by the petitioner and his legal representatives.

(*Contributed by the Clerk of the House of Representatives*).

3. Electoral

Australia (Common informers (Parliamentary Disqualifications)).—Sections 43, 44 and 45 of the Australian Constitution prescribes conditions which render persons incapable of being chosen or sitting as members of the Australian Parliament. Section 46 of the Constitution provides for the payment of penalties by a person who sits as a member of either House while being thus incapable:

> 46. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

Parliament had not otherwise provided until April 1975. On 22nd April 1975 the Common Informers (Parliamentary Disqualifications) Bill 1975, by leave, was introduced in the House of Representatives and passed all stages. Moving the second reading, the Attorney-General (the Hon. K. E. Enderby, Q.C.) stated that no common informer had availed himself of section 46 since federation, but it was intended to modify, not repeal, the provision despite its disuse. The Government did not intend to encourage common informer proceedings but it felt that the procedure should be kept open; it believed that a breach of the Constitution should not be condoned.

One of the main provisions of the Bill was to fix a maximum penalty for a past breach. Under the Constitutional provision a penalty of £100 ($200) per day could amount to enormous sums where the infringement did not become apparent until years after it had occurred. The Bill provided for the recovery of a penalty of $200 in respect of a past breach and $200 per day for a period in which the Member or Senator sat while disqualified after being served with the originating process. The Bill also restricted suits to a period no earlier than 12 months before the day on which the suit was instituted.

The High Court of Australia was specified in the Bill as the court in which common informer proceedings were to be brought. The Constitutional provision had enabled a suit to be brought in any court of competent jurisdiction.

The Attorney-General stressed that the provisions of the Bill would not affect the reference of any question regarding the qualifications of a Member or Senator to the High Court (sitting as a Court of Disputed Returns). At the time of the Bill's introduction, a question was before the Senate concerning the reference to the Court of Disputed Returns of a specific Senator's qualifications.

On the same day as it passed the House of Representatives, the Bill was passed without amendment by the Senate and received assent the following day.

(*Contributed by the Clerk of the House of Representatives*).

Australia (Electoral redistribution proposals for the States).—Reports by Distribution Commissioners for the proposed redistribution of electoral divisions of all Australian States except Western Australia were presented to the Australian Parliament in April and May of 1975. (Parliament agreed to a distribution of the electoral divisions of Western Australia before the general election in 1974, which resulted in an additional Western Australian seat in the House of Representatives. A description of events leading up to that redistribution and the provision of an additional seat for the Australian Capital Territory is contained in THE TABLE, Vol. XLIII, p. 126).

The proposals were approved by the House of Representatives, but motions to approve the proposed redistribution were negatived in the Senate. As approval of both Houses of the Parliament is required, the existing boundaries remained unaltered.

The Commonwealth Electoral Act, under which electoral redistributions are carried out, provides that if either House negatives a motion for the approval of any proposed distribution, the Minister may direct the Distribution Commissioners to propose a fresh distribution. Rather than follow this course of action, the Government introduced five Bills to implement the Distribution Commissioners' proposed electoral divisions for the five States. In introducing the first of the five Bills, the Minister for Services and Property (the Hon. F. M. Daly), who was responsible for electoral matters, indicated that the incorporation of the redistribution proposals in legislative form would enable the proposals, if necessary to be submitted to the judgment of the electorate together with other items of electoral legislation twice rejected by the Senate (hence within the ambit of section 57 of the Constitution).

On the day following their introduction, the five Bills were declared urgent and each was agreed to by the House. The Bills were all defeated in the Senate at the second reading stage.

Three months later the five Bills were re-introduced into the House of Representatives and, after again being the subject of a declaration of urgency, passed all stages and were transmitted to the Senate where they were again negatived at the second reading stage.

Having failed to pass the Senate on two occasions with a three month interval between each occasion, the Bills were added to the list of Bills which served as the basis of the constitutional prerequisite for the dissolution of both Houses of the Parliament by the Governor-General on 11th November 1975.

(*Contributed by the Clerk of the House of Representatives*).

New South Wales (Electoral changes).—Alteration of the electoral law was effected by the *Parliamentary Electorates and Elections (Amendment) Act* (No. 108 of 1975). The more important changes related to voting hours, postal voting and the order in which candidate's names appear on ballot papers. Since 1921 voting hours have been from 8 a.m. to 8 p.m. on polling day; they are now 8 a.m. to 6 p.m. The period for receipt of applications for postal votes and for the votes themselves were shortened. Instead of candidates' names appearing on ballot papers in alphabetical order, in future a returning officer will conduct a ballot to determine the order.

(*Contributed by the Clerk of the Legislative Council*).

South Australia (Electoral Districts Boundary Commission).—Act No. 122 of 1975 established an Electoral Districts Boundaries Commission consisting of a Judge of the Supreme Court appointed by the Chief Justice to be Chairman of the Commission; the Electoral Commissioner and the Surveyor-General. The Commission is required to commence proceedings for the purpose of making an electoral redistribution within three months of the commencement of the Act; and as soon as practicable after the passing of any Act which alters the number of members of the House of Assembly and within three months after a polling day if five years or more has intervened between a previous polling day on which the last electoral redistribution made by the Commission was effective and that polling day. The Commission shall invite representations from interested persons through the press before making any redistribution and cause an order making an electoral redistribution to be published in the Government Gazette. Appeals against the order must be made within one month of an order to the Full Court of the Supreme Court on the ground that the order has not been made in accordance with the Act. The Full Court may quash the order and direct the Commission to make a fresh electoral redistribution; vary the order or dismiss the appeal and make any ancillary order as to costs or other matters.

The foregoing provisions have been entrenched in the Constitution Acts and Bills providing for or effecting the repeal, suspension or amendment shall not be presented to Her Majesty or the Governor for assent unless and until they have been submitted to a referendum of House of Assembly electors and approved by a majority of persons voting.

(*Contributed by the Clerk of the Legislative Council*).

Western Australia (Increase in electorates).—Amendments were made during 1975 to the Constitution Acts Amendment Act to provide for an additional province to return two members in the Legislative Council, and four additional electorates in the Legislative Assembly. The increases are to be operative on and after the 21st May, 1977, in the Legislative Council, and, in the Legislative Assembly, from the dis-

solution of that House or the expiry thereof by effluxion of time first occurring after 31st December, 1976.

A further amendment provided for an additional Minister of the Crown, making the total thirteen.

Consequent upon these amendments there will be 32 members in the Legislative Council; 55 members in the Legislative Assembly, and of these, thirteen will be Ministers of the Crown—four in the Legislative Council and nine in the Legislative Assembly at the present.

(*Contributed by the Clerk of the Legislative Council*).

India (Election Laws (Amendment) Act, 1975).—This Act amended the Representation of the People Act 1951 and the Indian Penal Code. The amendments made by this Act in the Representation of the People Act 1951 were given retrospective effect so as to make them applicable to elections held before the date of commencement of this Act in respect of which election petitions may be filed or were pending. Prior to the amendment made by this Act, section 79(b) of the Representation of the People Act 1951 defined the expression "candidate" as including a person who has held himself out as a prospective candidate. By virtue of this provision, a person used to be deemed to be a candidate at an election for a long period, even before the issue of the notification calling the election. This definition has now been amended to provide that a person shall be deemed to be a candidate at an election from the date of publication of the notification calling the elections and not from any earlier date. A consequential modification in the definition of the same expression in section 171A of the Indian Penal Code was also made.

Under clause (3) of section 123 of the Representation of the People Act 1951, the use of, or appeal to, religious symbols or national symbols for the furtherance of the prospects of the election of a candidate or for prejudicially affecting the election of a candidate constitute a corrupt practice. It was made clear by this Act that the symbols alloted under the Act to candidates should not be deemed to be religious symbols or national symbols for the purposes of the said clause.

According to clause (7) of section 123 of the Representation of the People Act 1951, the obtaining by a candidate of any assistance for the furtherance of the prospects of that candidate's election from certain classes of persons in the service of the Government amounted to a corrupt practice. This provision has now been amended to make it clear that acts done for, or in relation to, a candidate by a person in service of Government in the discharge or purported discharge of his official duty would not amount to assistance in furtherance of the prospects of that candidate's election, and that expenditure incurred on the performance of such acts should not be included in the election expenditure of the candidate for the purposes of section 77 of the Representation of the People Act.

Clause (7) of section 123 of the Representation of the People Act was

also amended so as to make it clear that publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Government and of the date of taking effect shall be conclusive proof of such appointment, resignation, termination, dismissal or removal from service and of the date of taking effect thereof.

(*Contributed by the Secretary-General of the Rajya Sabha*).

Malta (Electoral changes).—Section 57(1) of the Constitution of Malta lays down that the Members of the House of Representatives shall be elected from such number of electoral divisions, being an odd number and not less than nine and not more than fifteen, as Parliament shall from time to time determine. By Act No. XII of 1975, the Electoral (Franchise) Method of Election and Registration of Voters (Amendment) Act, the electoral divisions were put at thirteen. Section 53(1) of the Constitution states that the House of Representatives shall consist of such number of Members, being an odd number and divisible by the number of electoral divisions, as Parliament shall from time to time by law determine. By Act No. XII of 1975 the number of Members was put at sixty-five, five members being returned from each electoral division. Section 58 of the Constitution stipulates, as one of the qualifications for registration as a voter for the election of Members, that a person shall have attained the age of eighteen years. Act No XII of 1975 made the consequent alteration in the qualifying age for registration as a voter. Act No XLVII of 1975, the Electoral (Polling) (Amendment) Act, increased the number of Electoral Commissioners from six to eight.

4. Emoluments

House of Commons (Members' pay, allowances and facilities).—The subject of Members' pay has, over the years, aroused more discussion and controversy than most other political issues. Last fixed in 1972 at £4,500 a year, the Member's salary had by mid-1975 been conspicuously eroded by rising prices. To adjust the salary to the rise which had taken place up to then, a salary of something like £8,000 a year would have had to be paid; and this was the figure recommended by a Review Body on the salaries of top public servants. (Seventh Report of the Top Salaries Review Body, July 1975).

As Members have often found, however, there is no time when it is politically propitious to raise their salaries. The Government originally received the report from the Review Body while delicate negotiations were going on to secure the agreement of the trade unions for some kind of restraint on incomes. A key part of the Government's proposals was the imposition of a limit of £6 a week on all pay increases. When the report was published the Government announced that Members were being asked to make a sacrifice in the public interest and that they would receive little more than a third of the increase recommended by

the Review Body. But even the increase proposed by the Government, to £5,750 instead of to the recommended £8,000, represented an increase of £1,250 a year, or about £24 a week, though the Leader of the House pointed out that this corresponded to an increase of £6 a week spread over the period since M.P.'s last had a rise. The Government's proposed increase was agreed to by the House.

Whatever their views about the timing of this particular pay rise, many Members took the view that some different system should be found to avoid having to make very large increases in Members' pay only after comparatively long periods. The Leader of the House, aware of such feelings, tabled the following motion:—

"That *in the opinion of this House* it is desirable in principle that the salaries of Members should be regulated to correspond with the amounts of the salary paid to a specified grade in the Public Service".

By a majority of one (128 to 127) the House agreed on 22nd July 1975 to an amendment to this Motion to leave out from 'with' to the end of the Motion and add the words:—

"a point on the scale paid to an Assistant Secretary in the public service, not later than three months after the next General Election, and annually until that date, the salaries of Members should be increased by not less than the same amount of increase as these Assistant Secretaries".

As amended the motion conveyed that Members' salaries would be adjusted automatically to take account of cost of living increases, without the need for embarrassing public debate on the Floor of the House. The amended motion was however purely an expression of opinion and as such cannot be regarded as binding on the Government.

Perhaps to balance the substantial addition to public expenditure represented by the Members' pay rise, the Government at the same time announced that the projected new Parliamentary building in Bridge Street, across the road from Big Ben, would be abandoned, and that instead some of the existing buildings on the same site would be renovated.

At the same time however, as the House agreed to accept salaries considerably lower than the Review Body had recommended, it also approved a substantial increase in the maximum of the secretarial allowance payable to Members. This was increased from £1,750 to £3,200. This increase more or less marked the acceptance by the House of the recommendation from the Select Committee on Assistance to Private Members in their First Report (HC (1974–75) 375) in May 1975 that every Member should be able to have the services of a full time secretary.

That Committee's Second Report published in November (HC (1974–75) 662) recommended the expansion of the House of Commons Library's research division, which the Committee regarded as being a relatively inexpensive way of providing an extension of services at present highly

regarded by Members. It also recommended the provision of full-time personal research assistance for all Members who want it.

This latter recommendation carried a great deal further present arrangements which enable Members to employ their own research assistants to assist in thier parliamentary duties. At present Members may use their secretarial allowance to pay for secretarial assistance *or* research assistance or any combination of both. The Committee's proposal meant that Members might have *two full-time* employees. This was a radical innovation and, if implemented, could clearly involve the expenditure of what, in terms of present expenditure on Parliament, would be large sums of public money, as well as imposing, as the Committee recognised, further pressures on accommodation at Westminster. The Report appeared at a time when the high level of public expenditure had become a matter of keen political controversy and there has so far been no formal Government reaction to it, and the House has not expressed a view.

Australia (Parliamentary salaries and allowances).—Reference has been made in a previous issue of THE TABLE to the passage of legislation to establish the Remuneration Tribunal to assess the salary and allowances of, *inter alia*, Ministers and Members of the Parliament (Vol. XLII, p. 151).

The Remuneration Tribunal comprises three persons appointed by the Governor-General and is empowered to determine salary and/or annual allowances of First Division Officers (including the Clerk of the Senate, the Clerk of the House of Representatives and the heads of the other Parliamentary Departments), Members of Parliament and office-holders of the Parliament and to determine the allowances (not salaries) of Ministers of State. The Tribunal furnishes to the responsible Minister a copy of each determination which is to be laid before each House within 15 sitting days of receipt by the Minister, and either House can disallow any determination thus laid before it within 15 sitting days. If not disallowed, a determination has effect from a date usually specified in the determination.

The Tribunal exercises advisory functions in respect of salaries of Ministers of State and judges. Parliament needs to pass legislation in these areas before the findings of the Tribunal can be given effect.

The first reports and determinations of the Tribunal were laid before both Houses on 24th July 1974 and were disapproved by the Senate on the motion of an Opposition Senator the next day. The salaries and allowances of Members of Parliament and Ministers thus remained at the level of the proposed rates listed in THE TABLE article cited above.

Reviews may be conducted by the Tribunal on its own initiative wherever it is satisfied that a *prima facie* need exists, but at least annually. The Tribunal's 1975 review relating to Members of Parliament and Ministers was laid before both Houses on 4th March 1975. These reports

and determinations, similar to those of July 1974, were not disapproved by either House and took effect from 1st March 1975, and are as follows:

(*a*) All Senators and Members receive a yearly Parliamentary Allowance of $20,000 and electorate allowance of $4,100,

(*b*) In addition, Ministers and office-holders of the Parliament receive the following salaries and allowances (Note: Total includes amount mentioned in (*a*) above):

	Salary of Office $ *p.a.*	*Special Allowance* $ *p.a.*	*Total* $ *p.a*
MINISTERS			
Prime Minister	27,000	10,900	62,000
Deputy Prime Minister	12,500	5,200	41,800
Ministers	10,500	4,875	39,475
HOUSE OF REPRESENTATIVES			
Speaker	10,500	4,250	38,850
Chairman of Committees	4,000	900	29,000
Leader of the Opposition	10,500	4,875	39,475
Deputy Leader of the Opposition	7,500	4,250	35,850
Leader of the Third Party (in Opposition)	5,000	2,500	31,600
Deputy Leader of the Third Party (in Opposition)	2,000	900	27,000
Government Whip	2,500	—	26,600
Opposition and Other Party Whips	2,000	—	26,100
Assistant Government Whip	1,000	—	25,100
Assistant Opposition Whip	500	—	24,600
Chairman of a Parliamentary Committee	500	—	24,600
SENATE			
President	10,500	4,250	38,850
Chairman of Committees	4,000	900	29,000
Leader of the Opposition	7,500	4,250	35,850
Deputy Leader of the Opposition	3,200	900	28,200
Leader of Second Non-Government Party	2,000	900	27,000
Whips	2,000	—	26,100
Assistant Whips	500	—	24,600
Chairman of a Parliamentary Committee	500	—	24,600

(*c*) Travelling allowance is payable for overnight stays in places other than a nominated home base when the stay is occasioned primarily by Parliamentary, political or official business, at the following rates:

	Canberra	*Elsewhere*
Members and Senators	$37	$37
Office-holders of Parliament, Ministers	$37	$48
Prime Minister	— (as in other official residences)	$66

(*d*) A yearly stamp allowance of $500 is payable to Members and Senators. Postage pre-paid (within Australia) official envelopes are provided to Members and Senators for Parliamentary business to be posted only from Parliament House.

On 9th September 1975 the Tribunal's Reports and Determinations of 6th August 1975 relating to Members of Parliament, Ministers and other were tabled in both Houses of Parliament. The Reports and Determinations provided for all salaries within the Tribunal's jurisdiction to be increased by 3.6 per cent, equivalent to the increase in the Consumer Price Index in the March 1975 quarter and to the adjustment made to award rates by the Australian Conciliation and Arbitration Commission in its National Wage Case decision of April 1975. (It is interesting to note that this was the first occasion on which the Tribunal reported that Ministerial salaries—as opposed to allowances—should be increased). The Determinations were disapproved by the Senate, on the motion of the responsible Minister, and legislation was not introduced to provide for an increase in Ministerial salaries.

(*Contributed by the Clerk of the House of Representatives*).

New South Wales: Legislative Council (Parliamentary salaries and allowances).—As indicated in Volume XLIII of THE TABLE, the *Parliamentary Allowances and Salaries (Amendment) Act* (No. 2 of 1975) increased the salaries and allowances of Members, Ministers and office holders as from 1st January, 1975. There followed the *Parliamentary Remuneration Tribunal Act* (No. 25 of 1975) which made statutory provisions for the appointment of a Tribunal (a Judge or retired Judge) to make annual determinations of the remuneration to be paid to Ministers, Members and office holders (sec. 5). Such determinations are required to be made by the 30th November each year and come into effect on the 1st January in the following year.

The rates determined in respect of Legislative Council Members, as from 1st January, 1976, are as follows—

	$ *per annum*		
	Salary	*Expense Allowance*	*Total*
President	25,000	4,100	29,100
Chairman of Committees	15,000	4,030	19,030
Leader of the Government	39,720	4,420	44,140
Deputy Leader of the Government	37,670	4,420	42,090
Leader of the Opposition	19,660	4,030	23,690
Deputy Leader of the Opposition	11,000	4,030	15,030
Whips	9,500	4,030	13,530
Private Member	9,000	3,280	12,280

Living away from home allowance: Members (other than Ministers) living in electoral districts specified in Parts III, IV, V and VI of the Fifth Schedule to the Constitution Act, 1902, receive an allowance of $39 for each day or part of a day on which they attend a sitting of the Council.

Ministerial expense allowance: A Minister whose usual place of residence is in one of the electoral districts above mentioned receives a special expense allowance at the rate of $3,410 per annum.

Travelling allowances for Ministers: When travelling on official business Ministers are entitled to the following daily allowance—

Capital cities (including Canberra) = $47.

Other areas = $38.

When no overnight stay is involved, but the absence from Sydney exceeds six hours = $19.

In addition to establishing rates of remuneration the Tribunal, pursuant to section 6 of the Act, will make recommendations relating to the services, equipment or facilities provided for Members of Parliament.

New South Wales: Legislative Assembly (Parliamentary Remuneration Tribunal).—The Government considered the recommendations of the Tribunal which was established under the Parliamentary Remuneration Tribunal Act, No. 25, 1975, and finally approved of the following:

Electoral Offices and Secretarial Assistance for Members of the Legislative Assembly

(*a*) Once a decision is made as to an appropriate general area for the location of an electorate office in each electorate, the Crown will become the lessee of the office space concerned. The decision to become the lessee of the premises will be made after obtaining the suggestions of the Member concerned.

(*b*) The Government will erect partitioning to divide an electorate office into two rooms of convenient size to assure privacy and will meet the cost of electric light and power and the supply of two small electric fans and two small radiators.

Air Travel Provisions

The Speaker of the Legislative Assembly will be provided with an additional six single journeys per year by air between any two centres in the State, the additional entitlement to be cumulative over the life of a Parliament.

Photocopying Allowance

The photcopying allowance of Members of the Legislative Assembly will be increased from $50 per year to $100 per year, cumulative over the life of a Parliament.

Stamp Allowance

The allowance of the Leader of the Opposition in the Legislative Assembly will be increased to 1,500 stamps per month at ordinary letter rate.

Each of the abovementioned increases in entitlement will become effective on 1st January, 1976, the date on which the Tribunal's deter-

minations on salaries and allowances will take effect.

The Government endorsed the following recommendations by the Tribunal:—

(*a*) That parking space for the cars of Members continue to be provided.

(*b*) That no change be made in Government Printing Office credits, this being $100 per year.

(*c*) That in the present economic climate overseas travel at Government expense be restricted to travel by Ministers of the Crown and other Members of Parliament on official business or for some special purposes approved by the Premier. Further that an annual grant to the New South Wales Branch of the Commonwealth Parliamentary Association be made for the purpose of enabling a small number of Members to travel overseas under the auspices of the branch.

(*d*) That no review of the Parliamentary Contributory Superannuation Fund be undertaken until the completion of the present investigation as to the state and sufficiency of the Fund.

The Tribunal also recommended that an investigation be made as to the need for Members in certain parts of the State to employ additional means of transport to link up with public commercial transport to and from Sydney and that the costs of such additional means of transport be reimbursed to Members on certification. This matter is being investigated.

India (Members' allowances).—The Salaries and Allowances of Members of Parliament Act 1954 was amended with a view to entitling Members of Parliament to recieve such water, electricity, constituency and secretarial facilities, or such amount in cash in lieu thereof, and also such amount in cash in lieu of housing and postal facilities, as may be specified by the rules, so as to enable them to discharge their duties more efficiently as representatives of the people.

The above amendment was mainly based on the recommendations made by the Joint Committee of the Houses on Salaries and Allowances of Members of Parliament.

As a result of the Rules made under this Act, Members of Parliament now receive Rs. 500/- per month.

Haryana (Parliamentary Allowances).—Each member, including the Presiding Officer and Members of the Council of Ministers, has been allowed a constituency allowance at Rs. 200/- per month in accordance with Section 3A of Haryana Legislative Assembly (Allowances of Members) Act, 1975. The rate of Halting Allowance allowed to a member for each day of attendance at a meeting of the Assembly or committees in respect of journeys undertaken under the orders of the Speaker for any other business anywhere connected with his duties as a Member has been raised from Rs. 35/- to Rs. 51/- per day.

A Member provided with a telephone has been allowed a payment of Rs. 100/- per month instead of Rs. 50/- per month in lieu of calls, whether local, trunk or otherwise, made by him on each telephone; any expenditure incurred by him on such calls in excess of one hundred rupees shall not be the liability of the State Government, and shall be payable by the Member. This facility has been extended to the Presiding Officer and Members of the Council of Ministers.

A proviso to Section 4B(1) (a) of the old Act which provided that a member shall not be entitled to perform more than two return journeys in any financial year, has now been deleted in the corresponding section 7(1) (a) of the new Act of 1975. Moreover a member making use of the State car allotted to him, for private purposes, may get the distance travelled by him therein, adjusted against the limit of sixteen thousand kilometers. While making the adjustment, the first class railway fare payable to him for the journey shall be adjusted against the hire charges recoverable in respect of it at the rates prescribed by the State Government. The above facility has been extended to the Presiding Officer and Members of the Council of Ministers.

Tamil Nadu (Allowances and pensions for members).—The Tamil Nadu Payment of Salaries (Amendment) Act 1975 provides for the issue of free railway travel coupons to the members of the Tamil Nadu Legislature to travel up to a distance of 10,000 kms. per year throughout India on any Railway and also for the payment of a telephone allowance of Rs. 100/- per month irrespective of the fact that they have their own telephone or not.

The Tamil Nadu Payment of Salaries (Second Amendment) Act, 1975 provides for the payment of pension of Rs. 250/- per month to every person who after 1st March 1952 had been or is a member of the Legislative Assembly or of Legislative Council for an aggregate period of (i) ten years as member of the Legislative Assembly or (ii) twelve years as member of the Legislative Council or (iii) ten years both as member of the Legislative Assembly and the Legislative Council.

Guyana (Parliamentary allowances).—During 1975, three Orders were made by the Minister of Finance making provision for the payment of—

(i) a commuted travelling allowance to the Leader of the Opposition (Order 17/1975),
(ii) allowances and gratuities to Chauffeurs of Parliamentary Secretaries (Order 17/1975 & 63/1975), and
(iii) an increase in the mileage rate of the travelling allowance payable to Members (Order 64/1975).

Bermuda (Members' salaries and pensions).—Under the Ministers and Members of the Legislature (Salaries and Pensions) Act

1975 provision was made for the payment of increased salaries to Members of the Legislature, and also for the payment of pensions to Members. Hitherto no Member of Bermuda's Legislature has been eligible for a pension by virtue of his service as a Member. The Act, which was assented to on 30th December, 1975, will not become operative until after the next General Election.

Under section 2 of the Act the salary payable to Members with effect from the operative date will be $4,500 per annum. In addition to this basic salary additional salaries will be payable under section 3 to those office holders as specified in the First Schedule to the Act.

Office	*Salary*
Premier	$7,500
Ministers of Cabinet	$4,500
Opposition Leader	$3,000
President of the Legislative Council	$2,500
Speaker of the House of Assembly	
Vice-President of the Legislative Council	$ 500
Deputy Speaker of the House of Assembly	
Parliamentary Secretaries	
Government Whip	
Opposition Whip	

5. Standing orders

House of Lords (Leave of Absence).—Standing Order No. 22 was repealed on 5th March 1975 and replaced by the following new Standing Order:—

"(1) Lords are to attend the sittings of the House or, if they cannot do so obtain leave of absence, which the House may grant at pleasure; but this Standing Order shall not be understood as requiring a Lord who is unable to attend regularly to apply for leave of absence if he proposes to attend as often as he reasonably can.

(2) A Lord may apply for Leave of Absence at any time during a Parliament for the remainder of that Parliament.

(3) On the issue of writs for the calling of a new Parliament the Lord Chancellor shall in writing request every Lord to whom he issues a writ, with such exceptions as the Leave of Absence and Lords Expenses Committee may direct, to answer within eight weeks whether he wishes to apply for leave of absence or not.

(4) In the case of those Lords who have not by the date specified in the Lord Chancellor's letter either—

(*a*) indicated their wishes: or

(*b*) attended the House (other than for the purpose of taking the Oath of Allegiance.)

reminder letters shall be sent by the Lord Chancellor stating that if they do not indicate their wishes within a further period of two weeks they will be considered to have applied for leave of absence.

(5) At the expiry of the period of two weeks the Leave of Absence and Lords Expenses Committees shall meet to consider lists of Lord who had—
(*a*) applied for leave of absence; and
(*b*) failed to reply to the reminder letter.
In considering the lists the Committee may, in appropriate cases, decide that no further action should be taken. The remaining Lords on the lists will be granted leave of absence by the House.

(6) A Lord who has been granted leave of absence is expected not to attend the sittings of the House until the period for which the leave was granted has expired or the leave has sooner ended, unless it be to take the Oath of Allegiance.

(7) If a Lord, having been granted leave of absence, wishes to attend during the period for which the leave was granted, he is expected to give notice to the House accordingly at least one month before the day on which he wishes to attend; and at the end of the period specified in his notice, or sooner if the House so direct, the leave shall end."

The new Standing Order was intended "to streamline the manner in which the existing scheme is operated and to place on a more secure basis the conventions which have hitherto guided the Select Committee on Leave of Absence and Lords' Expenses in its administration". (Report, Procedure Committee, 1974/75). The most important change was the abolition of leave of absence for a session, formerly available as an alternative to leave of absence for a Parliament.

House of Lords (Hybrid Statutory Instruments).—Certain amendments were made to Private Business Standing Orders concerning Hybrid Instruments (delegated legislation requiring approval by a resolution in each House of Parliament, and affecting particular private rights), and also for providing an expedited procedure in the case of certain Hybrid Instruments. S.O.216A was introduced as a result of the Offshore Petroleum Development (Scotland) Act 1975, providing that certain Hybrid Instruments should proceed as if not hybrid (that is, as if they did not affect particular private rights, and so were not covered by S.O.216) after a certain period.

House of Lords (Continuity of Sessional Committees).—A new Standing Order was made on 10th November 1975 as follows:—

"The orders of appointment of the . . . committees and any of their sub-committees shall remain in force and effect, notwithstanding the prorogation of Parliament, until such time as the House or Committee makes further orders of appointment in the next succeeding session."

Formerly sessional committees could not sit in the first few days of each session as they had not been appointed. This new Standing Order

was intended to fill the gap by enabling the committee (or any sub-committee) of the previous session to continue to sit until reappointed. It applies to all the sessional committees except the Appeal and Appellate Committees, which are automatically appointed on the first day of the new session, and the Committee of Selection.

House of Lords (Listing of peers alphabetically rather than by rank in the peerage).—The Journals of the House used to list peers attending the House by reference to their rank in the peerage. On 10th November 1975 the House agreed to amend the relevant Standing Order as follows:—

> Leave out all the words after "the Journals of the House" and insert "the title or dignity by which such a Lord sits in Parliament shall be added in brackets after such higher title or dignity".

The effect of this amendment is to allow the Journals to record the names of peers attending the House alphabetically.

Canada: Senate (Quoting speeches made in the House of Commons).—A new Standing Order 34 A was agreed to on 26th November 1975, following a Report from the Committee on Standing Rules and Orders, to clarify the procedure of the Senate with regard to the quoting of speeches made in the House of Commons. It reads as follows:—

> "The content of a speech made in the House of Commons in the current session may be summarized, but it is out of order to quote from such a speech unless it be a speech of a Minister of the Crown in relation to government policy. A Senator may always quote from a speech made in a previous session."

Canada: Senate (Quorum in Committees).—A new Standing Order 70 A was recommended by the Committee on Standing Rules and Orders to allow Committees to sit to hear evidence without a quorum being present. A quorum is required whenever a vote, resolution or other decision is taken. The Standing Order was adopted on 26th November 1975.

Australia: Senate (Amendments to Standing Orders).—A number of changes to the Standing Orders of the Senate were made in 1975. Most of these changes were of an adminstrative nature, such as the time for the ringing of Bells for divisions, time limits on speeches, procedures for the possible elimination of delay in cases of urgent Government Bills, and procedures for the calling together of Committee meetings.

One Standing Order was amended in respect of urgency motions with effect from 20th August 1975. When the old and the new ones are read together the reason for the change is obvious.

The old Standing Order 64 read:

"64. (1) A motion without Notice, that the Senate at its rising adjourn to any day or hour other than that fixed for the next ordinary meeting of the Senate, for the purpose of debating some matter of urgency, can only be made after Petitions have been presented and Notices of Questions and Motions given, and before the Business of the Day is proceeded with, and such Motion can be made notwithstanding there be on the paper a Motion for Adjournment to a time other than that of the next ordinary meeting. The Senator so moving must make in writing, and hand in to the President before the time fixed for the meeting of the Senate, a statement of the matter of urgency. Such motion must be supported by four Senators rising in their places as indicating their approval thereof. Not more than one such Motion can be made during a sitting of the Senate.

(2) In speaking to such Motion, the mover and the Minister first speaking shall not exceed thirty minutes each, and any other Senator or the mover in reply shall not exceed fifteen minutes, and every Senator shall confine himself to the one subject in respect to which the Motion has been made. Provided that the whole discussion on the subject shall not exceed three hours."

The new one reads as follows:

"64. (1) A motion without Notice, "That in the opinion of the Senate the following is a matter of urgency: [here specify the matter of urgency]", can only be made after Petitions have been presented and Notices given, and before the Business of the Day is proceeded with.

(2) The Senator so moving must make in writing and hand in to the President at least 90 minutes before the time fixed for the meeting of the Senate, a statement of the matter of urgency.

(3) Such motion must be supported by four Senators rising in their places as indicating their approval thereof.

(4) Not more than one such Motion can be made during a sitting of the Senate, and the Motion may not be amended.

(5) In speaking to such Motion, the mover and the Senator next speaking shall not exceed 30 minutes each, and any other Senator or the mover in reply shall not exceed 15 minutes, and every Senator shall confine himself to the one subject in respect of which the Motion has been made: Provided that the whole discussion on the subject shall not exceed three hours."

It will be noted that there is now no need, if an urgency motion is agreed, for the Senate to meet other than at the ordinary time of meeting for the next sitting day.

An interesting clarification was made in respect to Standing Order No. 98. The Standing Order provides as follows:

"98. After Notices have been given, Questions may be put to Ministers of the Crown relating to public affairs; and to other Senators, relating to any Bill, Motion, or other public matter connected with the business on the Notice Paper, of which such Senators may have charge."

With the growth of Senate Committees, more and more Committee Chairmen have had questions directed at them during Question Time. To clarify the way in which such questions should be asked and answered,

a new Standing Order 98A was adopted with effect from 20th August 1975.

The new Standing Order reads as follows:

"98A. Questions may be put to the Chairman of a Committee relating to the activities of that Committee: Provided that—

(*a*) unless leave of the Senate is granted for them to be asked without Notice, such Questions may only be asked upon Notice;

(*b*) they shall not attempt to interfere with the Committee's work or anticipate its report; and

(*c*) the Chairman shall answer such Questions only on the basis that he answers on behalf of the Committee and not of himself."

South Australia: Legislative Council (Messages between the two Houses).—Standing Order 249 was amended to allow for Officers at the Table other than the Clerk and Clerk-Assistant to deliver and receive Messages. This had been recommended by the Standing Orders Committee.

South Australia: Legislative Council (Quotations from Hansard).—Following consideration by the Standing Orders Committee, Standing Order 188 was amended to allow Quotations to be made from *Hansard* of the debates in the other House, provided they are strictly relevant to the matter then under discussion.

South Australia: Legislative Council (Conferences between both Houses).—The holding of Conferences between the two Houses during adjournments of the Council has become the practice over recent years and, in order to avoid the suspension of Council Standing Orders to enable the Conferences to be held during the adjournment and the reports of Managers to be made forthwith on the next day of sitting, Standing Orders Nos. 254 and 261 were amended to accord with the new practice.

South Australia: Legislative Council (Limitation on speeches relating to suspension of Standing Orders).—A Member moving for the suspension used to be limited to 10 minutes in stating the reasons for such suspension and no further discussion was permitted unless a Minister of the Crown wanted to speak, in which event he was also limited to 10 minutes. The Standing Orders Committee recommended that the debate on a motion for suspension of Standing Orders should be limited to fifteen minutes with the mover and subsequent speakers in the debate being limited to a maximum of five minutes in stating reasons for or against such suspension.

South Australia: House of Assembly (Grievance Debate).—Following a Report from the Standing Orders Committee, Standing Orders 57 (Motion for adjournment) and 288 (Grievances) were re-

enacted to provide a more satisfactory method of airing grievances, whereby more frequent opportunities are made available than those previously existing only when Supply or Appropriation Bills were being considered. The Committee decided that it would be of benefit to Members that the motion for adjournment may only be moved by a Minister and must be moved by 10 p.m. on Tuesdays and Wednesdays and by 5 p.m. on Thursdays, unless otherwise ordered by the House by a motion moved without notice by a Minister and put forthwith from the Chair without debate. The adjournment motion, if so moved may be debated as a "grievance" motion for no more than thirty minutes with a maximum of ten minutes for each speaker, but if the motion is not moved by these times, no grievance times shall occur. So that this additional time may be made available the Committee considered that the opportuinities for grievances to be debated on Appropriation and Supply Bills should be reduced only to the motion to be moved by a Minister after the Second Reading—That the Speaker do now leave the Chair and the House resolve itself into a Committee of the whole to consider the Bill, and not also the motion for leave to introduce or for resumption of debate on the Second Reading or for resumption of consideration in Committee as previously.

South Australia: House of Assembly (Time limits on speeches in Committee).—The Standing Orders Committee recommended the following new Standing Order:—

"In Committee (except when an Appropriation Bill, a Public Purposes Loan Bill, or a Supply Bill is being considered) no Member, other than the Member in charge of a Bill or motion, shall speak more than three times on any one question nor for more than 15 minutes on any one occasion, and debate shall be confined to the motion, clause or amendment before the Committee."

South Australia: House of Assembly (Suspension of a Member).—In the past the matter of the length of suspension of a Member who has been named by the Speaker or Chairman of Committees has rested with the Mover in moving that the Member be suspended from the service of the House for any period he thinks fit. The Standing Orders Committee, after enquiries of other Parliaments recommended that a fairer method would be to lay down in the Standing Order a set of penalties to be observed in each instance, as follows:—

"If any member be suspended under this Standing Order, the suspension on the first occasion shall be for the remainder of the day's sitting and on the second occasion during the same session shall be for three consecutive sitting days, and on any subsequent occasion during the same session, for 11 consecutive sitting days. When a Member is suspended from the service of the House, he shall be excluded from the House and its galleries and from all rooms set apart for the use of Members on the days that he is so suspended."

Victoria: Legislative Assembly (Revision and consolidation

of Standing Orders).—The Standing Orders which were introduced in 1857 and which were amended on many occasions were consolidated and re-drafted to provide for:—

(*a*) the re-arrangement of the Standing Orders in a more logical sequence;
(*b*) the omission of provisions superseded by later Standing Orders, Joint Standing Orders, or Statute;
(*c*) resolving of contradictions in accordance with settled practice;
(*d*) a more complete redrafting in cases where the text inadequately expressed existing practices;
(*e*) the simplification of obscure language;
(*f*) the omission of obsolete practices; and
(*g*) the inclusion of definitions thus bringing common terms into uniformity throughout the Standing Orders.

As a result of the redraft, the exising 307 Standing Orders were reduced to 255.

Zambia (Party rules within Standing Orders).—Standing Order 137 was amended to incorporate a new Standing Order 137A which reads as follows:—

"137A. The Standing Orders Committee is empowered to enforce the relevant disciplinary rules of the United National Independence Party for breaches of the rules within the precincts of Parliament."

The purpose of this amendment is to incorporate Party Rules in the Standing Orders of the House.

Malta (Oath of Allegiance).—An amendment was made to Standing Order No. 5, consequent on the changes in the Constitution. The form of the 'Oath of Allegiance' which Members of the House make before being permitted to take part in the proceedings of the House was altered to read "allegiance to the people and the Republic of Malta and its Constitution" instead of "allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law". In Standing Orders 177, 178 and 187 the words "Her Majesty's name" was deleted since the President of Malta had by virtue of the Constitution assumed the duties of the Office of Head of State. These Standing Orders refer to the assent given to Bills after their Third Reading, and to an Address.

Guyana (Mode of Address of Members of the National Asembly).—On 11th July 1975 the National Assembly agreed to the following new Standing Order 35(5):—

"A Member shall be referred to in the Assembly either with the title 'Comrade' before his surname or official designation or as the Honourable Member, Mr. . . ."

The new Standing Order had been considered and agreed by the

Standing Orders Committee but nevertheless the motion to approve it gave rise to a lengthy debate. The Opposition were opposed to the proposal that members of the National Assembly should be addressed as "Comrade" and have asked that they should continue to be addressed as "The Honourable Member" as the new Standing Order permits.

Following the adoption of the Standing Order, the Official Report now refers to the Speaker as "Comrade Speaker" rather than "Mr. Speaker".

Fiji: House of Representatives (Motions to be seconded).—In November, 1975, the provisions of the Standing Orders relating to motions were amended so that debate can take place only after a motion is seconded. The previous S.O. read:

> "A member called upon by the Clerk to move a motion shall rise in his place and after making such remarks as he may wish, shall move the motion stating its terms."

The House interpreted the words "after making such remarks as he may wish" to mean that the mover may make his full introductory speech at whatever length he chooses before the motion is seconded. All notices must now be sent to the Clerk by the intended mover, duly signed. This applies as much to Ministers, Assistant Ministers, Government backbenchers as it does to every other member of the House. A private member's motion must be signed by the intended mover and one other member of the House, and if those stipulations are not complied with, the motion is unacceptable.

Fiji: House of Representatives (Avoidance of matters likely to promote ill-will in the community). An amendment was made which dealt with inadmissible motions, and is designed to forestall any motion which, in the opinion of the Speaker, is likely to promote or provoke feelings of ill-will or hostility between different communities in Fiji, or if such motion would, if passed and put into effect, be inconsistent with the fundamental rights and freedoms of the individual under the Constitution.

A further amendment outlawed the use of treasonable or seditious words, or words likely to promote or provoke feelings of ill-will between the different communities.

Western Samoa (Control and adminstration of the Legislative Department etc.).—A new Standing Order 142A provides for the control and administration of the Legislative Department in view of its separation from the Public Service. It reads as follows:—

(1) Subject to the right of the Government to control the expenditure with respect to the Legislative Department and the Estimates relating thereto, and to the provisions of any Act of Parliament,—

(*a*) The Clerk and Clerk Assistant of the House shall be appointed by the Head of State on the recommendation of Cabinet after consulting Mr. Speaker:

(*b*) Other officers of the House shall be appointed by Mr. Speaker on the recommendation of the Clerk:

(*c*) The salaries and other remuneration of the Clerk and the Clerk Assistant shall be fixed and determined by the Prime Minister on the recommendation of Mr. Speaker:

(*d*) The salaries and other remuneration of the other officers shall be fixed and determined by Mr. Speaker on the recommendation of the Clerk:

(*e*) The control and administration of the whole of the parliamentary grounds and the buildings and other erections thereon shall be vested in Mr. Speaker on behalf of the House, whether the House be in session or otherwise.

(2) The Clerk shall be responsible for the safekeeping of all the papers and records of the House, and shall have the general direction and control of the Legislative Department and all officers employed therein.

6. Accommodation and Facilities

Westminster (Sound broadcasting of debates).—In February 1975 the Commons had a full day's debate on whether or not to broadcast its proceedings on television and sound. At the end there was a fairly narrow vote against television broadcasting (Ayes 263, Noes 275) but a substantial vote in favour of sound broadcasting (Ayes 354, Noes 182). Members were left to vote without advice from the Whips and as the total number of Members is 635, including the occupants of the Chair and members of the Government, the voting figures on an issue of this kind can be regarded as fully representative of the House as a whole. The vote was, however, for a four week experiment only—no more than that.

The Services Committee, which broadly speaking is responsible for adminstrative matters within the House, then held a series of urgent meetings with the broadcasting authorities and with the engineering staff of the House to make practical arrangements for the experiment. There were two particular problems. The first was to provide within the Chamber itself a commentators' box large enough to contain the necessary personnel but not of a size which would intrude overmuch upon Members' benches. This was achieved by building a temporary structure in one corner of the Chamber furthest from but facing the Speaker's Chair at one end of the Special Visitors' bench which is underneath the Strangers' Gallery. The second problem was to effect a good sound linkage with the existing Tannoy system which relays speeches throughout the Chamber and the Galleries by means of amplifiers built into the backs of the benches. Other matters considered by the Committee included the content and length of the broadcasts and editorial responsibility

for them. It was agreed that editing must rest with the broadcasting authorities who gave assurances with regard to accuracy and impartiality; assurances were also given by the commercial network about strict observance of their advertising rules and practice.

The experiment went ahead as planned for four weeks in June and July 1975 following a short "referendum" recess, during which the necessary temporary construction work and technical arrangements had been carried out. The general impression, in the country as well as at Westminster, seemed to be that the experiment was a success and many Members who had opposed it because they had reservations about its impact upon proceedings in the Chamber found their fears to be without foundation. The general view of the public, so far as one can guess it from newspapers and casual conversation, seemed to be in favour of, or at least certainly not opposed to, sound broadcasting.

The Services Committee then undertook in the autumn of 1975 an evaluation of the experiment and found in the words of their short Report to the House "that the experiment in public sound broadcasting was successful and the broadcasting could be arranged satisfactorily on a permanent basis". They again heard evidence from the broadcasting authorities, as well as technical evidence from the Editor of Debates and the Shorthand Writer to the House who are responsible, respectively, for the recording of proceedings in Standing Committees on Bills and in Select Committees before whom witnesses are giving evidence. This was because it is the intention to broadcast proceedings of Committees as well as of the House subject of course to proper safeguards for the Committees' own control of their proceedings.

The Services Committee were concerned only with evaluating the four week experiment and not with detailed recommendations for future broadcasting arrangements. They did, however, point out some of the matters which would have to be taken into account. These included the creation of a parliamentary broadcasting unit, the control of the originating signal, the editing of the broadcast material, the retention of a master tape for archival purposes and questions of copyright and privilege. There had been one unfortunate incident arising from the experiment when one of the independent broadcasting companies made use, later in the year, of an 11-second extract from the four week record of debates. This was contrary to the conditions laid down for the experiment and, moreover, was used in a programme which was not devoted to news, current affairs or education which was also contrary to assurances given before the experiment. The Committee considered this incident in the course of the evaluation of the experiment and, of course, unreserved apologies were given by all those concerned. It was not thought of sufficient importance to qualify the Committee's recommendations—but they did emphasise '. . . the necessity for specific rules to be drawn up which will lay down the conditions under which use may be made of recorded material".

The Committee reported to the House on 27th January 1976 but meanwhile the Government had decided to go ahead and the Queen's Speech to Parliament on 19th November, 1975 included the following sentence—

"An opportunity will be provided to decide on a permanent system for sound broadcasting of the proceedings of Parliament."

This opportunity occurred on 16th March 1976 when the House of Lords resolved, without division "That this House would welcome the public sound broadcasting of its proceedings". On the same day the House of Commons resolved "That this House supports the proposal that the public sound broadcasting of its proceedings should be arranged on a permanent basis". In the Commons, however, there was a vote (Ayes 299, Noes 124) which took place after a debate which had occurred on two days, 8th and 16th March, and had lasted for five hours altogether. As on the previous occasion in February 1975, the vote was a free one with no advice given by the Whips.

Following these decisions a Joint Select Committee consisting of five Peers and five Members of the Commons was appointed by the two Houses at the beginning of April and is now considering what arrangements must be made to establish sound broadcasting on a permanent basis. Whether sufficient progress can be made to effect this as from the beginning of next session, i.e. about the 1st November, or whether it will have to be deferred until the New Year or even until the next Easter recess it is impossible to say. Much may depend on whether the necessary authority is given, by the two Houses, for the construction in the Chambers of commentators' boxes should the Committee so recommend. This construction work could take some time and would therefore need to be done during a summer recess which lasts for approximately two months or possibly in the Christmas recess which lasts usually for between three and four weeks.

(*Contributed by the Clerk Administrator*).

Australia (New and permanent Parliament House).—In the last issue of THE TABLE it was reported that Parliament had passed a Parliament Act determining Capital Hill as the site for the New and Permanent Parliament House and delineating that area surrounding Capital Hill to be known as the Parliamentary Zone. (Vol. XLIII, pp. 151–2) The Parliamentary Zone is, by the terms of the Act, under the direct control of the Parliament.

On 10th April 1975 Speaker Scholes made a statement to the House drawing attention to the need for the House to establish machinery to deal with its responsibilities under the Parliament Act.

On 5th June 1975, the House agreed, on the motion of the Prime Minister, the Hon. E. G. Whitlam, Q.C., to the appointment of a Joint

Standing Committee on the New and Permanent Parliament House. The Senate agreed to the resolution of the House, with modifications, which modifications were disagreed to by the House, and the House was informed that the Senate did not insist on its modifications on 26th August 1975.

The terms of reference of the committee were, in part, as follows:

(1) That a Joint Standing Committee be appointed to act for and represent the Parliament, as the client for the new and permanent Parliament House, in all matters concerned with the planning, design and construction of the new and permanent Parliament House and all matters incidental thereto.

(2) That the Committee shall reconsider and, as necessary, amend the recommendations of the former Joint Select Committee on the New and Permanent Parliament House contained in its report dated March 1970, which when revised shall be used as the basis of the construction of the new and permanent Parliament House.

.....

(16) That the Committee be authorised to provide on behalf of the Parliament, all necessary information concerning the functional requirements for the new and permanent Parliament House and matters incidental thereto direct to the National Capital Development Commission as the authority responsible to Parliament to undertake or arrange for the planning, design and construction of the new and permanent Parliament House.

The President of the Senate and the Speaker of the House of Representatives were joint chairmen.

The committee was envisaged as continuing the work already done by a joint committee on the subject, incorporated in that committee's report of March 1970. The new committee was also to give effect to the intentions expressed in the Parliament Act. The new committee was constituted as a standing committee in order for it to be able to supervise continuously the design and construction of the building in all its stages over a number of years.

It was thought important to maintain close consultation between the committee and the National Capital Development Commission because of the Commission's role in the overall planning and construction of Canberra as the nation's capital. The Commission also has the responsibility for obtaining funds and Government approval for development works in Canberra and in the national area in particular.

The committee's deliberations were brought to a close by the dissolution of both Houses of Parliament on 11th November 1975.

(*Contributed by the Clerk of the House of Representatives*).

7. General

Westminster (Application of Employment Protection legislation to the staff of both Houses).—For the first time an Act of Parliament, (other than an Act dealing specifically with parliamentary employment) has been applied directly to the staff of one of the Houses of Parliament at Westminster. Before 1975 the terms of legislation dealing

with such matters as remuneration, pensions and conditions of employment, were applied automatically to the staff of each House by analogy as if they were Government employees. However, during the passage through Parliament of the Employment Protection Bill in 1975, consideration was given to whether the Act should be made directly applicable to the staff of both Houses. It was originally thought to be impossible to draft adequately a section applying the Bill to parliamentary staff, given the peculiarities of employment requirements in each House, as well as the difficult question of who in fact is the employer of members of the staff. For instance, in the House of Lords the Clerk of the Parliaments and Black Rod appoint staff but the House of Lords' Offices Committee alone can authorise salaries. In order to avoid these difficulties it was suggested that each House should give a public undertaking to apply the terms of the Employment Protection Act, and its associated legislation, to their staff by analogy; in other words, to follow their usual practice in these matters. This was done at an early stage of the Bill's progress. Later, however, when the Bill was before the House of Lords, amendments were agreed to applying the Bill and three other acts of Parliament to the staff of the House of Commons. These amendments were accepted by the House of Lords for the House of Commons staff but they declined to extend the provisions of the Bill to their own staff. This was for two reasons; in the first place, the House agreed that there was no apparent advantage in going further than they had already in giving an undertaking that the terms of the Act would apply to the staff by analogy; the second reason was that it seemed to the House that the implications of including their staff within general legislation for the first time had not been fully considered.

The section, which brought the Commons staff into the Bill, provides that Mr. Speaker shall be the employer of all the staff of that House, with a power to designate others to be the employers of particular sections of the staff. It also provides that the Equal Pay Act 1970 and the Sex Discrimination Act 1975 shall be directly applicable to House of Commons' staff.

Although the Employment Protection Bill was enacted without including a section relating to the House of Lords, the Offices Committee have subsequently recommended that all four Acts, now applicable to the House of Commons staff, should be applied by analogy to Lords staff. The Committee have also made recommendations relating to the designated employers of sections of the staff. The House agreed to these recommendations on 13th April 1976.

Quebec (Financial help to political parties).—The National Assembly passed a bill, which was assented to on 19th December 1975, to entitle each political party to receive a share of an amount of $400,000 related to its share of the vote in the last general election. However, a party will in no case receive a contribution of less than $50,000, even if

that requires going beyond the amount of $400,000. This financial assistance will be granted to the political parties to enable them to pay their current administrative costs, to propagate their political programmes and to coordinate the political activities of their members.

All amounts distributed will be paid by the chief returning-officer following the filing, by the official representative of the party, of a report accompanied by vouchers of allowable expenditures, incurred and discharged, to pay the costs of its current administration, to propagate its political programme and to coordinate the political activities of its members. The vouchers filed by a party in support of its report will not be public documents, and only the chief returning-officer and his auditing agent will have access to them; they must be returned to the official representative of the party at the same time as a cheque is mailed to him.

Australia (Pecuniary interests of Members of the Parliament). —The Joint Committee on Pecuniary Interests of Members of the Parliament appointed in October 1974, reported to the Parliament on 30th September 1975. The committee made eleven recommendations concerning the pecuniary interests of Members which may be summarised as follows:

(1) Filing a copy of an income tax return is not an adequate or appropriate form of registration of pecuniary interests.
(2) Members of Parliament should disclose all companies in which they hold any beneficial interest as an individual, member of another company, or partnership, or through a trust.
(3) The registration of the actual value of any shareholdings should be left to the individual's discretion.
(4) Members of Parliament should disclose the location of any realty in which they have a beneficial interest.
(5) Members of Parliament should declare the names of all companies of which they hold directorships (even if unrenumerated).
(6) Members of Parliament should declare any sponsored travel.
(7) The information should be provided as a statutory declaration to a Parliamentary Registrar, directly responsible to the President of the Senate and the Speaker of the House of Representatives. Public access should be allowed on satisfying the Registrar and with the approval of the President or Speaker that a *bona fide* reason exists for such access. The register should be in loose-leaf form. Upon any request for access being received by the Registrar, the Senator or Member shall be notified personally and acquainted with the nature of the request. The Senator or Member may, within seven days, submit a case to the Registrar opposing the granting of access. On receipt of such submission the Registrar, with the approval of the President or Speaker, shall make a decision from which there shall be no appeal.
(8) On assuming office, a Minister should resign any directorships

of public companies and dispose of any shares in a public or private company which might be seen to be affected by decisions taken within the Minister's sphere of responsibility.

(9) A joint standing Parliamentary committee should be established to supervise generally the operation of the register and modify, on the authority of the Parliament, the declaration requirements applicable to Members of Parliament.

(10) The joint committee should be entrusted with the task of drafting a code of conduct based on standing orders, conventions, practices and rulings of the Presiding Officers of the Australian and United Kingdom Parliaments and such other guidelines as may be considered appropriate.

(11) The Parliamentary Registrar should be the Clerk of the Joint Standing Committee, and should be appointed by the President of the Senate and the Speaker of the House of Representatives.

The Report made similar recommendations for Ministerial staff, media officials and senior members of the Public Service.

On 6th November 1975 Mr. Riordan (Chairman of the Committee) moved a motion which would have implemented the Committee's recommendations. Debate on the motion was adjourned and no further action had occurred when Parliament was dissolved on 11th November 1975.

(*Contributed by the Clerk of the House of Representatives*).

Australia (Parliamentary Presiding Officers in Table of Precedence).—In the Australian Table of Precedence the Presiding Officers of the Parliament are listed after the Governor-General, State Governors and the Prime Minister. Australian Tables of Precedence have, until recently, always accorded the President of the Senate precedence over the Speaker of the House of Representatives. On 20th January 1975 a new Table of Precedence was notified in the Australian Government Gazette in which the Presiding Officers of the Parliament are to enjoy relative precedence according to the date of their appointment to office. If both Presiding Officers are appointed at the same time, the President of the Senate shall have precedence.

Under the altered Table of Precedence, the Speaker of the House, the Hon. J. F. Cope, enjoyed precedence over the President of the Senate, Senator the Hon. J. O'Byrne, due to the Spekaer's earlier date of election to office. However, with the resignation of Speaker Cope and the election of the Hon. G. G. D. Scholes to the office of Speaker, President O'Byrne enjoyed precedence over Speaker Scholes.

(*Contributed by the Clerk of the House of Representatives*).

Australia: House of Representatives (Resignation of Speaker).—The office of Speaker of the Australian House of Representatives is regarded as one to be filled by a member of the Party in power. Of the

seventeen occupants of the office of Speaker (some for more than one Parliament) only one (apart from the early years of the federation, when Party lines were highly fluid) has held office during a period when the Party of which he was a member did not form the Government. (In November 1940, the Honourable W. M. Nairn, a member of one of the governing coalition Parties, was elected Speaker and continued in office until June 1943 even though, in October 1941, during the same Parliament, the former Opposition had come to power). A Speaker ceases to hold office either by tendering his resignation from his seat or from his office in writing to the Governor-General, by being removed from office by vote of the House, or by ceasing to be a Member of the House.

On 27th February 1975 a series of events occurred in the House which ended with the resignation from office of the Speaker (the Honourable James F. Cope). Shortly after Questions, Mr. Speaker named a Minister for refusing to apologise after disregarding the authority of the Chair, and an office-holder of an Opposition Party moved that the Minister be suspended from the service of the House. The question was negatived, on division, with most Government Members voting with the "Noes". Having declared the result of the division, the Speaker informed the House of his intention to tender his resignation from office to the Governor-General, and requested the Deputy Speaker (and the Chairman of Committees) to take the Chair.

Later that day the Clerk read to the House a communication from His Excellency the Administrator (the Governor-General being temporarily absent from Australia) informing the House that Mr. Cope's resignation from office had been received and had been accepted. The Clerk then informed the House that the next business was the election of Speaker, and called for nominations. After a ballot, the Deputy Speaker, Mr. G. G. D. Scholes, was declared elected as Speaker.

Mr. Cope was only the second Speaker of the House to resign from office during the life of a Parliament (the first Speaker to do so was the Honourable W. M. Nairn referred to above). No Speaker has resigned his seat in writing to the Governor-General and no Speaker has been removed from office by a vote of the House. Two Speakers have died in office.

(*Contributed by the Clerk of the House of Representatives*).

New South Wales (Protection for Government Printer in respect of parliamentary papers).—The *Parliamentary Papers (Supplementary Provisions) Act* (No. 49 of 1975) conferred on the Government Printer certain protection previously contained in the Defamation Act, 1958, which had been repealed by the Defamation Act, 1974. The latter Act gave the Government Printer immunity in respect of defamation actions only, whereas the new 1975 Act provides protection against all other types of legal proceedings arising from the publication of parlia-

mentary proceedings and papers. Not only is protection now afforded in regard to publication of debates, proceedings and documents ordered to be published by either or both Houses, but it is also provided in respect of the publication of documents laid before or evidence taken before either House, a joint sitting of both Houses, or a committee comprised of Members of either or both Houses.

(Contributed by the Clerk of the Legislative Council).

8. ORDER

Tamil Nadu: Legislative Countil (Unparliamentary expressions).—While speaking on the Policy Note on District Administration, Head of State, etc. on 31st March 1975, Thiru G. Vasantha Pai, M.L.C. made some objectionable remarks which the Hon. Chairman expunged. In that connection on 2nd April 1975, the Hon. Chairman gave the following ruling:

"I informed the House yesterday that I would give my ruling on the portions to be expunged in the proceedings of the House on 31st March 1975".

Rule 67, item (v), of the Legislative Council Rules reads as follows: ·

A member while speaking must not reflect upon the conduct of the President or, any Governor of any Court of Justice or irregularly use the Governor's or President's name for the purpose of influencing a debate.

Rule 197 of the Council Rules is as follows:

If the Chairman is of opinion that words have been used in debate which are defamatory or indecent, or unparliamentary or undignified or grossly irregular, he may in his discretion, order that such words or portion of the speech containing such words be expunged from the official report of the proceedings of the House and all consequential alterations, made in such report.

On that day the Hon. Member Thiru Vasantha Pai made certain references to 'a head of a State'. Those references I consider are irregular and undignified and are not in good taste. Hence, I have expunged such portions which referred to a Head of a State and his conduct and ordered consequential alterations to be made in the proceedings. Further, the incident referred to by the Member relates to what happened in 1970. The discussion now before the House relates to the estimate relating to the financial year 1975–76. In this view also the matter raised by the Member is irrelevant.

I have also to inform the House that the Chair is very zealous to protect the freedom of speech of the Members on the floor of the House and, at the same time, it has to safeguard the dignity and decorum o the House. Freedom of speech of Members does not mean that they can say anything on the floor of the House. Freedom is restricted by rules and regulations. Freedom should not mean licence.

Article 203 of the Constitution says that Members can discuss the

estimates but so much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly. The Members can discuss the policy behind, or offer suggestions for the better adminstration of, those estimates but should not reflect upon High Officials or a high dignitary or the Governor. In view of that I have expunged all the portions relating to the Governor as I have already informed the House."

XVII. EXPRESSIONS IN PARLIAMENT 1975

The following is a list of examples occurring in 1975 of expressions which have been allowed and disallowed in debate. Expressions in languages other than English are translated where this may succinctly be done; in other instances the vernacular expression is used, with a translation appended. The Editors have excluded a number of instances submitted to them where an expression has been used of which the offensive implications appear to depend entirely on the context. Unless any other explanation is offered the expressions used normally refer to Members or their speeches.

Allowed

"biggest frauds" (*N.S.W. L.A. Hans.* p. 733)
"clownery" (*Can. Com. Hans.*, 16.4.75)
"disgraceful conduct" (*Can. Com. Hans.*, 30. 7. 75)
"fools" (*N.S.W. L.A. Hans.* p. 3342)
"indecency in casting innuendos" (*Can. Com. Hans.*, 30.7.75)
"obstruction" (*Can. Com. Hans.*, 26. 5.75)
"queen, I would not call you a" (*N.S.W. L.A. Hans.* p. 330)
"shame" (*T.N.L.A. Procs.*, Vol. LXIV No. 2 p. 214)
"there are plenty of people in the legal profession who have not lived up to the ethics of that profession" (*N.S.W.P.D.*, Vol. 116, p. 4637)

Disallowed

"abusing" (*Gujarat Procs.* Pt II, Vol. 49, c. 69)
"agents of capitalists" (*L.S. Deb.*, 7.8.75. Col. 95)
"animal" (*Aust. Sen. Hans.*, 20.5.75, pp.1607–8)
"ashamed, you should be and drown yourself in the Bhopal lake" (*M.P.V.S. Procs.*, 18.2.75)
"blah, blah, blah" (*Zambia P.D.* c. 162)
"bloody" (*Zambia P.D.* c. 240)
"buggered" (*Zambia P.D.* c. 1394)
"cantankerous" (*T.N.L.A. Procs.* Vol. LXVI, No. 4, p. 422)
"chap" (*Zambia P.D.*, cc. 299, 393)
"Chintzy" (*Br. Col. Hans.* p. 634)
"communist symphathisers over there" (*W.A. Debates* 1975, p. 786)
"corrupt government and a corrupt leader" (*W.A. Debates* 1975, pp. 26–29)
"confusion" (*Gujarat Procs.*, Pt. II, Vol. 47, c. 666)
"contemptible" (*Aust. Sen. Hans.*, 21.10.75, p. 1311)
"corrupt" (*Aust. Sen. Hans.*, 15.10.75, p. 1166)
"coward" (*Aust. Sen. Hans.*, 15.10.75. p. 1175)
"cowardly" (*Br. Col. Hans.*, p. 634)

"crooked" (*M.P.V.S. Procs.*, 9.4.75)
"cunning" (*Gujarat Procs.*, Pt. II, Vol. 48, c. 807)
"deception, the Premier practices, and wants to hide" (*W.A. Debates*, 1975, p. 154)
"deliberately misleading" (*Br. Col. Hans.*, p. 631)
"devils" (*Zambia P.D.*, c. 2303)
"diabolical" (*Zambia P.D.*, c. 2044)
"dirty" (*Malta Procs.*, 6.8.75)
"disgraceful man" (of State Premier) (*Aust. Sen. Hans.*, 3.9.75, pp. 542–3)
"drunk again" (*N.S.W. L.A. Hans.*, p. 1853)
"faeces" (*Zambia P.D.*, c. 1387)
"false and deceptive demands" (of a Minster) (*Gujarat Procs.*, Pt. II, Vol. 48, c. 1003)
"fellows" (*Zambia P.D.*, c. 1599)
"flippant" (*Br. Col. Hans.*, p. 2514)
"fool" (*Gujarat Procs.*, Pt. II, Vol. 49, c. 456)
"Frankenstein and monster" (*Sabha Procs.*)
"fraudulent" (*Br. Col. Hans.* p. 2644)
"fumbling old man" (*Br. Col. Hans.*, p. 3338)
"guilty, you are, of a crime" (*W.A. Debates*, 1975, p. 292)
"gutter tactics" (*Vict. L.A. Hans.*, p. 5971)
"guttersnipe" (*Br. Col. Hans.*, p. 657)
"guttersnipe tactics" (*Br. Col. Hans.*, p. 657)
"honest, less than" (*Br. Col. Hans.*, p. 176)
"hope that will be more accidents, and indeed deaths, on the railways" (*N.S.W. L.A. Hans.*, p. 4698)
"hypocrisy" (*Br. Col. Hans.*, p. 179)
"hypocrite" (*Aust. Sen. Hans.*, 21.10.75, p. 1311)
"hypocritical" (*Br. Col. Hans.*, p. 2408)
"ignoramus" (*Aust. Sen. Hans.*, 6.11.75, p. 1862)
"inbibing, probably he is still elsewhere" (*N.S.W. P.D.*, Vol. 119, p. 2271)
"innuendo or smear" (*Br. Col. Hans.*, p. 320)
"liar" (*Aust. Sen. Hans.*, 30.10.75, p. 1604)
"lie" (*Aust. Sen. Hans.*, 15.10.75, p. 1191)
"lie" (*L.S. Deb.*, 10.4.75, Col. 325)
"lies" (*Aust. Sen. Hans.*, 15.10.75, pp. 1189–1190)
"lies" (*Malta Procs.*, 29.1.75)
"little dictators" (*Zambia P.D.*, c. 2306)
"makkukal" (dullards) (*T.N.L.A. Procs.*, Vol. LXXIII, No. 2, 23.10.75)
"mischievious" (*M.P.V.S. Procs.*, 9.4.75)
"misleading" (*Br. Col. Hans.*, p. 282)
"Mr. Magoo" (*Br. Col. Hans.*, p. 414)
"nonsense talk" (*M.P.V.S. Procs.*, 19.3.75)
"original gaol riots" (*N.S.W. L.A. Hans.*, p. 590)
"paranoid Member" (*Br. Col. Hans.*, p. 191)
"phony" (*Br. Col. Hans.*, p. 2644)

"pinched the pensioners' Christmas beer" (*N.S.W. L.A. Hans.*, p. 4004)
"pipsqueaks" (*Br. Col. Hans.*, p. 3336)
"provocative" (of a Bill passed by House) (*N.S.W. P.D.*, Vol. 116, p. 5134)
"Rasputin" (*Sabha Procs.*)
"rattlesnake" (*Victoria L.A. Hans.*, p. 4932)
"robbed, the taxpayers were being, of two million bucks" (*W.A. Debates*, 1975, p. 3623)
"smuggler" (*Punjab V.S. Procs.*, 30.1.75)
"stooge" (of Prime Minister) (*N.S.W. P.D.* vol. 120, p. 3083)
"stupid" (*Malta Procs.*, 28.10.75)
"subordinate" (*T.N.L.A. Procs.*, Vol. LXVIII, No. 4, p. 448)
"traitor" (*Zambia P.D.*, c. 1371)
"two cowrie worth or of no account" (*U.P.V.S. Procs.*, Vol. 308, p. 1008)
"unsound mind" (*M.P.V.S. Procs.*, 30.7.75)
"will this letter full of so much nonsense be read today" (of the Chair) (*U.P.V.S. Procs.*, Vol. 314, 22.3.75)
"worm" (*N.S.W. L.A. Hans.*, p. 1853)

Borderline
"vakku" (guts) (*T.N.L.A. Procs.*, Vol. LVII No. 2, p. 240)

XVIII. REVIEWS

The Commonwealth Parliaments. ed. S. L. Shakdher (Lok Sabha Secretariat, 1975, Rs. 35.00).

This special number of the Journal of Parliamentary Information, sub-titled "The Commonwealth Parliaments", was published to coincide with the 1975 Conference of the Commonwealth Parliamentary Association in New Delhi. Shri Shakdher is to be congratulated on the extensive coverage of Commonwealth parliamentary developments he has achieved in this book; it is one which THE TABLE has long tried to achieve but not always with success! The material in the book is extremely varied and will serve as a valuable reference source, but apart from the underlying theme of all contributions being from Commonwealth Parliaments, there appears to be no particular problem or constitutional development to which they are directed.

The journal is divided into three distinct parts. The first deals with inter-parliamentary co-operation to which contributors are, with one exception, politicians and, indeed, mainly Speakers. While this part of the journal is not therefore of the same professional interest to clerks as is the second (which deals with procedural and constitutional matters), nevertheless co-operation between parliaments, expecially those of the Commonwealth, should always remain something of importance to those who have the interests of organisations such as the Society of Clerks-at-the-Table in Commonwealth Parliaments at heart.

Part II of the journal is mainly devoted to articles on specific aspects of parliamentary and constitutional change in legislative assemblies as different in size as the House of Lords on the one hand to Grenada on the other. These are contributed in part by clerks; although curiously enough neither of the two articles from the United Kingdom is by a clerk. By coincidence also, both these articles deal with the European connection rather than the Commonwealth. The last part of the journal is devoted to information concerning the principal officers of each legislative assembly as well as constitutional details and salaries, etc. of members of various parliaments.

This issue of the Journal of Parliamentary Information, therefore, contains a wealth of useful information which will be valuable to both politicians and clerks and should find a place on all parliamentary bookselves.

The King's Parliament of England. By G. O. Sayles (Edward Arnold Ltd., 164pp. £3.50).

As Professor Sayles says in his foreword, his intention is to summarise the conclusions reached with Mr. H. G. Richardson ". . . over forty years". Apart from this, the purpose of the book is to shear away from the early

history of Parliament "the traditional mythology which regards popular representation as the focal point of interest": and the first chapter is entitled "Modern Myths and Medieval Parliaments".

No one who is acquainted with the work of these two most learned authors will be surprised to hear that their principal target, as modern myth-maker, is Bishop Stubbs. He is accused of the cardinal crime of reading into English constitutional history generally, and in particular into Parliamentary history, his own mid-nineteenth-century pre-occupations with democracy and its machinery. Of course almost anyone would agree that Stubbs was to some extent guilty of this fault; but even Professor Sayles himself, after a good deal of rough treatment of poor Stubbs, goes no further than the general conclusion that he was about a century too early in his dating of the emergence of any genuine and effective representation of the people in the House of Commons and the Government.

But Stubbs was following Macauley—not indeed in the sense that he had the same set of preoccupations to read into his constitutional history, but *mutatis mutandis* as it were. Macauley was concerned in, and concerned about, the general movement of Reform; and he wrote his history from that point of view. In thus involving history in current politics he too was following a respectable—we may feel inclined to say an admirable—precedent, that of the early seventeenth-century historian-parliamentarians like Selden, Cotton, Nye and Prynne, who quite deliberately, with the aid perhaps of officials like Elsynge, resurrected medieval precedents and procedure for the purposes of their politics. If their ends were good, were they not right to do so. And since they succeeded so thoroughly that their principles have largely permeated English politics ever since, it is surprising that their historical methods should have been pre-eminently influential among English historians. Of course these men made many and serious mistakes in their history—far more than Stubbs. There never had been, for example, a public Petition of Rights before they invented theirs in 1628: had they been better scholars, and perhaps more practical men of affairs as well, they would have stuck to that more genuine and natural product of contemporary Parliamentary form, the Grand Remonstrance.

While we may concede that the use of the past as a quarry from which to extract materials for use in the present is of doubtful legitimacy, particularly if the process involves some distortion, we must accept that the benefits may outweigh the objections of principle, as perhaps they did in the English Parliament of the seventeenth centruy. Be that as it may, it is plainly worth asking what alternative methods of studying parliamentary history there may be? The historian may follow Namier in adopting a scientific and inductive technique: he may study such purely objective data as what his subjects were and what they did, treating them as animals or insects, and making no attempt to find out what they *thought*. The so-called "History of Parliament" is an example

of this method, and one which perhaps may lead to the conclusion that it is not the best form of parliamentary history.

What Richardson and Sayles have done all their lives is to follow a third historical method, and to do it with immense learning and industry. Where adequate records exist, and where the matter to be studied is a human institution, these records may be used to try and find out what the people who composed that institution themselves thought they were doing. Following this method, and steering clear of all previous errors, Professor Sayles comes up with the conclusion, which I would venture to say is certainly correct, that the earliest Parliaments were special meetings of a Court, which was of course a court of law. But it is at this point—dare I say it?—that Professor Sayles has allowed his own version of modern prejudice to take over, or at least to creep in. For reasons which are quite natural, judicial records have an exceptionally good survival rate in an orderly society such as ours has on the whole been. This helps Professor Sayles to belabour Stubbs with the claim that there was precious little democratic action, and plenty of judicial action, in Parliament between 1250 and 1350. True enough. But we should never forget that there were in England between 1150 and 1750 perhaps two thousand manorial courts of which nearly everyone in the land had personal experience, and of which it is not unfair to say that the principle function was the running of what in modern terms would be described as a kibbutz or agricultural co-operative. In structure and procedure these courts were quite recognisably the same as that King's Court of which Parliament was a special or afforced sitting. In purpose and business, too, this similarity was discernible; both King's Court and manorial court were all-purpose authorities—they had legislative, judicial, executive, administrative and even ceremonial functions.

Professor Sayles indeed is quite prepared to recognise the omnicompetence of thirteenth-century Parliaments; he is only concerned to deny their representational element. This is perhaps fair enough; but if everyone was accustomed to working in and through courts of various kinds, it may be that the achievement of national consent against a background of given law—which after all was the purpose of the whole exercise—could be accomplished just as well by these perhaps cruder means as by the later more sophisticated methods and machinery for counting heads.

But all history seems predestined to steer a zig-zag course, and to go too far in veering away from past errors. What cannot be denied is that, not for the first time, Professor Sayles has put all students of Parliamentary history in his debt by compiling this short and masterly summary of the doctrines he has evolved with such care and learning over many years with his colleague H. G. Richardson.

(*Contributed by R. W. Perceval, formerly Clerk Assistant of the Parliaments*).

Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of

Parliament (19th Edition). Sir David Lidderdale (Editor). Butterworths, 1976, £25).

When reviewing the Seventeenth Edition of Erskine May in Volume XXXIII of THE TABLE, Mr. Robert Rhodes James claimed that "To review Erskine May is akin to reviewing the Bible"; reviewing the Nineteenth Edition, twelve years and two editions later, is a no less daunting task. However, any reviewer is immediately able to point to two obvious differences; the first is in cost—the 1964 edition cost £6 6s. while the 1976 edition costs £25! The second is that the name on the spine of the book is no longer that of Sir Barnett Cocks, who was responsible in whole, or in part, for five editions. The latest edition is the distinguished work of Sir David Lidderdale.

Although only five years separate this, the latest edition, from the Eighteenth, substantial changes, both procedural and constitutional, have occurred in this time. Perhaps the most important of these is the United Kingdom's accession to the European Communities and this is reflected by the addition of a whole new chapter to May dealing with the European institutions and their relationship with Westminster. The new Edition also covers the new procedure for the election of a Speaker, the requirement for Members of the House of Commons to register their financial interests and the increase in the use of Standing Committees. And in view of recent articles in THE TABLE about the effects of prorogation and dissolution on the work of Parliament, it is interesting to note that in 1974 the House of Commons made provision for certain Committees to survive prorogation and to exist for the duration of a Parliament. In 1975 provision was made in the House of Lords also for the Orders of appointment of most Sessional Committees to remain in force and effect, notwithstanding prorogation, until new Orders are made in the ensuing session. Other procedural changes in the House of Lords are also recorded.

The new Erskine May contains a great deal of new material but the method of its revision is something which should perhaps be considered before work on the Twentieth Edition is put in hand. It is astonishing that busy Clerks of both Houses of Parliament can still find time to revise, painstakingly and eruditely, a volume as detailed as May; that they do so is a matter for praise. But there remains the problem that contributors' official duties are bound to curtail the amount of thought they can give to the project as a whole. Little opportunity can be allowed to them to consider whether the constituent parts of the work truly reflect the priorities of the United Kingdom Parliament in the second half of the twentieth century and whether the relationship of those parts to each other are the best that can be devised.

In conclusion, however, the thanks of all those who use Erskine May are due to Sir David Lidderdale and his assistant editors who have succeeded in including so much new material in this latest edition without significantly adding to its length.

XIX. RULES AND LIST OF MEMBERS

The Society of Clerks-at-the-Table in Commonwealth Parliaments

Name

1. The name of the Society is "The Society of Clerks-at-the-Table in Commonwealth Parliaments".

Membership

2. Any Parliamentary Official having such duties in any legislature of the Commonwealth as those of Clerk, Clerk-Assistant, Secretary, Assistant Secretary, Serjeant-at-Arms, Assistant Serjeant, Gentleman Usher of the Black Rod or Yeoman Usher, or any such Official retired, is eligible for Membership of the Society.

Objects

3. (*a*) The objects of the Society are:

(i) To provide a means by which the Parliamentary practice of the various Legislative Chambers of the Commonwealth may be made more accessible to Clerks-at-the-Table, or those having similar duties, in any such Legislature in the exercise of their professional duties;

(ii) to foster among Officers of Parliament a mutual interest in their duties, rights and privileges;

(iii) to publish annually a JOURNAL containing articles (supplied by or through the Clerk or Secretary of any such Legislature to the Officials) upon Parliamentary procedure, privilege and constitutional law in its relation to Parliament;

(iv) to hold such meetings as may prove possible from time to time.

(*b*) It shall not, however, be an object of the Society, either through its JOURNAL or otherwise, to lay down any particular principle of parliamentary procedure or constitutional law for general application; but rather to give, in the JOURNAL, information upon these subjects which any Member may make use of, or not, as he may think fit.

Subscription

4. (*a*) There shall be one subscription payable to the Society in respect of each House of each Legislature which has one or more Members of the Society.

(*b*) The minimum subscription of each House shall be £15, payable not later than 1st January each year.

(*c*) Failure to make such payment shall make all Members in that House liable to forfeit membership.

(*d*) The annual subscription of a Member who has retired from parliamentary service shall be £1.25 payable not later than 1st January each year.

List of Members

5. A list of Members (with official designation and address) shall be published in each issue of the JOURNAL.

Records of Service

6. In order better to acquaint the Members with one another and in view of the difficulty in calling a full meeting of the Society on account of the great distances which separate Members, there shall be published in the JOURNAL from time to time, as space permits, a short biographical record of every Member. Details of changes or additions should be sent as soon as possible to the Officials.

Journal

7. One copy of every publication of the JOURNAL shall be issued free to each Member. The cost of any additional copies supplied to him or any other person shall be £3.50 a copy, post free.

Administration

8. (*a*) The Society shall have its office at the Palace of Westminster and its management shall be the responsibility of the Clerk of the Overseas Office, House of Commons, under the directions of the Clerks of the two Houses.

(*b*) There shall be two Officials of the Society, one appointed by the Clerk of the Parliaments, House of Lords, and one by the Clerk of the House of Commons, London; each Official shall be paid an annual salary, the amount of which shall be determined by the two Clerks. One of these Officials shall be primarily responsible for the editing of the JOURNAL.

Account

9. Authority is hereby given to the Clerk of the Overseas Office and the Officials of the Society to open a banking account in the name of the Society and to operate upon it, under their signature; and a statement of account, duly audited, and countersigned by the Clerks of the two Houses of Parliament at Westminster shall be circulated annually to the Members.

LIST OF MEMBERS

United Kingdom

Sir Peter Henderson, K.C.B., Clerk of the Parliaments, House of Lords, S.W.1.

*J. E. Grey, Esq., Clerk Assistant of the Parliaments, House of Lords, S.W.1.

J. C. Sainty, Esq., Reading Clerk and Clerk of Outdoor Committees, House of Lords, S.W.1.

R. P. Cave, C.B., M.V.O., K.C.S.G., D.L., Fourth Clerk-at-the-Table (Judicial), House of Lords, S.W.1.

Admiral Sir Frank Twiss, K.C.B., D.S.C., Gentleman Usher of the Black Rod and Serjeant-at-Arms, House of Lords, S.W.1.

Group-Captain R. M. B. Duke-Woolley, D.S.O., D.F.C., Yeoman Usher of the Black Rod and Deputy Serjeant-at-Arms, House of Lords, S.W.1.

*R. D. Barlas, Esq., C.B., O.B.E., Clerk of the House of Commons, S.W.1.

C. A. S. S. Gordon, Esq., C.B., Clerk-Assistant of the House of Commons, S.W.1.

K. A. Bradshaw, Esq., Principal Clerk of the Table Office, House of Commons, S.W.1.

J. H. Willcox, Esq., Clerk of the Overseas Office, House of Commons, S.W.1.

Lieutenant-Colonel P. F. Thorne, C.B.E., Serjeant-at-Arms, House of Commons, S.W.1.

Cdr. D. Swanston, D.S.O., D.S.C., R.N. (retd.), Deputy Serjeant-at-Arms, House of Commons, S.W.1.

Northern Ireland

R. H. A. Blackburn, Esq., LL.B., Clerk, Stormont, Belfast.

*John A. D. Kennedy, Esq., LL.B., Clerk-Assistant, Stormont, Belfast.

J. M. Steele, Esq., T.D., Second Clerk-Assistant, Stormont, Belfast.

B. M. J. Hunter, Esq., Fourth Clerk, Stormont, Belfast.

Capt. J. C. Cartwright, D.S.C., R.N., Serjeant-at-Arms, Stormont, Belfast.

Isle of Man

R. B. M. Quayle, Esq., Clerk of Tynwald, Clerk of Tynwald's Office, Legislative Buildings, Douglas, I.o.M.

R. G. G. Caley, Esq., Clerk-Assistant of Tynwald, Legislative Buildings, Douglas, I.o.M.

* Barrister-at -Law or Advocate.

Jersey

*E. J. M. Potter, Esq., Greffier of the States, States Greffe, St. Helier, Jersey, C.I.

Canada

Robert Fortier, Esq., Clerk of the Senate, Ottawa, Ont.

Alcide Paquette, Esq., Clerk-Assistant of the Senate, Ottawa, Ont.

Alistair Fraser, Esq., Clerk of the House of Commons, Ottawa, Ont.

C. B. Koester, Esq., Clerk-Assistant of the House of Commons, Ottawa, Ont.

*Marcel R. Pelletier, Esq., Q.C., Clerk-Assistant (Legal), House of Commons, Ottawa, Ont.

Alexander Small, Esq., Second Clerk-Assistant, House of Commons, Ottawa, Ont.

*Joseph Maingot, Esq., LL.B., Parliamentary Counsel, House of Commons, Ottawa, Ont.

Reginald-L. Boivin, Esq., Third Clerk-Assistant, House of Commons, Ottawa, Ont.

Maxine Guitard, Esq., B.A., Third Clerk-Assistant, House of Commons, Ottawa, Ont.

*Roderick Lewis, Esq., Q.C., Clerk of the Legislative Assembly, Parliament Buildings, Toronto, Ont.

Rene Blondin, Esq., Secretary-General of the National Assembly, Parliament Buildings, Quebec.

*C. Blake Lynch, Esq., Clerk of the Legislative Assembly, Fredericton, New Brunswick.

*H. F. Muggah, Esq., Q.C., B.A., LL.B., D.C.L., Chief Clerk of the House of Assembly, Halifax, N.S.

R. K. MacArthur, Esq., B.A., LL.B., Assistant Clerk of the House of Assembly, Halifax, N.S.

*I. M. Horne, Esq., Q.C., Clerk of the Legislative Assembly, Victoria, B.C.

Mrs. E. M. Miller, Clerk-Assistant of the Legislative Assembly, Victoria, B.C.

G. Barnhart, Esq., Clerk of the Legislative Assembly, Regina, Sask.

Mrs. G. Ronyk, Assistant-Clerk of the Legislative Assembly, Regina, Sask.

Hugh F. Coady, Esq., Clerk of the House of Assembly, St. John's, Newfoundland.

R. Penney, Esq., Clerk-Assistant of the House of Assembly, St. John's, Newfoundland.

E. K. Kennedy, Esq., Clerk of the Legislative Assembly, P.O. Box 2000, Charlottetown, Prince Edward Island.

Douglas B. Boylan, Esq., Clerk-Assistant to the Legislative Assembly, P.O. Box 2000, Charlottetown, Prince Edward Island.

* Barrister-at-Law or Advocate.

W. H. Remnant, Esq., Clerk of the Council, Northwest Territories, Canada.

D. J. Blain, Esq., C.D., Clerk-Assistant of the Council, Northwest Territories, Canada.

Australia

J. R. Odgers, Esq., C.B.E., Clerk of the Senate, Canberra, A.C.T.

R. E. Bullock, Esq., O.B.E., B.A., B.Comm., Deputy Clerk of the Senate, Canberra, A.C.T.

K. O. Bradshaw, Esq., First Clerk-Assistant of the Senate, Canberra, A.C.T.

*A. R. Cumming Thom, Esq., B.A., LL.B., Clerk-Assistant of the Senate, Canberra, A.C.T.

H. C. Nicholls, Esq., Principal Parliamentary Officer of the Senate, Canberra, A.C.T.

H. G. Smith, Esq., B.A., Usher of the Black Rod, Canberra, A.C.T.

N. J. Parkes, Esq., C.B.E., A.A.S.A., Clerk of the House of Representatives, Canberra, A.C.T.

J. A. Pettifer, Esq., B.Comm., A.A.S.A., Deputy Clerk of the House of Representatives, Canberra, A.C.T.

D. M. Blake, Esq., V.R.D., J.P., First Clerk-Assistant of the House of Representatives, Canberra, A.C.T.

A. R. Browning, Esq., Clerk-Assistant of the House of Representatives, Canberra, A.C.T.

L. M. Barlin, Esq., Senior Parliamentary Officer of the House of Representatives, Canberra, A.C.T.

I. C. Cochran, Esq., Senior Parliamentary Officer of the House of Representatives, Canberra, A.C.T.

D. M. Piper, Esq., Senior Parliamentary Officer of the House of Representatives, Canberra, A.C.T.

A. W. B. Saxon, Esq., Clerk of the Parliaments and Clerk of the Legislative Council, Sydney, N.S.W.

L. A. Jeckeln, Esq., Clerk Assistant of the Legislative Council, Sydney, N.S.W.

K. C. McCrae, Esq., Usher of the Black Rod, Legislative Council, Sydney, N.S.W.

R. Ward, Esq., Clerk of the Legislative Assembly, Sydney, N.S.W.

D. L. Wheeler, Esq., Clerk-Assistant, Legislative Assembly, Sydney, N.S.W.

G. H. Cooksley, Esq., Second Clerk Assistant, Legislative Assembly, Sydney, N.S.W.

H. St. P. Scarlett, Esq., House Secretary and Parliamentary Accountant, Parliament House, Sydney, N.S.W.

C. George, Esq., Clerk of the Parliament, Brisbane, Queensland.

* Barrister-at-Law or Advocate.

G. Wyborn, Esq., Clerk-Assistant and Serjeant-at-Arms, Parliament House, Brisbane, Queensland.
W. E. Wilson, Esq., Second Clerk-Assistant, Parliament House, Brisbane, Queensland.
A. R. Woodward, Esq., Third Clerk-Assistant, Parliament House, Brisbane, Queensland.
I. J. Ball, Esq., A.A.S.A., A.C.I.S., Clerk of the Legislative Council, and Clerk of the Parliaments, Adelaide, South Australia.
A. D. Drummond, Esq., F.A.S.A., A.C.I.S., J.P., Clerk-Assistant of the Legislative Council and Gentleman Usher of the Black Rod, Adelaide, South Australia.
C. H. Mertin, Esq., Second Clerk-Assistant, Legislative Council, Adelaide, South Australia.
Mrs. J. M. Davis, Parliamentary Officer, Legislative Council, Adelaide, South Australia.
A. F. R. Dodd, Esq., A.U.A., Clerk of the House of Assembly, Adelaide, South Australia.
J. W. Hull, Esq., A.A.S.A., Clerk-Assistant and Serjeant-at-Arms of the House of Assembly, Adelaide, South Australia.
G. D. Mitchell, Esq., B.A., Second Clerk-Assistant, House of Assembly, Adelaide, South Australia.
G. B. Edwards, Esq., J.P., Clerk of the Council, Legislative Council, Hobart, Tasmania.
A. J. Shaw, Esq., J.P., Clerk-Assistant and Usher of the Black Rod, Legislative Council, Hobart, Tasmania.
J. D. Chilcott, Esq., Second Clerk-Assistant, Legislative Council, Tasmania.
B. G. Murphy, Esq., Clerk of the House of Assembly, Hobart, Tasmania.
P. T. McKay, Esq., B.A., Dip.P. A., Clerk-Assistant and Serjeant-at-Arms, House of Assembly, Hobart, Tasmania.
*R. D. Doyle, Esq., LL.B., Second Clerk-Assistant, House of Assembly, Hobart, Tasmania.
P. R. Alcock, Esq., Third Clerk-at-the-Table, House of Assembly, Hobart, Tasmania.
A. R. B. McDonnell, Esq., Dip.P.A., J.P., Clerk of the Parliaments and Clerk of the Legislative Council, Melbourne, Victoria.
G. N. H. Grose, Esq., Clerk-Assistant of the Legislative Council, Melbourne, Victoria.
R. K. Evans, Esq., Usher of the Black Rod, Legislative Council, Melbourne, Victoria
J. H. Campbell, Esq., Dip.P.A., Clerk of the Legislative Assembly, Melbourne, Victoria.
I. N. McCarron, Esq., Clerk-Assistant, Legislative Assembly, Melbourne, Victoria.

* Barrister-at-Law or Advocate.

R. K. Boyes, Esq., Second Clerk-Assistant and Clerk of Committees, Legislative Assembly, Melbourne, Victoria.

J. G. Little, Esq., Serjeant-at-Arms, Legislative Assembly, Melbourne, Victoria.

J. B. Roberts, Esq., M.B.E., E.D., Clerk of the Legislative Council and Clerk of the Parliaments, Perth, Western Australia.

J. G. C. Ashley, Esq., A.A.S.A., Dip.P.T.C., Clerk-Assistant and Usher of the Black Rod, Legislative Council, Perth, Western Australia.

L. A. Hoft, Esq., A.A.S.A., Second Clerk Assistant, Legislative Council, Perth, Western Australia.

B. L. Okely, Esq., Clerk of the Legislative Assembly, Perth, Western Australia.

P. N. Thornber, Esq., A.P.A.A., J.P., Clerk-Assistant of the Legislative Assembly, Perth, Western Australia.

L. G. C. Farrell, Esq., Second Clerk-Assistant and Serjeant-at-Arms of the Legislative Assembly, Perth, Western Australia.

F. H. Walker, Esq., Clerk of the Legislative Assembly, Darwin, Northern Territory.

F. K. M. Thompson, Esq., Clerk-Assistant of the Legislative Assembly, Darwin, Northern Territory.

R. N. Carson, Esq., Clerk of the Legislative Assembly of the Australian Capital Territory, Legislative Assembly, Canberra, A.C.T.

D. Tracey, Esq., Deputy Clerk of the Legislative Assembly of the Australian Capital Territory, Legislative Assembly, Canberra, A.C.T.

Papua New Guinea

A. F. Elly, Esq., Clerk of the House of Assembly, Port Moresby, New Guinea.

D. M. Speakman, Esq., Executive Officer (Parliamentary Services,) House of Assembly, Port Moresby, New Guinea.

M. K. Yere, Esq., Clerk-Assistant of the House of Assembly, Port Moresby, New Guinea.

A. Paku, Esq., Clerk-Assistant of the House of Assembly, Port Moresby, New Guinea.

New Zealand

*C. P. Littlejohn, Esq., LL.M., Clerk of the House of Representatives, Wellington.

Sri Lanka

*S. S. Wijesinha, Esq., B.A., LL.M., Clerk of the National State Assembly, Colombo.

*S. N. Seneviratne, Esq., LL.B., Clerk-Assistant, National State Assembly, Colombo.

* Barrister-at-Law or Advocate.

*B. S. B. Tittawella, Esq., LL.M., Second Clerk-Assistant, National State Assembly, Colombo.

India

*Shri S. S. Bhalerao, M.A., LL.M., Secretary-General of the Rajya Sabha, Parliament House, New Dehli.

Shri S. P. Ganguly, B.Sc., Additional Secretary of the Rajya Sabha, Parliament House, New Dehli.

Shri S. L. Shakdher, Secretary-General of the Lok Sabha, Parliament House, New Delhi.

*Shri A. Shanker Reddy, B.A., LL.B., Secretary to the Andhra Pradesh Legislature, Public Gardens, Hyderabad, Andhra Pradesh.

Shri Rajeshwar Prasad Mandal, Secretary of the Bihar Legislative Council, Patna, Bihar.

Shri M. Raj Kumar, Secretary of the Haryana Legislative Assembly, Chandigarh, Haryana.

*Dr. R. Prasannan, M.L., LL.M., J.S.D., Secretary of the Kerala Legislative Assembly, Trivandrum, Kerala.

*Shri Madan Gopal, M.A., LL.B., Secretary of the Madhya Pradesh Vidhan Sabha, Bhopal, Madhya Pradesh.

Thiru M. Shanmugasubramaniam, B.A., B.L., Secretary of the Tamil Nadu Legislature, Fort St. George, Madras—9.

*Shri G. M. Alagarswamy, B.A., B.L., Secretary to the Tamil Nadu Legislative Council, Fort St. George, Madras—9.

*Shri D. M. Aney, B.A., LL.B., Secretary, Maharashtra Legislature Secretariat, Council Hall, Bombay, 400 039, Maharashtra.

*Shri S. R. Kharabe, B.A., LL.B., Additional Secretary, Maharashtra Legislature Secretariat, Council Hall, Bombay 400 039, Maharashtra.

Shri B. G. Pendse, B.Sc., Deputy Secretary, Maharashtra Legislature Secretariat, Council Hall, Bombay 400 039, Maharashtra.

*Shri G. G. Kudalkar, LL.B., Deputy Secretary, Maharashtra Legislature Secretariat, Council Hall, Bombay 400 039, Maharashtra.

Shri D. G. Desai, Secretary of the Gujarat Legislative Assembly, Gandhinagar, Ahmedabad, Gujarat.

Shri T. Venkataswamy, Secretary of the Karnataka Legislature, Bangalore, Karnataka.

Shri N. Rath, Secretary of the Orissa Legislative Assembly, Bhubaneswar, Orissa.

*Shri Partap Singh, M.A., LL.B., Secretary of the Punjab Vidhan Sabha, Chandigarh, Punjab.

Shri Ranjibal Gupta, Secretary of the Rajasthan Legislative Assembly, Jaipur, Rajasthan.

Shri S. P. Singh, Secretary, Uttar Pradesh Legislature, Lucknow, Uttar Pradesh.

* Barrister-at-Law or Advocate.

Shri G. P. Srivastava, Secretary of the Uttar Pradesh Legislative Council, Lucknow, Uttar Pradesh.

*Shri Satya Priya Singh, B.A., LL.B., Secretary to the Uttar Pradesh Legislative Assembly, Lucknow, Uttar Pradesh.

Shri D. N. Banerjee, Secretary of the West Bengal Legislature, Calcutta, West Bengal.

*Shri A. K. Chunder, B.A.,(Hons), (Cal.), M.A., LL.B. (Cantab.), LL.B. (Dublin), Deputy Secretary to the West Bengal Legislative Assembly, Calcutta, West Bengal.

Malaysia

Lim Joo Keng, Clerk of the Senate, Parliament House, Kuala Lumpur.

Datuk Azizal Rahman bin Abdul Aziz, Clerk of the House of Representatives, Parliament House, Kuala Lumpur.

A. Hasmuni bin Haji Hussein, Deputy Clerk of Parliament, Parliament House, Kuala Lumpur.

Mohd. Salleh bin Abu Bakar, Clerk-Assistant, Parliament House, Kuala Lumpur.

Ghazali bin Haji Abdul Hamid, Acting Second Clerk-Assistant, Parliament House, Kuala Lumpur.

Abang Bohari bin Datu Abang Haji Yan, Clerk of the Council, Negri, Sarawak.

Francis T. N. Yap, Esq., Clerk of the Legislative Assembly, P.O. Box 1247, Kota Kinabalu, Sabah.

Sierra Leone

M. Munu, Esq., Acting Clerk of Parliament, Parliament Building, Freetown.

Tanzania

W. J. Maina, Esq., Clerk of the National Assembly, Speaker's Office, P.O. Box 9133, Dar-es-Salaam.

Jamaica

H. D. Carberry, Esq., Clerk of the Legislature, Parliament House, Kingston, Jamaica.

E. L. Deans, Esq., Deputy Clerk, Parliament House, Kingston, Jamaica.

Trinidad and Tobago

J. E. Carter, Esq., Clerk of the House of Representatives, Port-of-Spain, Trinidad.

Kenya

L. J. Ngugi, Esq., Clerk to the National Assembly, P.O. Box 1842, Nairobi.

*Barrister-at-Law or Advocate

Malawi
H. M. Mtegha, Esq., Clerk of the Parliament, P.O. Box 80, Zomba.

Malta, G.C.
L. Abela, Esq., Clerk of the House of Representatives, Valletta.
A. Borg, Esq., Clerk-Assistant of the House of Representatives, Valletta.
D. Cauchi, Esq., Second Clerk-Assistant of the House of Representatives, Valletta.

Zambia
N. M. Chibesakunda, Esq., Clerk of the National Assembly, P.O. Box 1299, Lusaka.
A. C. Yumba, Esq., Clerk-Assistant of the National Assembly, P.O. Box 1299, Lusaka.
N. K. Siyanga, Esq., Second Clerk-Assistant of the National Assembly, P.O. Box 1299, Lusaka.

Singapore
A. Lopez, Esq., Clerk of Parliament, Singapore.
Neo Seng Kee, First Assistant Clerk, Parliament, Singapore.
Mrs. Liaw Lai Chun, Second Assistant Clerk, Parliament, Singapore.

Guyana
F. A. Narain, Esq., Clerk of the National Assembly, Georgetown.

Barbados
Chezley R. Boyce, Esq., Clerk of the House of Assembly, Bridgetown, Barbados.

Bermuda
R. C. Lowe, Esq., Clerk of the Legislature, Hamilton.
A. D. T. Eve, Esq., Assistant Clerk of the Legislature, Hamilton.

Belize
A. F. Monsanto, Esq., Clerk to the National Assembly, National Assembly Building, Independence Hill, Belmopan.
S. O. Waight, Esq., Deputy Clerk to the National Assembly, National Assembly Building, Independence Hill, Belmopan.

Cayman Islands
Mrs. S. McLaughlin, M.B.E., Clerk of the Legislative Assembly, Grand Cayman.

Fiji
Mrs. L. B. Ah Koy, O.B.E., Clerk to Parliament and Clerk of the House of Representatives, Government Buildings, Suva, Fiji.

Captain Vir Vijay Singh, Clerk-Assistant to Parliament and Clerk of the Senate, Government Buildings, Suva, Fiji.

Gibraltar
P. A. Garbarino, Esq., Clerk of the House of Assembly, Gibraltar.

Hong Kong
K. H. Wheeler, Esq., Clerk to the Legislative Council, Hong Kong.

Grenada
C. Strachan, Esq., Clerk of the Parliament, York House, St. Georges.

Mauritius
G. d'Espaignet, Esq., Clerk of the Legislative Assembly, Legislative Assembly, Port Louis.
Maurice Bru, Esq., Clerk-Assistant of the Legislative Assembly, Legislative Assembly, Port Louis.

Saint Vincent
J. Clement Noel, Esq., Acting Clerk of House of Assembly, Kingstown, Saint Vincent.

Seychelles
D. Thomas, Esq., Clerk to the Legislative Assembly, P.O. Box 237, Victoria, Mahe, Seychelles.

Western Samoa
G. A. Fepulea'i, Esq., Clerk of the Legislative Assembly, Apia, Western Samoa.

Cook Islands
J. Caffery, Esq., Clerk of the Legislative Assembly, P.O. Box 13, Rarotonga.
M. T. Puna, Esq., Clerk-Assistant of the Legislative Assembly, P.O. Box 13, Rarotonga.

The Gambia
S. A. R. N'jai, Esq., Clerk of the House of Representatives, Banjul.

St. Lucia
Miss D. M. Thomas, Clerk of the House of Assembly, St. Lucia.

Bahamas
P. O. Saunders, Esq., Chief Clerk of the House of Assembly, P.O. Box 3003, Nassau.

British Solomon Islands
D. Otuana, Esq., Clerk of the Legislature, Honiara.

Lesotho

B. A. Tlelase, Esq., B.A., Clerk to the National Assembly, P.O. Box 190, Maseru.

B. H. Pokane, Esq., B.A., Deputy Clerk to the National Assembly, P.O. Box 190, Maseru.

Botswana

I. P. Gontse, Esq., Clerk to the National Assembly, P.O. Box 240, Gabarone.

Bangladesh

S. M. Rahman, Esq., Secretary of Parliament, Parliament House, Dacca-8.

A. K. M. Faiz, Esq., Joint Secretary of Parliament, Parliament House, Dacca-8.

Antigua

L. Stevens, Esq., M.B.E., Clerk to the Parliament, St. John's.

Ex-Clerks-at-the-Table

D. J. Ayling, Esq., O.B.E., J.P., (Papua New Guinea).
O. S. Barrow, Esq., (St. Vincent).
E. C. Briggs, Esq., (Tasmania).
Henry Burrows, Esq., C.B., C.B.E., (United Kingdom).
Sir Barnett Cocks, K.C.B., O.B.E. (United Kingdom).
G. D. Combe, Esq., M.C. (South Australia).
H. N. Dollimore, Esq., C.B.E. (New Zealand).
T. E. Kermeen, Esq., C.I.S.O. (Isle of Man).
Sir Francis Lascelles, K.C.B., M.C. (United Kingdom).
M. H. Lawrence, Esq., C.M.G. (United Kingdom).
Sir David Lidderdale, K.C.B., (United Kingdom).
R. H. C. Loof, Esq., C.B.E., B.Comm., J.P. (Australia).
T. R. Montgomery, Esq. (Ottawa, Canada).
C. K. Murphy, Esq., C.B.E. (Tasmania).
R. W. Perceval, Esq., (United Kingdom).
*A. W. Purvis, Esq., LL.B. (Kenya).
Sir David Stephens, K.C.B., C.V.O. (United Kingdom).
A. A. Tregear, Esq., C.B.E., B.Comm., A.A.S.A. (Australia, Commonwealth Parliament).
Sir Alan Turner, C.B.E. (Australia, Commonwealth Parliament).
I. P. K. Vidler, Esq., C.B.E. (New South Wales).

Office of the Society

Palace of Westminster, S.W.1.

Editors for Volume XLIV of THE JOURNAL: J. M. Davies and G. Cubie.

* Barrister-at-Law or Advocate.

XX. MEMBERS' RECORDS OF SERVICE

Note.—**b.**=born; **ed.**=educated; **m.**=married; **s.**=son(s); **d.**=daughter(s).

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat individual records on promotion.

Bhalerao, S. S., M.A., LL.M.—Secretary General of Rajya Sabha, India; *ed.* Ferguson College, Ghokhale Institute of Politics and Economics, and Law College, Poona; lecturer in Constitutional Law and Jurisprudence, Osmania University Law College, Hyderabad; Assistant Secretary Hyderabad Legislature; Law Department, Government of Bombay, 1956; Deputy Secretary, Rajya Sabha 1958; Joint Secretary, 1963; Additional Secretary, 1974; Appointed Secretary-General of Rajya Sabha, 1st April 1976.

Boivin, Reginald-L.—Third Clerk Assistant, House of Commons, Canada; *b.* 5th June, 1923 at Ottawa, Ont.; *M.*, 1*s*, 4*d*; *ed.* at Ottawa Seminary and Ottawa Univ. Active and overseas service R.C.A.F., 1943–1964. Served as translator and reviser, Secretary of State Department, 1946–60; Appointed Committee Clerk, House of Commons, 1960; Assistant Chief of French Journals, 1963; Chief of French Journals, 1965; Chief of Committees and Private Legislative Branch, 1972; Third Clerk Assistant, 1975.

Farrell, Lionel Geoffrey Charles.—Second Clerk Assistant and Sergeant-at-Arms of the Legislative Assembly of Western Australia; *b.* 4th March, 1938; *ed.* Bideford Grammar School; Assistant Clerk of Records and Accounts, Legislative Assembly 1966–70; Clerk of Records and Accounts 1970–75; Second Clerk Assistant and Sergeant-at-Arms since December, 1975.

Guitard, Maxime, B.A.—Third Clerk Assistant, House of Commons, Canada; *b.* 21st November, 1920 at Hull, Quebec; *ed.* University of Ottawa and post-graduate studies in Psychology at Institute of Psychology, University of Ottawa; *m.* 1955; 2*s*, 2*d*; Professor of sciences at University of Ottawa and of languages at Hull Technical School; Founded Laval Business College, Hull, Quebec; Joined H. of C. as Clerk of Committees, 1963; Assistant Chief of Committees and Private Legislative Branch, 1968; Chief of French Journals Branch, 1972; Appointed Third Clerk Assistant, 1975.

Koester, Charles Beverley, C.D., M.A. (Sask.), Ph.D, (Alta).—Clerk Assistant (Administration and Procedural), House of Commons, Canada; *b.* 13th January 1926; *ed.* Regina Central Collegiate Institute, Royal Canadian Naval College, University of Saskatchewan, University of Alberta; *m.* five children; served in Royal Canadian Navy and Royal Canadian Navy (Reserve) from 1942, retiring in 1960 with rank of Lieutenant-Commander; teacher and Head of History Department, Sheldon-Williams Collegiate, Regina, Sask., 1956–59; Clerk Assistant, Legislative Assembly of Saskatchewan, 1959–60; Clerk, Legislative Assembly of Saskatchewan, 1960–69; Associate Professor of History, University of Regina, 1969–75; Head of History Department, 1974–75; appointed present position, 1975.

Quayle, Robert B. M.—Clerk of Tynwald and Secretary of the House of Keys; *b.* 6th April 1950; *m.* 1972; *ed.* Monkton Combe School and Selwyn College, Cambridge; Solicitor; appointed Clerk of Tynwald and Secretary of the House of Keys, 1st April 1976.

Okely, Bruce Lefroy.—Clerk of the Legislative Assembly of Western Australia; *b.* 16th January, 1935; *m.* 1957; 2*s* 2*d*; *ed.* Midland Junction H.S., Perth Technical College; Assistant Clerk of Records and Accounts Legislative Assembly 1954–66; Clerk of Records and Accounts 1966–70; Editor W. A. Official Publications 1973–75; Clerk Assistant and Parliamentary Librarian 1970–75; Clerk of the Legislative Assembly since December, 1975.

Thornber, Philip Norman, A.P.A.A., J.P.—Clerk Assistant of the Legislative Assembly of Western Australia; *b.* 15th October, 1925; *m.* 1948; 1*s* 1*d*; *ed.* Bunbury High School; Joined State Public Service 1942; Overseas war service as pilot in RAAF; Treasury Department then Private Secretary to Premier of W.A. 1960–71; Second Clerk Assistant and Sergeant-at-Arms 1971–75; Clerk Assistant of the Legislative Assembly since December, 1975.

ABBREVIATIONS

(Art)=Article in which information relating to several territories is collated. (Com.)=House of Commons