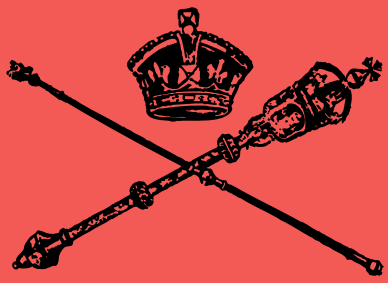

The Table

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

VOLUME 92
2024

The Table

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IN
COMMONWEALTH PARLIAMENTS

EDITED BY
MICHAEL TORRANCE &
JOE BERRY

VOLUME 92

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Contents

EDITORIAL

I provided an update in the previous edition about the new publication arrangements for *The Table*. The transition to the new arrangements involved the publishing teams in both Houses of the UK Parliament, who have taken great care to maintain continuity in the format of this journal in so far as possible. The editorial team would like to thank Dr Adonis Leboho from the House of Lords publishing team, in particular, for his diligence and good humour during this work.

In the previous edition I also announced an in-house project to digitise the first 70 volumes of *The Table*, which were previously only available in hard copy, and make them available online. Thanks to the dedicated efforts of Joe Berry, the deputy editor, I am pleased to report that the first 50 volumes, covering the period 1932 to 1982 are now available on the Society of Clerks-at-the-Table (SOCATT) website. When time allows, Joe hopes to digitise the remaining volumes.

Taking a break from his scanning work, this year's edition of *The Table* begins with an article by Joe Berry about the origins of the House of Lords Administration, beginning with the circumstances which led to the Clerk of the Parliaments Act 1824 and the subsequent development of the Administration. As a former Assistant Private Secretary to the current Clerk of the Parliaments, Joe was well-placed to delve into the historic parliamentary records to produce this insightful piece.

We then turn to Wales for a fascinating overview of the process to increase the size of the Welsh Parliament/Senedd from 60 to 96 members. A first-hand account is provided by Helen Finlayson, who clerked the various committees and expert panels which facilitated this significant piece of constitutional change.

The next article is from Jonathan King, the Clerk of Tynwald, on contemporary challenges with the application of exclusive cognisance in the Isle of Man. Natalie Cooke provides an account of the Australian referendum on an Indigenous Voice to Parliament. Moving to Canada, Glen Rutland then describes how the Northwest Territories Legislative Assembly continued to sit notwithstanding significant environmental and logistical challenges.

Dr David Wilson, the Clerk of the New Zealand House of Representatives, and David Bagnall, the Principal Clerk (Procedure), provide an overview of the House's recent review of procedures, including on its approach to the entrenchment of laws, as well as its financial scrutiny mechanisms. A further, and more historical article, also by Dr Wilson, describes the efforts of one of his

predecessors – TDH Hall – to publish a treatise on New Zealand parliamentary practice.

The penultimate article is from myself, about a trip I undertook to the National Assembly of The Gambia, as part of a Commonwealth Parliamentary Association team, to assist the Assembly's members and officials in the development of their first code of conduct. It was a fascinating trip and a real pleasure to share the UK Parliament's experience of this area with our Gambian colleagues.

Our final articles are provided by Colin Lee, who – despite becoming the Clerk of Legislation in the House of Commons – has found the time to continue his study of the procedural history of the UK House of Commons in the nineteenth century, with two interesting pieces about Archibald Milman and the control of supply and the courtship and marriage of William Ley and Fanny Hatsell.

This edition also includes the usual interesting updates from jurisdictions and the comparative study on the powers of legislatures to exclude members on a temporary or permanent basis.

MEMBERS OF THE SOCIETY

Australia

Australian Capital Territory Legislative Assembly

Mr Hamish Finlay was appointed Deputy Clerk and Serjeant-at-Arms in August 2023.

New South Wales Legislative Council

Clerk of the Parliaments and Clerk of the Legislative Council, **Mr David Blunt AM**, was made a Member of the Order of Australia in the King's Birthday Honours List.

South Australia House of Assembly

Joshua Forkert was temporarily assigned to the role of Assistant Clerk and Serjeant-at-Arms for the last quarter of 2023.

Tasmanian House of Assembly

In January 2023 **Mr Shane Donnelly**, Clerk of the House, retired. **Ms Laura Ross** was appointed the new Clerk of the House, commencing February 2023. **Ms Stephanie Hesford** was appointed the new Deputy Clerk of the House in April 2023. In August 2023 **Mr Ben Foxe** was appointed the new Clerk-Assistant and Sergeant-at-Arms.

Canada

House of Commons

Charles Robert, who had served as Clerk of the House of Commons since June 2017, retired on 13 January 2023. **Eric Janse** was shortly thereafter appointed Acting Clerk of the House of Commons on 13 February 2023. Mr. Janse had previously held the role of Deputy Clerk, Procedure, since October 2021. Mr. Janse was confirmed to the position of Clerk of the House of Commons on a permanent basis on 5 December 2023.

Jeffrey Leblanc was appointed Acting Deputy Clerk, Procedure on 13 March 2023. Mr. Leblanc previously held the role of Clerk Assistant, House Proceedings and has been a Table Officer for over 15 years. Also on 13 March 2023, **Jean-Philippe Brochu** was appointed Acting Clerk Assistant, House Proceedings.

Caroline Bosc and **Stéphanie Haché**, both Deputy Principal Clerks, were appointed as Table Officers, on 5 September 2023.

Michel Patrice, formerly Deputy Clerk, Administration since 2017, retired from the House of Commons on 13 October 2023, after a remarkable career of more than 30 years on Parliament Hill.

Alberta Legislative Assembly

Dr W.J. David McNeil passed away on 20 October 2023. As Clerk of the Legislative Assembly of Alberta for over 28 years, Dr McNeil served with five Speakers, seven Premiers and 392 Members. David was a longstanding and active member of SOCATT. He guided the Legislative Assembly Office through eight general elections, the 2005 visit by Her Majesty Queen Elizabeth II, and many other significant events. In 2012 he was awarded the Queen Elizabeth II Diamond Jubilee Medal in honour of his many contributions and achievements. A brief memorial tribute was held in the Legislative Assembly on 2 November.

Manitoba Legislative Assembly

Retirement of longest serving Clerk in Manitoba History

Patricia Chaychuk officially retired as the longest serving Clerk in the history of the Manitoba Legislature on 25 August 2023. Her tenure as Clerk marked exactly 23 years, seven months and 16 days of service since her appointment on 10 January 2000 as the first woman Clerk in the province. The previous record was held by Mr. Alfred Jean Charland Prud'Homme, who served at the Table in our Chamber from 1 June 1951 to 15 February 1973, for a total period of service of 2l years and 260 days.

Patricia served the Assembly for a total of 35 years. While her first day at the Table as Clerk was on 25 April 2000, she previously served as a Clerk Assistant/

Clerk of Committees from 1989 to 2000. Being both the first woman Clerk and the longest serving at the position were just two of a very impressive and remarkable long list of milestones in her career. Patricia seemed destined to serve the Manitoba Legislature as, before being hired by the Assembly, she held two key roles in the Youth Parliament of Manitoba – Premier and Speaker. Later she worked as a Manitoba Legislative Intern, a programme she ultimately became responsible for running for over 20 years.

Beyond those notable achievements, Patricia also has a long list of other accomplishments and acknowledgements, including:

- Past President of the Association of Clerks-at-the-Table in Canada;
- Past President of the Canadian Study of Parliament Group;
- Past Chair of the Editorial Board of the Canadian Parliamentary Review;
- Member of the Society of Clerks-at-the-Table in Commonwealth Parliaments (SOCATT), and is the Canadian Representative on the SOCATT Advisory Committee;
- Distinguished Alumnus of the University of Manitoba Faculty of Arts;
- Receiving the Alumni Achievement Award from the Youth Parliament of Manitoba;
- Honoured as a Trailblazer of the first 10 Years of Women of the Legislative Assembly of Manitoba;
- Receiving the Queen's Platinum Jubilee Medal.

Subsequent to the retirement of Patricia Chaychuk as the longest serving Clerk in Manitoba history, on Thursday, 23 November 2023, **Rick Yarish** was formally appointed as the 14th Clerk of the Legislative Assembly of Manitoba. On 27 November Speaker Lindsey paid tribute to Rick in a Statement listing his numerous accomplishments, noting that Rick has served in the Assembly for 23 years, initially as a Clerk Assistant, Clerk of Committees and as Deputy Clerk since 12 April 2011.

The Speaker further stated that:

"Rick's tenure as Deputy Clerk has seen him overcome many challenges, most notably during the COVID-19 pandemic where Rick led the team of talented Assembly staff who put together the virtual infrastructure that has seamlessly become part of the operations of this Legislature. Rick firmly believes in democracy and was unwavering in his belief that during those unprecedented limes, the Assembly would continue to function and the public should be able to see their elected officials working hard for them, even if they could not be here in the building."

Ontario Legislative Assembly

In June 2023, **Todd Decker** retired as Clerk of the Assembly. **Trevor Day** was appointed by the House as the tenth Clerk of the Assembly and started his new

role on July 1, 2023.

India

Punjab Legislative Assembly

Following the retirement of **Shri Surinder Pal** on 31 May 2023, **Shri Ram Lok Khatana** became secretary of the Assembly.

New Zealand

House of Representatives

Former Clerk of the House of Representatives **David Graham McGee, CNZM, LLD, KC**, died in Wellington on 27 August 2023, at the age of 75. He served as the Clerk of the House from 1985 to 2007, and was highly regarded by members and by clerks around the Commonwealth for his expertise on parliamentary law and procedure, and his advocacy for the institution of Parliament.

McGee was a prolific author and published numerous journal articles on parliamentary practice and constitutional law. Most notably, he was the author of the first three editions of *Parliamentary Practice in New Zealand*. First published in 1984, the work was based on copious entries and analysis he noted in his diaries each sitting day, as well as extensive research. He incorporated precedents and case law sent to him by contacts around the Commonwealth and set out a comprehensive record of how Parliament works, with a particular focus on parliamentary privilege. McGee, as it became known, was dispatched to many Commonwealth legislatures and was recognised as a leading text in the field. The fifth edition of the book that bears his name was published in October 2023 (see Books, below).

Two other notable publications by McGee were *The Overseers: Public Accounts Committees and Public Spending* (2002) and *The Budget Process: A Parliamentary Imperative* (2007). These books were both produced as part of work he did for the Commonwealth Parliamentary Association.

McGee was instrumental in the establishment of the Office of the Clerk and was its first leader. Following the 1984 general election, administration of the legislature was restructured to reduce control by the Government. This resulted in the formation in 1985 of the Parliamentary Service.

McGee was a strong proponent for a separate department to act as the legislature's secretariat, and this secretariat formally became the Office of the Clerk in 1988. The specialist focus he championed has remained at the core of the Office of the Clerk to this day.

United Kingdom

House of Commons

Following **Sir John Benger's** retirement from service as Clerk of the House of Commons, he was succeeded by **Tom Goldsmith** (former Principal Clerk, Table Office) on 1 October 2023.

Liam Laurence Smyth, Clerk of Legislation, was appointed a Companion of the Order of the Bath (CB) on 30 December 2023.

Matthew Hamlyn CBE left his role as Strategic Director of the Chamber and Participation Team in June 2023. He was succeeded by **Dr Farrah Bhatti**.

House of Lords

Clerk Assistant **Chloe Mawson** was awarded an OBE for services to Parliament and for her role in the state funeral of Her Majesty Queen Elizabeth II.

Sarah Clarke, Lady Usher of the Black Rod, was made a Commander of the Royal Victorian Order (CVO) for services to the Lying-in-State of Her Majesty Queen Elizabeth II.

Duncan Sagar was promoted to Clerk of Legislation, taking over from **Andrew Makower** who moved to become Clerk of Procedural Practice.

THE 200TH ANNIVERSARY OF THE CLERK OF THE PARLIAMENTS ACT 1824

JOE BERRY
Procedural Centre Assistant Clerk, House of Lords (and Deputy Editor of The Table)

Introduction

The position of Clerk of the Parliaments, as the head of the House of Lords administration is known, differs from many other clerks who head parliamentary administrations across the Commonwealth. As a self-regulating House, the Lords as a whole decides on matters of procedure. The Clerk of the Parliaments, as the chief procedural advisor to the House therefore has the significant duty to advise the House on the procedurally correct approach.[1] Many administrative responsibilities, which in other parliaments (and in the House of Commons) sit with the presiding officer, instead fall to the Clerk of the Parliaments to oversee in the House of Lords. Examples of this include the Clerk of the Parliaments determining whether something is covered by Parliamentary privilege (for example for the purposes of freedom of information requests) and acting as the owner of copyright for the House, whereas in the Commons these powers are exercised by the Speaker.

The Clerk of the Parliaments also plays a role as clerk of the whole Parliament, signifying royal assent to bills during the ceremony of prorogation where both Houses come together, endorsing the record copy of acts and certifying that bills have passed through Parliament. These responsibilities fall on the Clerk of the Parliaments alone, rather than with the under-Clerk of the Parliaments (more commonly known as the Clerk of the House of Commons).

The first edition of this journal, published in 1932, included an article on the Clerk of the Parliaments.[2] Written by the then Clerk of the Parliaments, Sir Edward Alderson, it gave a short history of the origins of the office including its regularisation in the Clerk of the Parliaments Act 1824. 21 June 2024 marked the 200th anniversary of this Act, which arguably formed the basis of the modern House of Lords Administration. Now is therefore a good time to revisit the history of the office, including the role of the Clerk of the Parliaments prior to the 1824 Act and the subsequent development of the House of Lords Administration.

[1] *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (26th edition, 2022), p.51

[2] Sir Edward Alderson, "Office of the Clerk of the Parliaments at Westminster", *The Table*, 1 (1932), p.15

The Mediaeval origins of the Clerk of the Parliaments

The position of Clerk of the Parliaments has existed in some form since around 1290, when the keeping of parliamentary records was put on a more definite footing.[3] It is about a century older than the position of Clerk of the House of Commons.[4]

The *Modus Tenendi Parliamentum* (in English, roughly 'the Manner of Holding Parliament') was written in the fourteenth century, probably by a Clerk of the Parliaments.[5] It sets out the duty of the clerk in Parliament in this period.[6] While there has been much debate among historians about whether this document is an accurate representation of how Parliament operated in this period or the author's idea of the procedure of parliament as it should be, it gives a sense of how Parliament was viewed at the time, and the place of the Clerk of the Parliaments within it.[7] While the *Modus* says "two principal clerks shall sit…", there is no evidence for more than one official beyond the Clerk of the Parliaments in this period. Some historians have suggested that, particularly with the use of the future tense, this reflects a desire for greater support, which did not exist at the time, rather than a mistaken understanding of the role.[8] Notwithstanding these inconsistencies, the *Modus* accurately sets out a number of duties of the Clerk of the Parliaments, which are still responsibilities of the office nearly 750 years later, such as maintaining parliamentary records and 'enrol[ing] all the pleas and transactions of parliament'.[9]

[3] *Ibid*, p.15

[4] A.F. Pollard, "The Clerical Organisation of Parliament", *The English Historical Review*, 57:225 (Jan.1942), p.36

[5] V.H. Galbraith, "The *Modus Tenendi Parliamentum*", *Journal of the Warburg and Courtauld Institutes*,16:1/2 (1953), p.90

[6] en.wikisource.org/wiki/Select_Historical_Documents_of_the_Middle_Ages/Book_I/Manner_of_holding_Parliament

[7] Historians have argued that it overemphasises the role the Commons played at the time it was written, perhaps in response to the political upheaval of the reign of Edward II. Galbraith, "The *Modus Tenendi Parliamentum*", pp.84–7

[8] Galbraith, "The *Modus Tenendi Parliamentum*", pp.87–8

[9] en.wikisource.org/wiki/Select_Historical_Documents_of_the_Middle_Ages/Book_I/Manner_of_holding_Parliament

Seventeenth century copy of the Modus Tenendi Parliamentum, *Parliamentary Archives, BRY/92ff1-9*

The *Modus* remained an authoritative document centuries after it was written. Its continuing importance was reflected in 1510 when it was included in the Journals of the House of Lords.[10] The copy held by the Parliamentary Archives today dates to the seventeenth century, copied out in a book of important parliamentary records preserved when the House of Lords was abolished following the Civil War.

In the fourteenth century, clerks were generally appointed each time the King summoned parliament. By the early fifteenth century, this had changed, and the position had become full time and more professional.[11] In 1509 this was reflected in the slight change in nomenclature from Clerk of the Parliament to Clerk of the Parliaments.[12] There were duties which had to be carried out, no matter whether a parliament was in session, such as maintaining and providing access to the records. Indeed, during the eleven year personal rule of Charles I, when no parliament sat, four successive Clerks of the Parliaments held office.[13] Even when the House of Lords did not exist during the Protectorate of Oliver Cromwell, there was still a Clerk of the Parliaments, with the then clerk of the House of Commons receiving the office (although with the Restoration, it

[10] A.F. Pollard, "The Authenticity of the "Lords' Journals" in the Sixteenth Century", *Transactions of the Royal Historical Society*, 8 (1914), p.37

[11] Pollard, "Clerical Organisation of Parliament", pp.34, 38

[12] *Ibid*, p.34

[13] M. Bond, "Clerks of the Parliaments 1509-1953", *The English Historical Review*, 73:286 (Jan., 1958), p.81

reverted back to the previous holder).[14]

Most of the Clerks of the Parliaments in the mediaeval period were originally Chancery clerks, working for the King's government before taking office. While they held office as Clerk of the Parliaments, they were still a Chancery clerk, and therefore under the authority of the Lord Chancellor.[15] There was no parliamentary service in which they could gain experience before becoming Clerk of the Parliaments, and therefore it was in the Chancery that they learned the necessary skills. The key qualifications were being able to read, write and speak English, French and Latin.[16] Holding the office of Clerk of the Parliaments was often a route to further advancement – with some postholders being appointed as members of the House or to senior positions in the government, such as Lord Chancellor or Master of the Rolls. However, this started to change in the sixteenth and seventeenth centuries as it became more professional and less of a temporary job. Between 1376 and 1550, there were twenty successive Clerks of the Parliaments, whereas in the next 50 years, there were only three.[17]

However, by the end of the seventeenth century, the office was increasingly held by those who did not actually exercise the duties, paying someone (often a junior member of their family) part of the fees they received to carry out their duties for them.[18] It had become a sinecure.

The Clerk of the Parliaments as a sinecure

The ability to appoint a deputy to carry out the duties of the role was often explicitly granted in the letters patent from the monarch appointing Clerks of the Parliaments, but before the eighteenth century this power had been used by few who held the office and often only as a temporary measure due to ill health.[19] There was a short period in the sixteenth century when deputies were used by Sir William Paget, who continued in office for six months after being created a peer.[20] The deputies used before the eighteenth century often became Clerks of the Parliaments in their own right. However, during the period of

[14] *Ibid*, p.84

[15] Pollard, "Clerical Organisation of Parliament", p.39

[16] To some extent, until recently, these three languages were still needed – while the vast majority of business is conducted in English, the minutes of proceedings were endorsed in Latin until 2003, and the Clerk of the Parliaments still uses Norman French to announce the King's assent to bills during the prorogation ceremony.

[17] Pollard, "Clerical Organisation of Parliament", p.38

[18] M. Bond, "The Office of Clerk of the Parliaments", *Parliamentary Affairs*, 12:3 (1958), p.307

[19] Pollard, "Clerical Organisation of Parliament", p.34

[20] Bond, "Clerks of the Parliaments", p.79

1715 to 1855 the use of sinecure was at its worst, enabled by the power of the Clerk of the Parliaments to appoint deputies. In this period, four men from two families successively held the office without ever exercising the duties of the office in person.

The office of Clerk of the Parliaments was considered one of the most lucrative sinecures in this period. Until 1824, all parliamentary officials were largely remunerated by fees to which they were entitled through their position, rather than through a fixed salary. Fees were charged on various aspects of the business of the House, such as copying and enrolling bills, judicial business, on the admittance of peers and, most lucratively, at the different stages of private bills, which increased significantly in number during this period.[21] On top of this, the Clerk of the Parliaments received an annual salary of £40, and certain other clerks received further income through regular addresses to the Crown.[22] Although a proportion of the income received was paid to his deputy to carry out the duties of the role day to day, by 1810 Sir George Rose was being paid about £5,000 a year (about £325,000 in today's money) as well as receiving the use of an official residence in Old Palace Yard (across the street from the Palace of Westminster) for holding an office he was not carrying out in person.[23]

The first family to hold the office as a sinecure in this period was the Cowpers. Earl Cowper was an eminent lawyer who was raised to the peerage in 1706 before becoming Lord Chancellor (and therefore speaker of the House of Lords) in 1707. His brother, who was a senior judge, was able to use this connection to obtain the position of Clerk of the Parliaments for his eldest son, with a reversion to one of his younger sons, meaning it would automatically pass to them on the death of his eldest son. This resulted in William Cowper holding the position from 1716 to 1740, and Ashley Cowper holding it from 1740 to 1788.[24] While they were not able to escape all responsibilities completely, for example their signatures were occasionally required, they mainly relied upon deputies to carry out most of their duties. Such deputies were often junior members of the family.

[21] D. Dewar, *The Financial Administration and Records of the Parliament Office, 1824 to 1868* (House of Lords Record Office Memorandum No.37, 1967), p.1

[22] *Ibid*, pp.1-2

[23] Bond, "The Office of Clerk of the Parliaments", p.308

[24] Bond, "The Office of Clerk of the Parliaments", p.307

Letters Patent of William and Ashley Cowper 1715, Parliamentary Archives, HL/PO/JO/10/3/205A

The most famous of these junior members of the Cowper family was William Cowper, nephew of the two Cowpers who were Clerks of the Parliaments. William Cowper was a successful poet of the late eighteenth century. Trained as a lawyer, he was appointed Clerk of the Journals in 1763, after declining the offer of the more senior positions of Reading Clerk and Clerk of Committees, because, as he wrote in his memoirs, "the clerkship of the journals would fall

fairly and easily within the scope of my abilities."[25] However, despite the Clerk of the Parliaments being a sinecure, there was opposition to those clerks who were performing duties being appointed and imposed on the House. In the case of William Cowper, opposition to his appointment arose from both members of the House and other clerks, partly in an attempt to thwart the influence of the Cowper family.[26] Cowper was ordered to be examined at the bar of the House to determine his suitability. This seems to have been an extraordinary measure which reflected opposition at the time to the Cowper family's influence. After months of trying to learn on the job and facing hostile clerks who wanted to see him fail, he attempted suicide the day before he was due to be examined by the House and was committed to an asylum.[27]

This demonstrates that despite the sinecure system and what we would today see as blatant nepotism, Cowper's appointment was by no means guaranteed. Clearly Cowper himself did not see it that way, evidenced by his stress and anxiety in response to the opposition to his appointment from members and what Cowper referred to as the "lesser clerks."[28] There is the tendency to see the sinecure system as inherently corrupt and unprofessional, however there were evidently those who were working for the House who would have considered themselves professionals in the context of the time. This period was one of rapidly expanding legislation and while there was evidently disquiet from the House, evidenced by the summoning of Cowper to the bar of the House to prove his suitability as well as a later committee inquiry into the office of Clerk of the Parliaments, the House was supported throughout this period, even if it was not by the Clerk of the Parliaments personally.[29] While William Cowper the poet's parliamentary career was not very successful, his cousin Major William Cowper (the son of the Clerk of the Parliaments from 1716 to 1740) was Clerk Assistant and Deputy Clerk of the Parliaments from 1740 until his death in 1769 and, in the words of a petition from the time, was the "real clerk of the parliaments." Major Cowper's nephew, Henry Cowper, held the same position as Clerk Assistant and Deputy Clerk of the Parliaments from 1785 to 1826.[30]

[25] W. Cowper, "Memoir of William Cowper", ed. Maurice Quinlan, *Proceedings of the American Philosophical Society*, 97:4 (1953), p.370

[26] *Ibid.*

[27] *Ibid*, pp.370-75

[28] *Ibid*, p.374

[29] Bond, "Clerks of the Parliaments", p.80

[30] *Ibid*, pp.84-5

The Cowper family was succeeded by the Rose family. George Rose was a strong opponent of the abolition of slavery and Catholic Emancipation, a long serving politician and MP. He gained the office of Clerk of the Parliaments in 1788 through his role as a junior member of the Government. As an MP, minister and friend of the King, he did not have time to officiate at the Table, and therefore continued the practice of relying on others to act as deputies.[31] When George Rose died in 1818, his son inherited his position through a reversionary grant. Reversions were generally a way of promising the office to another while the current office holder was still alive and therefore providing a further source of patronage. In the case of the Cowpers, the letters patent explicitly said that on the death of William, Ashley Cowper would gain the office.[32] In the case of the Roses, this was not explicit. George Rose had to secure a separate letters patent in 1795 to obtain the reversion for his son.

Rose was a notorious sinecurist and the securing of the position for his son led to him being attacked in the House of Commons by Charles James Fox and Richard Sheridan, two of the leading opposition politicians of the time. He was a close ally of William Pitt the Younger and took advantage of his position to the greatest extent, acting as a placeman for much of this period (one who supported the Government in return for sinecures). The office of Clerk of the Parliaments was only one of many other sinecures Rose held, the greatest of which was Treasurer of the Navy. Unsurprisingly, he strongly resisted any attempts to reform sinecures.[33] His son, Sir George Henry Rose (whose portrait today hangs outside Clerk of the Parliaments' office) was also an MP and a diplomat who made no attempt to carry out his duties in person once he replaced his father in 1818. His letters patent made provision for him to appoint a deputy, which he did.[34] Like his father, he took even less interest in the running of the House than the Cowpers, relying on Henry Cowper, a junior member of the Cowper family who had been made Clerk Assistant by Ashley Cowper in 1785.

[31] Sir John Sainty, *The Parliament Office in the Nineteenth and Twentieth Centuries – Biographical Notes on Clerks in the House of Lords 1800 to 1939* (House of Lords Records Office, 1990), p.4

[32] Letters Patent of William and Ashley Cowper, Parliamentary Archives (HL/PO/JO/10/3/205A).

[33] B Murphy and R. G. Thorne, "ROSE, George (1744-1818), of Cuffnells, Hants" in *The History of Parliament: the House of Commons 1790-1820*, ed. R. Thorne, 1986 historyofparliamentonline.org/volume/1790-1820/member/rose-george-1744-1818

[34] Sainty, *The Parliament Office*, p.5

Sir George Henry Rose (This portrait currently hangs outside the current Clerk of the Parliaments' office)

The discontent among members of the House that had so affected William Cowper persisted during Rose's term of office and pressure mounted for reform of sinecures across government. When Rose gave evidence to the Commons committee on sinecure offices in 1810, he admitted "the clerk of the Parliaments has done no duty for nearly a century." Interestingly, Rose highlighted that the Lord Chancellor at the time of his appointment in 1788, Lord Thurlow, tried to force him to perform his duties in person. However, Rose had pushed back and Thurlow contented himself with requiring Rose to sign certain documents.[35] Rose clearly felt no strong attachment to the office. When asked whether the office could be abolished, he said "I feel difficulty expressing an opinion on the subject." He was then asked if the office being carried out by a deputy caused any inconvenience, to which he responded: "not the slightest." When asked if he had ever carried out the office in person, "certainly not" was his response.[36]

This was disputed by the evidence of his Clerk Assistant, Henry Cowper, who claimed his great-uncle, Ashley Cowper had "attended regularly every day" as Clerk of the Parliaments. However, what Cowper's attendance actually constituted is debatable as evidence points to deputies doing all substantive work, even if the Clerk of the Parliaments was required sometimes to sign orders of the House.[37] Cowper contradicts himself slightly in his evidence, saying that Clerks of the Parliaments executed the duties of their office in person "as late as 1723."[38] Cowper was perhaps attempting to defend the conduct of his family. Rose's bluntness about the extent to which he had ever carried out the duties of the office shows that, at least for Rose, there was nothing strange nor particularly dishonourable about his approach. The Clerk of the Parliaments remained by 1824 one of the last and most outstanding examples of a sinecure, and there was significant pressure from the Opposition for this to be regulated in a more effective manner.[39]

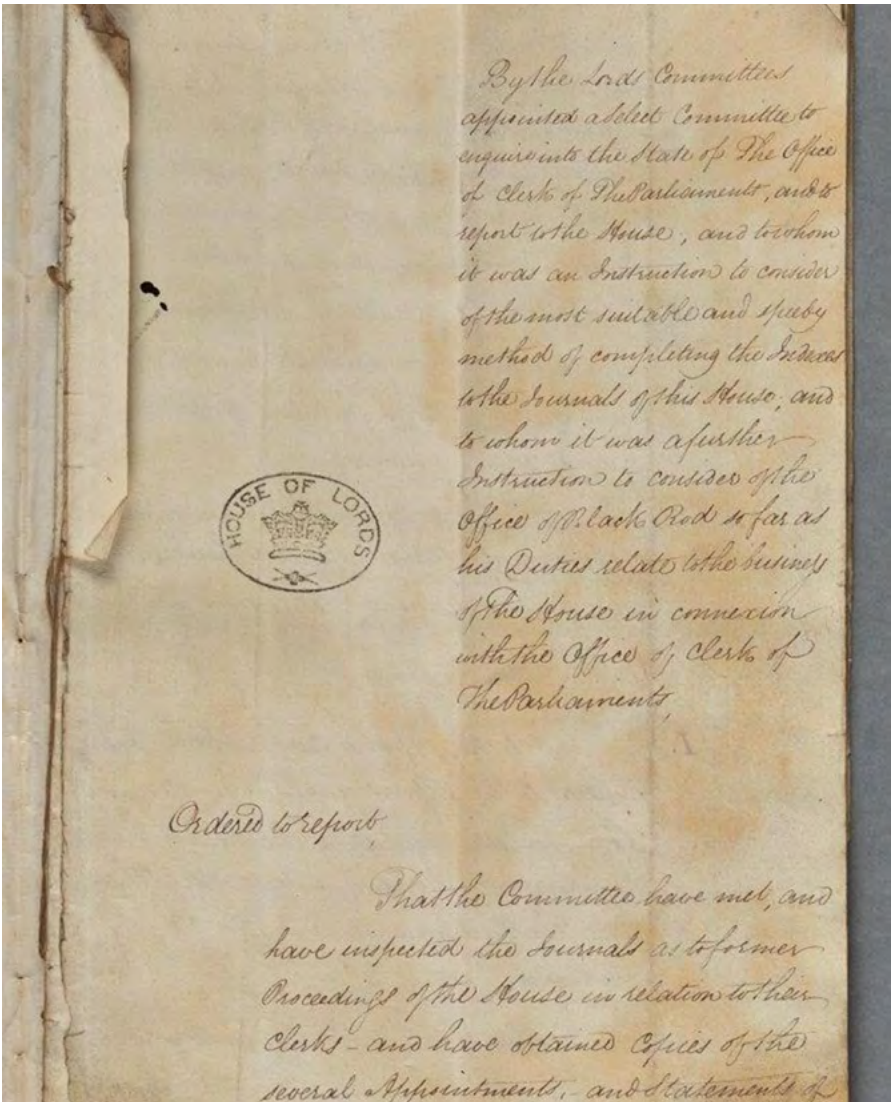
[35] Select Committee on Sinecure Offices in United Kingdom and Foreign Dominions of H.M.: First Report, Minutes of Evidence, 1810, pp.41-2 parlipapers.proquest.com/parlipapers/result/pqpdocumentview?accountid=16211&groupid=92769&pgId=971f4bb2-392b-4378-ad36-ad732079e7d4&rsId=18F2554235C

[36] *Ibid*, p.10

[37] *Ibid*, p.38. Bond, "Clerks of the Parliaments", p.80

[38] Select Committee on Sinecure Offices in United Kingdom and Foreign Dominions of H.M.: First Report, Minutes of Evidence, 1810, p.38

[39] Dewar, *The Financial Administration and Records of the Parliament Office*, p.3



First Report of the committee to enquire into the Office of Clerk of the Parliaments, Parliamentary Archives, HL/PO/JO/10/8/649

The 1824 committee report and Act

The succession of Sir George Henry Rose to the office by reversion in 1818 prompted a debate in the House on sinecure offices being granted in such a manner. This was particularly pushed by Earl Grosvenor, who said "nothing more strikingly showed the impropriety of granting offices in reversion" than Rose's succession.[40] While the Prime Minister, the Earl of Liverpool, said he would consider this further, it was not until March 1824 that the House appointed a select committee to enquire into the Office of Clerk of the Parliaments.[41]

The committee included some of the most important peers at the time, including the Prime Minister and a former Prime Minister, Viscount Sidmouth.[42] It was significant that the Prime Minister moved the motion appointing the committee, reflecting the wider significance of the problem of sinecure offices. As Earl Grosvenor said when the committee later reported, it was not "merely to save expense, but to have the service performed better."[43]

The committee was appointed on 9 March 1824 and reported for the first time on 9 June. This marked the first time a formal committee had been appointed to examine the workings of the House Administration in this way. The report made many wide-ranging recommendations. Some of these were very specific, such as setting the pensions of named clerks, but others ultimately laid the foundations of the contemporary Administration, including ordering that the House of Lords Business and Minutes be printed each day and distributed to peers.[44] The key recommendations concerning the sinecure were the implementation of formal salaries for clerks (rather than clerks being paid primarily through the fees they collected) and changes to the appointment of clerks, with only the Clerk of the Parliaments appointed by the monarch. The Committee recommended that the other clerks-at-the-Table should be appointed by the Speaker of the House (at that time, one of the roles of the Lord Chancellor), with the Clerk of the Parliaments appointing the other positions. This remains the situation today

The central recommendation, however, was the requirement for the Clerk

[40] HL Deb 2 February 1818 *vol 37 cc.117-9* api.parliament.uk/historic-hansard/lords/1818/feb/02/clerk-of-the-parliament-offices-in

[41] Dewar, *The Financial Administration and Records of the Parliament Office*, p.3

[42] Lords Journals, vol.56, p.67

[43] HL Deb 7 February 1825 *vol 12 c126* api.parliament.uk/historic-hansard/lords/1825/feb/07/clerk-of-parliament

[44] "Report of the Select Committee to enquire into the State of the Office of Clerk of the Parliaments", 9 June 1824, pp.5-6, parlipapers.proquest.com/parlipapers/docview/t70.d75.jhl-013745?

of the Parliaments to "execute the duties of his office personally."[45] While the committee recommended several other important changes, it was this that resulted in the abolition of the sinecure. The Clerk of the Parliaments could no longer rely on deputies to carry out the role on their behalf, forcing them to oversee the administration of the House of Lords in a way they had not done for over a century.

The report was agreed on 9 June 1824 and a bill to implement its recommendations was read a first time on the same day. The Clerk of the Parliaments Act received Royal Assent on 21 June 1824.[46] Since the thirteenth century, clerks in the House of Lords had performed an important role in supporting Parliament. Even in the eighteenth century, the deputies appointed by the Cowpers and Roses performed their duties effectively, but the clerks were not professional salaried posts. The Act now required the Speaker to appoint the senior clerks with the agreement of the House and the Clerk of the Parliaments to carry out his role personally.

The committee which produced the report continued to meet and oversee the running of the Parliament Office, and subsequently the Office of Black Rod; eventually becoming known as the Offices Committee.[47] It was only in 2002 that the committee was reconstituted as the less unwieldy House Committee, and then later the House of Lords Commission.[48]

However, while the report and Act in 1824 facilitated the creation of what became the modern House Administration, some of the changes took longer to become operational. Although the Act specified that the Clerk of the Parliaments must "execute the duties of the said office in person", it also provided that "Sir George Henry Rose shall remain in full possession of all the Rights, Profits, and Emoluments of his Office … as if this Act had not been made."[49] This was part of a compromise the committee reached with Rose, to prevent him opposing the report and the subsequent bill.[50] This was necessary because of Rose's appointment under Letters Patent. He was also an MP at this time, so could have directly opposed the passage of the bill. As Rose lived until 1855, this meant that the Act did not fully come into force until over

[45] *Ibid*, p.1

[46] Dewar, *The Financial Administration and Records of the Parliament Office*, p.3

[47] Sainty, *The Parliament Office*, p.5

[48] Fifth Report from the Select Committee on the House of Lords' Offices, 2001-2. publications.parliament.uk/pa/ld200102/ldselect/ldholoff/105/10502.htm (see also appendix 2 for full examination of the work of the Offices committee).

[49] Clerk of the Parliaments Act 1824, legislation.gov.uk/ukpga/Geo4/5/82/enacted/data.pdf

[50] Sainty, *The Parliament Office*, p.5

thirty years after it had been passed.[51] Rose had also made use of his power of patronage to appoint a number of relations as clerks before 1824. While he was restricted to one further appointment after the passage of the Act, the post of Reading Clerk was passed between Roses for three generations from 1800.[52] This allowed Rose to appoint his son, William Rose, as a clerk. William later became Clerk Assistant, and then was appointed Clerk of the Parliaments in 1875, holding the office until his death in 1885.[53] His 50 years of service at the Table has never been equalled.[54]

The 1824 reforms did not prompt a wholesale change in attitudes towards practices that today would not be acceptable. One example of this was William Courtney, a former MP who stood down from his seat in 1826 to take up the position of Clerk Assistant. Courtney was able to use his position to support his cousin's claim to revive the long-extinct title of Earl of Devon, which four years later, he was able to appeal successfully to the Privileges Committee to grant to him despite not being a direct descendant.[55]

However, as the 19th century progressed, substantive changes became more evident. One notable change was the reduction of clerks' salaries during this period. For example, the Clerk Assistant's annual salary of £2,500 granted by the 1824 Act had been reduced to £1,500 in 1890.[56] This reflected economies made by the now established Offices' Committee, in particular following complaints from the House of Commons arising from its consideration of the Lords' estimate that Lords clerks were treated more favourably than their Commons counterparts.

There was also greater alignment in this period between both Houses and the wider civil service.[57] Much of this work was due to the efforts of Sir John Shaw-Lefevre, who was the first Clerk of the Parliaments under the 1824 Act to be bound to execute his office in person. Shaw-Lefevre, who was the brother of the Speaker of the House of Commons (who became Viscount Eversley in 1857), had an incredibly active career as a senior civil servant (also acting as Civil Service Commissioner while Clerk of the Parliaments), a founder of the University of London and, briefly, an MP. During his time in office from

[51] Dewar, *The Financial Administration and Records of the Parliament Office*, p.5

[52] Sainty, *The Parliament Office*, pp.4-6

[53] Bond, "Clerks of the Parliaments", p.85

[54] Sainty, *The Parliament Office*, p.12

[55] T Jenkins, "COURTENAY, William (1777-1859), of 18 Duke Street, Mdx" in T*he History of Parliament: the House of Commons 1820-1832*, ed. D.R. Fisher, 2009 historyofparliamentonline.org/volume/1820-1832/member/courtenay-william-1777-1859

[56] Sainty, *The Parliament Office*, p.14

[57] *Ibid*, p.14

1855 to 1875, he established the Clerk of the Parliaments as an equivalent to a permanent secretary of a government ministry. He also oversaw revisions to the House's standing orders and compiled the first edition of the guide to the House's proceedings, which became known as the *Companion*.[58] Although some of his work, for example on aligning recruitment with the Civil Service Commission, was reversed in 1875 by Sir William Rose, the son of Sir George Henry Rose, this proved to be a temporary setback.[59] In many ways, it was Shaw-Lefevre who created the office as it exists today as arguably the first Clerk of the Parliaments to carry out the duties of the role in full since the late 17th century. While evidently an extraordinary man, he was acting within the framework of the 1824 Act which allowed for this sort of professionalisation of the office. Although there were further attempts to reverse Shaw-Lefevre's changes, the provisions of the 1824 Act and the oversight of the Offices' Committee, ensured the trend of professionalisation would continue.

The development of the role

The role of the Clerk of the Parliaments in the first years after the passage of the 1824 Act, bears a much closer resemblance to the role of the Clerk today than the work of mediaeval clerks. Certain core functions, as outlined in the *Modus Tenendi Parliamentum*, do remain, in particular keeping Parliament's records, but there is very little that mediaeval clerks would recognise in the role of the current holder of the office, the 65th Clerk of the Parliaments. The clerks of the nineteenth century sat at the Table, supported members in their parliamentary duties and oversaw a wider administration, much in the same way the Clerk of the Parliaments does now.

However, the twentieth century saw significant change in the House of Lords Administration as it grew in size and scope. A key driver of this was significant changes to the House and the way it functioned, with the House beginning to sit throughout the year, rather than just six months of it, and the growth in the size of the membership. Perhaps the biggest change was the Life Peerages Act 1958, which led to long term changes in the membership and nature of the House. The overall size of the House, and the demands of those new members (many of whom were former MPs), grew significantly, and the responsibilities of the Clerk of the Parliaments also grew accordingly. One indication of the change was the increasing headcount of the Administration. There were 33 staff in the mid-19th century which had risen slightly to 51 staff in 1958. Since that date the Administration has increased significantly to around 650 members of staff today. All these staff are personally employed by the Clerk of the Parliaments,

[58] Bond, "The Office of Clerk of the Parliaments", pp.308-9

[59] Sainty, *The Parliament Office*, pp.10-12

under the 1824 Act.

Another significant development in the role of the Clerk of the Parliaments has been the increasing responsibility for the Palace of Westminster and wider Parliamentary Estate. Until 1965, the Palace was directly overseen by the Crown and Royal Household. While control was then vested in the two Houses, the Ministry of Works remained responsible for the maintenance of the fabric of the Palace.[60] This was changed by the Parliamentary Corporate Bodies Act 1992, which made the Clerk of the Parliaments corporate officer of the House of Lords (while also making the Clerk of the House of Commons corporate officer of that House) and therefore granting them greater legally responsibility for the Parliamentary Estate. Much of the Clerk of the Parliaments' work today, particularly on the restoration of the Palace of Westminster, as well as entering into a range of contracts as corporate officer, arises from their responsibilities under that Act, as well as under the Parliamentary Works Sponsor Body (Abolition) Regulations 2022, which gives the Clerk of the Parliaments, acting jointly with the Clerk of the House of Commons, 'overall responsibility' for the restoration works.[61]

One of the more peculiar responsibilities that has been acquired by the Clerk of the Parliaments is that of returning officer for hereditary peer by-elections, something the drafters of the 1824 Act would not have foreseen. Since 1999 and the end of the automatic right of hereditary peers to sit in the House of Lords, it has been the Clerk of the Parliaments' responsibility to run the electoral process for replacing any of the 90 elected hereditary peers who retire or die. While in practice, this is run by an external company and overseen by the Journal Office, it is the Clerk of the Parliaments who as returning officer announces the results to the House. The office has accumulated other statutory duties like this, for example receiving requests from members to retire from the House since 2014.

Into the twenty-first century, the structures created under the 1824 Act have come under strain by some of the changes outlined above, with a more active and larger membership, larger Administration (with an increasing number of professional staff beyond only procedural clerks) and increased responsibilities of the Clerk of the Parliaments. By 2002, the Offices Committee, whose first report led to the 1824 Act, consisted of 28 members with four sub-committees of overlapping membership which met infrequently with very short meetings. A review carried out by the committee recommended its abolition and the creation of a smaller and more focused House Committee in its place to

[60] M. Torrance, "Governance and Administration of the House of Lords", pp.22-3 researchbriefings.files.parliament.uk/documents/LLN-2021-0034/LLN-2021-0034.pdf

[61] These Regulations amended the Parliamentary Buildings (Restoration and Renewal) Act 2019. legislation.gov.uk/uksi/2022/1360/made/data.pdf

provide strategic direction to the Administration, with a Management Board of officials, chaired by the Clerk of the Parliaments, to advise it and take some of the more routine and Administration focused decisions.[62] This marked the end of the close scrutiny and control of the Administration by the members on the Offices Committee which had been the case since 1824. Decisions that had once been debated by the Offices Committee and required approval by the House, such as on staffing and financial management, were now under the purview of the Clerk of the Parliaments. Further reviews over the past couple of decades have, to a large extent continued this trend, with members primarily offering strategic direction and making decisions on matters directly affecting them.

Conclusion

There has been significant continuity in the office of the Clerk of the Parliaments since its foundations in the 13th century. The normal, everyday work of the clerks has continued, and while this has developed as the House itself has developed, there has been incremental rather than radical change. The exception to this was the 139 years from William Cowper taking office in 1716 to the death of Sir George Henry Rose in 1855 when it was held as a sinecure. However, even in this period, while the Clerks of the Parliaments themselves may not have been undertaking their role in person, someone, usually the Clerk Assistant and Deputy Clerk of the Parliaments, was. The 1824 Act required the role to be exercised in person, which, along with the non-statutory changes recommended by the committee which prompted the Act, created a more professional parliamentary administration beyond just that office. Two hundred years later, the House of Lords Administration, led by the Clerk of the Parliaments, provides professional support to the House across a number of specialisms, with the Clerk of the Parliaments continuing to perform some of the functions his predecessors undertook.

[62] Torrance, "Governance and Administration of the House of Lords", pp.23-5

SENEDD REFORM: PAST, PRESENT … AND FUTURE?

HELEN FINLAYSON
Clerk of the Reform Bill Committee, Welsh Parliament

Introduction

Devolution in Wales has continually evolved since the then National Assembly for Wales ('the Assembly') was established in 1999. As the devolution model has changed, and the powers, functions, responsibilities and structures of Wales' legislature have developed, the ongoing debate about the size and capacity of what has been known since 2020 as Senedd Cymru or the Welsh Parliament ('the Senedd') has been one of the few constants.[1]

This article explores the debate, with particular reference to the period since powers over the Senedd's size and electoral arrangements were devolved in 2017. While it focuses primarily on discussions about the number of Members, these cannot be wholly disentangled from matters such as how Members are elected, the areas they represent, and the Senedd's broader electoral arrangements. The article considers four phases of reform:

- pre-2017, including how powers over size and electoral arrangements came to be devolved;
- the Assembly Commission's 2017-2019 reform agenda;
- 2019-2022, including committee-led policy development and the Welsh Government and Plaid Cymru Co-operation Agreement;
- the development, introduction and scrutiny of Senedd reform Bills in 2022-2024.

It also briefly looks ahead to preparations for the election of a larger Senedd, and the potential for further legislative or non-legislative reforms.

Phase 1: Devolution of powers (pre-2017)

The 60-Member institution elected in 1999 was a single body corporate comprising the then Welsh Assembly Government and the Assembly, and possessing limited secondary legislation-making powers. All powers over its size and electoral arrangements remained at a UK level.

[1] Except where stated, throughout this article the relevant contemporaneous terms are used to describe the Assembly/Senedd and associated bodies.

The Richard Commission

In 2004, the Commission on the Powers and Electoral Arrangements of the National Assembly for Wales ('the Richard Commission'), commissioned by the Welsh Assembly Government, made a series of recommendations to move the Assembly towards becoming a primary law-making body. This included formal separation of the Assembly and the Welsh Assembly Government, and changes to the Assembly's powers. Reflecting on the associated workload increase, the Richard Commission recommended[2] 80 Members elected by single transferable vote.[3] However, while most recommendations were given effect by the Government of Wales Act 2006 ('the 2006 Act')—including limited primary law-making powers in specified devolved areas—the Assembly's size and electoral system remained unchanged.

The Assembly's purpose-built Senedd building was formally opened in 2006 with sufficient seating in the Siambr (the debating chamber) to accommodate 60 Members. The design included temporary walls that could be removed to increase capacity to 80 Members should the Richard Commission's recommendations be implemented.

The Silk Commission

Following a referendum in March 2011, the Fourth Assembly (elected in May 2011) gained full primary law-making powers within the devolved areas. Later that year, the UK Government established the Commission on Devolution in Wales ('the Silk Commission') to consider the future of the devolution settlement. In 2012, the Silk Commission recommended devolving fiscal powers.[4] The Wales Act 2014 subsequently devolved some tax-raising and variation powers and extended the Welsh Government's borrowing powers.

In 2014, the Silk Commission recommended further changes to the Assembly's powers and responsibilities, including more extensive powers and a reserved powers devolution model.

In doing so, it concluded that the Assembly's size had already created a "capacity gap" in its ability to scrutinise the Welsh Government, and predicted the "problem will grow substantially" as the Assembly's powers and functions

[2] Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, Report of the Richard Commission, Spring 2004, p.259

[3] The Government of Wales Act 1998 provided for Members to be elected under the additional member system, in which 40 Members are elected by first past the post to represent constituencies. A further 20 Members are elected by closed list proportional representation to represent regions. The proportional regional element of the system is intended to 'compensate' political parties for the disproportionality of the constituency element.

[4] Commission on Devolution in Wales, Empowerment and Responsibility: Financial Powers to Strengthen Wales, November 2012

increased. It called for short term measures (such as alternative ways of working) to release additional capacity, but concluded that the "size of the National Assembly should be increased so that it can perform its scrutiny role better." It suggested that "eighty [Members] would balance enhanced scrutiny capacity with restraint in public spending."[5]

This was broadly in line with comparative research on the Assembly's size in the international context published in 2014 by the UK's Changing Union Partnership and Electoral Reform Society Cymru which concluded that:

> "80 members would be relatively small for a legislature such as the National Assembly that represents more than three million people. Indeed, the comparison suggests that 100 AMs would be closer to the norm."[6]

The Assembly Commission

In January 2015, the Assembly Commission[7] stated that "[w]ith only 60 Members, the National Assembly is under powered and over stretched." Calling for devolution over the Assembly's size and electoral arrangements, and highlighting issues such as the increasing legislative scrutiny workload and the proportion of Members required to serve on multiple committees, it suggested an "optimum size" of 80 to 100.[8]

The Wales Act 2017

In February 2015, the UK Government announced the St David's Day Agreement,[9] which proposed bringing the model of devolution in Wales into line with that in Scotland by moving from a conferred powers model to a reserved powers model—albeit with differences in the nature and extent of the powers which would be reserved. The accompanying Command Paper said there was political consensus that matters relating to Members, including the

[5] Commission on Devolution in Wales, Empowerment and responsibility: legislative powers to strengthen Wales, 2014, paras 13.3.2-13.3.5

[6] UK's Changing Union Partnership and Electoral Reform Society Cymru, Size matters: making the National Assembly more effective, March 2014

[7] The Assembly (now Senedd) Commission was established by the 2006 Act as a body corporate with responsibility for providing the property, staff and services required for the Assembly's purposes. It is chaired by the Llywydd, and comprises four other Members who must, as far as reasonably practicable, not all belong to the same political groups.

[8] Assembly Commission, The future of the Assembly: ensuring its capacity to deliver for Wales, January 2015

[9] UK Government, Press release: Landmark funding announcement and new powers for Wales in St David's Day Agreement, 27 February 2015

number and how they are elected, should be decided by the Assembly.[10]

This was reflected in the draft Wales Bill[11] published in October 2015, and the Wales Bill 2016-17,[12] introduced in September 2016. During the Bill's Second Reading in June 2016, the then Secretary of State for Wales, Alun Cairns MP, said:

> "Through this Bill, the Assembly will take control of its own affairs, including deciding arrangements for its own elections. It will be able to determine how its Members are elected, the number of Members, the constituencies and regions used in those elections and who is eligible to vote. As we promised in the St David's day agreement, the Bill gives the Assembly full responsibility for deciding how it conducts its own affairs and regulates its own proceedings."[13]

Among other things, the Wales Act 2017 ('the 2017 Act') devolved powers over key constitutional matters (referred to as "protected subject matters") including the legislature's name, electoral franchise, electoral system, electoral areas and boundaries (and the number of Members returned by each), and the maximum number of Welsh Ministers. It also introduced a 'super-majority' requirement, specifying that a Bill that includes a provision or provisions that the Presiding Officer ('the Llywydd') has determined "relates to any protected subject matter" may only be passed if the number of Members voting in favour of the Bill being passed is at least two-thirds of the total number of seats.[14]

Phase 2: The Assembly Commission's reform agenda (2017-2019)

Following the devolution of powers over the Assembly's size and electoral arrangements, the Llywydd, the Rt Hon Elin Jones AM, led the reform agenda in her capacity as Chair of the Assembly Commission. This began with an announcement in November 2016 that the Assembly Commission would explore the potential exercise of the then anticipated powers in the Wales Bill.[15]

Expert Panel on Assembly Electoral Reform

The day after the 2017 Act received Royal Assent, the Llywydd announced the

[10] UK Government, Powers for a purpose: towards a lasting devolution settlement for Wales, February 2015, p.56

[11] UK Government, Draft Wales Bill, October 2015

[12] UK Parliament, Wales Act 2017

[13] HC Deb 14 June 2016 Vol 611 c1652

[14] The 2017 Act also provides that the question of whether any provision in a Bill relates to a protected subject matter may be referred to the Supreme Court for determination.

[15] National Assembly for Wales Assembly Commission, 'Commission agrees its ambitions for the future' 14 November 2016

establishment of the Expert Panel on Assembly Electoral Reform ('the Panel'). Chaired by Professor Laura McAllister CBE, and comprising parliamentary and academic experts, the Panel was tasked with reviewing and complementing existing evidence on the Assembly's size and electoral arrangements and making recommendations by autumn 2017 on how many Members there should be, how they should be elected, and the minimum voting age for Assembly elections. The announcement also indicated that the Llywydd would chair a Political Reference Group (comprising representatives identified by the leaders of the political parties then represented in the Assembly[16]) to advise the Panel.[17]

The Panel recommended that the number of Members should increase to "at least 80 Members, and preferably closer to 90 Members."[18] Its report explored issues including:

- the Assembly's evolving role and powers, including the potential implications of the reserved powers model, devolution of taxation and borrowing powers, and Brexit;
- what had already been, or could be, done to increase the capacity of a 60-Member Assembly;
- the breadth and complexity of Members' roles as "legislators, scrutineers of policy and finance, employers with responsibilities for staff, property and contracts, and, ultimately, elected politicians with important responsibilities to their constituents and to their parties";[19]
- the potential impact of more effective policy, legislative and financial oversight and scrutiny on outcomes for people in Wales, with a particular focus on the capacity of the Assembly's committees;
- UK and international comparisons.

The Panel cautioned that implementing an increase in Members must be done carefully to keep costs down and ensure that the additional capacity delivered improved "quality and quantity of scrutiny."[20] Other recommendations included options for electoral systems and boundaries, measures to encourage and support diversity of representation, and reducing the minimum voting age to 16.

[16] Welsh Labour, Welsh Conservatives, Plaid Cymru, UKIP and Welsh Liberal Democrats.

[17] National Assembly for Wales Assembly Commission, 'Written statement: Expert Panel on Assembly Electoral Reform', 1 February 2017

[18] Expert Panel on Assembly Electoral Reform, A Parliament that works for Wales: report of the Expert Panel on Assembly Electoral Reform, November 2017, recommendation 1

[19] Expert Panel on Assembly Electoral Reform, A Parliament that works for Wales: report of the Expert Panel on Assembly Electoral Reform, November 2017, paragraph 16.07

[20] Expert Panel on Assembly Electoral Reform, A Parliament that works for Wales: report of the Expert Panel on Assembly Electoral Reform, December 2017, paragraph 08.34

A two-phase approach

In February 2018, the Assembly formally noted the Panel's report and unanimously approved the Assembly Commission's intention to consult on the Panel's proposals and other potential reforms.[21]

The subsequent consultation ran from February to April 2018. Of the 1,830 responses to questions about the number of Members, 56% were in favour of more Members (of whom 95% agreed with the Panel's proposal of 80-90 Members) and 39% were opposed to any increase. Supporters highlighted potential improvements in scrutiny, representation and diversity, and opponents raised the costs and their impact on public services.[22]

In July 2018, the Assembly Commission announced[23] a two-phase approach for legislation to take effect from the 2021 election:

- Phase one: a Bill to reduce the minimum voting age to 16, change the Assembly's name, reform arrangements for disqualification from being a Member, and address other organisational matters.
- Phase two: progress discussions on the electoral system with the intention of legislating on the Assembly's size and electoral arrangements.

The Senedd and Elections (Wales) Bill

In October 2018, the Assembly agreed by majority that the Assembly Commission should introduce a Bill to, among other things, change the Assembly's name, extend the franchise and amend the law on disqualification.[24]

The Senedd and Elections (Wales) Bill was subsequently introduced in February 2019, and received Royal Assent in January 2020.[25] It renamed the Assembly as Senedd Cymru or the Welsh Parliament, reduced the minimum voting age to 16, extended the franchise to qualifying foreign citizens, reformed arrangements for disqualification from being a Member, and established financial and oversight arrangements for the Electoral Commission in respect of the exercise of its functions in relation to devolved elections in Wales.

The Llywydd was the Member in charge of the Commission Bill. However, at the same time, the Welsh Government was developing legislation to make similar franchise changes for local government.[26] The Assembly Commission

[21] Record of Plenary Proceedings [paras 141-201], 7 February 2018

[22] National Assembly for Wales Assembly Commission, Creating a Parliament for Wales: consultation report, October 2018, pp.9-10

[23] Senedd Commission, Written statement: the Commission's Assembly reform priorities following the outcome of the public consultation "Creating a Parliament for Wales", 18 July 2018

[24] Record of Plenary Proceedings [paragraphs 311-385 and 494], 10 October 2018

[25] National Assembly for Wales, Senedd and Elections (Wales) Act 2020

[26] National Assembly for Wales, Local Government and Elections (Wales) Act 2021

and the Welsh Government agreed a Memorandum of Understanding under which Welsh Government officials provided policy development and legislative drafting support for the franchise elements of the Commission's Bill. There was also separate engagement between the Commission and the Welsh Government on policy and drafting regarding the name of the legislature, the disqualification changes, and Electoral Commission accountability.[27]

Reflecting on this arrangement in December 2018, the then First Minister, the Rt Hon Carwyn Jones AM, said the "significant resource and governance challenges" meant it should not be repeated for subsequent reform Bills.[28] This position was reiterated in August 2020 by the then Minister for Finance and Trefnydd, Rebecca Evans MS.[29] She described the arrangement as "workable for a discrete area of policy", but "unworkable and untenable for more extensive areas of policy and/or longer periods of time." She indicated the Welsh Government's view was that "the Welsh Government of the day should lead on any future reform."[30]

Decision not to proceed with phase two

The Llywydd wrote to Members in June 2019 to say that, while she was confident there was consensus that the number of Members should be increased, the Assembly Commission had concluded it was not possible to legislate before the 2021 election because there was no consensus on the electoral system.[31]

Phase 3: Committees and the Co-operation Agreement (2019-2022)

In July 2019, Plaid Cymru tabled a motion calling for "immediate action" to legislate for a larger Assembly to be elected by single transferable vote at the 2021 election. Following the agreement of a Welsh Labour amendment, the Assembly agreed by majority that an increase in Members was needed and called for further cross-party work.[32]

[27] Letter from the Llywydd to the Constitutional and Legislative Affairs Committee, 2 April 2019 [see Annex 2, letters A, D, F, and I]

[28] Letter from the Llywydd to the Constitutional and Legislative Affairs Committee, 2 April 2019 [see Annex 2, letter I]

[29] Since 2017 the title of Trefnydd has been used to denote the Minister with responsibility for government business.

[30] Letter from the Minister for Finance and Trefnydd to the Committee on Senedd Electoral Reform, 11 August 2020

[31] Letter from the Llywydd to Assembly Members , 10 June 2019

[32] Record of Plenary Proceedings [paragraphs 416-556 and 559-563], 10 July 2019

The Committee on Assembly/Senedd Electoral Reform

After initial cross-party discussions, the Assembly agreed in September 2019 to establish the Committee on Assembly Electoral Reform[33] ('CSER') and task it with examining the Panel's recommendations.[34] As the Welsh Conservatives declined to participate in the CSER's work, it initially comprised Welsh Labour, Plaid Cymru and Brexit Party members.[35]

The CSER aimed to consolidate and add to the existing evidence, inform and engage the public, and outline a roadmap to inform political parties' manifestos for the 2021 Senedd election.[36] In its September 2020 report,[37] it acknowledged that its work had been affected by the COVID-19 pandemic and the resignation at a late stage of the Brexit Party member, David Rowlands MS, following concerns about whether social media comments made by the CSER Chair about regional Members changing parties brought her impartiality into question.[38]

The CSER's report highlighted developments since the Panel had reported, explored the capacity constraints identified by the Panel (and others), and considered what could be different in a larger Senedd. It endorsed the Panel's conclusion that the Senedd was too small, and agreed there should be between 80 and 90 Members. The CSER called for legislation to be introduced shortly after the 2021 election, and emphasised the need to reach consensus not only on the reforms, but also who should take them forward.

In addition, recognising that the earliest legislation could be implemented would be 2026, the CSER called for further work to identify and implement measures to alleviate capacity pressures during the 2021-26 Senedd, but noted that:

> "[m]any of the easier and more effective measures have already been put in place […]. The remaining options available to the Senedd may be less practical, less effective, poorer value for money, less politically palatable, or more difficult to present to the public."[39]

The CSER's report was debated in October 2020 on a motion which called on the Senedd to note the report. Unusually for a debate on a committee report,

[33] The Committee was renamed the Committee on Senedd Electoral Reform in May 2020 following the implementation of the Senedd and Elections (Wales) Act 2020.

[34] Record of Plenary Proceedings [paragraphs 183-185 and 442], 18 September 2019

[35] Business Committee, Minutes , 17 September 2019

[36] Committee on Senedd Electoral Reform, Senedd reform: the next steps, September 2020, paragraph 8

[37] Committee on Senedd Electoral Reform, Senedd reform: the next steps, September 2020

[38] BBC News, 'Brexit Party MS quits Senedd vote reform body in 'bias' row', 29 June 2020

[39] Committee on Senedd Electoral Reform, Senedd reform: the next steps, September 2020, paragraph 49

two amendments were tabled (both of which called for a referendum to be held before any increase in the number of Members could take place).[40] Although neither amendment was selected, the Members who tabled them[41] spoke during the debate about their opposition to any increase in the number of Members. No Welsh Conservative members took part in the debate. Following the debate, there were objections to the motion being agreed; it subsequently passed by 38 votes to 14.[42]

In accordance with its establishing motion, the CSER was dissolved following the debate. Later that month, the Welsh Government laid a written response. It did not address recommendations about the number of Members or how they were elected, stating:

> "Given the point within the electoral cycle which we are at, there are a limited number of recommendations that it is appropriate for the Welsh Government to consider at this stage."[43]

2021 manifestos

The manifestos of political parties that won seats at the May 2021 Senedd election took different approaches to Senedd reform. Plaid Cymru[44] and the Welsh Liberal Democrats[45] committed to implementing the increase in Members and single transferable vote recommended by the Panel. Plaid Cymru also pledged to introduce candidate gender quotas. Welsh Labour was less specific; it promised to "build on" the CSER's work and "develop proposals to improve the representation of the people of Wales in their Parliament."[46] The Welsh Conservatives ruled out any increase in Members.[47]

The Special Purpose Committee on Senedd Reform and the Co-operation Agreement

In October 2021, the Senedd agreed[48] to establish the Special Purpose

[40] NDM7417 – Committee Debate

[41] Gareth Bennett MS (elected to represent UKIP in 2016, before leaving the group to sit as an independent Member in November, and subsequently joining the Abolish the Welsh Assembly Party in 2020), and Neil Hamilton MS (UKIP).

[42] Record of Plenary Proceedings [paragraphs 251-323 and 501], 7 October 2020

[43] Welsh Government, Written response by the Welsh Government to the report of the Committee on Senedd Electoral Reform, October 2020

[44] Plaid Cymru, Let us face the future together: vote for Wales, 2021, p.117

[45] Welsh Liberal Democrats, Put recovery first, 2021

[46] Welsh Labour, Moving Wales forward, 2021, p.64

[47] Welsh Conservatives, A plan for recovery and change: let's build a better Wales, p.10

[48] Record of Plenary Proceedings [paragraphs 184-186], 6 October 2021

Committee on Senedd Reform ('SPCSR') with a remit to consider the conclusions reached by the CSER and, unusually, to make recommendations for policy instructions for a Welsh Government Bill on Senedd reform.

Other unusual aspects of the SPCSR included:

- Its Chair, Huw Irranca-Davies MS, was appointed, not elected,[49] the Llywydd was a non-voting committee member, and political parties' policy advisers "attended and contributed to committee meetings."[50]
- When establishing the SPCSR the Senedd disapplied the usual voting procedures, replacing them with weighted voting on all votes, and a super-majority requirement for committee resolutions to agree recommendations.
- The Senedd's Standing Orders require committee proceedings to take place in public unless the committee has formally resolved otherwise for one of a number of specific reasons.[51] The SPCSR chose to conduct much of its work informally and in private: "we held a number of private meetings that were not limited by the Senedd's Standing Orders, in order to facilitate frank, open and interactive discussions with a range of stakeholders."[52]

On 1 December 2021, the then First Minister, the Rt Hon Mark Drakeford MS, and the then Leader of Plaid Cymru, Adam Price MS, announced that the Welsh Government and Plaid Cymru had committed to work together on specific issues through a Co-operation Agreement. This included a commitment to:

> "Support plans to reform the Senedd, based on 80 to 100 Members; a voting system, which is as proportional—or more—than the current one and have gender quotas in law. We will support the work of the Senedd Special Purpose Committee and introduce a Senedd reform Bill 12 to 18 months

[49] Since the introduction of committee chair elections in 2016 chairs of all other committees established under Standing Order 16 have been elected rather than appointed with the exception of: the Committee for the Scrutiny of the First Minister (chaired by the Deputy Presiding Officer), interim committees established after the 2016 and 2021 elections to temporarily undertake specific functions until substantive committees were established, the Llywydd's Committee (may only be chaired by the Llywydd or Deputy Presiding Officer), and the Wales COVID-19 Inquiry Special Purpose Committee (the Senedd agreed in May 2023 to appoint co-chairs under a new temporary Standing Order).

[50] Special Purpose Committee on Senedd Reform, Reforming our Senedd: A stronger voice for the people of Wales, May 2022

[51] Standing Orders 17.40 and 17.42. Reasons specified in Standing Order 17.42 include, for example, national security, avoiding harm to commercial or economic interests, and discussion of draft reports or matters internal to the committee.

[52] Special Purpose Committee on Senedd Reform, Reforming our Senedd: A stronger voice for the people of Wales, May 2022, paragraph 12

after it reports."[53]

On 10 May 2022, the Co-operation Agreement partners published a joint statement which, among other things, proposed 96 Members elected by closed list proportional representation.[54] On the same day, they told the SPCSR the statement was their "joint view on the package of proposals that is most likely to succeed in achieving the 2/3rds Senedd majority that is required by law to deliver reform."[55] Later that day the Welsh Conservative member, Darren Millar MS, resigned from the SPCSR, saying the statement undermined the SPCSR's work and constrained its ability to reach independent conclusions.[56]

The SPCSR reported on 30 May 2022. Like the Co-operation Agreement partners' statement, which it closely reflected, the report's proposals diverged from the Panel's and the CSER's recommendations. For example, both the statement and the SPCSR report proposed 96 Members (rather than 80 to 90) and closed list proportional representation (rather than the CSER's and the Panel's preferred option of single transferable vote). Despite this, the statement was rarely mentioned in the SPCSR's report beyond the Chair's foreword which acknowledged:

> "An announcement by the Co-operation Agreement parties on 10 May 2022 also informed this Committee's discussions, though the decisions detailed in this report were ours to take."[57]

Some of the key recommendations—including the electoral system and boundary model—were agreed by majority.

The Senedd debated the SPCSR's report in June 2022, and voted by majority to endorse its recommendations for policy instructions for a Welsh Government Bill for implementation in 2026.[58] During the debate the SPCSR's Welsh Liberal Democrat member, Jane Dodds MS, described the Co-operation Agreement statement as "a stitch-up" which did the Senedd "a disservice" and "prejudged the debate […] and the legislative process that will follow."[59] Former Welsh Conservative SPCSR member, Darren Millar MS, similarly felt the statement was "disrespectful to the committee" and "an insult to this institution."[60]

[53] Welsh Government, The Co-operation Agreement: 2021, December 2021, p.7

[54] Welsh Government, Press release: A way forward for Senedd reform, 10 May 2022

[55] Letter from the First Minister of Wales and the Leader of Plaid Cymru to the Special Purpose Committee on Senedd Reform, 10 May 2022

[56] BBC News, Senedd: Plans for 96 politicians agreed by Labour and Plaid, 10 May 2022

[57] Special Purpose Committee on Senedd Reform, Reforming our Senedd: A stronger voice for the people of Wales, May 2022, p.7

[58] Record of Plenary Proceedings [paragraphs 179-440 and 537], 8 June 2022

[59] Record of Plenary Proceedings [paragraph 246], 8 June 2022

[60] Record of Plenary Proceedings [paragraphs 201-202], 8 June 2022

The Business Committee's response

The SPCSR had called on the Senedd's Business Committee[61] and the Welsh Government to consider how further cross-party consideration could be facilitated on certain issues.

The Business Committee reported in December 2022.[62] It supported increasing the maximum number of Welsh Ministers from 12 to 17, with provision for further increases through secondary legislation. It also supported increasing the maximum number of Deputy Presiding Officers from one to two. It did not want to see changes in the number of Senedd Commissioners, or the introduction of constraints on Members' ability to join, leave or change political groups between elections.

Phase 4: Development and scrutiny of Welsh Government Bills (2022-2024)

Policy and legislative development

The then First Minister, the Rt Hon Mark Drakeford MS, confirmed in December 2022 that work was underway to progress the SPCSR's recommendations and the Business Committee's conclusions.[63] He provided a further update in April 2023, raising other potential policy areas including statutory candidate quotas, boundary review arrangements and rules, and the collection and publication of candidate diversity information. He also referred to new Welsh Government policies not previously considered by Senedd committees, including requirements for candidates to declare political party memberships held in the 12 months prior to Senedd elections, requirements for candidates and Members to be resident in Wales, and a statutory post-legislative review.[64]

During his annual statement on the legislative programme in June 2023, the then First Minister announced a pair of Senedd reform Bills to:

> "create a Senedd that is better able to represent and serve the people of Wales, with increased capacity to scrutinise, to make laws and to hold the executive to account [and] introduce gender quotas for candidates elected to this Welsh Parliament."[65]

[61] The Business Committee is responsible for the organisation of Senedd business. Its membership includes the Minister with responsibility for government business and the business managers for each of the political groups in the Senedd that do not have an executive role.

[62] Business Committee, Response to the Special Purpose Committee on Senedd Reform's report – Reforming our Senedd: a stronger voice for the people of Wales, December 2022

[63] Welsh Government, Written statement: Update on Senedd reform, 16 December 2022

[64] Welsh Government, Written statement: Update on Senedd reform, 4 April 2023

[65] Record of Plenary Proceedings [paragraph 119], 27 June 2023

When asked why there would be two Bills, the First Minister told the Senedd he was confident that candidate quotas were within the Senedd's legislative competence, but acknowledged that challenge was possible. Therefore:

"In order to make sure that the main reforms are not vulnerable to challenge, we've severed the two aspects."[66]

A further update in July 2023 reiterated that there would be two Bills, with the first to be introduced in the autumn. It also indicated that Welsh Government proposals for guidance for political parties relating to diversity and inclusion strategies, and requirements for candidates to declare political party memberships would be taken forward separately.[67]

Senedd Cymru (Members and Elections) Bill

The Senedd Cymru (Members and Elections) Bill[68] ('SC(ME) Bill') was introduced in September 2023, exactly 26 years after the referendum on the Assembly's establishment.

It provided for a 96-Member Senedd, comprising 6 Members for each of 16 constituencies formed, initially, by pairing the 32 Westminster constituencies. It also repurposed and renamed the Local Democracy and Boundary Commission for Wales[69] as the Democracy and Boundary Commission Cymru, and set out rules for ongoing periodic boundary reviews. In addition, it increased the maximum number of Welsh Ministers and Deputy Presiding Officers; disqualified candidates and Members not registered on Welsh local government electoral registers; shortened the time between ordinary elections from five years to four; and put a duty on the Llywydd elected after the 2026 election to table motions proposing the establishment of committees to undertake reviews of specified matters, including the extent to which people should be able to be elected or appointed to specified Senedd roles[70] on a job-sharing basis, the operation and effect of the Bill's provisions relating to the Senedd, Welsh Ministers and the voting system, and the extent to which the elements of a healthy democracy are present in Wales.

The Reform Bill Committee (established to undertake Stage 1 scrutiny of the general principles of the two Senedd reform Bills), the Finance Committee

[66] Record of Plenary Proceedings [paragraph 141], 27 June 2023

[67] Welsh Government, Written statement: Update on Senedd reform, 27 July 2023

[68] Senedd Cymru, Senedd Cymru (Members and Elections) Act 2024

[69] The body with responsibility for reviewing the electoral arrangements and boundaries for local authorities in Wales. It is separate from, but shares a secretariat with, the Boundary Commission for Wales which is responsible for reviewing Westminster boundaries in Wales.

[70] Member of the Senedd, Presiding Officer, Deputy Presiding Officer, member of the Senedd Commission, First Minister, Welsh Minister, Deputy Welsh Minister, and Counsel General.

and the Legislation, Justice and Constitution Committee reported on 19 January 2024.[71] While there was opposition from the public to the principle of any increase in the number of Members—often focused on the costs, whether there was a mandate to legislate, or scepticism about the Welsh Government, the Senedd or devolution more broadly[72]—there was relatively little discussion in the evidence or among Members of whether 96 was an appropriate number or the specifics of how a 96-Member Senedd might operate to make best use of its additional capacity.

Throughout Stage 1 the Welsh Government frequently referred to the SPCSR's recommendations and their endorsement by a majority vote of the Senedd,[73] whereas opposition Members often highlighted the impact and timing of the Co-operation Agreement partners' May 2022 statement.[74] The Reform Bill Committee noted in its report that the Welsh Government seemed reluctant to take ownership, preferring to describe it as "a Senedd Bill"[75] or "the Welsh Government facilitating the ability of a Bill to pass through the Senedd."[76] However, despite this, the Welsh Government did not accept key committee recommendations, including concerns about the appropriateness of the electoral system and calls to remove or amend "constitutionally problematic and legally unnecessary" provisions.[77]

The SC(ME) Bill's general principles and Financial Resolution were agreed by majority on 30 January 2024[78] allowing it to proceed to the amending stages. Within the Senedd, opposition to the general principles of the Bill was limited to the Welsh Conservatives, and focused primarily on the costs, the degree of public support, whether there was sufficient mandate for the reforms, and the closed list electoral system.

[71] Reform Bill Committee, Senedd Cymru (Members and Elections) Bill: Stage 1, January 2024; Finance Committee, Financial implications of the Senedd Cymru (Members and Elections) Bill, January 2024; Legislation, Justice and Constitution Committee, Report on the Senedd Cymru (Members and Elections) Bill, January 2024

[72] Reform Bill Committee, Senedd Cymru (Members and Elections) Bill: Stage 1, January 2024, paragraph 60

[73] For example, Record of Reform Bill Committee Proceedings [paragraphs 29, 36 and 39], 5 October 2023, Record of Reform Bill Committee Proceedings [paragraph 233], 13 December 2023

[74] For example, Record of Reform Bill Committee Proceedings [paragraphs 28 and 35], 5 October 2023, Record of Reform Bill Committee Proceedings [paragraph 236], 13 December 2023

[75] Record of Finance Committee Proceedings [paragraph 178], 18 October 2023

[76] Record of Reform Bill Committee Proceedings [paragraph 16], 5 October 2023

[77] Letter from the Counsel General to the Reform Bill Committee, 26 January 2024

[78] Record of Plenary Proceedings [paragraphs 425-574 and 578], 30 January 2024

Significant themes during the Bill's passage through the Senedd included:

- Opposition to the closed list electoral system on the basis that it restricted voter choice and gave too much power to political parties. The Reform Bill Committee recommended further political discussions to identify a better solution, and opposition amendments proposing a flexible list system were tabled at both amending stages. These amendments were supported by the Welsh Conservatives and the Welsh Liberal Democrats, but rejected as a result of opposition from Welsh Labour and Plaid Cymru. An amendment to require the inclusion of all candidates' names on ballot papers was agreed.
- The mandate for the specific reforms in the Bill, including whether parties' 2021 Senedd election manifestos were sufficient or a public referendum was needed. Debates on Welsh Conservative-proposed amendments to provide for a referendum frequently referred to the 2011 UK-wide referendum on the alternative vote electoral system, ongoing increases in the size of the House of Lords, and changes made to the mayoral and police and crime commissioner voting systems without referendums. The amendments were rejected.
- Changes were agreed to the approach to naming constituencies, including requiring constituencies to have monolingual names unless the boundary commission considered there was a particular reason for a bilingual name, and strengthening requirements for consultation with the Welsh Language Commissioner. Other technical changes to the boundary review rules were made, but opposition amendments to reduce the tolerable variance between constituency sizes from ±10% to ±5% were rejected.
- Amendments to apply a super-majority requirement to regulations to increase the maximum number of Welsh Ministers from 17 to 18 or 19 were agreed.
- Despite not being raised during Stage 1 scrutiny, Welsh Government amendments to give the Welsh Ministers powers to amend campaign expenditure limits for political parties during Senedd elections were agreed.
- Opposition amendments to introduce a recall system and disqualify Members and candidates convicted of wilfully and knowingly making or publishing false or deceptive statements were defeated. The Welsh Government cautioned against pre-empting work being conducted by the Standards of Conduct Committee on improving individual Member accountability.[79]

The Bill secured a super-majority at its final Senedd stage on 8 May 2024,

[79] For example, Record of Plenary Proceedings [paragraph 269], 30 April 2024

the day after the 25th anniversary of the first Assembly election in 1999, and received Royal Assent on 24 June 2024. The reforms will take effect for the 2026 general election.[80]

Senedd Cymru (Electoral Candidate Lists) Bill

The Senedd Cymru (Electoral Candidate Lists) Bill[81] ('SC(ECL) Bill') requires political parties' candidate lists to comply with quota rules. Specifically, at least half of the candidates on a constituency list must be women, and candidates must be ordered such that a candidate who is not a woman is (unless they are the only or the last candidate on the list) followed by a woman. In addition, if a party stands candidates in two or more constituencies, the candidate at the top of at least half of the lists must be a woman. Compliance is assessed on the basis of candidates' statements about whether they are, or are not, a woman.

On 1 November 2023, Hannah Blythyn MS, the then Deputy Minister for Social Partnership, provided the Reform Bill Committee with an overview of the anticipated SC(ECL) Bill and its interaction with the SC(ME) Bill. She indicated that she would consider providing the Committee with "an embargoed, advance copy of the [SC(ECL)] Bill before introduction."[82] No such copy was provided. But, at around the same time, a Welsh media outlet, Nation Cymru, reported it had seen a leaked draft Bill.[83]

Usual practice in the Senedd is for a Member introducing a Bill to make an oral statement the day after introducing it. On 14 November 2023 the Welsh Government announced[84] that a statement on the SC(ECL) Bill would take place on 5 December 2023. However, on 29 November 2023 there were media reports that a planned technical briefing on the Bill had been cancelled and

[80] The dates of ordinary Senedd general elections are specified in section 4 of the 2006 Act as the first Thursday in May in the fifth year after the previous ordinary general election. The 2006 Act provides powers for the Welsh Ministers and the Llywydd to move the date of the election under certain circumstances, meaning that the next ordinary Senedd general election is scheduled for 7 May 2026 but could take place as early as 6 April 2026. There are provisions in the 2006 Act for extraordinary general elections to be held under certain circumstances—should such an election be held after 7 November 2025 it would elect a 60 Member Senedd under the current electoral arrangements, but for a four year term only, with the broader reforms taking effect from the ordinary election held in 2030.

[81] Senedd Cymru, Senedd Cymru (Electoral Candidate Lists) Bill

[82] Letter from the Deputy Minister for Social Partnership to the Reform Bill Committee, 1 November 2023

[83] Nation Cymru, 'Row looms as Welsh Government plans to allow self-identifying transgender women to stand in Senedd elections as females', 30 October 2023

[84] Business statement and announcement, 14 November 2023

introduction would be delayed.[85] The then Trefnydd, Lesley Griffiths MS, subsequently announced on 5 December 2023 that the oral statement had been withdrawn.[86] Welsh Government responses to Members' written and oral questions consistently said further work was being done on the Bill, but provided no specific details or timings.[87]

In late February 2024, the Business Committee considered a Welsh Government-proposed scrutiny timetable for the Bill.[88] Following the Bill's introduction on 11 March 2024, the Business Committee set a committee reporting deadline of 7 June 2024.[89] Unusually, the Llywydd, in her capacity as Business Committee Chair, wrote to the Reform Bill Committee to "place on record [her] reservations" that the timetable agreed by the Business Committee by majority provided only nine sitting weeks[90] for committee scrutiny.[91] Among the reasons given by the Llywydd for her reservations was her unprecedented conclusion that the Bill was entirely outside the Senedd's legislative competence.[92]

In addition to laying a formal statement[93] before the Senedd, the Llywydd set out her reasoning in a letter to the Reform Bill Committee.[94] In oral evidence to the Reform Bill Committee and the Legislation, Justice and Constitution Committee, the Member in charge of the Bill, Jane Hutt MS, explained why she considered the Bill was within legislative competence.[95]

While not offering views on whether or not the Bill was within legislative

[85] For example, Nation Cymru, 'Controversial Bill that would allow biological males to stand as women in Senedd elections is postponed', 29 November 2023

[86] Record of Plenary Proceedings [paragraph 79], 5 December 2023

[87] For example, WQ90006 (answered 8 December 2023), OQ60426(3) (answered in writing on 13 December 2023), and WQ90517 (answered 18 December 2023)

[88] Business Committee, Minutes, 27 February 2024

[89] Business Committee, Timetable for consideration: the Senedd Cymru (Electoral Candidate Lists) Bill, March 2024

[90] Normal practice at the Senedd is 12 sitting weeks.

[91] Letter from the Llywydd to the Reform Bill Committee, 15 March 2024

[92] The 2006 Act provides that (1) a Bill may only be introduced if the Member in charge states that, in their view, the Bill's provisions are within legislative competence; (2) on or before introduction the Llywydd must make a statement setting out their view on whether the Bill's provisions are within legislative competence. The view taken by the Llywydd in the statement does not affect whether or not the Bill may be introduced.

[93] Presiding Officer's statement on legislative competence: Senedd Cymru (Electoral Candidate Lists) Bill, 11 March 2024

[94] Letter from the Llywydd to the Reform Bill Committee, 11 March 2024

[95] Record of Reform Bill Committee Proceedings, 13 March 2024; Record of Reform Bill Committee Proceedings, 1 May 2024; Record of Legislation, Justice and Constitution Committee Proceedings, 29 April 2024

competence, the two Committees were concerned that ongoing uncertainty could disrupt the 2026 election.[96]

Certainty on legislative competence can only be achieved by:

- clarification of the Senedd's legislative competence through an Act of the UK Parliament or an Order in Council under section 109 of the 2006 Act;
- referral, after the Bill has been passed,[97] to the Supreme Court by the Welsh Government's Counsel General or the UK Government's Attorney General under section 112 of the 2006 Act.

A debate on the general principles of the Bill, and whether it should proceed to the amending stages of the legislative process, was scheduled for 18 June 2024. However, on 14 June 2024 the Member in charge acknowledged the concerns raised by both Committees and said, to give the Welsh Government time to "respond […] as fully and appropriately as possible", the debate would be delayed until 16 July 2024.[98]

During the debate, the Member in charge said that she had reflected on the concerns raised by the Committees about potential legal challenges on the grounds of competence and:

> "I've concluded that the more responsible approach is for this Bill to be implemented for the scheduled 2030 Senedd election. This will ensure that the legislation can be implemented in an orderly way, and gives time for any potential legal challenges to be resolved well in advance of that election."[99]

When asked specifically about the potential to seek an Order in Council under section 109 of the 2006 Act, the Member in charge said that the Welsh Government was discussing the Bill with the UK Government and would provide further updates as the Bill progressed.[100]

Following the debate, the Senedd agreed the general principles of the Bill by majority, allowing it to progress to the amending stages during which it is expected the Welsh Government will table amendments to delay implementation until the 2030 election.[101]

[96] Reform Bill Committee, Senedd Cymru (Electoral Candidate Lists) Bill: Stage 1, June 2024, paragraphs 391-397; Legislation, Justice and Constitution Committee, Report on the Senedd Cymru (Electoral Candidate Lists) Bill, June 2024, paragraphs 58-82

[97] Unlike Scottish Parliament Bills, which may be referred during the legislative scrutiny process, Senedd Bills may only be referred during the four-week period that follows a Bill's passing by the Senedd.

[98] Letter from the Trefnydd and Chief Whip to the Reform Bill Committee, Legislation, Justice and Constitution Committee and the Finance Committee, 14 June 2024

[99] Record of Plenary Proceedings [paragraph 281], 16 July 2024

[100] Record of Plenary Proceedings [paragraph 290], 16 July 2024

[101] Record of Plenary Proceedings [paragraphs 272-384 and 461-466], 16 July 2024

Political context

The scrutiny of the Senedd reform Bills has taken place in a context of political change in Wales and beyond. The then First Minister, the Rt Hon Mark Drakeford MS, announced his resignation as Welsh Labour leader on 13 December 2023.[102] The SC(ECL) Bill was introduced on 11 March 2024, days before the Welsh Labour leadership contest concluded on 16 March 2024[103] and a new First Minister, Vaughan Gething MS, took office on 20 March 2024.

On 17 May 2024—the week after the Senedd passed the SC(ME) Bill, and following a series of controversies relating to donations to Mr Gething's Welsh Labour leadership campaign, the dismissal of a Welsh Government Minister alleged to have leaked private text messages, and questions about whether Mr Gething had deleted text messages while he was Minister for Health and Social Services during the COVID-19 pandemic—Plaid Cymru ended the Co-operation Agreement.[104]

The First Minister subsequently lost a non-binding confidence vote in the Senedd on 5 June 2024.[105] He initially chose to remain in office. However, opposition Members continued to press the issue, and on 9 July 2024 the Minister dismissed by Mr Gething made a personal statement in the Senedd indicating she had raised formal concerns about the process of her dismissal.[106] On 16 July 2024, the day of the general principles debate on the SC(ECL) Bill, three Cabinet Secretaries and the Counsel General resigned.[107] The First Minister subsequently announced that, while the "growing assertion that some kind of wrongdoing has taken place" was inaccurate, he would resign once a new Welsh Labour leader could be identified.[108] Eluned Morgan MS[109] was subsequently elected Welsh Labour leader unopposed on 24 July 2024,[110] and

[102] BBC News, 'Wales' First Minister Mark Drakeford resigns', 13 December 2023

[103] ITV News, 'Vaughan Gething wins leadership race to become Wales' next first minister', 16 March 2024

[104] BBC News, 'Pressure piles on Wales' FM as Plaid ends deal', 17 May 2024

[105] Record of Plenary Proceedings [paragraphs 203-327 and 392-393], 5 June 2024

[106] Record of Plenary Proceedings [paragraphs 133-139], 9 July 2024

[107] BBC News, 'Wales' FM Gething denies wrongdoing as he resigns', 16 July 2024

[108] Record of Plenary Proceedings [paragraphs 4-8], 16 July 2024

[109] Eluned Morgan has been a Member of the House of Lords since 2011. During the 2018 Welsh Labour leadership contest, she indicated that she would resign her peerage if she became First Minister. However, since then, the Senedd and Elections (Wales) Act 2020 has provided that, with effect from the 2021 Senedd election, Members of the House of Lords are disqualified from being Members of the Senedd unless they have been granted formal leave of absence from the House of Lords. Ms Morgan has been on formal leave of absence from the House of Lords since May 2021.

[110] Wales Online, 'Eluned Morgan named new Welsh Labour leader', 24 July 2024

was nominated as First Minister on 6 August 2024.[111]

In addition, the UK general election called on 22 May 2024 and held on 4 July 2024 resulted in a change of UK Government from Conservative to Labour.

What's next?

While the SC(ECL) Bill continues to be scrutinised by the Senedd, and it remains uncertain whether, and if so, how or when, the ongoing question over the Senedd's legislative competence to pass it will be resolved, it is now certain that the first general election after 6 April 2026 will elect 96 Members.

Debates about the Senedd's size have generally focused on the impact of capacity constraints and mechanisms for their alleviation. Advocates have consistently argued that a larger Senedd will improve outcomes for the people of Wales through more effective scrutiny and representation, and that such gains will offset the transitional and ongoing costs associated with the reforms. However, there has been less focus on how a larger Senedd might structure and organise itself, design its procedures, or develop its ways of working.

Final decisions will be for the next Senedd. But, as they prepare for 2026, political leaders in the Senedd, the Welsh Government, the Senedd Commission and political parties may wish to consider a range of practical, political and procedural issues. For example:

- communication and engagement by and between the Senedd, the Welsh Government, the Senedd Commission and electoral partners to ensure the people of Wales understand the reforms and the reasons for them;
- the nature and operation of the scrutiny and accountability relationship between an enlarged, and potentially more proportional, Senedd, and what may be a bigger Welsh Government;
- which procedural, practical or cultural features of a 60-Member Senedd should be retained or reformed, and what services and support a 96-Member Senedd, freed at least partially from capacity constraints, wants or needs;
- what adaptations are required to the Senedd estate, including expanding the capacity of the Siambr, and ensuring sufficient committee meeting facilities, event spaces and office provision for Members, their staff and Commission officials;
- how to monitor, measure and communicate whether the anticipated improvements in scrutiny and representation are achieved, and whether they deliver positive impacts for the people of Wales.

[111] Senedd Cymru, 'Senedd summoned in summer break to choose new First Minister', 25 July 2024

In addition, it is unlikely that the reform process is over. The Welsh Government has said[112] it expects the Standard of Conduct Committee's inquiry into individual Member accountability[113] will lead to legislation before 2026 to establish a recall system. Under pressure from cross-party backbenchers, the Welsh Government has committed to legislate to disqualify Members or candidates found guilty of deception.[114] And the outcome of any work undertaken by the review committees that must be proposed in 2026 under sections 7 and 19 of the Senedd Cymru (Members and Elections) Act 2024 ('the 2024 Act') could lead to further electoral system changes[115] or consideration of job-sharing for relevant Senedd roles.

Within the complex parliamentary reform landscape, it remains to be seen who will lead the development and delivery of such reforms, and what the outcomes might be. A recent report from UCL's Constitution Unit explored different models for parliamentary reform, noting that "the impact of any approach will inevitably depend on the actors involved, the remit they are given, and the wider political context." Those responsible for implementing Senedd reform may wish to reflect on this, and bear in mind the report's conclusion that:

> "Ultimately, parliamentary reform is unavoidably political […]. Designing an effective process is important, but successful reform will also require ideas, leadership, and political skill."[116]

The road to the 2024 Act has been long and challenging. It has often been uncertain whether consensus on any specific proposals could be achieved or maintained. Nevertheless, while the election of a 96-Member Senedd is now certain, the biggest Senedd reform challenges may still lie ahead.

[112] For example, Record of Plenary Proceedings [paragraph 78], 14 May 2024 and Record of Local Government and Housing Committee Proceedings [paragraph 576], 16 May 2024

[113] Standards of Conduct Committee, Individual Member accountability

[114] Wales Online, 'Plan for 'historic' new law making it a criminal offence for politicians in Wales to lie is shelved – for now', 2 July 2024

[115] For example, Record of Committee of the Whole Senedd Proceedings [paragraphs 245 and 251], 5 March 2024, Record of Plenary Proceedings [paragraph 180], 8 May 2024

[116] Fleming, T and Kelly H, Delivering House of Commons reform: what works?, June 2024

EXCLUSIVE COGNISANCE IN THE ISLE OF MAN: AN ANCIENT RIGHT WITHSTANDS MODERN CHALLENGE

JONATHAN KING
Clerk of Tynwald

The legislature of the Isle of Man, known as Tynwald, is widely regarded as the world's oldest parliament in continuous operation. It traces an unbroken line of descent from a method of settling disputes which by at least the 10th century had been established in the Island and given the Norse name *Thingvollr*, meaning "assembly field."

At what point in the 10th century Tynwald came into existence is not known. Around 50 years ago the year 1979 was designated as the "Manx millennium" based on a scholarly best guess. But the idea that the Manx constitution goes back a thousand years was not invented in the 1970s. It was alluded to in the pages of *The Table* by my predecessor Thomas Edward Kermeen in 1967; at a special sitting of Tynwald itself by the young Queen Elizabeth II during her first visit to the Island in August 1955; and by the then Governor, Sir Claude Hill, during a discussion of a cost-of-living crisis in March 1929.[1]

Wherever it came from, the concept of the "world's oldest parliament" is not just for the tourists. It underlies the way Tynwald operates every day, namely on the basis of precedent, with no entrenched constitutional law and no delegated authority from Westminster or anywhere else. Constraints on the functioning of Tynwald are few. As a result, parliamentary practice in this jurisdiction can evolve in its own way and at its own pace, which is sometimes glacial but which can, where necessary, be lightning quick.

Among those constraints is a small body of statute law making provision for membership of the House of Keys and the Legislative Council (referred to as the two "Branches of Tynwald") and for certain aspects of Tynwald procedure including certain of Tynwald's privileges. Changes were made to this statutory framework in the context of a particular Committee inquiry which began in July 2017 and which for a number of reasons did not reach its final conclusion until February 2023. This article outlines both the inquiry and the statutory changes which arose as a direct consequence of it.

[1] T. E. Kermeen, "A constitutional difference between the Isle of Man and the United Kingdom", *The Table* XXXVI (1967), pp.84 to 86. Reports of Debates in the Manx Legislature XLVI (1929), p.960; LXXII (1955), p.617. Reports of Manx parliamentary proceedings since 1888 can be found at tynwald.org.im

The legislative developments outlined here arose because the Social Affairs Policy Review Committee had assured survivors of historic child abuse that they could be heard in confidence. This assurance was critical to the success of the particular inquiry. But although the subject matter was uniquely harrowing, the inquiry was not unique in procedural terms. Similar assurances had been given before, and have been given since, in relation to inquiries across a range of subject areas including mental health, domestic abuse, family law, social services, the benefits system, economic grant schemes and whistleblowing.

That Tynwald committees should be so keen on hearing from witnesses in confidence reflects the political culture of a small jurisdiction with great autonomy. In a population of around 85,000 there are plenty of dissatisfied customers, but few who are prepared to speak out in public. Professional pressure groups of the kind found in larger jurisdictions, through which individual experiences can be channelled and anonymised, are scarce. The Island is divided into 12 constituencies, so that each directly elected parliamentarian represents just over 7,000 voters. The relationship between an individual constituent and a Member of the House of Keys is close and personal, and a similarly intense relationship is found between interest groups and parliamentary committees.

Knottfield – a highly sensitive inquiry

In July 2017 it was resolved, on a motion of Mr Tim Baker MHK:

> "That Tynwald notes with concern reports of historical child abuse at the former Knottfield Children's Home, which closed in 1983, and refers the matter to the Social Affairs Policy Review Committee to report by December 2017; and further instructs the Committee to investigate the adequacy of current procedures to protect from abuse children in care (looked after children) in the Isle of Man and to report in March 2018."

By way of background Knottfield, a house in the Island's capital, Douglas, had been the site of a residential childrens' home from 1968 to 1983. In 1992 a former manager of the home, Mr Joseph Marshall, had been convicted of sex offences against children in his care. Further disclosures had been made in 1995, 1996 and 2015 but these had not led to prosecutions. The 2015 disclosure had led to an extensive investigation, but the investigation had not led to a prosecution, and the decision not to prosecute had caused enormous distress among affected individuals.

In explaining the reasons for proposing an inquiry by a parliamentary committee, Mr Baker said:

> "Those affected included my constituent and a group of several others known to him. This was many years ago, but the experience has had, and still has, damaging consequences for them; it is not something that has gone

away. Yet, other than going through a formal police process, there is little in place to meet their needs. Many of the victims have had no opportunity for counselling, support or assistance to work through or to move on from the experiences that they suffered whilst in the care of the Government. They need to achieve closure and for this they need our help."

The idea of a parliamentary inquiry was resisted by the Government on the basis that such matters should be left in the hands of the police. In a division a Government amendment to that effect was defeated thanks to the votes of the Members of the Legislative Council, and the inquiry went ahead.[2]

In calling for evidence in its inquiry, the Committee took great pains to reassure potential witnesses that any information they gave would be treated in confidence. This was not just a matter of giving written assurances to that effect. The Committee found it necessary to adjust its practices so that, for example, written submissions would be sent to the Committee clerk personally and not to an impersonal institutional email address; it would be made clear that submissions would be seen only by the absolute minimum of staff necessary; and, being a small community, staff rotas would be adjusted to minimise the risk of a witness in the inquiry being greeted on arrival at the Legislative Buildings by someone they knew.

The potential for overlap between the work of the Committee and that of the police, which had been alluded to in the debate, remained at issue throughout the inquiry. A number of witnesses gave evidence to the Committee in private. In some cases, with consent, the Committee passed unpublished transcripts to the police. In November 2017 the inquiry was suspended to avoid conflict with a renewed police investigation; but in March 2018 a further decision was taken not to prosecute, and the inquiry was able to resume.

The Committee's report was published on 4 October 2018.[3] A few days later a new criminal investigation began. The report was withdrawn from public view on the Tynwald website to allow the parliamentary authorities to consider the proper course of action, but a decision was quickly taken to republish. This latest criminal investigation eventually led to a further prosecution. The report was again removed from public view on the Tynwald website in December 2021, when a trial began, but no attempt was made to withdraw it from circulation; anyone who had it could still read it, and anyone who wanted it could still obtain it from the Clerk of Tynwald. It was restored to public view on the website in October 2022.

[2] 1314-1319 T 134

[3] PP 2021/0132; PP 2022/022; PP 2022/0129

The Tynwald Proceedings (Amendment) Act 2020

In October 2019 the Clerk of Tynwald was approached by the police who believed that, as a result of their disclosure obligations in the criminal case against Mr Marshall, it was their duty to inspect all the unpublished records of the parliamentary inquiry into Knottfield. The Clerk of Tynwald said no. The Committee had co-operated extensively with the criminal process by passing on transcripts of evidence with consent, and by suspending the inquiry pending an earlier criminal investigation. But this latest request by the prosecution crossed a line, having the potential to open up to the scrutiny of a court evidence given to the legislature by a person, or persons, who had not consented to such scrutiny. Tynwald had promised that people could talk to it in confidence. It should not be forced to break that promise. Moreover, the request sought access to other unpublished Committee records whose enforced disclosure, if less potentially harmful to vulnerable individuals, was no less an affront to the separation of powers between the legislature and the judiciary.

As an aside, the resultant clash of legal principle placed Her Majesty's Attorney General for the Isle of Man in a particularly interesting position. On the one hand, as the prosecuting authority, he was under an obligation to uphold the requirements of the criminal disclosure process – requirements that had recently been put in statute in the Criminal Procedure and Investigations Act 2016 (an Act of Tynwald). On the other, as a Member of Tynwald, he was well aware of the background to the particular parliamentary committee inquiry in question and of the constitutional principles at stake. In the event of litigation between the Clerk of Tynwald and the criminal prosecution function as to the nature and extent of the privileges of Tynwald, whose side would he be on?[4]

In the event litigation was not needed because the matter was resolved through legislation, a route which was both less costly and more effective. On 17 December 2019 both Branches of Tynwald were invited to pass the Tynwald Proceedings (Amendment) Bill seeking to provide for immunity from compulsion to give evidence, produce documents or supply information relating to proceedings in Tynwald.

The Bill went through all its insular stages in a day.[5] This is unusual but not unheard of in the Isle of Man in circumstances where there is political consensus not only on the substance of a measure but also on its urgency. A similar feat was achieved, for example, in respect of an Emergency Powers

[4] On the conflicts in the role of the Attorney General of the Isle of Man, see Stephen Wooler, "Review of the Role of HM Attorney General (Isle of Man)", March 2023 (GD 2023/0065) and the Council of Ministers' Response to the Wooler Review, June 2023 (GD 2023/0066)

[5] 323-330 K 137; 87-91 C 137

(Amendment) Bill introduced on 3 April 2020, which also happened to be the day on which Tynwald sat virtually for the first time. What was particularly unusual about the Tynwald Proceedings (Amendment) Bill of December 2019 was that it was brought forward as a private Member's Bill, the private Member in question being the Deputy Speaker, Mr Chris Robertshaw MHK. In moving the Bill he explained that:

> "The Attorney General has been consulted about this Bill and supports the move to legislate in this area, although the initiative for this Bill is the advice of the Clerk of Tynwald."

The Minister for Home Affairs also spoke in favour and there were no divisions in either Branch, the entire process being completed within an hour.

Royal Assent was given and announced a month later, on 21 January 2020. The reason for the delay between the end of debate and the Royal Assent was that, in line with the normal procedure for Manx primary legislation, the Bill as passed had to be examined by the UK Ministry of Justice and advice given to the Lord Chancellor before the Governor of the Island could be authorised to give the Royal Assent on behalf of Her Majesty. This stage of the Manx legislative process can take several months; for it to be done in a single month was not quite a record, but suggested that the reasons for urgency were appreciated not only in the Isle of Man but also in Whitehall.

The Bill added two new sections to the Tynwald Proceedings Act 1876. New section 6A deals with exclusive cognisance, providing that no court or tribunal may require a person to give evidence, produce a document, or supply information, and that no person may give evidence, produce a document or supply information, if doing so would infringe the exclusive cognisance Tynwald in respect of its internal procedures. It also empowers the President of Tynwald, acting on the advice of the Clerk of Tynwald, to give a certificate that giving evidence, producing a document or supplying information in respect of a matter would infringe exclusive cognisance. New section 6B provides that Article 9 of the Bill of Rights 1688 applies to Tynwald.[6]

Crucially, while the Act puts beyond doubt the existence of exclusive cognisance and the applicability of Article 9, it makes no attempt to define the contours of Tynwald's "internal procedures" of or "proceedings in Parliament." It is likely that in the event of a dispute the Manx courts would regard precedent from other Commonwealth jurisdictions as persuasive, although not binding. Hence we now find ourselves, by a different route, in a similar position to those younger Commonwealth jurisdictions in which the privileges of the legislature are expressed as being equivalent to the privileges of the UK Parliament.

[6] The Manx legislation referred to in this article can be found at legislation.gov.im

The GDPR and LED Implementing Regulations 2018 (Amendment) Regulations 2021

The Tynwald Proceedings (Amendment) Act 2020 having enshrined in primary legislation Tynwald's exclusive cognisance over its internal procedures, it might have appeared that by the second half of 2020 the question of the legislature's control over access to unpublished committee evidence had been settled once and for all. This turned out not to be the case.

In September 2020 the Office of the Clerk of Tynwald received its first two data subject access requests. One was from a former employee and one from a witness who had given evidence in confidence to a sensitive committee inquiry. Although the Isle of Man had, under a protocol of 1973, a semi-detached relationship with the European Union, data protection legislation of European derivation had been on the Manx statute book since 1986; it had applied to Tynwald in express terms since 2002. Until now, however, no-one had sought to exercise statutory rights in relation to their personal information held by the legislature. Therefore, although the legislation included an exemption for parliamentary privilege, this had never been invoked.

Having sought advice from colleagues in other Commonwealth parliaments, and bearing in mind the sensitivities described above in relation to committee evidence, the reaction of the parliamentary authorities was, unsurprisingly, to seek to rely on the privilege. The President of Tynwald said in Tynwald on 20th October 2020:

> "Hon. Members, just before we commence the Order Paper, I just wish to make a Ruling in relation to the question of Data Subject Access Requests and parliamentary privilege.
>
> This Ruling is in relation to handling the rights of members of the public to make formal requests for Data Subject Access. The Island's data protection legislation provides that the processing of personal data (i.e. our holding of information about a person) is exempt from Article 15(1) to (3) of the applied GDPR – that is, the requirement to respond to a data subject access request – if that exemption is required for the purpose of avoiding an infringement of the privileges of Tynwald. This exemption is at paragraph 7(c) of Schedule 9 to the GDPR and LED Implementing Regulations 2018 (SD 2018/0145).
>
> To respond to a Data Subject Access Request involving Committee records would infringe the privilege of Tynwald as it would open up the private information held by Committees, much of which is given on a confidential basis. It would conflict with the principle of exclusive cognisance which was recently enshrined in statute through the enactment of the Tynwald Proceedings (Amendment) Act 2020.
>
> I therefore rule that, as a matter of policy, when considering Data

> Subject Access Requests from Committee witnesses or others in relation to Committee records, the Clerk of Tynwald should presume that the parliamentary privilege exemption should apply unless there is a very good reason for that presumption to be displaced; and that the presumption should in any case not be displaced without the authority of the Committee concerned and the relevant presiding officer."[7]

On 30 December 2020 the Isle of Man's Deputy Information Commissioner wrote to the President of Tynwald asking him to withdraw the ruling. It was her opinion that the ruling conflicted with Manx data protection legislation, that it could conflict with the Council of Europe Convention for the Protection of Individuals with regard to the Processing of Personal Data, and that it could undermine the Island's "adequacy decision" from the European Commission which was then under review. These representations were taken seriously with the result that on 19 January 2021 the President of Tynwald said in Tynwald:

> "Finally, I wish to let the Court know that, following legal advice from the Attorney General's Chambers, I wish to withdraw my Ruling made at the October sitting which was in relation to the complex interaction of parliamentary privilege and data protection law. This matter will be referred to the Tynwald Standing Orders Committee for further consideration."[8]

The Office of the Information Commissioner not only disputed the President's general ruling, but also intervened in the two cases. In the case of the former employee a decision was taken not to assert privilege but in the case of the committee witness it was considered necessary to assert it and to rely on the associated exemption within the data protection legislation. The Office of the Information Commissioner set about establishing whether the exemption had been properly applied. A statutory enforcement notice was issued on 12 February 2021 demanding access within a month to all the relevant documentation on pain of criminal sanction. Once again a promise of confidentiality given by Tynwald to a witness in a highly sensitive committee inquiry was threatened.

The enactment of the Tynwald Proceedings (Amendment) Act 2020 had seen off the previous threat and in doing so had changed the landscape to a certain extent. There was now statutory authority on which disclosure of unpublished committee records to the Information Commissioner could be resisted. However, the clear statement of principle in the new parliamentary privilege legislation was counterbalanced by an equally clear statement in the data protection legislation, that:

"No enactment or rule of law prohibiting or restricting the disclosure

[7] 93 T 138

[8] 952 T 138

of information precludes a person from providing the Information Commissioner with information necessary for the discharge of the Information Commissioner's functions under the data protection legislation."[9]

Once again, costly litigation looked to be in the offing. Once again, the solution preferred was to legislate. This time primary legislation was not needed as the necessary changes could be made to the statutory framework using delegated powers. Having been drafted with the assistance of colleagues in Jersey, the necessary regulations were made on 4 March 2021 by the Council of Ministers at the request of the Standing Orders Committee of Tynwald.[10] They were placed before Tynwald on 9 March 2021 and were approved on the same day thanks to a suspension of the normal time limits for the consideration of secondary legislation.[11] They came into effect immediately upon approval, just three days before the deadline for disclosure which had been set by the Information Commissioner's Office.

The effect of the new regulations was to prevent the Information Commissioner from accessing privileged information. They enabled the parliamentary authorities to issue a certificate that particular information is subject to parliamentary privilege, such certificate being conclusive for the purposes of the Information Tribunal and subject to challenge in the High Court only on an appeal by the data subject. A certificate was duly made and confidential information was not disclosed.

Knottfield again – the criminal and parliamentary processes conclude

Meanwhile in the criminal court the defence in the case of *R v Marshall* was arguing on a number of grounds that a fair trial was impossible. Those grounds included not only the public impact of the parliamentary Knottfield inquiry, but also the consequences of what the Tynwald committee had done in private including the fact that no unpublished records of Tynwald had been disclosed. A summons was issued to the Clerk of Tynwald in the middle of 2020 but this was defeated by a certificate under the new legislation and the Clerk of Tynwald did not attend.

On 2 March 2021 His Honour Deemster Richmond QC delivered judgment in respect of the defence's application for a stay of proceedings based on abuse of process. In it he said he was surprised and troubled by some of the decisions made in relation to the parliamentary inquiry, and described the state of affairs as highly unfortunate. Nevertheless he did not find an abuse of process and the trial went ahead. In relation to the new Act he said:

[9] SD 2018/0145, Regulation 90

[10] SD 2021/0099

[11] 1462-1464 T 138

> "Whilst I understand the frustration which Mr Marshall's lawyers may feel to find their inquiries blocked by the certificate from Tynwald asserting their rights under the 2020 Act, in reality there is no prejudice to the Defendant in the conduct of the trial."[12]

Mr Marshall was convicted in December 2021 and sentenced in April 2022 to a term of six years' imprisonment. His age at the time was 85. His appeal against his sentence failed at the end of September 2022.

The end of the criminal process made it possible for the parliamentary process to resume and to reach its conclusion. In Tynwald every report by parliamentary committees which contains any recommendations is debated. The timeframe for the debate is normally around 10 weeks after publication, with the Government being expected within that time to produce a written response, which is debated alongside the committee's report.

In the case of the Knottfield report the normal 10-week timeframe was elongated to 4½ years. As mentioned above, shortly after the report had been published, a criminal investigation had begun. While the investigation and the subsequent trial were underway, although the report remained in the public domain, the remaining parts of the process (being the publication of the Government response and the debate) were suspended. As a result there was no question of the Government response being published before October 2022.

Between October 2018 and September 2022 there had been a General Election to the House of Keys and two sets of elections to the Legislative Council, together resulting in a considerable turnover of Members. To allow sufficient time for new Members to become acquainted with the material, a moderate pace was adopted on resumption of the process. The October 2018 report was brought formally to the attention of Tynwald in November 2022 and the Government response was published in January 2023, with the debate taking place in February 2023.[13] Part of the resolution arising from the debate was:

> "That Tynwald acknowledges that serious mistakes were made in relation to the care of children between 1961 and 1983 and in relation to the subsequent treatment of former residents of the Isle of Man Children's Home; and that Tynwald deeply regrets and sincerely apologises for its part in the failures of the Island's public authorities over many decades to detect and prevent the abuse of children in the Home, to bring the perpetrators of abuse to justice, and to provide support and assistance to individuals who have been abused."

[12] The judgment can be found at judgments.im. The words quoted are at paragraph 152.

[13] 702-711 T 140

Conclusions

In moving in 2017 for a parliamentary committee inquiry into historic child abuse, Mr Tim Baker MHK set in train a sequence of events which was to lead to not one but two statutory interventions affecting Manx law relating to parliamentary privilege. The Tynwald Proceedings (Amendment) Act 2020 has put beyond doubt the exclusive cognisance of Tynwald over its own internal procedures and the applicability of Article 9 in the Island. The GDPR and LED Implementing Regulations 2018 (Amendment) Regulations 2021 have put beyond doubt that in relation to rights of a data subject under data protection legislation, the parliamentary privilege exemption falls to be asserted by the parliamentary authorities subject only to the oversight of the High Court.

Both the Act of 2020 and the regulations of 2021 provide for privilege to be asserted by the making of a certificate by the parliamentary authorities, such certificate constituting conclusive proof that the privilege applies. This certification mechanism is similar to that in the Freedom of Information Act 2015 (of Tynwald), which is in turn closely modelled on that in the Freedom of Information Act 2000 (of the UK Parliament). The net result is a triptych of parallel certification mechanisms. Between them they make it possible to assert privilege in response to requests arising either from a specific statutory framework concerned with information (freedom of information and data protection) or arising from legal proceedings in general. While none of the three enactments seeks to define the contours of privilege, there is every reason to suppose that the Manx courts would recognise as privileged in the Island any category of information whose equivalent would be privileged in the UK or elsewhere in the Commonwealth.

The ability for Tynwald to keep information to itself has wider application than to committee scrutiny of the conventional variety. In 2023, following an adverse finding of the Equality and Employment Tribunal which was disastrous for the Island's Government, the need arose for an inquiry into the Government's handling of the case. It was recognised that the inquiry would need the ability to access confidential documents and to hear from witnesses in private; by constituting the inquiry as an emanation of a parliamentary committee it was possible to facilitate this without going to the expense of a full statutory public inquiry.[14] In the same year the Tynwald Standards and Members' Interests Committee, having conducted its own inquiries for the first 20 years of its existence, decided the time had come to seek the assistance of an independent investigating officer. Again confidentiality was of importance and again the ability of a Tynwald committee to keep information to itself came to

[14] PP 2023/0096; PP 2024/0017

be relied on.[15]

Both the Act of 2020 and the regulations of 2021 were introduced and put through the parliamentary process in double quick time in response to rapidly unfolding developments in live cases. And yet Tynwald – a body generally known more for excessive delay than for undue speed – was prepared to support them without demur. Why?

It is unlikely that this support was borne out of any special attachment to the doctrine of parliamentary sovereignty. Indeed that term is seldom heard in the Isle of Man, having little resonance in an insular context. While the Island is proud of its thousand-year parliamentary heritage, it is also widely understood that Tynwald has never won a civil war against anyone, and that the corpus of statute law recognised by the Manx courts includes instruments enacted not only in Tynwald but also at Westminster. It would be difficult for Tynwald to hold itself out as a sovereign legislature when its legislation is subject to the assent of a Head of State advised by a Lord Chancellor in another parliament, and when it admits on its own website that its legislative competence is "unlimited, but not necessarily exclusive."

Rather, it is clear from the debates in 2019 and 2021 that Tynwald's firm support for legislation settling the existence of privilege and clarifying its operation is based on two other grounds. At a practical level there is the desire of Manx legislators, described above, to be able to hear from witnesses in private. At a more principled level there is a strongly held belief that, as the legislature of the Isle of Man, Tynwald should be able to operate in the same way as any other parliament.

In a small jurisdiction in which the independent parliamentary service, the Office of the Clerk of Tynwald, numbers around 25 Full Time Equivalent staff, resources matter. Had either the Act of 2020 or the regulations of 2021 not been supported, the fall back of the parliamentary authorities would have been to seek to establish the existence and extent of privilege through litigation. This would have been extremely costly.

While anyone who legislates in haste may repent at leisure, the reality of scarce resources is that in a small jurisdiction legislation it is impractical to regard legislation as a last resort. Legislation should not be a knee-jerk reaction to every challenge which may arise, but for the parliamentary authorities the ability to initiate legislation is a tool in the toolkit which is there to be used if needed.

Finally, the developments outlined above illustrate the immense value of communication between members of the Society of Clerks-at-the-Table and their colleagues in all the jurisdictions of the Commonwealth. That

[15] PP 2023/0032

communication takes place in writing including through *The Table* and other publications, but also in other ways including on the conference circuit and through the exchange staff both temporary and permanent. While Tynwald in its great antiquity may predate the Commonwealth by many centuries, it is in its modern form very much part of the Commonwealth family, and long may it be so.

PUTTING IT TO THE PEOPLE: AUSTRALIA'S REFERENDUM ON AN INDIGENOUS VOICE TO PARLIAMENT

NATALIE COOKE
Director, Chamber Research, House of Representatives, Australia

On Saturday, 14 October 2023, Australian electors voted in the 45th referendum since Federation in 1901. The proposal was to change the Constitution to recognise First Peoples of Australia by establishing a body called the Aboriginal and Torres Strait Islander Voice. The referendum was not carried.

The 'Voice to Parliament' had been initiated by a group of First Nations Australians who, following a series of dialogues, issued the Uluru Statement from the Heart in 2017. The statement called for the establishment of a constitutionally enshrined representative mechanism to provide expert advice to Parliament about laws and policies that affect Aboriginal and Torres Strait Islander peoples. A constitutionally enshrined 'Voice' was one of the three key pillars of substantive reform called for, along with 'Treaty' and 'Truth'.

Altering the Constitution

Section 128 of Australia's Constitution sets a double bar for constitutional change. Changes can only be made through a referendum, which requires a double majority of voters—that is, a national majority of voters and a majority of voters in a majority of states—to approve the proposed alteration. The question must have first been approved by an absolute majority in each of the houses of parliament, or in the event of disagreement, by one house twice after a period of three months. It can then be put to the people. There must be period of at least two months and no more than six months between passage of a constitution alteration proposal and it being put to the electors in each state and territory.

It has been observed that the need for passage of an amending bill through the Parliament, followed by a federal referendum, recognises the Constitution 'as a superior law requiring both a parliamentary process and popular approval for its alteration'.[1] The delegates to the 1890s Constitutional Conventions were very conscious of the importance of the Constitution and that it therefore

[1] Reid, GS and Martin Forrest, *Australia's Commonwealth Parliament 1901-1988: Ten perspectives*, Melbourne University Press, Carlton, Victoria, 1989, p.242

should not be 'lightly interfered with'.[2] At the same time, balancing states' rights and popular sovereignty was a key consideration.[3] Section 128 is the result of extensive deliberations about these issues.

Changing the Constitution is not easy, as history shows. Out of 45 referendums held since Federation in 1901, only eight have succeeded. Prior to the 2023 referendum the most recent questions, on whether Australia should be established as a republic and on whether a preamble should be added to the Constitution, were rejected by electors in 1999.

Passage of the constitution alteration

On 30 March 2023, the Attorney-General, Hon Mark Dreyfus KC MP, introduced the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 to the House of Representatives.[4] It proposed inserting a new chapter in the Constitution: Chapter IX—Recognition of Aboriginal and Torres Strait Islander Voice, which would read as follows:

"In recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia:

1. there shall be a body, to be called the Aboriginal and Torres Strait Islander Voice;
2. the Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples;
3. the Parliament shall, subject to this Constitution, have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers and procedures."

In his second reading speech, the Attorney-General said:

"The Voice will not be required to make a representation on every law, policy or program. The Voice will determine when to make representations by managing its own priorities and allocating its resources in accordance with the priorities of First Nations peoples."[5]

In concluding, he said:

[2] Richard O'Connor, *Official Report of the Debates of the National Australasian Convention*, Melbourne, 9 February 1898, p.745, cited in Hobbs, Harry, and Andrew Trotter, 'The Constitutional Conventions and Constitutional Change: Making sense of multiple intentions', (2017) *Adelaide Law Review*, Vol. 38, Issue 1 (2017)

[3] Hobbs and Trotter, op cit, pp.61-2

[4] *Votes and Proceedings*, 30 March 2023, p.649. Note: Proposals to alter the Constitution do not contain the word 'bill' in their title.

[5] House of Representatives Hansard, 30 March 2023, p.2701

> "The Uluru Statement from the Heart was issued to the people of Australia, not to the government. It is now time for the Australian people to decide whether to accept that offer when they vote in this referendum."[6]

While the bill was being debated, a Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, established by resolutions of the House and the Senate, inquired into its provisions and recommended that it be passed unamended, although there were dissenting reports.[7]

The constitutional alteration passed the House of Representatives on 31 May and then the Senate on 19 June.[8] In each case it was passed by an absolute majority, as required by section 128.

Putting it to the people

On 30 August, the Prime Minister announced that voting day would be 14 October, and the Governor-General issued the necessary writ on 11 September.

In Australia, it is compulsory to vote in a referendum, just as it is to vote in federal elections. Ahead of the referendum, the Australian Electoral Commission announced that a record 97.7 per cent of eligible Australians were enrolled to vote.[9] In total, 15,895,231 voters (of 17,671,784 enrolled) turned out.[10]

In addition to being able to vote on the day, electors were also able to cast pre-poll votes or lodge postal votes. Voting teams from the Australian Electoral Commission also visited remote locations across Australia.[11]

When the polls closed on 14 October, it quickly became clear that neither of the bars set for constitutional change would be cleared. At the national level, 60.6 per cent of electors voted 'no', and no states had a majority of 'yes' votes. While there was majority support for the proposal in the Australian Capital Territory, territories are distinct from states and are not considered when calculating the majority of electors in a majority of states, although electors in Australian territories are included in the count of all electors.

That evening, the Prime Minister, Hon Anthony Albanese MP, said, 'While tonight's result is not one that I had hoped for, I absolutely respect the decision

[6] House of Representatives Hansard, 30 March 2023, p.2702

[7] Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, Advisory Report on the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023, Canberra, May, 2023

[8] *Votes and Proceedings*, 31 May 2023, p.760; *Journals of the Senate*, 29 June 2023, p.1510

[9] Australian Electoral Commission, 'Largest enrolment in history ahead of 2023 referendum', Media release, 21 September 2023

[10] Australian Electoral Commission, Referendum National Results, available at: results.aec.gov.au/29581/Website/ReferendumNationalResults-29581.htm, last viewed 1 May 2024

[11] Australian Electoral Commission, 'Remote voter services for the 2023 referendum start today', Media release, 25 September 2023

of the Australian people and the democratic process that has delivered it.' He went on to say, 'Just as the Uluru Statement from the Heart was an invitation extended with humility, grace and optimism for the future … tomorrow, we must seek a new way forward with the same optimism.'[12]

Also speaking that evening, the Leader of the Opposition, Hon Peter Dutton MP, who supported the 'no' campaign, said, 'At all times in this debate, I have levelled my criticism at what I consider to have been a bad idea – to divide Australians based on their heritage, or the time at which they came to our country. The Coalition, like all Australians, wants to see Indigenous disadvantage addressed – we just disagreed on the Voice being the solution.'[13]

In a statement published the day after the referendum, Indigenous Australians who supported the referendum called for a week of silence, saying it was not the time to dissect the reasons for the outcome but rather the time to mourn and deeply consider the consequence.[14]

[12] Prime Minister, Transcript of Press Conference: Parliament House: 14 October 2023: Aboriginal and Torres Strait Islander Voice to Parliament Referendum

[13] Hon Peter Dutton MP, Transcript: Joint Press Conference with Senator Jacinta Nampijinpa Price, Shadow Minister for Indigenous Australians, Brisbane, Queensland, 14 October 2023

[14] 'A statement from Indigenous Australians who supported the Voice referendum' 15 October 2023, available at ulurustatement.org/a-statement-from-indigenous-australians-who-supported-the-voice-referendum [accessed 2 May 2024]

WILDFIRES, EVACUATIONS AND ELECTIONS— NEW CHALLENGES AT THE END OF THE 19TH NORTHWEST TERRITORIES LEGISLATIVE ASSEMBLY

GLEN RUTLAND
Clerk of the Northwest Territories Legislative Assembly

In the summer of 2023, the Northwest Territories experienced a wildfire season unlike any other. At one point, more than 2/3rds of the population of the Northwest Territories were subject to mandatory evacuation orders. The Town of Hay River evacuated twice; several communities experienced fire damage, and most of the Hamlet of Enterprise was lost to wildfire. One firefighter died while fighting the fires.

Against the backdrop of this emergency, the 19th Legislative Assembly was about to begin its final sitting. The Territorial General Election was scheduled to occur on 3 October 2023. Prior to dissolving on 3 September 2023, the 19th Assembly needed to approve a capital budget and conclude consideration of all legislation.

On 13 August 2023, just days before the final sitting was to begin, several communities in the southern part of the Territories were evacuated to Alberta. Plans were made to convene evacuated Members of the Legislative Assembly to Yellowknife for the final sitting.

On 16 August 2023, as the wildfire situation worsened across much of the territory, the Speaker, the Hon. Frederick Blake Jr., used his authority under Rule 2.1(1) of the Rules of the Northwest Territories Legislative Assembly[1] ("Rules") to postpone the sitting to a later date determining it was in the public interest that the Assembly meet a later date.[2]

That same day, Yellowknife, the capital city – home to the Legislative Assembly and more than 20,000 people – was placed under a mandatory evacuation order. Staff from the Office of the Clerk secured the Assembly as best as they were able. They ensured significant items, such as the Mace, original flag, the art collection and critical records and documents were secured. Boxes were packed with the records, items, and equipment necessary to hold a sitting. It was unclear how long the evacuation would last. Essential staff evacuated with

[1] Rules of the Northwest Territories Legislative Assembly, Northwest Territories Legislative Assembly, ntassembly.ca/documents-proceedings/rules-assembly

[2] News Release – Postponement, Northwest Territories Legislative Assembly, ntassembly.ca/documents-proceedings/news-releases/postponement

these items and equipment. They did not know how long they would be gone, when the final sitting would occur, or if they would return to damage to their homes, community, and the Legislature.

Because of the sheer number of communities and people evacuated, most were evacuated outside of the Territories. Members of the Assembly and Office of the Clerk staff were spread out all over Western Canada, from large cities like Edmonton and Calgary to small towns like Zama City.

On 21 August 2023, the Speaker announced he had accepted a recommendation from the Chief Electoral Officer ("CEO") that the Territorial General Election scheduled for 3 October 2023, be delayed until November due to the wildfire situation.[3] As the Hon. Margaret Thom, Commissioner of the Northwest Territories, had already ordered the CEO to issue writs of election in all 19 electoral districts on 4 September 2023, legislation had to be passed to delay the election.[4]

The Speaker recalled the Legislative Assembly for Monday 28 August 2023. Members would consider legislation to delay the General Election until early November 2023, and a supplementary appropriation for wildfire related costs.[5] The Speaker stated that if the Assembly was unable to sit in Yellowknife, the Assembly would sit in Inuvik, with remote participation for Members unable to travel. Inuvik is a town of about 3,000 people located 200 km north of the Arctic Circle.

The Commissioner of the Northwest Territories signed an order authorising the Assembly to sit outside the capital.[6] While the Assembly had spent years meeting in communities before establishing a permanent home in Yellowknife, this was the first time the Assembly had sat outside the capital in 30 years.

The Town of Inuvik offered their Council Chambers for the meeting. Inuvik was chosen as two Members lived in Inuvik, one from the Executive, and one Regular Member. The Speaker was also able to drive to Inuvik.

At the time, Inuvik was no longer under threat of wildfire or evacuation, but the fibre-optic link to Inuvik had been damaged by wildfires. This presented connectivity concerns for remote participation, but the Assembly was legally

[3] News Release – Assembly to Meet to Consider Law Delaying Territorial General Election and Emergency Spending, Northwest Territories Legislative Assembly, ntassembly.ca/documents-proceedings/news-releases/assembly-meet-consider-law-delaying-territorial-general-election

[4] Writ of Election Order, Northwest Territories Gazette, Volume 44, No.8 Part II, p.154. justice.gov.nt.ca/en/files/northwest-territories-gazette/2023/08_2.pdf

[5] News Release – The Second Session of the 19th Legislative Assembly to reconvene on Monday August 28, 2023, Northwest Territories Legislative Assembly, ntassembly.ca/documents-proceedings/news-releases/second-session-19th-legislative-assembly-reconvene-monday-august

[6] Place of Sitting Order (Inuvik), Northwest Territories Gazette, Volume 44, No.8 Part II, p.198. justice.gov.nt.ca/en/files/northwest-territories-gazette/2023/08_2.pdf

required to sit in the Northwest Territories. The Town of Inuvik had an alternate internet provider, whereas a Government of the Northwest Territories facility was reliant on the fibre-optic line.

In 2021, the Rules were changed to provide for hybrid and remote proceedings in cases of public health or other emergencies, in response to the global COVID-19 pandemic. These rules for remote and hybrid sittings remain in effect. Rule 10.5(2) stated that where the specific rules for remote sittings are silent on a matter covered elsewhere in the Rules, the Speaker may amend any rule or procedure as required to allow for the effective participation of Members appearing remotely, and the efficient operation of the Chamber. Rule 10.5(2) received a workout in its first outing.

As most of the public service was also evacuated, and focused on manage the wildfires, evacuations and supports for residents, Members were keen to have a short, business-focused sitting, preferably one day, to deal with the required elections legislation and supplementary appropriation. The Speaker used Rule 10.5(2) to issue a special orders of the day for the sitting. He removed most routine items, including Ministers' Statements, Members' Statements, and Oral Questions. The special orders were:

1. Prayer
2. Tabling of Documents
3. Consideration in Committee of the Whole of Bills and Other Matters
4. Report of Committee of the Whole
5. Notice of Motion for First Reading of Bills
6. First Reading of Bills
7. Second Reading of Bills
8. Third Reading of Bills
9. Orders of the Day

The Clerk, Deputy Clerk, House Procedure and Committees, the Clerk's Executive Administrative Coordinator and a Broadcasting Analyst traveled to Inuvik with the records, items, and equipment necessary to hold a sitting. Additional table officers and support staff were able to participate remotely, helping to test and manage Members' connection issues, maintain electronic records, and ensure proceedings were adequately supported.

Arriving on the afternoon of Sunday 27 August 2023, they went straight to the Town Council Chamber to convert it into a temporary chamber, set up the technology required, and test systems. The Town of Inuvik Council Coordinator provided valuable assistance, as did the Government's local office of the Technology Service Centre. The Speaker drove to Inuvik from his home community of Tsiigehtchic to chair the sitting in person.

On Monday morning, remote table officers tested Members' connections and resolved technical issues. With only several hours before session was

scheduled to begin, the Member for Monfwi advised the Speaker she intended to introduce a private member's public bill to amend the *Emergency Management Act*. The Member advised she would seek unanimous consent to move the bill through all three readings in one day. This was the same approach that was proposed to introduce and pass Bill 97*, An Act to Postpone Polling Day for the 2023 General Election*.[7]

Not long before the sitting was scheduled to begin, the Member for Monfwi advised the Speaker she would also invoke Rule 3.5, the rule for emergency debate. If the motion for an emergency debate was successful, it would result in the ordinary business of the house being set aside for that day, which would disrupt the plan for a one-day emergency sitting. An additional problem that had to be resolved, was that Rule 3.5 required a Member to move to set aside the ordinary business of the day, at the conclusion of Oral Questions. However, Oral Questions was not on the orders.

When the Speaker called the sitting to order at 1.30pm, three Members including the Speaker were present in person, and 16 appeared remotely. Even the Mace appeared remotely.

The Speaker immediately addressed the issue of an emergency debate with the following ruling as part of his opening remarks. The Speaker said:

> "Members, the Member for Monfwi has provided me with notice that, pursuant to Rule 3.5(1), she wishes to move a motion for emergency debate calling upon the Government of the Northwest Territories to ensure that Indigenous governments are involved in the GNWT's response to end the current wildfire emergency. Under that rule, the Member would move the motion for an emergency debate at the conclusion of oral questions but those are not on the orders today. That means Rule 10.5(2) applies. That rule relates to remote sittings.
>
> It states where the rules in this section are silent on a matter covered elsewhere in the rules, the Speaker may amend any rule or procedure as required to allow for the effective participation of Members appearing remotely. In the efficient operation of the Chamber under Rule 10.5 (2), I directed special orders of the day for today to ensure the efficient operation of the Chamber. This sitting could be characterized as an emergency sitting. The orders were issued to allow for a business-focused sitting, focused on dealing with two pressing matters:
>
> - Changing the date of the election; and,
> - Approving additional funding for wildfire response.
>
> The Northwest Territories is under a state of emergency. We must be focused

[7] Bill 97, *An Act to Postpone Polling Day for the 2023 General Election*, Northwest Territories Legislative Assembly, ntassembly.ca/sites/assembly/files/bill_97_-_public_version.pdf

> on the pressing matters at hand; however, Members still have their individual privileges. When a motion is made for an emergency debate, if it passes all of the remaining business of the day is set aside. That would mean dealing with the timing of the election and authorizing spending for wildfire response would not be dealt with today.
>
> I am concerned that the Member's motion may not get fair consideration if Members are worried that the matters we were called together for would be put aside. As a result, under Rule 10.5(2), I will amend Rule 3.5(1) such that at the end of third reading of bills, the Member may move to set aside the original business of the House to discuss a matter of urgent public importance requiring immediate consideration.
>
> Members, I believe this balances the privileges of the Member and the Assembly and ensures the efficient operation of the Chamber. Thank you."[8]

The Minister of Finance tabled the Supplementary Estimates (Operations Expenditures), No. 2 2023-2024[9] to deal with additional wildfire fighting costs. The Assembly immediately moved into Committee of the Whole to consider the estimates. The Chair of Committee of the Whole, the Member for Inuvik Twin Lakes was able to chair committee in person. Once Committee of the Whole concurred in the estimates, Committee reported their concurrence and the Assembly moved on to dealing with Bills.

The Member for Inuvik Boot Lake, a Minister and Member of the Assembly's Board of Management introduced Bill 97, *An Act to Postpone Polling Day for the 2023 General Election*. The Member for Monfwi introduced Bill 98, *An Act to Amend the Emergency Management Act*.[10] The Minister of Finance introduced Bill 99, *Supplementary Appropriation Act (Operations Expenditures), No. 2, 2023-2024*.[11]

Unanimous consent saw Bill 97 and Bill 99 receive three readings in one day. Bill 98 received unanimous consent for first and second reading but did not receive unanimous consent to bypass review by a Standing Committee and proceed to third reading on that day. As a result, Bill 98 was referred to the Standing Committee on Government Operations for review.

[8] Hansard, August 28, 2023, Northwest Territories Legislative Assembly, pp.6381-6382. ntassembly.ca/sites/assembly/files/hn230828.pdf

[9] Tabled Documents – 967-19(2), Supplementary Estimates (Operations Expenditures), No. 2 2023-2024, Government of the Northwest Territories, ntassembly.ca/sites/assembly/files/tabled_document_-_fin_-_supplementary_estimates_operations_expenditures_no._2_2023-2024.pdf

[10] Bill 98, *An Act to Amend the Emergency Management Act*, Northwest Territories Legislative Assembly, ntassembly.ca/sites/assembly/files/bill_98_-_public_version.pdf

[11] Bill 99, *Supplementary Appropriation Act (Operations Expenditures), No. 2, 2023-2024*, Northwest Territories Legislative Assembly, ntassembly.ca/sites/assembly/files/bill_99_-_public_version.pdf

After third reading of bills, the Member for Monfwi moved her motion for emergency debate. After hearing debate on the motion, the Speaker ruled the motion out of order as the subject of the emergency debate was the same as the proposal in Bill 98, which now stood referred to a standing committee for review. The Speaker then adjourned the sitting until 12 October 2023, but advised Members and the public that he would recall the House sooner if it was safe to do so.

The evacuation order for the City of Yellowknife was lifted on Wednesday September 6, 2023. Assembly staff were given until Monday 11 September 2023 to return to the workplace. The Speaker recalled the House on Wednesday 27 September 2023. The Assembly sat until 6 October 2023, and was dissolved on 15 October 2023. The Territorial General Election was held on 14 November 2023.

The special sitting could not have occurred without the work of employees from across the Office of the Clerk, who were all evacuated and working remotely. Arranging travel, accommodation, technical requirements, producing documents on the fly, from their campers, hotel rooms or evacuation centres. Special mention also goes to the Legislative Counsel who drafted the necessary legislation and orders while evacuated and working remotely.

The Northwest Territories Legislative Assembly also appreciated the support of the Quebec National Assembly. They provided translation assistance for news releases when our normal translation services were not available due to the evacuation.

During the COVID-19 pandemic, the Assembly had reviewed its business continuity plans including options for sitting outside of the Assembly. While at the time, a sitting outside of the capital was not envisioned, this work served us well in the face of a state of emergency, wildfires, evacuation orders and a pending election.

SCRUTINY AND ENTRENCHMENT: PROCEDURAL CHANGES IN THE NEW ZEALAND PARLIAMENT

DR DAVID WILSON AND DAVID BAGNALL
Clerk of the House and Principal Clerk (Procedure), House of Representatives, New Zealand

Introduction

Every three years, towards the end of each term of Parliament, New Zealand's House of Representatives reviews its rules and practice, and considers whether to amend the Standing Orders. The review is undertaken by the Standing Orders Committee, which, by convention, makes recommendations only when there is overwhelming support for them across the House. In practice, the committee does not vote on its recommendations but collectively adopts them. Following the review, the House adopts the recommended amendments with effect on the dissolution or expiration of Parliament ahead of the general election. This timing itself provides a moderating influence, as it means that, during the review process, the parties involved do not know which side of the House they will be on when the rule-changes are in place.

The consensus-based approach to examining the House's rules could result in glacial change, but, more often than not, the experience has been otherwise. The review of the Standing Orders in 2023 was a case in point: the House adopted an important set of rule-changes to bolster its scrutiny of the executive. Further changes also addressed a thorny issue that had arisen in relation to statutory entrenchment. This article describes the approach of the Standing Orders Committee to these two substantive topics, and how changes have been implemented.

Proposals for statutory entrenchment

A controversial moment in November 2022 led to some constitutional soul-searching about the process through which a Parliament may seek to bind its successors through statutory entrenchment. The situation at hand was resolved before any entrenchment took place. However, questions lingered about how such proposals should be dealt with in future, and this matter was raised for the Standing Orders Committee to ponder.

Provisions entrenched under current law

New Zealand does not have a codified constitution—that is, a single document setting out the major institutions of government, their principal powers, and the way those powers are regulated. Instead, its constitutional arrangements

are found in legislation, decisions of the courts, the Treaty of Waitangi, the prerogative powers of the Sovereign, the rules and practice of the House of Representatives, and conventions.[1] Electoral law is an important element of these constitutional arrangements, and some parts of it—known as reserved provisions—have been entrenched, or given special protection. Reserved provisions deal with the following aspects of electoral law:

- limit on the term of Parliament, which currently is three years[2]
- establishment and membership of the Representation Commission, which determines electoral boundaries
- division of New Zealand into electoral districts after each census
- variation of up to five percent from the quota for general electoral districts
- minimum age for registering as an elector and voting
- method of voting.

By law, a proposal to amend or repeal one of these reserved provisions can have effect only if it is passed by at least a 75 percent majority of all members of the House or supported by a majority in a national referendum.[3]

The provision that entrenches the reserved provisions is an example of "single entrenchment"—it is ordinary legislation and not itself entrenched. In theory, a Government could seek to amend or repeal a reserved provision by first introducing a bill, which could be passed with a simple majority, to remove the entrenchment. This is not an unintended loophole; the legislation that originally entrenched the reserved provisions in 1956[4] was passed in the belief that a Parliament could not bind its successor but that entrenchment was a way

[1] Kenneth Keith, "On the Constitution of New Zealand; An Introduction to the Foundations of the Current Form of Government" (1990, updated), in *Cabinet Manual 2023*, Cabinet Office, Department of the Prime Minister and Cabinet (2023, Wellington) at p.2. The Treaty of Waitangi, or Te Tiriti o Waitangi, is the primary founding document of government in New Zealand. Māori and English versions were signed on 6 February 1840 and over subsequent months by more than 500 rangatira (chiefs). Lt-Gov William Hobson signed on behalf of the British Crown. The Treaty provided for the Crown to establish government to prevent a state of lawlessness as settlers arrived, guaranteed the unqualified chieftainship and possession by tribes and subtribes of all their lands, villages, and taonga (property), allowed for the sale of land to the Crown, and accorded to Māori the status of British subjects. Soon afterwards, Hobson proclaimed sovereignty over New Zealand and declared it to be a colony. Many breaches of the Treaty have been acknowledged by the Crown, and settlements have resulted in apologies and provided for partial redress. The Treaty continues to shape the law, government, and politics of New Zealand. See Kevin Hille, Carwyn Jones, Damen Ward, *Treaty Law: Principles of the Treaty of Waitangi in Law and Practice* (2023, Thomson Reuters, Wellington).

[2] In its coalition agreements, the current Government undertook to consider a proposal to extend the term to four years.

[3] Electoral Act 1993, s.268

[4] Electoral Act 1956, s.189 (repealed)

of signalling the moral force of broadly accepted democratic rules. An attempt to exploit single entrenchment by using a simple majority to remove the special majority required to amend or repeal any of the reserved provisions would be constitutionally improper and arguably a breach of constitutional convention.[5]

Proposals for entrenchment

No further provisions have been entrenched since the reserved provisions were first enacted in 1956 (those reserved provisions have since been re-enacted in the Electoral Act 1993, which implemented the MMP electoral system). It is possible, though, to seek to entrench other legislation. A "proposal for entrenchment" is a provision in a bill that, if passed, would protect the entrenched provision from being amended or repealed by a subsequent bill passed with the support of a simple majority of the House. Such a proposal for entrenchment could seek to require a special majority (for example, 75 percent, as for the currently reserved provisions) or the support of a majority at a national referendum for the amendment or repeal of the entrenched provision.

In 1995, the House acted to prevent a law being passed with a simple majority that would bind a future Parliament through entrenchment. It amended the Standing Orders to require that a proposal to entrench a provision must be passed, in the committee of the whole House, by the same special majority as the provision would require for future repeal or amendment.[6]

The House has, occasionally, considered proposals to entrench a policy unrelated to electoral law or constitutional arrangements.[7] One such proposal, in 2022, was agreed in the committee of the whole House, before being reconsidered and removed. This incident led to the House revisiting the way it deals with proposals for entrenchment.

Attempt at entrenchment

In 2022 the House considered the Water Services Entities Bill, a fundamental reform of how public water assets were managed, which was highly contentious. The Cabinet had considered proposals to entrench some of these provisions. The Clerk of the House had advised against doing so and the Cabinet had

[5] David Wilson (Ed), *Parliamentary Practice in New Zealand* (5th ed, 2023, Wellington), at [14.2.6], p.161

[6] Standing Order 259 [1996] (adopted on 19 December 1995 with effect on 20 February 1996)—now Standing Order 270

[7] For example, the Keep Kiwibank Bill would have required that any proposal to privatise Kiwibank, wholly or partly, would require the support of at least 75 percent of all members of the House or a majority of voters in a referendum. The measure was not passed.

determined not to proceed with the proposals.[8] During the committee of the whole House stage of the bill, a member proposed an amendment to entrench clause 116 with a threshold of 60 percent of all members (or majority support at a national referendum) being required for its amendment or repeal.[9] This percentage was chosen because it was close to the proportion of the House that the member calculated could be mustered to vote for the proposal.[10] Clause 116 related to public ownership of water assets. The bill was one of many being considered under urgency at that sitting, which extended over a number of days. When debate on the relevant part of the bill concluded, the chairperson informed the committee that a majority of at least 60 percent of all members was needed to include the proposal for entrenchment in the bill. The amendment received little attention during the debate and was agreed by the requisite majority.[11] However, following a strong public reaction prompted by concerns being raised by prominent legal commentators,[12] the bill was subsequently recommitted and the clause deleted.[13]

Standing Orders Committee consideration of proposals for entrenchment

When these events were occurring in the House, the Standing Orders Committee was undertaking its triennial review of the Standing Orders. As part of the review, the committee decided to discuss procedures relating to proposals for entrenchment and called for submissions on the topic. The committee posed a series of questions to potential submitters, including asking them to identify relevant principles and conventions and options for reform.[14] It received 18 submissions and heard oral evidence from legal academics, the New Zealand Law Society, the Clerk of the House and the Parliamentary Counsel Office.[15]

[8] Thomas Coughlan, "Three Waters entrenchment: Papers reveal months of planning to entrench provision, hidden meeting with Greens", New Zealand Herald, 28 January 2023

[9] The member, Hon Eugenie Sage, was a member of the Green Party of Aotearoa New Zealand, which had entered into an agreement to support the Labour Party in Government.

[10] The Labour Party and the Green Party together held 62 percent of seats in the House at the time. As discussed above, Standing Order 270 required the proposal itself to reach the threshold it sought to impose through entrenchment.

[11] (22 November 2022) 764 NZPD 13991

[12] Michael Neilson, "Three Waters: Lawyers' constitutional concerns over entrenched privatisation provision–'dangerous precedent'", New Zealand Herald, 28 November 2022

[13] (6 December 2022) 765 NZPD 14327–14344

[14] Standing Orders Committee, "*Review of Standing Orders 2023*: call for public submissions on the House's rules and principles relating to proposals for entrenchment", Parliament website (parliament.nz), 8 December 2022

[15] Office of the Clerk, "Advice paper–entrenchment" dated 21 July 2023, subsequently made available on the Parliament website: parliament.nz

Submissions to the Standing Orders Committee addressed two main themes: the nature of policy provisions that should be entrenched, and the process for considering entrenchment.

They argued that a high threshold should be set for entrenchment and that transient majorities should not be able to be used to impose entrenchment provisions.[16] Concern was expressed that allowing for small majorities to entrench policy could weaken the legitimacy of the convention around entrenchment.[17] The Ministry of Justice, which administers electoral law, made the point that the 75 percent threshold set out in law was designed on the basis of a two-party Parliament,[18] and that there needs to be capacity to amend the law so that it keeps pace with public expectations.

Several submissions argued that entrenchment should be reserved for provisions of a significant constitutional nature, so that the mechanism could continue to serve as a protection for the integrity of representative democracy.[19] The committee considered whether the Standing Orders should specify the types of matters to which entrenchment could be applied. Ultimately, it decided against recommending such a change, as the Speaker could be placed in the undesirable position of having to rule on whether policy proposals were sufficiently "constitutional" and, therefore, admissible.

Manner and form

A further matter of relevance to the committee's decision-making was the intersection between the law and parliamentary rules and practices. To make valid law, Parliament must meet any statutory conditions of lawmaking, called "manner and form" provisions.[20] These provisions relate only to the procedure to be used in making law, not to the policy that it brings into effect. The provision in electoral law that entrenches the current reserved provisions is a manner and form provision. The High Court has jurisdiction to make a declaration on the validity of a statute, in terms of the procedure followed by Parliament to enact it, rather than its content.

[16] Submissions of Prof Dean Knight and Dr Edward Willis

[17] Submission of Legislation Design and Advisory Committee

[18] New Zealand employed the First Past the Post electoral system prior to 1996, which resulted in two-party dominance.

[19] Submissions of the Clerk of the House, Parliamentary Counsel Office, Dr Edward Willis, Legislation Design and Advisory Committee

[20] David Wilson (Ed), *Parliamentary Practice in New Zealand* (5th ed, 2023, Wellington), at [14.2.6], p.161. The term "manner and form" comes from a phrase used in a 19th century law, passed by the Parliament of the United Kingdom, that defined the scope of the legislative power possessed by colonial legislatures. It is now used to apply to a legislature with unrestricted legislative powers as well as those with a limited power to legislate such as devolved or state legislatures.

Judicial enforcement of manner and form provisions is an area of legal uncertainty. The traditional view has been that any declaration by the court that a law was improperly made and, therefore, invalid would be incompatible with the concept of parliamentary sovereignty. However, recent indications are that such a power could be exercised.[21] The court may be more likely to do so where the manner and form rules serve a necessary constitutional purpose, such as protecting core electoral provisions. How manner and form rules would be applied to non-constitutional policy matters is an open question.[22]

Ideally, the court would not need to consider either scenario because no bill raising the question of judicial intervention would be passed by Parliament. Regardless of whether a court would enforce a manner and form provision, the House is obliged to comply with the law and the Speaker always seeks to apply the procedures of the House in a way that does so. The Speaker has ruled that, when there is doubt about whether a provision engages a manner and form requirement, the approach should be to apply the House's procedures in a way that is less likely to lead to judicial consideration of whether the law has been validly made.[23] Although the Speaker has overall responsibility for compliance with manner and form provisions, their practical application falls to the chairperson in a committee of the whole House, because that is the only stage in the legislative process when the requisite special majority is required to be achieved when the House considers the amendment or repeal of an entrenched provision.[24]

Aside from the potential judicial approach, members considering a proposal to entrench substantive policy would need to consider seriously whether doing so would risk diminishing the moral force that underpins single entrenchment. Although it would be a breach of convention to circumvent the single entrenchment of important constitutional rules, similar moral constraints might not attach to the entrenchment of other policy matters.

Changes to Standing Orders

The Standing Orders Committee devoted substantial time to the issue of entrenchment and how best to safeguard constitutional arrangements. The unanimous view of the committee was that:

> "Proposals for entrenchment should be subject to due notice and measured consideration, including public consultation. A proposal for entrenchment is

[21] *Ngaronoa v Attorney General* [2018] NZSC 123 at [70] and [159]

[22] Philip Joseph, *Constitutional and Administrative Law in New Zealand* (5th ed, Thomson Reuters, Wellington, 2021) at [17.8.4] and [17.8.11]

[23] NZPD Vol 764, 2022, 13509

[24] [1980] 433 NZPD 3513

> a matter of constitutional importance, as it effectively regulates how a future Parliament may make law. We would expect proposals for entrenchment to be subject to comprehensive parliamentary scrutiny."[25]

Ensuring public and political scrutiny would leave the House to judge whether a proposal for entrenchment was appropriate and to reach a political agreement, in the same way that provisions were first entrenched in 1956. Such an approach was thought to reinforce the constitutional norms that underpin the special status of the provisions, despite only being singly entrenched.

The committee recommended that a proposal for entrenchment could not be considered in a committee of the whole House without being first subject to a select committee process, including a call for submissions. The effect of this is that the proposal would need to be contained in a bill when it was introduced to the House. If entrenchment was proposed by a select committee during its consideration of a bill, it would need to seek public submissions on the proposal and report on it to the House.

A further, and separate, protection recommended by the committee was that a proposal for entrenchment would not be able to be accorded urgency when it was considered at the committee of the whole House stage. This would minimise the prospect of such provisions being dealt with while legislating in haste, as had been the case with the amendment that gave rise to the Standing Orders Committee's consideration of the issue.

Following the committee's recommendations, the House adopted the new provisions governing proposals for entrenchment. Given the rarity of such proposals, it may some time until they are tested. However, they ensure that the House will not again be surprised by amendments that would entrench policy positions.

Strengthening parliamentary scrutiny of the executive

Improving the House's fundamental role of scrutinising the executive was the primary overarching theme that emerged from the *Review of Standing Orders 2023*. Crucially, there was broad agreement in the Standing Orders Committee about the big problem: that the House and its committees were inadequately performing the scrutiny function.

Scrutiny by multi-functional select committees

New Zealand's select committee system revolves around 12 "subject select committees", which are established automatically on the opening of Parliament

[25] Standing Orders Committee, *Review of Standing Orders 2023*, (30 August 2023) [2020–2023] AJHR I.18A, at p 33

and continue in existence for the whole parliamentary term.[26] This overall committee structure has remained substantially the same since it was introduced as part of broader constitutional reforms in 1985.[27] Each subject select committee has its own subject area,[28] and they are multi-functional—that is, they carry out several different types of activity. The most substantial functions are the consideration of bills (nearly all bills are referred to select committees to receive public submissions and consider recommending amendments) and the conduct of financial scrutiny. Committees also self-initiate briefings and inquiries about matters within their subject areas, and are referred other business such as petitions, international treaties, and reports from Officers of Parliament (for example, reports of the Auditor-General).

Financial scrutiny by select committees occurs mainly through their examination of the Estimates of appropriations (which happens over 10 weeks, usually from May to August) and their conduct of annual reviews of departments and other public agencies (generally from October to the end of March). The Estimates are examined by committees as part of the House's consideration of the main appropriation bill after Budget day, and the process always involves hearings of evidence from Ministers about their spending proposals for the financial year.[29] Annual reviews follow from the presentation of annual reports by departments and agencies, and entail the attendance of chief executives and other senior public sector leaders to account for the performance of their organisations. The procedure focuses on the previous financial year. Evidence from Ministers is becoming more common as part of that process.

Overall membership of subject select committees is allocated to parties on a basis that is, as far as practicable, proportional to their membership of the

[26] Standing Orders 185 and 189. Five specialist select committees are appointed too: the Regulations Review Committee, the Petitions Committee, the Officers of Parliament Committee, the Privileges Committee and, of course, the Standing Orders Committee. The House also may appoint additional committees on an ad hoc basis.

[27] Standing Orders Committee, *First Report*, (July 1985) [1984–1985] 7 AJHR I.14. For most of the period since then, there were 13 subject select committees. This number was reduced to 12 in 2017. Adjustments have also been made to the names and subject areas of some committees.

[28] These are set out in Standing Order 189, as follows: Economic Development, Science and Innovation Committee, Education and Workforce Committee, Environment Committee, Finance and Expenditure Committee, Foreign Affairs, Defence and Trade Committee, Governance and Administration Committee, Health Committee, Justice Committee, Māori Affairs Committee, Primary Production Committee, Social Services and Community Committee, and Transport and Infrastructure Committee.

[29] In New Zealand, the Government's financial year is from 1 July to 30 June. The main appropriation bill generally is passed two months or more into the financial year to which it relates. In anticipation of this, the House passes an imprest supply bill that gives interim authority until the main appropriation bill is passed.

House. Since every Government must maintain the support of the majority of the House in order to form and survive, the proportional basis for determining committee membership in practice means that parties aligned with the Government enjoy a majority across most subject select committees.[30] Some committees are evenly divided, but that still provides an effective veto because a tied vote on a question means it is lost.[31]

Concerns raised in submissions on Review of Standing Orders

Every review of the Standing Orders includes a call for submissions, inviting the public to raise issues about how Parliament works and to propose improvements. The call for submissions generally occurs in the year before the end of the term of Parliament and is followed by public hearings. The review tends to receive relatively few submissions, compared to other business before committees, and this affords the Standing Orders Committee the opportunity to have some in-depth conversations with witnesses about the House's rules and practices.

The Clerk of the House makes a submission on each review of the Standing Orders and presents it in a public hearing. Typically, the Clerk's submission ranges over many areas of procedure, identifying issues and suggesting ways to improve parliamentary effectiveness.[32] However, the Clerk's submission on the *Review of Standing Orders 2023* focused on a single theme: improving parliamentary scrutiny of the executive. It concentrated particularly on how well this scrutiny was being performed by select committees.

It was observed in the Clerk's submission that the scrutiny procedures had changed little since being introduced in the early 1990s, and that arguably the select committee system had reduced in the robustness of its scrutiny of the executive. The submission pointed to studies that showed a general sense of dissatisfaction with this aspect of committee work among chairpersons, members, advisers, and public servants, and also cited concerns raised by the Auditor-General about a lack of public accountability. Another feature of the submission was that it presented issues for discussion, rather than solutions, encouraging the committee to reach a cross-party understanding about the

[30] Standing Order 186(1). At present, there are 102 seats across the 12 subject select committees. Of these, 56 are allocated to Government parties, and 46 to members of non-Government parties. That translates into the Government parties holding a majority of one on each of ten committees, with two committees evenly divided.

[31] Standing Order 156

[32] For example, the Clerk's submission in 2019 focused on six objectives, with 39 proposals grouped according to seven key themes (Clerk of the House, submission on the *Review of Standing Orders 2020*).

nature of the issues before working on a package of proposals to address them.

Other submissions on the review also raised concerns about parliamentary scrutiny. Notably, Rt Hon Sir Geoffrey Palmer, a former Prime Minister and Leader of the House, engaged with members of the Standing Orders Committee in an animated discussion on this topic during the hearing of evidence. In these conversations, committee members drew on their experiences—as participants in committee scrutiny and as Ministers answering questions—to critique the effectiveness of the procedures. They traversed such issues as—

- the ability of Governments to use their numbers on select committees to block or inhibit scrutiny
- inadequacy of time devoted to scrutiny by committees
- committee size and the difficulties that members (especially on large committees) can experience when wanting to engage in sustained questioning of Ministers and public sector leaders within relatively short hearing times
- conversely, the lack of preparedness of members to undertake sustained questioning of Ministers
- limited capacity of members to put time into scrutiny, because of the many other demands on them and the relatively small size of the Parliament
- inadequate use of independent expert advice by committees when carrying out scrutiny.

Members came together in diagnosing that, overall, the select committee system exhibited a weak culture and expectation of scrutiny. This broad agreement about the problem provided an important platform from which the committee could develop options for changing how the scrutiny procedures work. The committee summarised its outlook as follows:[33]

> "We agree that the select committee system is not performing its scrutiny function as well as well as it should be. Scrutiny of the executive is often cursory, particularly when viewed against the magnitude and complexity of government activity and spending under review. We therefore devoted a considerable portion of our time during this review to considering how to improve select committee scrutiny."

A sense of common purpose emerged too. In its report, the committee set out what was at stake:

> "Scrutiny of the executive is ultimately about contributing to the quality of government, and enhancing public trust in democratic institutions. This can involve holding Ministers accountable, which is the cornerstone of our constitutional system of responsible government. It also includes the

[33] Standing Orders Committee, *Review of Standing Orders 2023*, (30 August 2023) [2020–2023] AJHR I.18A, at p 40

> regular and detailed examination of how public sector organisations, and departments in particular, are performing. We rightfully expect a lot from our public sector, and Parliament has a crucial role to play in securing its effectiveness."[34]

Consideration of changes to select committee system

During the hearings, the committee tested ideas about changing the select committee system to reduce the executive's ability to control the extent to which it is scrutinised. This had been proposed in submissions, including those of the ACT Party and the Green Party. These two parties separately proposed that the method for allocating seats on select committees be adjusted so overall membership would be proportional to the number of members of Parliament who were not Ministers or Parliamentary Under-Secretaries. This would have meant that parties in Government would receive a smaller share of the seats across select committees, and would have a majority on fewer committees—or no majorities at all—as a result. Staff provided the committee with calculations showing the impact this change would have had over the three previous terms of Parliament. Overall, the calculations showed that non-executive proportionality would be likely to result in parties not in Government having a majority on all subject select committees, but this depended both on general election results and the outcome of the formation of Government.[35]

In advice to the committee, the Clerk drew attention to implications that could arise from this proposal in the context of the multi-functional character of subject select committees.[36] In particular, the Clerk emphasised the importance of balancing the legislative and scrutiny functions. Select committees are acknowledged as the House's best mechanism for improving the quality of legislation, and this key feature of the legislative process should be carefully protected from unintended consequences that could arise from structural changes. The Clerk outlined a number of problematic incentives that could arise from the proposal, both in terms of the prospect of Opposition actions to frustrate policy initiatives and the potential for Governments, in turn, to respond strategically in ways that could diminish legislative outcomes. The Clerk also warned that the proposal could disrupt the generally collaborative and collegial culture of select committees.

[34] Standing Orders Committee, *Review of Standing Orders 2023*, (30 August 2023) [2020–2023] AJHR I.18A, at pp 40–41

[35] Office of the Clerk, "Advice paper—Select committee structure and membership" (26 May 2023), Appendix 2

[36] Office of the Clerk, "Advice paper—Select committee structure and membership" (26 May 2023), at pp 7–9

Heeding this advice, the committee next explored a proposal to reorganise the committee system into a structure of paired select committees.[37] Under this proposal, each subject area would be covered by paired committees—a main committee and a scrutiny committee—with separate scopes of activity relating to different select committee functions. The scrutiny committee would conduct financial scrutiny functions, and the main committee would carry out all other select committee functions, including the consideration of legislation. Arrangements for the paired committees would generally have resulted in scrutiny committees being controlled by non-Government parties. However, members were unable to reach agreement about such changes, which would have amounted to "a major overhaul of the current select committee system."[38]

When following a consensus-based approach to reviewing parliamentary rules, there is always the potential to reach a point where no substantial change seems achievable. The lack of agreement on a viable model for restructuring the select committee system could have led to such an impasse. In this case, however, members had agreed that there was a compelling need to improve scrutiny; it was a matter of figuring out how to reach this objective. The committee's discussions had been constructive, and members repeatedly expressed a wish not to let the opportunity for meaningful change slip away. Discussion turned instead to how to bolster scrutiny within the existing committee structure.

Balancing committee autonomy with prescriptive approach

Select committees in New Zealand are relatively autonomous—the Standing Orders have tended to avoid prescribing how committees should operate. Aside from procedural requirements to promote good-practice principles such as natural justice and transparency about financial interests, it is largely for committees themselves determine the approach to their business. The assumption has been that committees are best placed to judge how to conduct their work, so they can manage their time and priorities. Yet, as the Standing Orders Committee acknowledged, the outcome for scrutiny had been less than ideal. In the absence of agreement about adjusting the committee system's structure, a logical next step was to consider what procedural changes could be made to improve scrutiny. The question was whether the committee could settle on a package that would address the systemic problem it had identified.

An important consideration, then, was how to provide a more robust procedural framework for scrutiny while still giving committees a sense of control over their activities. Imposing an overly complicated or onerous set of

[37] Office of the Clerk, "Advice paper—paired select committees" (16 June 2023)

[38] Standing Orders Committee, *Review of Standing Orders 2023*, (30 August 2023) [2020–2023] AJHR I.18A, at p 40

requirements, without the buy-in of members, would be counterproductive. The committee sought to achieve this balance by articulating the bigger picture of what scrutiny involves and why it should be prioritised, and then recommending particular changes to provide structure and set expectations for scrutiny work. There was no intention to create rigid, one-size-fits-all obligations. The committee emphasised that it wanted "members to drive what good scrutiny looks like", and for committees "to approach the new procedures with a spirit of openness and innovation."[39] In short, the committee was seeking a culture change.

Overview of new scrutiny procedures

In recommending the new procedures, the committee opted for a package of changes that would focus on achieving "a substantial increase in the time spent by committees on scrutiny activities, a more systematic approach to planning and reporting on scrutiny work, and greater opportunity for members to engage in sustained questioning."

First, the committee described the purpose of scrutiny, to provide a shared understanding of what committees should seek to achieve. This would in turn guide chairpersons and members in applying the procedures. A purpose statement in the Standing Orders is somewhat unusual, but there are precedents in New Zealand: the Standing Orders already describe the constitutional purpose underlying the rules about referring to matters before a court,[40] and the reason why members declare their pecuniary and other interests.[41] Of course, the aims of individual members participating in scrutiny are up to them—the Standing Orders Committee was articulating the intended premise for the process as a whole:[42]

> "Parliament is a political environment. It could never be otherwise in a lively, competitive democracy. We recognise that scrutiny has a political dimension to it, particularly when the decisions and actions of Ministers are being scrutinised. We hope, however, that in articulating the purpose of scrutiny, we can contribute to a shared sense of purpose among members in deeper scrutiny of public administration and governance generally. Ministers and members have an interest in understanding what is being achieved with public money and how well the country is progressing towards important

[39] Standing Orders Committee, *Review of Standing Orders 2023*, (30 August 2023) [2020–2023] AJHR I.18A, at p 42

[40] Standing Order 116(3)

[41] Standing Orders, Appendix B, clause 1(3)

[42] Standing Orders Committee, *Review of Standing Orders 2023*, (30 August 2023) [2020–2023] AJHR I.18A, at p.44

outcomes."

Accordingly, the purpose of scrutiny is set out in new Standing Order 338A, as follows:

338A Purpose of select committee scrutiny

1. The purpose of scrutiny is to hold the executive to account, to contribute to good governance for improved outcomes, and to strengthen confidence in public institutions.
2. For this purpose, select committees examine, assess, and express views about the executive's strategy, policy, expenditure, administration, performance, and results.

New procedural features include:[43]

- **Scrutiny weeks**—a requirement for the annual sitting calendar to include two dedicated select committee scrutiny weeks (one for annual reviews and one for Estimates), during which the House does not sit and members must attend committee meetings in person (without using remote access, unless expressly permitted), and witnesses are expected to make themselves available.[44]
- **Scrutiny plans** and **scrutiny activities reports**—obligations for committees to devise and report plans soon after the start of the Parliament, covering their planned scrutiny activities for the rest of the term, and then scrutiny activities reports providing information about how committees have implemented their scrutiny plans and carried out scrutiny activities. Scrutiny activities reports also can include updates that committees wish to make to their scrutiny plans.[45]
- **In-depth annual reviews**—the creation of a new procedure for reviewing public organisations involving structured hearings of at least three hours (in most cases a substantial increase over previous practice).[46] A particular mechanism for managing these longer hearings has been provided through **structured agendas**, which are developed and adopted before hearings and (usually) sent to agencies beforehand to ensure they have relevant personnel and information ready.
- **Broader scope for annual reviews**—widening the procedure beyond the previous concentration on annual reports, to incorporate other strategic documents and enable questioning focused on progress made against strategic objectives, and plans towards reaching identified

[43] Standing Orders Committee, *Review of Standing Orders 2023*, (30 August 2023) [2020–2023] AJHR I.18A, at pp.41–42

[44] Standing Order 338C

[45] Standing Order 338B

[46] Standing Order 353A(3)

outcomes.[47] A particular intention for this broader scope is to allow committees to follow a logical progression from long-term aims, to strategic intentions, to particular proposals, to current performance, to results, and to outcomes.[48]

- **Review briefings**—a new procedural category for short-form scrutiny with smaller organisations that may take place outside the congested annual review period.[49]

Compromise and agreement

Finding consensus often involves actively seeking out compromises—haggling, even—to enable the participants to feel satisfied that their different perspectives and needs are properly balanced. As with most conversations about changing parliamentary procedure, a key question was where the time would be found to carry out the increased activity that was envisaged. The proposal for scrutiny weeks was a case in point—their purpose was to carve out extra time for committees to undertake long hearings. Members were conscious of the need to make Parliament more family-friendly, or at least not to increase the demands on members to attend business away from home. Hence, to accommodate the two scrutiny weeks, the number of weeks in which the House is expected to sit each year was reduced from 30 to 28.[50] Two main concerns arose from this reduction in sittings: the impact on the time available for implementing the Government's legislative programme, and the loss of two weeks when oral questions may be held. The first of these considerations was addressed by shortening the length of debates on the first readings of Government bills—data provided to the Standing Orders Committee demonstrated how this adjustment could completely offset the loss of the Government's time each year.[51] As for the loss of opportunities for question time, the committee discussed how scrutiny weeks would bring about a net effect of strengthening parliamentary scrutiny by enabling sustained questioning over many hours of hearings.

Such negotiations enabled the Standing Orders Committee to meet its conventional threshold of overwhelming support for the whole package of recommendations. The committee's report was adopted unanimously and

[47] Standing Order 353(2)

[48] Standing Orders Committee, *Review of Standing Orders 2023*, (30 August 2023) [2020–2023] AJHR I.18A, at p 49

[49] Standing Order 358A

[50] Standing Order 82(3)(a)(ii)

[51] Office of the Clerk, "Advice paper—shortening time spent on certain House business" (11 August 2023)

presented to the House on 30 August 2024—only one day before the House was expected to adjourn ahead of the general election. On the last sitting day of the Parliament, the debate on the committee's recommended amendments to the Standing Orders was the House's final item of business before embarking on the adjournment debate. The House adopted the amendments, for them to come into force on the day after the dissolution or expiration of Parliament.[52]

Implementation of new procedures

Amendments to the Standing Orders do not by themselves bring about a culture change, and new procedures can fail to fire if participants do not understand how they should work in practice. A project was established during the general election period to ensure committees could dive quickly and effectively into their scrutiny activities after the opening of Parliament. This project was a collaborative effort led by staff of the Office of the Clerk and closely involving the Office of the Auditor-General. Areas of work included:

- communication to the public about the changes
- explanation of the new procedures to public sector staff
- training for new members
- training for select committee chairpersons and deputy chairpersons
- advice to committees about how to undertake the procedures
- substantive advice supporting committees in their scrutiny
- templates for key documents that underpin the procedures.

One of the most important templates to develop was for structured agendas, which are designed to provide a thematic framework for questioning witnesses during scrutiny hearings. Each structured agenda sets out the particular topics that will be covered during a hearing and how much time is scheduled for each topic. The Standing Orders require committees to adopt structured agendas for in-depth review hearings,[53] and committees may choose to adopt them for other hearings if they wish. Aside from the general requirement to use structured agendas, committees are still relatively free to arrange their hearings as they see fit. Generic themes appearing in the structured agenda for an annual review hearing might be as follows:

- strategic direction and outcomes—covering the agency's progress against its strategic intentions
- role and performance—discussion about specified key functions of the agency, how they have been undertaken, and results
- organisational health, including people-capacity, capability, culture, and strategy

[52] (31 August 2024) [2020–2023] 1 JHR 963

[53] Standing Order 353A(3)(c)

- general questions and current events.

Committees started with such headings but readily took ownership of shaping the structured agendas to suit their own contexts and priorities. One real advantage of the structured approach to longer hearings was that members were comfortable that they could engage in systematic scrutiny while still having time set aside for them to pursue politically important matters (usually under the "current events" heading).

High committee engagement in first round of annual reviews

A practical effect of the requirement for structured agendas was the need for committees to consider their scrutiny priorities ahead of hearings (such prior reflection was not practised extensively in the past). Advice about the preparation of structured agendas was given jointly by the Office of the Clerk and the Office of the Auditor-General. While the Office of the Auditor-General has supported select committee scrutiny processes for many years, in recent times committees had usually received only short briefings from the Office's Sector Managers[54] immediately prior to hearings. With the arrival of the new procedures, Sector Managers have been closely working with committees before hearings to identify areas that warrant examination, to articulate themes for questioning, and to develop a format for hearings that can systematically address the broader scope that has now been accorded to the annual review procedure. During hearings, committees have been pausing for closed-door discussions to obtain feedback from Sector Managers on answers they have received and prompts for further questioning. Committees also have adopted a more methodical approach to discussing hearings afterwards, reflecting on the issues that arose from hearings, exploring them with Sector Managers, and indicating to committee staff the topics and conclusions they want to address in their reports. In this way, the new procedures have seen committees make more effective use of the advice and support available to them when conducting scrutiny of the executive.

With the timing of the general election and the opening of Parliament, select committees were plunged straight into the annual review process with a relatively short time before their reports were due on 31 March 2024.[55] From

[54] Sector Managers are staff of the Office of the Auditor-General's Parliamentary Group, who coordinate and lead the provision of the Office's advice to select committees. Each has responsibility for supporting parliamentary scrutiny of public service departments and other agencies within a particular sector. David Wilson (Ed), *Parliamentary Practice in New Zealand* (5th ed, 2023, Wellington), at [55.6.7], pp.656–657

[55] The general election was held on 14 October 2023, the Parliament opened on 5 December 2023, and select committees met for the first time in the following week. This meant the annual review process commenced more than a month later than in the previous year.

the outset it was recognised that there was no opportunity for a scrutiny week to be held until mid-year, too late for the annual review process—meaning hearings would need to be held on the mornings of House sitting days or during adjournment weeks. Disruptions to select committee meetings in early 2024, mainly caused by the House sitting under urgency, led to several hearings being truncated or postponed.

Despite these intense time constraints, select committees displayed considerable doggedness in undertaking their new scrutiny responsibilities. The first round of annual reviews held under the new procedures involved approximately 130 hours of hearings—effectively double the average number of hours spent on hearings for annual reviews each year during the previous term of Parliament (66 hours). Committees took advantage of the ability to schedule review briefings outside the annual review process, so they could concentrate on larger agencies.[56]

When prompted for feedback about how the first round of annual reviews using the new procedures had gone, select committees generally were very positive. The Economic Development, Science and Innovation Committee, which always is allocated the largest number of agencies for review, endorsed the new approach:[57]

> "One of the intentions behind the changes to scrutiny procedures was to develop a more robust culture of scrutiny, including opportunities for members to conduct sustained questioning of witnesses. All members on our committee considered that this intention was met during the first round of annual reviews."

Given the high number of agencies in its portfolio, that committee particularly appreciated the ability to spread its scrutiny workload across each year by scheduling review briefings. The committee also noted that, while it was pleased with the quality of the scrutiny that occurred, there was a lack of clarity about how to reconcile the broader, more forward-looking scope of annual reviews with the normal focus of the process on the previous financial year.[58]

A number of committees commented on the benefit of using structured

[56] Out of 159 organisations allocated for review, committees prioritised 80 of them for hearings during the annual review process. The longest hearing was conducted by the Health Committee, which heard 9 hours and 25 minutes of evidence, spread over 3 meetings, from Health New Zealand—Te Whatu Ora (a Crown entity formed recently from the combination of all the former district health boards).

[57] Economic Development, Science and Innovation Committee, *Scrutiny Plan for the 54th Parliament* (May 2024), at p.13

[58] Economic Development, Science and Innovation Committee, *Scrutiny Plan for the 54th Parliament* (May 2024), at p.13

agendas. This was summarised by the Environment Committee as follows:[59]

> "Before the hearings, we had some reservations about hearing length. Some members were concerned that there would not be enough material to fill a four-hour hearing. These worries proved unfounded—we had no difficulty filling each hearing with productive and sustained questioning. The structured agendas made even long hearings easy to conduct. As well as clearly guiding our lines of enquiry, they also ensured that agencies were well prepared to answer our questions."

The Foreign Affairs, Defence and Trade Committee was ambivalent, noting a risk that structured agendas could make the topics and lines of questioning pre-determined. The committee valued spontaneity in topics and lines of questioning to enable the testing of witnesses on their grasp of issues. It balanced this view by acknowledging that a structured agenda can provide clear signposting of issues identified for discussion and enable agencies to come prepared to answer questions in more detail.[60] In other committees, that spontaneity was accommodated by setting aside time in structured agendas for miscellaneous topics, so all members could "ask questions about topics they are passionate about."[61] These responses are entirely in keeping with the aim of the Standing Orders Committee to set a procedural framework for scrutiny but leave control of proceedings with individual committees.

In subsequent discussion groups led by staff from the Office of the Clerk and Office of the Auditor-General, interesting perspectives were expressed by officials from agencies that had been subject to review. On the whole, they saw the benefit of the more conversational approach that was possible in longer hearings. As they saw it, the extra time meant members did not focus solely on high-profile political matters and could enquire about an organisation's functions, strategies, priorities, activities, progress, and organisational health. Some commented that the longer hearings, broader scope, and structured agendas meant agencies needed to be better prepared, with information available to respond properly to questioning on the identified topics. These views align well with the purpose of scrutiny, articulated by the Standing Orders Committee, to contribute to good governance.

Scrutiny plans

An important theme of the new procedures is that scrutiny is a continuous process through the whole term of Parliament. This can be distinguished

[59] Environment Committee, *Scrutiny Plan for the 54th Parliament* (May 2024), at pp.12–13

[60] Foreign Affairs, Defence and Trade Committee, *Scrutiny Plan for the 54th Parliament* (May 2024), at p.10

[61] Health Committee, *Scrutiny Plan for the 54th Parliament* (May 2024), at p.12

from the previous approach where, while committees sometimes followed up on matters of interest, each round of scrutiny was regarded as a discrete episode. When looking at the new procedures, the Standing Orders Committee was concerned that there was "little to no planning at the committee level in terms of topics, outcomes, or initiatives that members are interested in or that would benefit from scrutiny." The committee proposed a planning process to "help to develop a culture of systematic scrutiny, and provide a greater focus to committees' scrutiny activities."[62] Scrutiny plans are central to this more strategic approach.

Subject select committees must report their scrutiny plans to the House just before the first Budget day in each term of Parliament, which means they are due about one month after the completion of the annual review process.[63] This timing allows committees to come to grips with the issues in their subject areas and take advantage of the annual reviews to identify and refine their priorities.

All subject select committees presented their scrutiny plans before the deadline. Their typical structure includes:

- purpose of the scrutiny plan
- scrutiny priorities for the rest of the term of Parliament—the most important topics, issues, and aims of the committee in conducting its scrutiny, including major initiatives or outcomes the committee intends to focus on
- intentions for examining the Estimates of appropriations
- intentions for annual reviews, including which agencies will be subject to in-depth reviews, standard reviews, and review briefings, and when
- other expected scrutiny activities, including the examination of reports of Officers of Parliament, and other self-initiated work such as inquiries and briefings
- appendices setting out schedules of hearings on the Estimates, annual reviews, and review briefings.

As well as serving the practical purpose of enabling committee staff to arrange hearings well in advance, the plans prompted committees to consider which areas of interest they wanted to look into more deeply than could be done during the routine scrutiny cycle. The process therefore helped committees to be proactive in considering how they would exercise their general inquiry powers to delve into broader public policy matters, aside from the specific exercise of scrutinising the executive.

[62] Standing Orders Committee, *Review of Standing Orders 2023*, (30 August 2023) [2020–2023] AJHR I.18A, at p.44

[63] Standing Order 338B(3) and (7). Annual reviews must be completed by 31 March, and Budget day is normally in mid- to late-May.

Estimates and inaugural scrutiny week

Considerable media interest developed around the first scrutiny week, which took place in mid-June 2024 and involved lengthy hearings from Ministers and agencies about spending plans set out in the Budget. Scrutiny week effectively replaced a week of sittings, which meant the hearings were the main focus and were not competing with any drama arising on the floor of the House. Committees fronted up with approximately 130 hours of hearings that week, which led to an overall increase in scheduled hearing times for the Estimates of 96 percent over the yearly average for the previous term of Parliament. The week placed intense pressure on committee staff and on Hansard staff, who transcribed every minute. Sector Managers from the Office of the Auditor-General had barely two weeks to examine the volumes of information about the Estimates and prepare their briefings to committees.

Most committees used structured agendas for their Estimates hearings, despite this not being required. Spontaneity was not lacking—the attendance of Ministers meant the hearings generally were more heated than the conversations with agencies that had taken place during the annual review process. At the time of writing, committees have not completed the first Estimates cycle under the new procedures. It is fair to observe, however, that the hearings were more thorough and robust than in previous years, and provided a substantial cache of material of on-going value for media coverage of Government initiatives.

Conclusion

Positive outcomes from the *Review of Standing Orders 2023* demonstrated the value of seeking common ground among members about the nature of the problems at hand and desirable outcomes. The consensus-based approach to procedural change provided challenges, as usual, but fostered buy-in and gave legitimacy to the new procedures. When particular solutions did not garner sufficient support, there was enough goodwill to look at alternatives. What emerged was a package of proposals that sought, not only to adjust the rules, but also to bring about a culture change. An intense effort was needed to implement the new procedures so they did not fall flat. Both the question of statutory entrenchment and the multi-faceted puzzle of how to improve scrutiny required members to reflect on their constitutional role and engage with the shared purpose of making Parliament more effective.

TDH HALL'S TREATISE ON NEW ZEALAND PARLIAMENTARY PRACTICE

DR DAVID WILSON
Clerk of the House of Representatives, New Zealand

One curious item I found in my office when I was appointed Clerk of the House was a typewritten manuscript, bound in buckram and titled 'Notes on Parliamentary Procedure'. The front cover was embossed with the initials 'HND', for Henry Dollimore (Clerk from 1946 to 1971). It contained no introductory material and had a table of contents hand-written on the back of a 1977 question paper. A second, loose-leaf, copy of the manuscript was found in the Victoria University Library in Wellington, with a letter from its author Thomas Donald Horne (TDH) Hall, who was Clerk from 1930 to 1945. Both copies contain hand-written amendments.

TDH Hall (1885-1971) was the seventh Clerk of the New Zealand House of Representatives and the first to write a treatise on parliamentary procedure in this country. Hall, a veteran of the First World War, was the first legally qualified Clerk and a former law drafter.[1] In combination with the highly regarded Speaker Charles Statham they were said to be "the most formidable procedural team in New Zealand's parliamentary history."[2] Hall's contributions to the New Zealand House of Representatives were numerous and a fascinating part of his legacy is the 'Notes on Parliamentary Procedure' that he wrote shortly after his retirement. It is the subject of this article.

The history of the undertaking

In moving to adjourn the House in December 1944, Prime Minister Peter Fraser took the opportunity to acknowledge the retiring Clerk, Hall, and to praise his procedural knowledge. He went further to explain how New Zealand parliamentary practice had not kept pace with Erskine May so that it was no longer a useful guide for New Zealand and proposed that:

> "… a manual could be produced which would coordinate all the various rulings and items on procedure, enabling members to arrive at an accurate conclusion and determine the proper course with a minimum expenditure of time. I propose, with the agreement of Cabinet, to ask Mr Hall to undertake the work and to request Sir Charles Statham, as far as his health will permit,

[1] Hall served on the Western Front and became a senior non-commissioned officer.

[2] D. McGee (1990). The Office of the Clerk. Unpublished paper, p.2

to co-operate with Mr Hall."[3]

Although Fraser said that he had discussed the idea with the two gentlemen, Hall recorded that he had not been consulted[4] and Statham immediately indicated that he was not available for such an undertaking.[5] Despite this inauspicious start, Hall admitted that the preparation of a local book of parliamentary procedure had always attracted him and he thought he could prepare something useful.[6]

Drafting the manuscript

Hall moved out of Wellington upon his retirement and worked on the draft at his home. He noted that no accommodation at parliament was offered, and his work appears to have been unpaid. He prepared a manuscript comprising 17 chapters, which outlined the constitution of New Zealand, and set out the role of members and the Speaker, the basis of parliamentary procedure, the business of the House, papers, the sessional timetable, amendments, financial procedures, parliamentary questions, debate and the committee system. It referenced statute, case law and Erskine May. Unlike Clerks' later published reference works, it also pointed out errors in procedure and areas for reform[7] because Hall saw his work as a precursor to a rewrite of Standing Orders. The main draft was completed in 1950. The manuscript is now useful as a snapshot of mid-20th century parliamentary practice.

Reflections on the state of procedure

Hall thought that New Zealand's parliamentary procedures were in urgent need to modernising. There was no review of Standing Orders between 1929 and 1950. He spent some time reflecting on the reasons why procedure in New Zealand had stagnated:

> "The sessions were usually short and the business of Parliament in the main confined to matters of local importance. The staff was small in consequence; many were employed only for the session e.g. the Clerks of Select Committees and Bill Clerks and the Clerk of the House and the one or two permanent officers were not required to be in attendance for any length of time during the long recesses. Later as business grew administrative duties were placed

[3] New Zealand Parliamentary Debates (NZPD) 1944, Vol.267, pp.827-828

[4] TDH Hall (1959). History of the undertaking. Unpublished correspondence, 20 March

[5] Statham had been appointed to the upper house upon his retirement as Speaker (1935) and died in 1946.

[6] Hall (1959). History of the undertaking. Unpublished correspondence, 20 March

[7] He identified the rules on dropped orders as having been "drafted under a misapprehension", for example (Chapter 10, p.8)

upon the Clerk foreign to his proper function and taking a disproportionate part of his time. There was thus no continuity of tradition and no body of trained men from whom the higher offices could be filled."

In addition to the short sessions and lack of professional, permanent parliamentary officials, Hall noted a shortage of members with procedural knowledge:

"Within the House itself there is evidence of considerable knowledge of constitutional theory and of Parliamentary practice amongst the earlier members, who were largely drawn from the same class as those who entered the House of Commons… In more recent times Members have reflected to a greater degree the character and local need of the constituencies they represented."

He also pointed to a strong institutionalisation of existing practices:

"There were several whose mastery of precedent and of the procedural forms of the House was outstanding. They came however to a practice already built up and stabilised and did not approach it with the same regard to principle and theory as in the more formative period."

Finally, he blamed a nostalgic attachment to rules copied from the House of Commons:

"In general, the loyalty and affection felt for the homeland of the parents or grandparents of most of the adult population made for a conservative attitude towards changes made in the interest of an independence which did not need to be asserted which might suggest a lessening of that feeling."[8]

Parliamentary procedure in New Zealand

Hall recorded that the rules regulating the procedure of the House lay in precedent of the New Zealand and British parliaments and the Standing Orders. He noted that:

"There are a number of rules which are not collected in any one place but must be gathered from old established practice as set out in the rulings of Speakers and in decisions of the House recorded in the Journals. Some of the precedents followed are ancient rules of the House of Commons and the Speaker is enjoined… to decide all cases not provided for in the Standing Orders taking as his guide the rules, forms and usages of the House of Commons as far as they are applicable."[9]

Other rules were local customs of the House which were regarded by

[8] TDH Hall, Notes on Parliamentary Procedure. Unpublished manuscript [hereafter 'Hall']. Chapter 17, pp.1-3

[9] Hall, Chapter 5, p.2

the Speaker as binding unless the House otherwise directed.[10] Hall said the Standing Orders were analogous to the statute law of the House as contrasted with the common law, which the older rules set out.

Proxy voting

The practice of 'pairing' with absent members had been in use in New Zealand since the early days of its parliamentary history. It worked reasonably well until the 28th parliament (1946-1949) where the government held a slender majority, thanks solely to the four Māori seats.[11] Hall observed that the National and Labour parties had "developed a greater divergence… on fundamental questions of policy" and there were some complaints about refusals to grant pairs.[12] The introduction of proxy voting for absent members in the face of opposition intransigence over the granting of pairs was considered to be a real possibility particularly because of the long absence of Labour member Arthur Richards[13] due to illness.[14]

The Prime Minister, Peter Fraser, sought advice on introducing proxy voting, as a result of the four-seat majority. Hall, by then retired, advised him that the duty of members to attend the House lay in statute and that a law change would be the safer way to provide any exemption from that duty since the House could not override the law by resolution.[15] Proxy voting was not pursued further because, according to Hall, "the give and take of pairs in certain circumstances and an appeal to the country when the margin is too small is the British and better practice."[16] By the following year, the matter appears to have resolved itself and the Opposition stated that "the understanding we have regarding pairs has been honourably observed."[17] Proxy voting would eventually be introduced in preparation for the multiparty environment brought about by the adoption of the mixed member proportional (MMP) electoral system, in 1996.

[10] An example was the Financial Debate always taking precedence over all other business.

[11] New Zealand created Māori electorates in 1867 to ensure indigenous representation in Parliament. Voters on the Māori electoral roll must be of Māori descent.

[12] New Zealand Parliamentary Debates [NZPD] 276, 1947, p.185 & p.371

[13] *The Evening Post*, 23/6/1947

[14] *The Evening Post*, 26/6/1947

[15] The Legislature Act 1908 had conferred on the House all the privileges, immunities and powers enjoyed by the House of Commons. Hall appears to have considered that this included a statutory requirement for members to attend the House.

[16] Hall, Chapter 2, p.1

[17] NZPD 284, 1948, p.4349

Abolition of the upper house

The abolition of the Legislative Council in 1950 represented a significant constitutional change and an alteration of the parliamentary landscape, though it was not usually characterised as such. Hall lamented that:

> "We are not very expert in constitution making. We recently abolished the traditional second Chamber. One would have expected a restatement of the constitutional position. It was not so however ... I imagine more steps to clarify the position and define powers would have been taken in reconstituting a limited liability company."[18]

The abolition of the Legislative Council necessitated a review of Standing Orders, the first since 1929. No specific steps were taken to fill the scrutiny and review role of the Council. Instead, the Standing Orders Committee reported that "all Standing Orders which have become redundant following the abolition of the Legislative Council have been deleted and that all consequential amendments have been made so as to render the procedure suitable for a single-chamber Legislature."[19]

Control of the House

Hall documented the growing control of the House by the executive and the entrenchment of the two-party system. His reflections on the arrangement of parliamentary business are particularly interesting. Noting that the parliament was not so pressed for time as its British counterpart, "the same meticulous apportionment of the days and hours available is not made."[20] Consistent with the executive dominance of the legislature and a moderate workload, the House sat for three to six months annually, usually in the latter half of the year.

The collegiality and relative informality of the small parliament also featured with Hall recording that:

> "It is quite common in the interchange between the Leader of the House and the Leader of the Opposition at the close of a sitting for an agreement to be reached as to the business to be taken next sitting day and if necessary, this is regarded as an Order of the House as far as the preparation of the Order Paper is concerned."[21]

Committees

Committees of the whole House featured prominently in Hall's writing. Their

[18] Hall (1950-1954) Drafts on constitutional and parliamentary topics. Privilege of Parliament, p.4; National Archives, MS-Papers-9472-04

[19] Appendices to the Journals of the House of Representatives, 1951, I.17, p.42

[20] Hall, Chapter 7, pp.6-7

[21] Hall, Chapter 7, p.14

functions, powers and local idiosyncrasies were the subject of Chapter 16. By contrast, select committees received little mention, except to note that the House could refer any matter to them for inquiry.[22] Public bills were not routinely referred to committees until the 1980s, and most of their time was spent on petitions as well as private and local bills.[23]

Question time

Hall observed that question time became a more central feature of parliamentary business in his time in office (1930-1945) and that was only lightly regulated by Standing Orders. Instead, rules pertaining to other proceedings were adapted and applied by Speakers.[24] He noted that they generally followed practice set out in Erskine May, except where local modifications had been made.[25] Many of the most important rules about questions, which endure to this day, were established by Speaker Statham in the early 1930s. Questions bore little resemblance to contemporary procedure. All questions were regarded as written questions, with answers able to be debated on some sitting days. There was no live interchange between members and ministers during an oral question period. That would come in 1962.

Role of the Clerk

The manuscript devotes several pages to enumerating the role of the Clerk of the House. Procedural duties such as advising members, servicing select committees, noting proceedings, producing the Journal, Hansard and the Order Paper, custody of records and keeping a roll of members will be familiar to most modern-day clerks. Other duties such as building maintenance, groundskeeping, catering, library services, messenger services, custody of ballot papers, payroll and general administration were also the responsibility of the Clerk. "The separation of duties as practised in Great Britain and in other parts of the Commonwealth" had not occurred in New Zealand's small parliament. Hall lamented that these duties "make great inroads on the time that should be available for professional duties."[26] This situation was rectified in 1985, with the creation of the Parliamentary Service as a separate department responsible for all non-procedural services to members and to Parliament.

The impost on the Clerk's time must have felt acute, since there were only two Clerks at the Table in Hall's time; the Clerk and Clerk-Assistant. In a later

[22] Hall, Chapter 9, pp.43-44
[23] Hall, Chapter 7, p.5
[24] Hall, Chapter 9, pp.21-22
[25] Hall, Chapter 9, p.26
[26] Hall, Chapter 3, pp.12-13

radio interview, he recalled the rigours of the role:

> "The longest sitting, in my period of service commenced at 2.30 one Tuesday and continued without break until 6 p.m. on the Friday. During that period, I was never in bed and never had my clothes off except in the morning when I had a bath. There was practically no sleep except perhaps one dozed in a chair. On one night, the division bells rang 55 times."[27]

The manuscript also discussed the challenging arrangements whereby the Clerk was responsible to the Speaker but a cabinet minister was responsible for the Legislative Department, which the Clerk headed. This situation was resolved by the passage of legislation in 1988, which made the Clerk responsible to the Speaker solely for the efficient, effective, and economic management of their office and independent in exercise of their substantive duties.[28]

The fate of the manuscript

Hall retired in 1945 due to failing health, aged 60. He blamed the long working hours for his illness, though he was also hospitalised during the First World War.[29] His advice was still being sought years after his retirement. In addition to advising the Prime Minister on proxy voting, and drafting his manuscript, he examined the private bills procedure and advised the incumbent Clerk on changes to it.[30]

The manual would never be published. By the time Hall completed the first draft in 1950 there was little interest in the manual or reform of Standing Orders. Peter Fraser, who had proposed the project, was no longer Prime Minister, the Labour Party having been defeated in the 1949 election. The National Party government was proceeding with the dismantling of the upper house but did not wish to revise other constitutional settings. Hall deposited a copy of the manuscript with the Clerk and another with Victoria University. His letter detailing the history of his work conveys a sense of frustration that it would not be completed.[31]

Although unfinished, Hall's work is the only detailed account of parliamentary practice in New Zealand during the mid-20th century. The copy held by the Clerk was bound and kept as a reference by Hall's successor Henry Dollimore. Charles Littlejohn, Clerk from 1976 to 1985 wrote its contents page. It was David McGee who finally realised Hall's ambition of writing a manual on parliamentary practice in New Zealand, and he produced three editions during

[27] Radio New Zealand (1952). TDH Hall reminisces (audio recording)

[28] Section 16 of the Clerk of the House of Representatives Act 1988

[29] Radio New Zealand (1952). TDH Hall reminisces (audio recording)

[30] Letter from TDH Hall to H Dollimore, 28/3/1951

[31] TDH Hall (1959), History of the undertaking. Unpublished correspondence, 20 March

his time as Clerk (1985-2007).[32] He certainly knew of the manuscript because he mentioned it in his own writing.[33] We cannot know whether Hall's work influenced his decision to produce a reference work but it remains an interesting artifact that provides insights in the operation of the House in the past.

[32] The fifth edition of *Parliamentary Practice in New Zealand* was published in 2023.

[33] D. McGee. The Office of the Clerk, unpublished paper, p.2

THE DEVELOPMENT OF A CODE OF CONDUCT BY THE NATIONAL ASSEMBLY OF THE GAMBIA[1]

MICHAEL TORRANCE
Former Standards Clerk, House of Lords (and Editor of The Table)

The Commonwealth Parliamentary Association project

Following earlier contact between the Commonwealth Parliamentary Association (CPA) and the National Assembly of the Republic of The Gambia ('the Assembly'), which facilitated, among other things, the revision of the Assembly's Standing Orders, the CPA was invited to assist the Assembly's members and officials to develop its first code of conduct, which was a priority for the Speaker of the Assembly.

To provide technical assistance in support of this work Eve Samson, the House of Commons Clerk of the Journals, myself and Avni Kondhia, from the CPA, visited Banjul from 26 to 29 March 2024. Our main contact at the National Assembly was Kalipha Mbye, the Assembly's Deputy Clerk for Legal & Procedural Matters.

Context

The Gambia is a former British colony which became independent on 18 February 1965 and became a member of the Commonwealth – initially as a constitutional monarchy and then as a republic from 1970. An article in volume 36 of *The Table* provides a concise account of the presentation of a speaker's chair on behalf of the UK House of Commons to then Gambian House of Representatives by a delegation of four MPs (including a young Mrs Margaret Thatcher) in 1967.[2] The speaker's chair, with some modifications, is still in use by the National Assembly (see images 2 and 3).

[1] A similar version of this article appeared in the July 2024 edition of *The Parliamentarian*. The author would like to thank Jeffrey Hyland, as the editor of *The Parliamentarian*, for his cooperation and agreement to reproduce this article in *The Table*.

[2] HRM Farmer, "The Gambia: Presentation of a Speaker's Chair to the House of Representatives", *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments* (hereafter *The Table*), Vol 36 (1967), pp.87-89. For a description of the colonial legislature, see *The Table*, Vol 20 (1951), pp.181-184

Image 1: the National Assembly building on the outskirts of Banjul, the capital of The Gambia

Image 2: the chamber of the National Assembly of The Gambia

Image 3: the speaker's chair gifted by the UK House of Commons to the National Assembly, shortly after The Gambia became independent

On 2 October 2013, The Gambian interior minister announced that The Gambia would leave the Commonwealth with immediate effect, ending 48 years of membership of the organisation.[3] On 14 February 2017, following a change of government and policy, The Gambia began the process of rejoining the Commonwealth, which was welcomed by Boris Johnson during a visit to The Gambia as foreign secretary in early 2018. The Gambia officially rejoined the Commonwealth on 8 February 2018.

The Gambia has a written constitution, which is currently being reviewed. Its parliamentary system includes some features familiar in Westminster systems, combined with elements from more presidential systems. The National Assembly is a unicameral legislature with 58 members who serve a five-year term. 53 of these members are directly elected while the remaining five are appointed by the president, including the speaker.

The development of the Code of Conduct

The CPA team's initial brief for this piece of work was provided by Assembly officials and members of the Committee of Privileges and Ethics in a virtual meeting in early March. The issues that they felt could potentially be addressed by the adoption of a code of conduct included the late attendance of members at plenary and committee sessions, strained relations between members and staff, and conduct and standards of dress in the chamber. In general terms it was felt that clearer rules and guidelines were required to regulate conduct inside and outside the Assembly to increase its standing and reputation with the electorate.

The CPA team reviewed the existing constitutional provisions and standing orders and noted that these already contained several relevant provisions, including on the registration and declaration of interests, as well as sanctions for any breaches of these requirements. However, following the recent review of the Assembly's standing orders, these provisions had not yet been operationalised and the exact scope of the Committee of Privileges and Ethics in overseeing the standards system was therefore unclear. Alongside preliminary engagement with the Assembly's members and officials, the existing constitutional and Assembly provisions formed the basis of an initial draft code of conduct which was developed by the CPA team before arriving in The Gambia.

After the CPA team arrived in Banjul productive and constructive engagement took place with the speaker, members (particularly from the Assembly's Committee of Privileges and Ethics), female members, and senior and junior clerks. At the end of each day the draft code of conduct was revised

[3] The Gambian government said it had "decided that The Gambia will never be a member of any neo-colonial institution and will never be a party to any institution that represents an extension of colonialism."

in response to feedback and re-issued for further feedback. The issues discussed during the engagement centred around the scope of the code, who should be able to make a complaint about possible breaches, logistical issues surrounding member attendance and the challenges of enforcement, as well as the need to specifically tailor the code of conduct to take account of local political and cultural circumstances.

The CPA team was impressed by the level of engagement by the stakeholders and noted that many of the issues that arose were not unfamiliar in the Westminster context. While engaging with stakeholders, the CPA team were conscious of the need to ensure that the code of conduct was – and was seen to be – owned by the Assembly members, rather than being imposed upon them by an outside body. While the team would occasionally refer to established Westminster practice in some standards areas, this was only to illustrate practical considerations, and care was taken not to assume the same approach would be either be appropriate or desirable in the Gambian context. In this respect, the CPA team and Assembly officials were cognisant that as this would be the Assembly's first code of conduct, it was important to allow it time to develop and mature, rather than consider introducing independent enforcement mechanisms, such as third-party commissioners for standards, at this stage in the code's development. While independent lay commissioners are now an established part of the Westminster standards systems such roles are a relatively recent addition to processes that were previously overseen by member committees only.

Outcome

At the end of a stimulating and productive visit, the CPA team provided Assembly officials with a final draft code of conduct, which incorporated a guide to the registration of interests, and flagged possible consequential changes to the Assembly's standing orders for further consideration. All concerned were in agreement that it was important to be realistic about how much a document such as a code of conduct could achieve in isolation but recognised it as an important first step in establishing the Assembly's ownership of a code which took account of its specific circumstances, as well as facilitating wider behaviour and culture change among its membership.

The Committee of Privileges and Ethics held a general consultation workshop with all Assembly members at the beginning of June and the final version of the code of conduct was adopted by the Assembly, by way of a resolution, on 24 June.[4]

[4] assembly.gm/?p=6642

ARCHIBALD MILMAN AND THE CONTROL OF SUPPLY, 1887–1902

COLIN LEE
Clerk of Legislation, House of Commons, United Kingdom[1]

Introduction

Archibald Milman, the Clerk Assistant of the United Kingdom House of Commons, adopted a practice while at the table of the House towards the end of a long Session:

> "In the small hours of the late sittings which precede the recess he unfolds a map and studies the continental Bradshaw. Weary onlookers are gladdened by the sight of the map, and the long thin finger tracing a journey. From the droning sentences of the bores the mind flies to some far-off spot where the silence is broken only by the splash of a stream."[2]

In the late 1880s and early 1890s, Milman's conspicuous planning for his recess travels took place late in the summer. In 1887, the recess started after prorogation on 16 September.[3] In 1889, prorogation took place on 30 August.[4] In 1893, the House sat until 22 September.[5] In 1894, the Session concluded on Saturday 25 August.[6] In December 1895, Milman prepared a memorandum designed to address the accumulated problems with the management of the business of the House and the length of sessions. He suggested:

> "It might be worth considering whether in some cases the plan of allotting a definite time for the consideration of defined business would not promote the despatch of business as well as giving certainty as to the time and order in which business would be taken."

He went on to argue that "In Committee of Supply such an allotment of

[1] The author is grateful to Dr Stephen Farrell and Dr Paul Seaward for comments on an earlier draft of this article.

[2] *The Sphere*, 3 Mar. 1900, p.28. All newspapers have been accessed via the British Newspaper Archive, except *The Times* which has been accessed via *The Times* Digital Archive.

[3] *Commons Journals* (hereafter *CJ*) (1887) 553

[4] *CJ* (1889) 476

[5] *CJ* (1893–94) 577; C Lee, "Archibald Milman and the 1893 Irish Home Rule Bill", *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments* (hereafter *The Table*), Vol 84 (2016) (hereafter "1893 Home Rule Bill"), pp.28–63, at p.60

[6] *CJ* (1894) 408

time could be usefully adopted."[7]

The approach advocated by Milman and others was adopted in the sessional order introduced by Arthur Balfour, First Lord of the Treasury and leader of the House of Commons, in February 1896, to allot a set number of days for the main Supply business of a session. That measure was one of the most far-reaching and important procedural reforms of the nineteenth century, embodying a fundamental shift in the extent of effective control over the House's time by the government and presaging a greater role for the Official Opposition in the distribution of time.[8] However, none of the accounts of the fundamental change introduced in 1896 provide any extended analysis of its origins.[9] This article traces the origins of the Balfour Supply reforms and their development to 1902 when the measure became a Standing Order.

"The last to be submitted to gagging laws": Supply and its control to 1886

The core of Supply business in the House of Commons was the approval of the Main Estimates for a financial year beginning on 1 April. The Civil Service Estimates were divided into seven Classes, and there were also five Estimates for Revenue Departments.[10] Each Class or Estimate was further divided into Votes, so that the Civil Services Estimates for 1891–92, for example, comprised 106 Votes in total.[11] The Army and Navy Estimates were organised on a slightly different basis, with initial Votes authorising numbers of men in the military and naval service, and 16 numbered Votes for each service in the same year.[12]

[7] House of Commons, Papers of the Clerk of the Journals (hereafter *PCJ*), Miscellaneous Precedents and Memoranda on Procedure, 4 volumes (hereafter Miscellaneous Precedents), vol 4, fos 92–97, Suggestions for Facilitating the Business of the House, at fo 95v.

[8] J Redlich, *The Procedure of the House of Commons* (London, 1908, 3 volumes), I.189–193; Sir Edward Fellowes, *History of the Standing Orders of the House of Commons relating to Public Business, 1833–1935*, ed S Patrick, pp.99–103; P Fraser, "The Growth of Ministerial Control in the Nineteenth-Century House of Commons", *English Historical Review*, Vol 75 (1960), pp.444–63, at pp.461–462; A Barker, "'The most important and venerable function': a study of House of Commons Supply procedure", *Political Studies*, Vol 13 (1965), pp.45–64, at pp.46–51; G Reid, *The Politics of Financial Control: The Role of the House of Commons* (London, 1966), pp.69–71; M Ryle, "Supply and other financial procedures", in S A Walkland, ed, *The House of Commons in the Twentieth Century* (Oxford, 1979), pp.330–425, at pp.347–349

[9] Partial exceptions are a short account of proposals made in 1889 and 1895 in Fellowes, *Standing Orders*, p.99, and Fraser's reference to Milman's 1894 *Quarterly Review* article: "Growth of Ministerial Control", p.461, fn 8

[10] *Memorandum of the Financial Secretary to the Treasury relating to the Civil Service Estimates, 1891–92*, HC (1890–91) 97

[11] *Estimates for Civil Services for the Year ending 31 March 1892*, HC (1890–91) 50, p.vii

[12] *Army Estimates of Effective and Non-Effective Services for 1891–92*, HC (1890–91) 70, p.4; *Navy Estimates for the year 1891–92*, HC (1890–91) 93, pp.v–viii

By 1896, there were 148 Votes in total requiring distinct approval.[13] In addition to the main financial business to be concluded before the end of a session, there were additional elements of Supply proceedings which had to be completed before the end of March, relating principally to the Supplementary Estimates and Votes on Account.[14] Each of these elements was debated and approved in the Committee of Supply, which was a Committee of the whole House, and then considered by the House itself on report.[15] Although the essential function of Supply proceedings concerned the authorisation of public expenditure, reductions in proposed expenditure were extremely rare and there was widespread scepticism about their effectiveness in this regard.[16]

To describe the formal purpose of Supply proceedings only represents part of the picture. The scope of debate encompassed all administrative action undertaken by or on behalf of government as a result of the relevant expenditure, with only matters of policy and legislation excluded.[17] Even with these restrictions, the enforcement of order in debate on Supply was a case of pushing water uphill. Milman observed that "debate upon the supplies for the current year might easily be carried on, without any breach of order, into the middle of the next century."[18] The consumption of time in Supply was often less about the expenditure plans of the government or the quality of administration and more about the inconvenience created, and the use of time that might otherwise be used more fruitfully from the perspective of the government, most notably on its legislative priorities.[19]

Until 1882, the main focus for procedural reform with regard to Supply, exemplified in Erskine May's long running campaign, was to constrain the preliminary proceedings which diverted the House from Supply business, so that the function of the House in debating expenditure demands could be better performed.[20] The traditional reverence accorded to Supply proceedings limited

[13] HC Deb, 24 Feb. 1896, col 1026

[14] C Lee, "Archibald Milman and the failure of Supply reform, 1882–1888" (hereafter "Failure"), in *The Table*, Vol 87 (2019), pp.7–34, at p.9

[15] "Failure", pp.8–9

[16] C Lee, "May on Money: Supply Proceedings and the Functions of a Legislature", in P Evans, ed, *Essays on the History of Parliamentary Procedure in Honour of Thomas Erskine May* (Oxford, 2017), pp.171–87, at pp.175–179; "Failure", pp.12–16

[17] A Milman, *A Selection from the Decisions from the Chair, Illustrative of the Procedure of the House, Drawn Mainly from the Session of 1894*, (hereafter *Decisions*), p.55; A Milman, *Decisions*, 1895, pp.103–105.

[18] A Milman, "The Block in the House of Commons", *Quarterly Review*, Volume 146 (1878), pp.181–202, at p.185

[19] "Failure", pp.16–20

[20] "May on Money", pp.171–175, 179–187

the appetite for restrictions on Supply business itself. As William Gladstone put it:

> "Supply was the most important Business of the House; and, therefore, it ought to be the last to be submitted to gagging laws."[21]

The first serious consideration of the possibility of controlling Supply proceedings came during the discussions on possible emergency powers for the regulation of business late in 1880 and early in 1881, faced with the prospect of sustained obstruction of coercive legislation for Ireland.[22] At that point, Hugh Childers, the Secretary of State for War, suggested to cabinet colleagues that a motion might be made in respect of any stage of a bill, "or in the discussion of any vote in Committee of Supply" which, if agreed to, would have the effect of terminating debate, with all amendments and the main question being put forthwith.[23] When the urgency rules were subsequently introduced, their proposed application to Supply proceedings was very limited, largely being confined to a prohibition on second or subsequent speeches and the application of the closure rule. Moreover, a government proposal to apply these urgency provisions to Supply did not command the necessary Conservative support to secure a two-thirds majority.[24]

Gladstone's reform package of 1882 sought to address the problems of Supply in two ways. First, it finally gave effect to restrictions on preliminary motions which could delay or even prevent Supply proceedings taking place.[25] Second, the new closure power to end debate on a single question was to be applicable in the Committee of Supply.[26] These reforms had little or no effect in preventing the use of Supply proceedings to reduce the overall time available for the government's legislative programme. The number of days spent on Supply and the length of those days increased.[27] A number of proposals were considered up to 1886 to delegate some of the functions of the Committee of Supply to select or standing committees, but none commanded widespread

[21] "Failure", pp.9–10; HC Deb, 26 Oct. 1882, col 260

[22] C Lee, "Archibald Milman and the Evolution of the Closure—Part 1: Origins to 1881", in *The Table*, Vol 88 (2020), pp.5–54 (hereafter "Part 1"), at pp.25–30

[23] BL, Add Ms 44626, fos 23–25, Printed Cabinet paper, 18 Jan. 1881. For the original manuscript version, see BL, Add Ms 44626, fos 64–65

[24] *CJ* (1881) 122–3; reprinted in Redlich, III.250; "May on Money", p.182

[25] *CJ* (1882) 516–517; "May on Money", p.184; HC Deb, 24 Nov. 1882, cols 62–64, 70–72

[26] "Failure", pp.19–20; HC Deb, 26 Oct. 1882, cols 258–260, 262–264

[27] "May on Money", pp.184–185; "Failure", pp.20–23; A A Taylor, compiler, *House of Commons … Statistics relative to the Business and Sittings of the House* (undated but circa 1913) (hereafter *Sitting Statistics*), p.226.

support.[28] The short autumn session of 1886 demonstrated conclusively how proceedings in Supply could be extended almost indefinitely, unconstrained by recently-introduced rules of procedure.[29]

"By motion that the Vote be put": the 1887 proposals

The first substantive proposals to limit the duration of Supply proceedings arose from the particular problems faced by the Conservative-led administration in the Session of 1887. The government had devoted 14 days in the early part of the Session to securing its new closure rule.[30] Most of the House's time up to early July was then devoted to securing passage of the Criminal Law (Amendment) Ireland Bill.[31] This approach created arrears in the consideration of Supply, which was accentuated by a provision of that legislation giving the government a power to declare the Irish National League a "dangerous association", making its activities illegal. The special proclamation giving effect to that declaration could be 'prayed' against by motion if the House was sitting so that the opposition parties had a strong incentive to keep the House sitting to enable such a debate.

In consequence of this, as well as the government's indecision about the proclamation and sustained opposition to the government's Irish Land Bill, Supply business made glacial progress.[32] In all, the House sat for 160 calendar days during the year, a number exceeded since 1853 only in 1882. Moreover, the days were longer than ever before, with the House sitting for a record 277 hours after midnight.[33] On 13 August, William Henry Smith, the leader of the House, sent a memorandum to cabinet colleagues stating that it was "notorious" that, until the government announced its decision on the special proclamation, the opposition would only "dribble out Supply." He suggested that it would be possible

> "to pass a Rule by Closure to give the Government the power to carry Votes in Supply by motion that the Vote be put, determination by a bare majority; which if carried would finish the business of the Session in ten or twelve

[28] C Lee, "A Road not Taken: Select Committees and the Estimates, 1880–1904", in Evans, ed, *History of Parliamentary Procedure*, pp.269–284, at pp.273–275, 277–278; "Failure", pp.23–29

[29] "Failure", pp.26–29

[30] C Lee, "Archibald Milman and the Evolution of the Closure—Part 3: 1885–1894", in *The Table*, Vol 90 (2022), pp.8–55 (hereafter "Part 3"), at pp.31–39

[31] "Part 3", pp.39–43; C Lee, "Archibald Milman and the crisis of legislation, 1880–1891", in *The Table*, Vol 91 (2023), pp.139–181 (hereafter "Crisis"), at pp.167–169

[32] *CJ* (1887) unpaginated index pages relating to Resolutions of the Committee of Supply; R Temple, *Life in Parliament being the experience of a Member in the House of Commons from 1886 to 1892 inclusive* (London, 1893), pp.168–172

[33] *Sitting Statistics*, pp.183–185

days."[34]

Careful preparation was needed, because no closure could be claimed in such circumstances without the consent of the Speaker, but the intent of the proposed motion was unmistakable: to apply to Supply business a guillotine comparable to that recently applied to the Criminal Law (Amendment) Ireland Bill. Milman drafted a motion which provided for the Army and Navy Estimates to be considered for two further days and the Civil Services Estimates for five further days. At midnight on the respective final days

> "(if the Votes are not previously reported) the Chairman shall put forthwith the Question or Questions already proposed from the Chair, and shall proceed and put the Question on the remaining Votes, and report them forthwith to the House."

The remainder of the draft motion also provided for a time limit on proceedings on report and on subsequent legislation, and precluded dilatory motions unless moved by a minister. Two further draft motions envisaged a certain number of Votes be disposed of on each allotted day, rather than limitation through a single end time.[35]

The motion was not used. The special proclamation was issued on 19 August and a motion for its annulment was debated on 25 and 26 August.[36] The Speaker was reluctant to agree to the Supply guillotine, believing that the government would "get Supply in the course of the week", which proved broadly accurate.[37] Salisbury as Prime Minister and Arthur Balfour as Irish chief secretary viewed Smith's decision not to deploy the motion with disappointment, although Balfour acknowledged that it arose from the Speaker's reluctance to endorse the proposal.[38]

"Some suggestions of our own": reform ideas 1888–89

The exceptional burden of the 1887 Session created pressure for procedural reform.[39] Supply procedure was considered by a select committee which received a variety of conflicting proposals. Leonard Courtney, the Chairman of

[34] British Library (hereafter BL), Add MS 49696, fos 33–42, Memorandum on business from W H Smith, 13 Aug. 1887

[35] *PCJ*, Miscellaneous Precedents, vol 3, fos 110–112, Business of the House (Financial Business)

[36] Temple, *Life in Parliament*, pp.172–174; *CJ* (1887) 498, 502; HC Deb, 25 Aug. 1887, cols 1827–1915; HC Deb, 26 Aug. 1887, cols 33–152

[37] *CJ* (1887) 553

[38] *Salisbury–Balfour Correspondence: Letters exchanged between the Third Marquess of Salisbury and his nephew Arthur James Balfour 1869–1892* (Hertfordshire Record Society, 1988), p.204

[39] Temple, *Life in Parliament*, pp.177–178

Ways and Means, and Reginald Palgrave, the Clerk of the House, wanted to see select committees established to inform debate in the Committee of Supply, but adamantly opposed the delegation of its functions to such a committee. Milman, in contrast, envisaged the establishment of a select committee to consider all Votes and determine those which should be debated by the Committee of Supply and those which could be agreed to without such debate.[40] The Committee's Report acknowledged that "much irrelevant and unimportant matter" was discussed on Supply, but also concluded that "subjects of interest which might otherwise escape the attention of the House, and of the public, receive in this way a certain amount of examination." The Report noted that "the Parliamentary time" devoted to Supply "is rapidly increasing in amount", from 13 days in 1875 to 20 days in 1881 and 31 days in 1887. It considered this time "excessive", but rejected proposals for delegation to select committees, and the Committee's tentative proposals to delegate certain Votes to a Standing Committee were not pursued.[41]

The experience of Supply business in 1888 was little better than in 1887, albeit with slightly shorter sitting days. By 10 July, only 15 days had been set aside for Supply. Due to problems with its legislative business, on 26 July, the government announced that it would abandon attempts to secure Supply, postponing most Supply business until the autumn, sittings which began in early November and were finally concluded on Christmas Eve. Smith regretted the necessity to adopt this expedient, the first time that an autumn sitting period was arranged for ordinary as opposed to extraordinary business, expressing the hope that "it will be the last time in the history of Parliament in which it will be necessary to do it."[42]

Based on the experience of the 1888 Session and the lack of an agreed way forward arising from the work of the 1888 Select Committee, Smith sought new ideas to address the problems of Supply from Palgrave. In response, in January 1889, Palgrave enclosed proposals drawn up with Milman, which sought "to meet the difficulties that have occurred to you—with some suggestions of our own." Drawing on the motion prepared for Smith in 1887, Palgrave and Milman offered a rule "supplying the machinery whereby a limited time can be assigned to the discussion of particular Votes, or Classes of Estimates." The draft Standing Order they proposed, entitled "Regulation of Debate in Committee of Supply", enabled a Minister to make a motion subject to debate

[40] "A Road not Taken", pp.278–279; "Failure", pp.29–32

[41] *Report from the Select Committee on Estimates Procedure (Grants of Supply)*, HC (1888) 281, pp.iii–v

[42] HC Deb, 10 July 1888, cols 893–894, 898; HC Deb, 26 July 1888, cols 555–567; HC Deb, 4 Aug. 1888, cols 1429–1430; Temple, *Life in Parliament*, pp.213–216; *CJ* (1888) 437–534

for only half an hour "to allot a definite time for the consideration by the Committee of Supply of any Vote, or Votes, of which Notice has been given." When the allotted time had expired, the questions "necessary to complete the proceedings" were to be put forthwith. This was crafted as a selective tool to be applied to specified Votes, and it was linked to a suggestion to prioritise on these allotted days Votes chosen by the opposition front bench:

> "It is anticipated that arrangements would be privately made with the regular Opposition, so that the time to be allotted would be acceptable to all except professional Obstructers."[43]

Smith then consulted Courtney, who thought that "parcelling out the days among the Classes … would not now be practicable nor could it be proposed by responsible persons."[44] In a debate in March 1889, Smith accepted that proceedings of the Committee of Supply "have not been of a business-like or satisfactory character", but echoed Courtney's response by suggesting that no "suggestion has been made in any form that gives the slightest hope that it is likely to be accepted by the House."[45] The debate was notable for the first public proposal for a definite allocation of time to Supply, from the Conservative backbencher, Edwin de Lisle, whose suggestion was that

> "thirty days of the Session should be set apart for the discussion of the Estimates, dividing the total into 10 parts, and allowing for the discussion of each class of the Estimates three days. When these three days had elapsed, then the Closure would, by automatic action, be applied at midnight."[46]

Although Smith had seemingly eschewed such reform, the problem remained: the Committee of Supply sat for 45 sitting days in the 1889 Session of 122 days—equating to more than a third of the main business of the day across the Session—and prorogation did not take place until 30 August.[47]

"To fix beforehand … the number of days": further proposals, 1890–94

When a debate on a backbench motion criticising the lateness of summer sittings took place in March 1890, Smith again saw no prospect of a change which "seriously shortens the liberties of discussion in Supply."[48] Milman took the opportunity of the debate to prepare a memorandum containing his

[43] RUSC, HAM PS 14/7, Palgrave to Smith, 17 Jan. 1889; *PCJ*, Miscellaneous Precedents, vol 3, fos 154–156, Procedure (Draft Rules 1889)

[44] RUSC, HAM PS 14/12, Courtney to Smith, 13 Feb. 1889. On consultation with others, see "Part 3", p.49

[45] HC Deb, 8 Mar. 1889, cols 1291–1293

[46] HC Deb, 8 Mar. 1889, cols 1305–1306

[47] *Sitting Statistics*, pp.227, 183

[48] HC Deb, 14 Mar. 1890, cols 896–898

"Suggestions for facilitating business with a view to the House rising early in July." Milman admitted that changes to the parliamentary calendar would have little effect "unless a greater certainty of the even progress of Government business, and especially of Supply, could also be secured." He went on:

> "The real difficulty which impedes the fair progress of legislation lies in the abuse of Debate in Supply. Obstruction is so easy and control so difficult."

He reminded Smith of the proposal for a rule "apportioning a limited time to the consideration of particular Votes" that had been suggested in 1889.[49] Milman's paper also considered the debate on the Address, "the extreme length" of which had been a source of concern for some years, with an option to restrict the length of that debate.[50] The aim of Milman's rule was to limit the debate on the Address to three days, with all questions to conclude proceedings put forthwith at the moment of interruption on that day, unless the government itself proposed to extend it. His draft also proposed giving priority to an amendment from the official Opposition, reflecting Milman's appreciation that procedural changes were more likely to be delivered if they offered a clear benefit to the organised Opposition.[51] In the Session of 1890, the Committee of Supply sat for 38 sitting days in a Session of 125 days—equating to more than three tenths of the main business of the day across the Session. The business of Supply in its entirety, including report stage, accounted for more than 235 hours, more than one fifth of the total sitting time of the House.[52]

In late 1890, the case for far-reaching change was made publicly by one of the most prominent and influential politicians in the House—Joseph Chamberlain. He had long been associated with advocacy of far-reaching procedural reforms to secure the delivery of the will of the electorate. He had done much to bolster support for Gladstone's closure rule in the summer of 1882, being portrayed as its progenitor by some of its opponents, and had continued to press the case for Parliament to increase its legislative output.[53] By 1890, Chamberlain was politically associated with the legislative programme of the Unionist

[49] *PCJ*, Miscellaneous Precedents, vol 4, fos 89–91, Suggestions for facilitating business with a view to the House rising early in July

[50] HC Deb, 3 Aug 1888, col 1430; *PCJ*, Miscellaneous Precedents, vol 4, fos 89, 90v

[51] Bodl., Harcourt MS 190, fo 123. This version dates to 1894. The same argument was included in Milman's December 1895 package (*PCJ*, Miscellaneous Precedents, vol 4, fos 92–97, at fos 94v–95) and in a new version of the paper in 1898 (*PCJ*, Miscellaneous Precedents, vol 3, fo 65)

[52] *Sitting Statistics*, pp.228, 183, 278, 206

[53] "Part 2", pp.13, 27, 35–37, 45; "Failure", pp.24–25, 30; "Part 3", p.19; P Fraser, *Joseph Chamberlain: Radicalism and Empire, 1868–1914* (London, 1966), pp.xiii, 42–43; P Seaward, History of Parliament lecture, "Time and the Commons; or, A brief History of (Parliamentary) Time"

administration, and, as that programme fell apart, he entertained radical solutions. At the conclusion of that abortive Session, he visited the United States of America, and examined the work of the lower House of Congress, writing to his ally Jesse Collings on 28 October:

> "Another subject of interest to me has been the rules of Procedure in the House of Representatives. My eyes! Wouldn't they make the Parnellites sit up! They have absolutely destroyed the possibility of obstruction, but they have destroyed free discussion also. Fancy carrying a big contested bill through all its stages in seven hours!"[54]

In December 1890, in his own words, Chamberlain

> "published an article in the *Nineteenth Century* on the methods of dealing with obstruction in the American House of Representatives and offered a suggestion for adoption in England."[55]

Chamberlain began his article, entitled "Shall we Americanise our Institutions?", by claiming that it was now "possible for any minority absolutely to prevent the majority from passing any legislation at all." The only bills passed during the recent session were not of a party character, and even those had been passed due to the forbearance of the opposition after "the withdrawal of the chief bills in the Unionist programme." Under the existing rules, a few score of members "could easily wreck every session in turn, as the Gladstonians did, in fact, wreck the session of 1890." He warned that, if "the minority decline to be bound by the rules of the game … then representative government becomes a farce" and "democracy—the power of the people—becomes an empty name."[56]

Chamberlain then sought to describe the procedural revolution wrought during the 51st Congress under the Speakership of Thomas Reed. Through two rulings in January 1890, subsequently upheld through the votes of a cohesive Republican majority, Reed dramatically swept away the minority's key powers.[57] Chamberlain noted how "the most drastic resolution and the most complicated bill can be carried through the House in about seven hours" so that "the death-knell of obstruction has been sounded as an established instrument of party and parliamentary tactics" in the House of Representatives.[58] He pointed to

[54] Fraser, *Chamberlain*, p.149

[55] C H D Howard, ed, *A Political Memoir 1880–1892 by Joseph Chamberlain* (London, 1953), p.293.

[56] J Chamberlain, "Shall we Americanise our institutions?", *The Nineteenth Century*, Vol 166 (1890), pp.861–875, at pp.861–863

[57] "Shall we Americanise", pp.863–867; E Schickler, *Disjointed Pluralism: Institutional Innovation and the Development of the US Congress* (Princeton, 2001), pp.32–43. For a sympathetic British evaluation of Reed's disappearing quorum ruling, see R Palgrave, "The Recent Crisis in Congress", *The North American Review*, Vol 151, No. 406, Sep. 1890, pp.367–375

[58] "Shall we Americanise", pp.867–871

the control that could be exercised by the majority in the House of Commons "if they choose to exert it", by passing a resolution "limiting debate on any particular measure, or even preventing debate altogether."[59] He envisaged this could be applied to legislation, but with regard to Supply his proposal was

> "to fix beforehand, on entering upon the consideration of supply, the number of days which shall be given to each class of the estimates, and to order the committee to report each class at the expiry of the time named."

He argued that this provided an opportunity for the opposition to secure a better use of time:

> "the Opposition would have to arrange among themselves the questions of policy or detail which they might desire to raise in each session in order to concentrate their energies on these instead of frittering the time away in unimportant and discursive debate."

In this way, the House could ensure that the Estimates were considered "while members were still fresh", rather than Supply being rushed at the tail-end of a session.[60] Chamberlain's article late in 1890 sketched out some of the fundamental elements of the reforms which a government of which he was a leading figure were to place before the House just over five years later. They built on ideas already circulating in the House of Commons and government, and gave public vent to those ideas.

The immediate impact of Chamberlain's article may have been lessened by the fact that the problems of 1890 were not repeated in such an acute form in the immediately ensuing period. In response to the difficulties encountered towards the close of the 1890 Session, the government decided to begin the ensuing session that autumn.[61] The 1890–91 Session was easier in some ways. The opposition was divided and distracted by the Parnell divorce case, such that the Address was agreed to on the first day of the Session.[62] Supply business was scheduled earlier, helped by the earlier start to the Session, and Parliament was prorogued on 5 August. Nevertheless, the Committee of Supply sat for 31 sitting days in a Session of 141 days—equating to more than one fifth of the main business of the day across the Session. The business of Supply in its entirety, including report stage, accounted for more than 207 hours, almost one fifth of the total sitting time of the House.[63]

In the course of the Session, Milman prepared a further memorandum on reform. Under his new proposed rule, a minister would be able to move a

[59] "Shall we Americanise", pp.871–872

[60] "Shall we Americanise", p.874

[61] "Crisis", p.179

[62] Temple, *Life in Parliament*, pp.288–291; *CJ* (1890–91) 7

[63] *Sitting Statistics*, pp.229, 183, 278, 206

motion "to allot a definite time in Committee or on Report for the consideration of any Clause or of any Supply Votes of which Notice has been given", after which questions would be put forthwith.[64] As with Chamberlain's proposal, this sought to apply in the legislative context as well as to Supply the idea first mooted in the rule prepared in early 1889 for Supply: to provide for a more rational allocation of time by setting out in advance the overall envelope available. Milman's proposal was also more comprehensive in its application to Supply than the 1889 draft: whereas the 1889 draft had referred simply to a Votes or Votes specified in a motion, the 1891 version could be applied to any Supply Votes, subject only to a requirement for notice which could easily be met.

Almost none of the proposals advanced by Milman between 1889 and 1891 found favour during W H Smith's time as leader. Smith was admired for his decency and integrity, but he coupled this with caution. The significant package of procedural reform he piloted through the House in 1887 and 1888 was overwhelmingly inherited from his more imaginative predecessor, Lord Randolph Churchill. Smith's one venture into procedural innovation on his own initiative, in the form of the 1890 carry-over proposals, was rapidly abandoned.[65] In October 1891, Smith finally succumbed to the illness which had bedevilled his last years as leader, often made worse by the demands of the House and his dedication to it, such that one of his closest colleagues remarked to another on the "sacrifice of a valuable life in the discharge of public duties."[66] His successor as First Lord of the Treasury and leader of the House, Arthur Balfour, was a very different character. Balfour had gained a reputation for toughness and effectiveness as chief secretary in Ireland, and was widely seen as the logical choice to be leader.[67] He would eventually apply his boldness and clarity of thought to reform of the House of Commons, but in 1891 he recognised that he inherited "a (temporarily) waning cause & a dying Parliament." In appointing him, Salisbury noted that "we shall have rough water for the next twelve months."[68] These were not the conditions for procedural reform.

The first and only Session of Gladstone's fourth administration which

[64] *PCJ*, Miscellaneous Precedents, Vol 1, fos 251–252v, Memorandum on the Working of the Closure Rule, Apr. 1891. See also "Crisis", pp.171–172

[65] "Crisis", pp.175–180

[66] Kent History and Library Centre (hereafter KHLC), U564/C40/9, Jackson to Akers-Douglas, 7 Oct. 1891.

[67] See, for example, the verdicts in KHLC, U564/C40/10, Jackson to Akers-Douglas, 13 Oct. 1891; KHLC, U564/C346/4, Long to Akers-Douglas, 14 Oct. 1891; Temple, *Life in Parliament*, pp.315–316; *Salisbury–Balfour Correspondence*, p.363

[68] *Salisbury–Balfour Correspondence*, pp.363–364

began on 31 January 1893 and ended on 5 March 1894 was of unprecedented duration, encompassing 226 sitting days.[69] The first half of the session was dominated by proceedings on the Irish Home Rule Bill. The Supply business needed prior to 31 March 1893 was subject to fierce resistance, partly to delay proceedings on that Bill and partly to disorient a new Chairman of Ways and Means, John William Mellor.[70] Control over proceedings on the Bill itself was only established by the imposition of a legislative guillotine agreed to after 27 days in Committee.[71] The guillotine contained one important procedural innovation, which came to be known as "closure by compartments." Whereas the guillotines introduced in 1881, 1887 and 1888 had set a single date and time for proceedings to be brought to a conclusion, this motion effectively allotted a further day for the conclusion of proceedings on Clauses 5 to 8, and then set end dates for three compartments for remaining proceedings in Committee.[72]

During the Session as a whole, 38 days were spent in Committee of Supply, not finishing until 18 September, with more than 243 hours spent on Supply altogether.[73] Much of this time was taken up by two Opposition backbenchers in particular—Thomas Gibson Bowles and Robert Hanbury. Both had an interest in economy which pre-dated their time in Opposition from 1892, and were to show continued commitment to the cause in subsequent years.[74] There was nevertheless a strong element of partisan convenience to their sustained criticism of the Estimates, especially in Hanbury's case, as he coordinated his approach with the Opposition Chief Whip, telling him somewhat cynically in early March 1894 that "if we are to make a grievance of their voting so much money in a hurry & rush worse than even last year we shall I suppose have to be closured periodically."[75] Hanbury's obstruction of Supply and defiance of the Chair must have been a source of unease for his brother-in-law and the principal adviser to the Chairman of Ways and Means—Archibald Milman.[76] Perhaps in part because of this association, Milman was keen to share his advice on methods of effective control of proceedings, including those in Supply, with

[69] *Sitting Statistics*, p.231; *CJ* (1893–94) *passim*

[70] "1893 Home Rule Bill", pp.37–42

[71] "1893 Home Rule Bill", pp.46–47

[72] *CJ* (1893–94) 400

[73] *Sitting Statistics*, p.231 & p.278

[74] On Thomas Gibson Bowles, see "A Road not Taken", p.283 and C Lee, "Archibald Milman and the 1894 Finance Bill", *The Table* (2018) (hereafter "1894 Finance Bill"), pp.10–39, at p.28. On Hanbury, see "A Road not Taken", pp.276, 280–281 and "1893 Home Rule Bill", pp.40–42

[75] KHLC, U564/C262/3, Hanbury to Akers-Douglas, 2 Mar. 1894

[76] "1893 Home Rule Bill", pp.41–42

leading members of the Liberal administration, most notably Harcourt.[77] They were also probably shared with selected government backbenchers, because one of them, Sir Charles Dilke, during a procedural debate in April 1894, referred to "the suggestions which have been made by Mr Milman at various times."[78]

At the end of the Session, Milman went further in publishing an article drawing extensively on papers he had submitted between 1887 and 1893. The article was anonymous, but its author would have been evident to the politicians who had read his memoranda.[79] Having rehearsed his concerns about the vulnerability of Supply to obstruction, Milman argued for a "formal understanding between the Government and the Opposition" on the priority for particular Votes in Supply, with those resolutions which the Opposition wished to debate at length placed first. This would entail more formal arrangements building on what was currently agreed between the whips on both sides through "informal and confidential communications." Formality and sanctioning by the House were now necessary because "the libertines of debate decline to accept any arrangement whatever, even when made by their own Whips."[80] Milman then proposed that, after notice had been given of the Votes to be taken on any given night or succession of nights, a new Standing Order would enable

> "a motion to allot a definite time for the consideration by the Committee of Supply of any vote or votes of which notice has been given. At the expiration of the allotted time (if the proceedings were not previously concluded) the decision of the Committee would be taken forthwith on every question necessary to complete the proceedings on such vote or votes; such motion to be open to debate and amendment for half an hour only."

In conclusion, Milman drew together his proposals for limiting amendments to bills and his proposals to control Supply, arguing that if they were both adopted, "it would be possible to advance business without curtailing fair debate", and prevent recourse to peremptory orders.[81]

"Absolutely intolerable": Supply out of control in 1895

The case for change seemingly receded in the 1894 Session. The Committee of Supply met on only 22 days during the Session, and the business of Supply accounted for 157 hours, somewhat less than one fifth of the sitting time as a

[77] "1894 Finance Bill", p.15

[78] HC Deb, 3 Apr. 1894, col 1265

[79] A Milman, "Parliamentary Procedure *versus* Obstruction", *Quarterly Review* (1894), Vol 178, pp.486–503

[80] "Parliamentary Procedure *versus* Obstruction", pp.498–500

[81] "Parliamentary Procedure *versus* Obstruction", p.500

whole.[82] However, the problems of Supply returned to centre stage in 1895. On 29 April that year, Balfour expressed irritation that the government had not yet scheduled the main Estimates, while also conceding that

> "the temptation is almost irresistible in modern days for a Government to defer the great mass and bulk of discussions in Supply to a time when Members are too hot and too tired to spend many hours over them."[83]

The government continued prioritising its legislative business over Supply, even though there was no sense that any key bills were likely to pass, with little time allocated to Supply.[84] In 1890 and again in 1894 backbenchers had suggested that the government should commit to scheduling Supply on at least one day each week.[85] In June 1895, Harcourt conceded that "a satisfactory system of dealing with financial business" was not in place and said:

> "I have always thought and believed that there ought to be some more regular system in the House of Commons for dealing with the Estimates … by which a certain time should be appropriated to the Estimates."

He went on to suggest

> "that there should be a day—I do not bind myself as to a particular day, as it may be necessary from time to time to vary it, but we will call it at present Friday—set apart for the Estimates. I hope that arrangement will commend itself to the House as an improvement."[86]

Balfour was supportive, stating that the government's proposal to give "one day in the week to Supply for the remainder of the Session is a good plan."[87] However, the plan was soon superseded by developments which were to bring Supply proceedings, and the difficulties in controlling them, to the forefront of politics.

The Supply proceedings which took place in the days after 13 June demonstrated how the government's authority was slipping away.[88] The next day, a reduction in a Vote relating to Black Rod's accommodation in the House of Lords was agreed to by 63 votes to 43.[89] Worse was to come when ministers sought to defend public expenditure to support the erection of a

[82] *Sitting Statistics*, pp.232, 278, 208

[83] HC Deb, 29 Apr. 1895, cols 44–68

[84] D Brooks, *The Destruction of Lord Rosebery: From the Diary of Sir Edward Hamilton 1894–95* (Gloucester, 1986), pp.81–88, 248; HC Deb, 14 June 1895, col 1163

[85] HC Deb, 15 Aug. 1890, cols 1151–1159; HC Deb, 9 Apr. 1894, cols 1673–1674

[86] HC Deb, 13 June 1895, cols 1062–1063

[87] HC Deb, 13 June 1895, col 1067

[88] L McKinstry, *Rosebery: Statesman in Turmoil* (London, 2005), pp.320–322; R Rhodes James, *Rosebery: A Biography of Archibald Philip, Fifth Earl of Rosebery* (London, 1963), p.368

[89] HC Deb, 14 June 1895, cols 1194–1199; D W R Bahlmann, *The Diary of Sir Edward Walter Hamilton 1885–1906* (Hull, 1993), p.301

statue of Oliver Cromwell in the precincts of the Palace of Westminster. In the Committee of Supply the proposal was bitterly attacked by Irish members, with Cromwell's misdeeds in Ireland recalled "as if they had happened yesterday" in Morley's words, forcing the government to abandon the proposal.[90] On Friday 21 June, the government was subject to an ambush in the form of an amendment to reduce the salary of the Secretary of State for War, Henry Campbell-Bannerman, over delays in the supply of small-arms ammunition due to an alleged shortage of cordite. This amendment, an effective vote of censure, was agreed to by 132 votes to 125, with Welsh Liberals disillusioned with the management of the Welsh disestablishment bill conspicuous by their absence, an outcome greeted with "jubilation" by Unionists.[91] The next day, the cabinet agreed that Rosebery would tender his resignation as premier, with the defeat in Supply the occasion, not the cause, of the government's fall.[92]

The government chose to resign rather than seek a dissolution, partly in the hope that Salisbury would be unable to form a government, but he was able to form an effective coalition, with Balfour returning as leader, and Chamberlain as Colonial Secretary. The Unionist coalition won a convincing majority in the ensuing General Election, with 411 seats. Rosebery's Liberals were reduced to only 177 seats, ensuring a majority of 152 for Salisbury even taking account of the Irish Nationalists. Before the new government could present a substantive legislative agenda to make good on the promises which bound the coalition together, a short meeting of the new Parliament to complete the business of Supply—interrupted by the dissolution—would be necessary. Parliament met for that purpose in mid-August. Balfour had received assurances that the Official Opposition would "give no trouble over getting Supply",[93] but that undertaking did not extend to the Irish Nationalists. Although the Estimates were in essence those proposed by the previous Liberal government, a small group of Irish members led by Tim Healey were determined to extend proceedings. Ten days were devoted to the Committee of Supply, and three further days to subsequent Supply business. At times, Balfour chivvied things along, including with the threat of a Saturday sitting, by reference to precedents

[90] HC Deb, 14 June 1895, cols 1181–1194; HC Deb, 20 June 1895, cols 1546–47, 1340–1361; Rhodes James, *Rosebery*, p.381–382; McKinstry, *Rosebery*, pp.376–377; Brooks, *Destruction*, pp.89, 253; Bahlman, *Hamilton Diary*, p.300

[91] HC Deb, 21 June 1895, cols 1673–1691; Rhodes James, *Rosebery*, p.382; Brooks, *Destruction*, p.255; P Stansky, *Ambitions and Strategies: The struggle for the leadership of the Liberal Party in the 1890s* (Oxford, 1964), pp.166–168

[92] Stansky, *Ambitions and Strategies*, pp.168–173; D A Hamer, *Liberal Politics in the Age of Gladstone and Rosebery: A Study in Leadership and Policy* (Oxford, 1972), pp.186–207; Brooks, *Destruction*, pp.85–92; McKinstry, *Rosebery*, pp.214–215, 378–379

[93] BL, Add Ms 49760, fos 7–8v, Sandars to Balfour, 23 July 1895

and by frequent use of the closure, but the Session lasted four weeks in the height of summer and was not concluded until 5 September.[94]

The challenges of the late summer Session sparked exchanges in government on possible procedural reforms. On 21 August, Chamberlain wrote to Balfour proposing the introduction of a new rule whereby, when the Speaker or Chairman declared that business was being "deliberately prolonged", a Member who continued to engage in obstruction would be prevented from participating in debate for a certain period.[95] Balfour circulated Chamberlain's proposal to cabinet colleagues, but was sceptical. He pointed out the difficulty of determining whether debate was being "deliberately prolonged", particularly in the case of Estimates debates:

> "It is of course, true, as every human being knows, that the object of the present Debates has nothing to do with the efficiency or the economy of the Public Service. Nevertheless, it is possible that the Chairman of Committees might find himself obliged to found his opinion as to what was obstructive discussion partly, at all events, upon the length of time which discussions on the same subjects have taken in past years."

In making this point, Balfour was well aware that the obstruction now experienced was comparable in scale to the obstruction which Unionists had inflicted on the previous Liberal administration:

> "To put the matter in a concrete shape, is there anybody who is speaking more frequently on Estimates at the present time than Mr Hanbury and Mr Bowles did during recent sessions?"[96]

Balfour realised that the proposal could anyway hardly be pursued during the remainder of the short session, not least because it would prolong it much further, encouraging further obstruction on Supply as well as on the motion itself.[97] However, the challenges demonstrated the case for change.

[94] HC Deb, 22 Aug. 1895, cols 650–651; HC Deb, 23 Aug. 1895, cols 752–753; HC Deb, 26 Aug. 1895, cols 877–878; HC Deb, 27 Aug. 1895, cols 943, 990–991; HC Deb, 28 Aug. 1895, cols 1054–1055. Balfour claimed the closure in the Committee of Supply on 7 occasions between 26 and 31 August, with all but one claim granted: *Return respecting application of … Closure*, HC (1895–II) 461; *CJ* (1895) 353–391

[95] Bodl, MS.Eng.hist.c.727, fos 18–19v, Chamberlain to Balfour, 21 Aug. 1895. The proposal echoed Chamberlain's proposal for a similar prior declaration for the use of the closure in January 1882, which was abandoned because the Speaker advised that it would create a high hurdle: "Part 2", p.14

[96] Bodl, MS.Eng.hist.c.727, fos 21–27, Balfour to cabinet, 22 Aug. 1895. Salisbury was similarly sceptical about the proposal, suggesting that it would be "effective in the end", but would "produce scenes of considerable violence" when enforced: Bodl, MS.Eng.hist.c.727, fos 28–30, Salisbury memorandum, undated

[97] The suggestion that "Balfour let the opportunity slip" disregards these realities: P T Marsh, *Joseph Chamberlain: Entrepreneur in Politics* (New Haven and London, 1994), p.371

The "absolutely intolerable" problems faced by the government in August and September were to be referred to by Balfour in introducing his measure, and evidently also influenced some of the support the measure attracted among new Unionist MPs for whom this short Session was their first parliamentary experience, while more senior MPs were paired.[98]

"Your revolutionary project": the development of the motion

The work in preparing the motion that would be tabled in February 1896 began almost as soon as this difficult Session had been concluded. The senior Treasury official Edward Hamilton noted in his diary for 10 September 1895 that the government "are apparently anxious to devise some method of shortening the business of Supply next Session." Hamilton himself was sceptical about their chances: "I doubt if they will meet with much success."[99] On 16 September, Jack Sandars, Balfour's private secretary, provided Balfour with an update on his dealings with the Treasury, where Hanbury had assumed the role of Financial Secretary to the Treasury:

> "Chalmers, the Estimate Clerk at the Treasury, tells me that by Hanbury's directions in conformity with y[ou]r wishes, he has prepared the outline of a scheme for shortening business of Supply. It will be in your hands probably in Oct[ober]."[100]

The evolution of the components of the motion can be traced from that letter and from drafts and papers prepared by Palgrave and Milman.[101] The first key element of the motion was about making regular provision for Supply to be debated each week; the second was about setting aside a set number of days for Supply proceedings, after which a guillotine would fall; the third was the requirement for those days to take place prior to 5 August.

The first element of the plan was summarised in the Sandars letter in mid-September 1895: "The rough idea is that one night in every week sh[oul]d be devoted to Supply."[102] This was not itself a radical idea; indeed, it was derived directly from Harcourt's proposal of June that year, which Balfour had supported. Balfour went beyond Harcourt in the specific proposals he made for Fridays. The formal effect of the provisions of Standing Orders at the time

[98] HC Deb, 24 Feb. 1896, cols 1024–25; HC Deb, 27 Feb. 1896, cols 1272–73, 1279, 1289–90

[99] BL, Add MS 48667, fo 110

[100] BL, Add MS 49760, fos 17–18v, Sandars to Balfour, 16 Sept. 1895

[101] *PCJ*, Miscellaneous Precedents, vol 3, fos 225–225v, Committee of Supply: Procedure on the Annual Estimates, 30 Jan. 1896; *PCJ*, Miscellaneous Precedents, vol 3, fo 229, Draft Motions, 5 Feb. 1896

[102] BL, Add MS 49760, fos 17–18v, Sandars to Balfour, 16 Sept. 1895

was to give private Members' motions precedence on Fridays,[103] although in practice the government increasingly secured precedence on Fridays for the opening and closing months of the session, and in 1894 and 1895 Harcourt had made even further inroads. Milman, in his December 1895 memorandum, argued that the government should seek formal precedence for the first part of Fridays up to Whitsun and the whole of Friday sittings thereafter.[104] A draft motion submitted by Palgrave on 30 January 1896 provided for Supply to be the first order of the day on every Friday after the start of work by the Committee of Supply on the main Estimates, usually after Easter.[105] In the final motion, this was modified slightly so that Fridays would be available for Supply from when the Committee of Supply was appointed, so in effect from the conclusion of the debate on the Address.[106] Nothing in the scheme required Supply to be debated every Friday, and it also remained quite possible for Supply to be debated on other days.[107]

The second element of the plan was central to Balfour's scheme and was not initially shared with the Treasury, to judge by a comment from Sandars to Balfour: "*Otherwise* I did not say a word to him [Hanbury], nor have I to anyone, about your revolutionary project."[108] The "revolutionary" element offered a solution which went beyond the mere allocation of earlier days to Supply, by allotting a definite number of days to Supply at the conclusion of which all questions necessary to conclude the business would be put. The idea was far from original, having been discussed within the government and by House officials since 1887, and aired publicly by Chamberlain in 1890 and Milman in 1894. However, Balfour brought these ideas to fruition.

To develop his proposals, Balfour needed to decide on the number of days to be allotted. In the period between 1887 and 1890, the average number of days on which the Committee of Supply sat was 40, with a peak of 45 days in 1889. Thereafter, the number of days on which the Committee of Supply sat fell significantly, with the partial exception of the long Session of 1893–94, when it sat for 38 days.[109] The draft motion of 5 February provided that

"Not more than twenty days … shall be allotted for the consideration of the

[103] R Palgrave, ed, T E May, *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (10th edn, London, 1893), pp.832, 825; *PCJ*, Miscellaneous Precedents, vol 4, fos 89–91

[104] *PCJ*, Miscellaneous Precedents, vol 4, fo 96

[105] *PCJ*, Miscellaneous Precedents, vol 3, fo 225

[106] *CJ* (1896) 48

[107] *PCJ*, Miscellaneous Precedents, vol 3, fos 225, 229; HC Deb, 20 Feb. 1896, cols 725–726, 727, 730

[108] BL, Add MS 49760, fos 17–18v, Sandars to Balfour, 16 Sept. 1895; emphasis in original

[109] *Sitting Statistics*, p.226; HC Deb, 15 Aug. 1890, cols 1167–1169

> Annual Estimates for the Army, Navy, and Civil Services, including Votes on Account, the Business of Supply standing first order on every such day."

To arrive at the allocation of 20 days, Balfour had commissioned "a laborious calculation" of the number of hours given to Supply between 1890 and 1895. He chose 1890 as the starting year for his calculation very deliberately, after the preceding year's peak. He asked for separate identification of time spent on Supplementary Estimates as opposed to the annual Estimates, and excluded the former from the allocation. Perhaps most importantly, he asked for a calculation of the number of hours spent in Supply, rather than the number of days, with the average being 166 hours a year for the six-year period. Balfour then argued that the average time taken since 1890 equated to 20 eight-hour days, and that the days provided for Supply would be of this length (on the understanding that two morning sittings together constituted a single day). He therefore argued that his proposed allocation represented "a very liberal allowance."[110] To give effect to the limit, the motion provided that, on the nineteenth allotted day, at 10.00 pm, the Chairman was to put forthwith every question necessary to conclude proceedings on outstanding Votes in the Committee of Supply. At the same hour on the twentieth day, the Speaker was to put all questions to conclude the report of Supply.[111]

The final element of the proposal was in some ways the most memorable and certainly the most enduring, in the form of the requirement that these 20 allotted days should take place before 5 August. This was a late addition to the motion, appearing in none of the drafts and not mentioned when an outline of the proposals was shared by Balfour with Harcourt in mid-February.[112] The addition of this element to the Supply motion was seemingly not supported by Chamberlain, at least according to the journalist Henry Lucy:

> "With respect to the Time Limit for Supply, Mr Chamberlain holds the opinion that so far from favouring the Government of the day, it is capable of being used to their disadvantage by a determined and well-led Opposition."[113]

The idea for the self-imposed limitation was quite probably Balfour's own, and its inclusion was to prove central to the case he advanced for acceptance of his motion.

"This great reform": the 1896 debate

The 1896 Session began on 11 February, and on 17 February Balfour announced his intention, when the debate on the Address was concluded, to bring forward

[110] HC Deb, 20 Feb. 1896, cols 731–732; *Sitting Statistics*, p.278

[111] *PCJ*, Miscellaneous Precedents, vol 3, fo 229, Draft Motions, 5 Feb. 1896

[112] BL Add Ms 46696, fos 220–22v, Harcourt to Balfour, 18 Feb. 1896

[113] H W Lucy, *Diary of the Unionist Parliament 1895–1900* (London, 1901), p.49

a motion "dealing with the question of Supply."[114] The debate on the Address concluded with unexpected rapidity on 18 February, and Balfour gave notice of his motion the following day. The key components of the plan, namely the guillotine and the requirement to conclude proceedings by 5 August, had not leaked to the press, so that the House was taken by surprise. Opposition parties expressed unease at the suggestion that debate on the motion would began the following day, and Balfour agreed simply to move the motion and make his opening speech the next day, and then adjourn the debate until the following week.[115]

Balfour's opening speech on 20 February explained the rationale for what he termed "this great reform."[116] Balfour began by taking aim at what he termed "the flattering unction to our souls that the result of discussion in Supply is to diminish expenditure", a view which he termed no more than "an ancient and deeply rooted superstition." Having attacked this sacred cow, Balfour then sought to emphasise the importance of Supply proceedings for backbenchers as an opportunity to criticise and seek explanations of administrative and executive action. He contended that, for this purpose, Supply proceedings were better for private Members than the "system of anarchy" which prevailed on private Members' motion Fridays, so that private Members would actually benefit if Fridays were used for Supply, especially bearing in mind that government precedence on Fridays was often secured for its legislation.[117]

Balfour defended the allocation of only 20 days to the main Estimates by reference to the average for the period since 1890 and by contending that certainty would enable the time to be better used. Instead of extended discussion on Class I under which "you can discuss nothing but drains, windows, roofs, and matters of that sort", priority could instead be given to topics of "public interest and importance." Although fewer Votes might be debated, they would be the most important and they would be the subject of "more thorough and completed consideration."[118] Balfour acknowledged that the application of the principle of the guillotine to Supply was the most contentious part of the proposal, and sought to disarm critics during his opening speech and subsequent contributions. He argued that a regular and pre-planned guillotine on necessary, annual financial business was different in kind to the use of

[114] HC Deb, 17 Feb. 1896, col 465

[115] BL Add MS 46696, fos 223–224v, Harcourt to Balfour, 19 Feb. 1896; *Sheffield Daily Telegraph*, 20 Feb. 1896, p.4; HC Deb, 19 Feb. 1896, cols 678–679; HC Deb, 20 Feb. 1896, col 724

[116] HC Deb, 20 Feb. 1896, col 735. See also HC Deb, 24 Feb. 1896, col 990

[117] HC Deb, 20 Feb. 1896, cols 724–727

[118] HC Deb, 20 Feb. 1896, cols 729–731; HC Deb, 27 Feb. 1896, col 1312

the same device for contested legislation. He did not disavow, and indeed embraced, the termed "guillotine", which had generally been used hitherto by opponents of such a proceeding. He argued that the guillotine was preferable to the "misery and exhaustion" entailed by the current system, claiming that the choice before the House was "the difference between the guillotine and the rack." Supply proceedings would be improved, there would be a "shortening of our inordinately long Sessions" and a chance for all Members to enjoy "the end of an English summer."[119]

The requirement for Supply proceedings to be completed by 5 August was crucial to Balfour's case and its intended appeal. He argued that the urge of all governments to legislate—"the illusion … that it is going to acquire great glory by carrying out its legislative Programme"—meant that they could never resist the temptation "to put off Supply to as late a date as possible." Similarly, private Members could not resist the temptation to string out Supply when it was debated in tandem with the legislative programme with the aim of delaying that programme. In consequence, Supply was largely "thrust away to the later days of August, or even September"—the "dog days" when the House was "not in its best Parliamentary form." The requirement to conclude Supply business prior to 5 August was characterised primarily as a discipline upon government itself, which would be obliged to provide parliamentary time for scrutiny of its actions during what Balfour termed "the effective parliamentary months" up to July. The potential reputational downside of this date was turned against opponents of the measure, namely the more senior members of the House who could pair in August and would be "enjoying themselves on grouse moors or golf links" while other Members would be left to deal with Supply business later in August if the motion was not passed.[120]

Balfour's speech was warmly received and seen as highly effective. After the speech, Palgrave went to Sandars "to express his profound admiration at the ability which the explanatory speech had shown, not only in respect of detail, but also the interest with which he had clothed an unattractive subject."[121] Balfour's method of presentation contrasted with the earnestness of Gladstone and W H Smith in similar cases, and he was criticised during the debate that followed for his "levity" and for his "clever and humorous speech."[122] In this speech, and subsequent interventions in the debate, Balfour argued in a way which was coherent, cogent, and compelling for many Members. *The Times* described

[119] HC Deb, 20 Feb. 1896, cols 732–736; HC Deb, 24 Feb. 1896, cols 1023–1024; HC Deb, 27 Feb. 1896, cols 1295–96

[120] HC Deb, 20 Feb. 1896, cols 726–728, 732–733, 735; HC Deb, 24 Feb 1896, col 1022

[121] Bodl, MS.Eng.hist.c.771, fo 327

[122] HC Deb, 24 Feb. 1896, cols 976, 1004, 1007

it as "exhaustive and clearly reasoned" and thought that "its adroitness and moderation render opposition to the scheme difficult." Another newspaper saw it as "one of those rare House of Commons efforts that actually affect men's minds, and possibly their votes", allaying suspicions of the automatic closure of supply.[123]

During the debate, a common refrain among Opposition speakers and Conservative opponents of the measure was that the true author of the measure was not Balfour, but Chamberlain. Thus, Harcourt stated that Chamberlain was "the real patentee of the project", referring to Chamberlain's advocacy of such a measure in his 1890 article, and this theme was taken up by those who opposed the proposal on both sides of the House.[124] There were obvious advantages for opponents to emphasise Chamberlain's role: he was a bogeyman for many Gladstonian Liberals and Irish Nationalists and references to his role were designed to reinforce suspicions among more traditional Conservatives. Furthermore, Chamberlain's 1890 article provided ammunition for those who contended that application of the guillotine to Supply presaged its more systematic use for legislation.[125] Balfour said that there was "no foundation" to the suggestion that he was not the author of the scheme or that he had been subject to what others characterised as "sinister influences." Chamberlain himself only made two short contributions to the debate, one stating his disregard for private Members' business and another rather implausibly denying the relevance of his 1890 article.[126]

Harcourt had advised Balfour ahead of the debate that he was "not myself adverse to the general principle of your proposals", although he objected to the 20-day limit.[127] In his speech, Harcourt stated his opposition to "a cast-iron rule with reference to the number of days or to the closure of Supply", contending that the use of the guillotine was more justifiable for legislation than for Supply. He mocked Balfour's claim that the guillotine was preferable to the rack, alluding to Hanbury's leading role in extending Supply proceedings while in Opposition by saying that "the rack has only fallen into discredit since the Grand Inquisitor has become the Secretary to the Treasury" and stating that he "would rather that discussion faded out under the rack, than it should die a

[123] *The Times*, 21 Feb. 1896, p.9; *St James's Gazette*, 21 Feb. 1896, p.13

[124] HC Deb, 24 Feb. 1896, cols 963, 1003; HC Deb, 25 Feb. 1896, cols 1104–05; HC Deb, 27 Feb. 1896, col 1297

[125] HC Deb, 24 Feb. 1896, col 964

[126] HC Deb, 24 Feb. 1896, col 1023, 1099; HC Deb, 27 Feb. 1896, col 1297

[127] BL Add Ms 46696, fos 220–22v, Harcourt to Balfour, 18 Feb. 1896; BL Add MS 46696, fos 223–224v, Harcourt to Balfour, 19 Feb. 1896

bloody death under the guillotine."[128] Harcourt nevertheless viewed the matter as one to be governed by "individual opinion" rather than being settled on party lines and, as *The Times* concluded, Harcourt's "opposition was only half in earnest."[129] His frontbench colleague Henry Campbell-Bannerman stated that "He was friendly to the proposal of the Government, and did not object to the automatic Closure in Supply."[130] During the debates on the principle of the measure, seven Liberals spoke against the proposal from the Opposition benches, but a further four supported it.[131] Lucy thought that the measure "will conspicuously help the Liberals whether in opposition or in office."[132] The Irish Nationalists who spoke all opposed the measure, but few were present for the votes on the final day of the debate.[133]

Eight Unionists spoke in opposition to the measure, while six spoke in favour. The majority of the 47 amendments that had been tabled by the time the debate began were from Unionists. The fiercest and most forthright opponents of the measure were on the Unionist benches, although *The Times* viewed the "irreconcilable element" as "small and not very important."[134] Gibson Bowles argued that the measure would "destroy the House", with the weapon forged by Unionists used against them by future Liberal governments. This theme was taken up by others, with one suggesting that the extent of Opposition support for the measure should be seen by Unionist ministers as a warning. Sydney Gedge spoke against the measure "with tears in his voice", pointing out that the Lords could have a final say on a bill guillotined in the Commons, as they had in 1893, but had no say in Supply.[135] One of the "weightiest" Unionist critics of the measure was James Lowther, who had been an MP since 1865 and, according to Lucy, carried "all the influence of an old and esteemed Parliamentary hand."[136] Lowther contended that the measure

[128] HC Deb, 24 Feb 1896, cols 958–968

[129] HC Deb, 24 Feb. 1896, col 958; *The Times*, 25 Feb. 1896, p.9

[130] HC Deb, 27 Feb. 1896, col 1331

[131] The Speaker permitted a general debate for the whole of 24 February and the first hour or so on 25 February (to col 1111); there was then in effect a second general debate on an amendment to leave out almost all of the effective provisions, from late on 25 February (col 1128) until the evening of 27 February (col 1300). These two debates have been combined for the purposes of the calculation in the text.

[132] Lucy, *Unionist Parliament*, p.28

[133] HC Deb, 24 Feb 1896, cols 971–980, 1029–31; HC Deb, 25 Feb. 1896, cols 1103–1106; HC Deb, 27 Feb. 1896, cols 1279–83, 1332–1333

[134] *Newcastle Daily Chronicle*, 24 Feb. 1896, p.8; *The Times*, 25 Feb. 1896, p.9

[135] HC Deb, 24 Feb 1896, cols 983–990, 997–1000, 1002–1007, 1023; HC Deb, 25 Feb. 1896, cols 1108–1111, 1139, 1141–42; HC Deb, 27 Feb. 1896, cols 1269–1272, 1292–93

[136] Lucy, *Unionist Parliament*, p.24; *The Times*, 25 Feb. 1896, p.9

"constituted a deliberate encroachment upon the privileges of Parliament", inhibiting Members from their role in ventilating grievances.[137] Another long-serving Conservative, Sir Ellis Ashmead-Bartlett, expressed annoyance that Balfour appeared to "ridicule" what Ashmead-Bartlett termed "the old constitutional theory that the redress of grievances should precede the voting of Supply", which he contended "had been for hundreds of years the basis of the Constitution."[138] It was such arguments that provoked Milman into preparing a memorandum seeking to demonstrate that "there is no venerable custom which will be broken by dedicating the Friday evening Sitting to a more productive purpose."[139] Lucy also characterised claims about grievance before Supply as "sound and fury, signifying nothing."[140]

An important theme of the debate concerned the management of the time allocated to Supply. Palgrave had proposed the establishment of a committee to allocate sittings to particular Supply business and during the debate some argued that the allocated time should be "divided into compartments, a certain allotment of days being allowed to each", with allocations possibly proposed by a select committee.[141] Balfour rejected such ideas, contending that the government could allocate the time more effectively, through discussion with others affected, than could a select committee, because the government would "be more elastic than any Committee could be." He said that the government would "always put first on every day … some Vote of public interest and importance."[142] He expressed a preference for the time to be allocated by "the Whips of the two sides", with the Opposition Whips having the main role to help "secure the discussion of the more important Votes."[143] Lucy suggested that "Mr Balfour … would be wise in introducing the compartment principle", but Balfour successfully resisted such proposals.[144]

Before votes on amendments began, there was a brief appearance of jeopardy with "an important and growing section of the Conservatives" opposed to the measure, but few doubted that the newer Members would vote overwhelmingly

[137] HC Deb, 24 Feb. 1896, cols 1017–22

[138] HC Deb, 25 Feb. 1895, col 1110

[139] *PCJ*, Miscellaneous Precedents, Vol 4, fos 98–99, "Origins, in 1811, of the Practice of Moving Amendments on Going into Supply", Feb. 1896

[140] Lucy, *Unionist Parliament*, pp.25–26

[141] *PCJ*, Miscellaneous Precedents, vol 3, fos 225–225v; HC Deb, 24 Feb. 1896, cols 956–957, 982–983, 1016; HC Deb, 25 Feb. 1896, cols 1111

[142] HC Deb, 20 Feb. 1896, cols 728–729

[143] HC Deb, 24 Feb. 1896, cols 1026–1027; HC Deb, 27 Feb. 1896, col 1319

[144] HC Deb, 27 Feb. 1896, cols 1338–40; Lucy, *Unionist Parliament*, p.28. See also Hamilton's reflections, after the passage of the resolution, that "the Sessional Order will never work unless he [Balfour] arranges for 'closure by compartments'": BL, Add MS 48668, fo 124

in favour.[145] Some Unionists suggested that they could support the measure on a sessional, experimental basis, but not as a Standing Order.[146] Balfour admitted he had wanted to make the measure "permanent" as a Standing Order, but agreed to "regard it as an experiment to be tried for one year."[147] *The Times* noted that this concession had "distinctly lessened the opposition to the scheme."[148]

Another theme of criticism during the debate was that the allocation of 20 days was insufficient.[149] Balfour responded to pressure to increase the standard allocation to 25 with a well-judged and two-fold concession, whereby the number of allotted days could be increased to 23 on the basis of a motion moved by a Minister and, importantly, the additional days could take place after 5 August.[150] Balfour and Hanbury also accepted or proposed some relatively minor drafting amendments to the motion. The government endured a tricky couple of hours while the House debated the procedure for putting questions when the guillotine fell—a matter considered below in the context of the events of 1901—before securing agreement to the motion with 202 Members in favour and 65 against.[151]

"Satisfaction to all quarters": operation of the Supply rule, 1896–1900

Between 1896 and 1900, the new Supply rule operated with little controversy. According to Milman, "Balfour consulted the Leaders both of the Liberal and of the Nationalist Oppositions" on the Votes they wished to discuss, "and these were placed first on the paper on the succeeding Fridays."[152] In July 1896, Balfour moved a motion for the additional three days, thus also enabling Supply to be concluded after 5 August. Two thirds of the days allocated to Supply were Fridays. Only 24 Votes were outstanding at 10.00 pm on the final day in Committee of Supply, and only three divisions took place after the falling of the knife. *The Times* commented that "The votes in Supply have never, in recent

[145] Lucy, *Unionist Parliament*, p.24; HC Deb, 25 Feb. 1896, col 1140

[146] HC Deb, 24 Feb. 1896, cols 992–997, 1011–17

[147] HC Deb, 24 Feb. 1896, col 1029

[148] *The Times*, 25 Feb. 1896, p.10

[149] HC Deb, 24 Feb 1896, cols 957, 970, 995, 1055; HC Deb, 27 Feb. 1896, cols 1290–93

[150] HC Deb, 27 Feb. 1896, cols 1300–1314, 1320–21; *CJ* (1896) 62; *The Scotsman*, 28 Feb. 1896, p.4

[151] HC Deb, 25 Feb 1896, col 1128; HC Deb, 27 Feb. 1896, cols 1315, 1336; *CJ* (1896) 58, 62–63

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

years, been so well-arranged and so carefully examined."[153] When seeking renewal of the order in 1897, Balfour said that the rule "gave satisfaction to all quarters of the House." He placed on the record "my sense of the manner in which all Parties of the House co-operated to make this rule a success." Harcourt in turn credited Balfour for its operation. Although Balfour had tabled the motion providing for it to be made a Standing Order, he immediately conceded that it could continue as a sessional order, preventing any significant opposition to the renewal, which was agreed to without division.[154]

This pattern continued until 1900. The order was renewed each Session from 1898 to 1900 after short debates, which confirmed the consistent cross-party support for what was increasingly recognised as "a most valuable reform."[155] There remained dissenting voices across the House, but even those who opposed the rule acknowledged that "the Resolution has come to stay."[156] The debates up to 1900 justified Balfour's observation in 1901 that the rule "has been growing in favour", with "converts even among those who originally opposed it."[157] The text was unaltered, except for one minor concession made in response to Opposition concerns in 1898 about Additional Estimates.[158] In each Session, the government provided the additional three days, although the business of Supply was still concluded before 5 August in 1897, 1899 and 1900.[159] Supply was taken on Fridays on 20 out of the 26 days devoted to Supply in 1897, 18 out of 31 in 1898 and 19 out of 31 in 1899.[160] Balfour demonstrated his flexibility when a doubt arose as to whether a day on which both Main Estimates and Supplementary Estimates were taken should be counted as an allotted day. It was held that within the letter of the rule it could, but Balfour accepted that it would be contrary to the spirit, so that the day in question was not treated an allotted day.[161]

There was, however, growing concern about the allocation of time. In 1897,

[153] *CJ* (1896) 136, 138–139, 155, 172, 378, 436–437; *Business of the House Return*, HC (1896) 353, p.11; HC Deb, 21 July 1896, col 292; The National Archives (hereafter TNA), CAB 37/58/74, Notes on Supply, Aug. 1901, by Sandars, p.2; *The Times*, 30 Jan. 1897, p.11

[154] *CJ* (1897) 29; HC Deb, 29 Jan. 1897, cols 828–842; Lucy, *Unionist Parliament*, p.122

[155] *CJ* (1898) 52; HC Deb, 21 Feb. 1898, cols 1219–1226; *CJ* (1899) 57–58; HC Deb, 23 Feb. 1899, cols 311–352; *CJ* (1900) 46–47; HC Deb, 15 Feb. 1900, cols 103–134; Fellowes, *Standing Orders*, p.101

[156] HC Deb, 23 Feb. 1899, col 339

[157] HC Deb, 27 Feb. 1901, col 1333

[158] *CJ* (1898) 52; HC Deb, 21 Feb. 1898, cols 1219–1226

[159] *CJ* (1897) 378, 420; *CJ* (1898) 388; *CJ* (1899) 327, 407; *CJ* (1900) 325, 382

[160] *Business of the House Return*s, HC (1897) 389, p.8, HC (1898) 358, p.8, HC (1899) 326, p.8

[161] *Decisions, 1898*, pp.84–86

30 Votes had not been debated when the knife fell at the end of the twenty-second day.[162] The number of Votes outstanding rose further to 36 in 1898 and 47 in both 1899 and 1900. Dissatisfaction was reflected in an increasing number of divisions at that time, rising from 13 in 1897 to 18 in 1899 and 1900.[163] In 1899, the Liberal Sir Henry Fowler complained that certain Civil Estimates, such as that for the Post Office, were barely debated at all.[164] In response to concerns about the use of time, Balfour noted that more Votes had been passed without extended debate prior to the introduction of the rule, and also indicated—in a change of position from the original debates in 1896—that he would support the establishment of a select committee with an opposition majority to allocate time in the Committee of Supply.[165] In 1901, Balfour conceded that this proposal had never "met with any favour in any part of the House", and confirmed he would not pursue it.[166]

"Wilfully wasted": the problems of 1901 and the roll-up

The minor irritations with the operation of the rule up to 1900 were soon placed in perspective by the transformative impact of renewed systematic obstruction during the session of 1901, in part from Irish Nationalists, but also increasingly from Liberals, made more bitter due to opposition to the conduct of the South African War. Balfour moved the motion on 26 February 1901 with one important textual concession, adding to the categories exempt from the definition of Supply for the purposes of the order "Votes for Supplementary or Additional Estimates presented by the Government for war expenditure." The effect of this change, as Balfour explained, would be to require the government to provide time beyond the allotted days for such expenditure. Balfour contended that this change was "entirely in favour of the independent criticism of the Government", concluding with the hope that the motion should be agreed to "without any lengthened discussion, and with absolute unanimity."[167] The scheduling of the motion and the proposed precedence for government business had already been the subject of fierce criticism, led by Henry Campbell-Bannerman, the Leader of the Opposition,[168] and critics of

[162] TNA, CAB 37/58/74, p.2

[163] HC Deb, 23 Feb. 1899, col 312; TNA, CAB 37/58/74, p.2. See also HC Deb, 26 Feb. 1901, col 1295

[164] HC Deb, 23 Feb. 1899, cols 312–315

[165] HC Deb, 23 Feb. 1899, cols 326–332

[166] HC Deb, 27 Feb. 1901, col 1346. See also the observation by Sandars on the proposal in August 1901: "The Opposition has steadfastly declined the plan": TNA, CAB 37/58/74, p.5

[167] HC Deb, 26 Feb. 1901, cols 1291–1294

[168] HC Deb, 26 Feb. 1901, cols 1209–1237

the rule were more vocal than in previous such debates.[169]

The tone for Supply proceedings themselves was set on the first allotted day on 5 March, to consider the Civil Service and Revenue Department Votes on Account, when Irish Nationalists objected to Balfour's claim of the closure at the moment of interruption and tried to disrupt the division, with 12 Members being named and suspended *en masse*.[170] The passage of the Supply needed before the end of March required a Saturday sitting.[171] Progress on the main Estimates after Easter was far slower than in recent years, such that the government put on Supply business after other business on three unallotted days in May and July. On one such day, 2 July, a large number of non-contentious Votes were put down for debate starting at 9.30 pm, but the time available was consumed by "a wholly frivolous discussion" on the first Vote, followed by four divisions, so that no others were discussed.[172] Although the government moved the now standard motion on 22 July to provide for three additional days and to enable Supply to go beyond 5 August, it was recognised that Supply business was "in a very backward state", with almost 100 Votes undebated. Herbert Asquith, for the Opposition, suggested that, if the business was to be concluded in three weeks, the House would be required "to carry on its work under conditions that will reduce discussion to a mockery and a farce."[173] Balfour argued that the misuse of the time available resulted from the desire of Irish Nationalists in particular "to bring into contempt and impotence this great legislative Assembly."[174] Lucy sympathised with Balfour's characterisation, commenting that "An exceptionally large measure of time had been given to Supply, and it was wilfully wasted."[175]

This brought to a head a matter which had arisen during the initial debates in 1896 about the method of voting at the conclusion of Supply. In 1895, Balfour had explored ideas to aggregate Votes, to reduce the number of votable propositions, an idea considered by the 1888 Select Committee, which had tentatively suggested a scheme for grouping Votes.[176] Although aggregation was

[169] *CJ* (1901) 47, 48–49; HC Deb, 26 Feb. 1901, cols 1291–1321; HC Deb, 27 Feb. 1901, cols 1325–57

[170] *CJ* (1901) 61–62; HC Deb, 5 Mar. 1901, cols 687–696; Redlich, I.192, n3

[171] HC Deb, 26 Feb. 1901, cols 1211–1213; *CJ* (1900) 85, 92–95

[172] *Business of the House Returns*, HC (1901–I) 348, p.11; HC Deb, 7 Aug. 1901, col 1541; *CJ* (1901) 286; TNA, CAB 37/58/74, p.5

[173] *CJ* (1901) 332; HC Deb, 22 July 1901, cols 1144–1145, 1153, 1158, 1171; TNA, CAB 37/58/74, p.2

[174] HC Deb, 22 July 1901, cols 1176–1179

[175] H W Lucy, *The Balfourian Parliament 1900–1905* (London, 1906), p.114

[176] BL, Add MS 49760, fos 17–18v, Sandars to Balfour, 16 Sept. 1895; HC (1888) 281, QQ 272, 287, 468, 585, 590, 596, 629, 630, 633, 639, 675, 699, pp.iv–v, 62–63, 68–71

again mooted by Palgrave at the end of January 1896, no changes affecting the number of Votes were included in the motion as tabled. Indeed, in his opening speech, Balfour had argued that it would be counter-productive to bring different Votes in the same Class together, because his proposal would enable the government to "always put first on every day … some Vote of public interest and importance."[177] Balfour mooted the idea of reducing the number of separate Votes in an exchange with Fowler in 1899, but again did not pursue it.[178]

The 1896 motion provided that, at 10.00 pm on the penultimate allotted day, the Chairman should "put forthwith every Question necessary to dispose of the outstanding Votes in the Committee of Supply." Balfour had briefly asserted during the 1896 debate that this wording might not exclude combined decisions on Votes in the same Class, but backed down after his interpretation was subject to sustained questioning from both sides of the House, with Campbell-Bannerman noting that "the Closure of Supply *en bloc* was contrary to the terms of the Resolution." The possibility of an "enormous number of divisions" when the knives fell in Committee of Supply and on report remained, but the numbers werneco e manageable up to 1900.[179] The number of outstanding Votes in 1901, and the approach of the government's opponents, created a new situation in which, as Gibson Bowles pointed out, if each of the outstanding Votes were to be divided on at the conclusion of Committee and then on report, it would "entail forty-eight hours continuous walking."[180]

In response, Balfour moved a motion on 7 August which provided that, at the conclusion of business in the Committee of Supply on the twenty-second allotted day, the Chairman would put a single question on each Class of the Civil Service Estimates and similarly treat as a single question the combined Votes on the Navy, the Army and the Revenue Departments, a proceeding that subsequently became known as the "roll-up." The same approach was to apply to the questions to be put by the Speaker at the close of report on the final allotted day. In introducing the motion, Balfour emphasised the "absurdity" of divisions on each Vote, and the "ridicule" it would invite. Campbell-Bannerman opposed the motion, claiming somewhat implausibly that the problems arose from the government's mismanagement of time, and also contending that the motion entailed the loss of the "immemorial right" to oppose each Vote. Some Irish Nationalists denied any intention to vote indiscriminately against each Vote. Gibson Bowles described it as "the extra drop of poison enough to

[177] *PCJ*, Miscellaneous Precedents, vol 3, fos 225–225v; HC Deb, 20 Feb. 1896, cols 728–729

[178] HC Deb, 23 Feb. 1899, col 331

[179] HC Deb, 27 Feb. 1896, cols 1321–1336

[180] HC Deb, 22 July 1901, cols 1158–1159

kill the last remnant of independence" in the House. *The Times* thought that the protestations of opponents of the motion "deceived nobody", because the amount of time for debate was unaffected.[181] Milman later described the motion as a case of "logic being sacrificed to expediency."[182]

When the knife fell in Committee at 10.00 pm the next day, there were divisions on all possible questions, but the roll-up ensured that there were only 12 divisions, interspersed with points of order from Irish Nationalists, ending at 1.00 am. Each further question to conclude the formal financial business was also the subject of a division, making 25 in total, so that the House did not rise until 6.00 am.[183] On report on Friday 9 August, 12 divisions took place, the House rising at 12.40 am, with the final proceedings to conclude financial business taking place the following Monday.[184]

"The time has come for making it permanent": the 1902 Standing Order

The exceptional difficulties of the 1901 Session extended beyond Supply proceedings. The number of divisions was the greatest ever in any Session, with many during "the dinner hour", leading the government whips to characterise the Session as "more harassing" than any previous session.[185] This experience led to the government bringing forward a wide-ranging set of procedural reforms, including a proposal to make the Supply order first introduced in 1896 a Standing Order in modified form.[186] After mooting the idea of it becoming a Standing Order in 1897, Balfour had subsequently found the practice of sessional renewal congenial. However, he was frustrated by the disputes which arose during the debate on renewal in 1901, as he made clear at the time.[187]

Balfour had already, in 1899, indicated a personal preference for the normal allotted day for Supply to be moved from Friday to Thursday and

[181] *CJ* (1901) 379; HC Deb, 7 Aug. 1901, cols 1537–1612; *The Times*, 8 Aug. 1901, pp.4–5, 7; Fellowes, *Standing Orders*, pp.101–102

[182] *Encyclopædia Britannica*, p.479

[183] *CJ* (1901) 383–387; HC Deb, 8 Aug. 1901, cols 132–248; TNA, CAB 37/58/74, p.6. The Chairman made a ruling having consulted the Speaker about whether the provisions applied to a loan to the Wu-chang Viceroy.

[184] *CJ* (1901) 391–393, 398–400; HC Deb, 9 Aug. 1901, cols 346–396; TNA, CAB 37/58/74, p.6

[185] TNA, CAB 37/58/79, Memorandum on Hours of Business in the House of Commons from Government Whips

[186] On the package, see Redlich, I.193–203 and D N Chester and N Bowring, *Questions in Parliament* (Oxford, 1962), pp.49–84. The proposals as first published are helpfully printed in Redlich, III.254–261

[187] HC Deb, 27 Feb. 1901, cols 1332–1334

canvassed cabinet support for such a change without result.[188] In 1901, he embraced proposals by his whips for changes to sitting hours, including a proposal from the Chief Whip, Sir William Walrond, for Supply to be moved to Thursdays.[189] In October, Balfour circulated a set of proposals for reform of parliamentary rules in which he wrote: "The Supply Rule has now had a long trial, and … with certain modifications, the time has come for making it permanent." The modifications were threefold. First, the provision for the grouping of Votes through a roll-up, adopted initially in August 1901, would be "part of our permanent procedure." Second, the allotted days would be "days which terminate at midnight", so that members would not be "kept up … over and over again, till the small hours on estimates." Third, debates on report of Supply, which were "invariably wearisome and useless" would be abolished.[190] The last of these proposals attracted dissent within cabinet, most notably from Hanbury, provoking discussion about devolution of some of the scrutiny functions of the Committee of Supply which was to continue for some time after the Supply rule had become a Standing Order.[191]

By early December, Balfour had decided to modify the proposals further, abandoning the proposal to abolish debate on report of Supply, reinforcing the proposal to end Supply proceedings by midnight by coupling it with a provision to prevent any opposed business other than Supply being taken on a Supply day and limiting debate on the Votes on Account to a single allotted day.[192] The task of preparing a draft to embody Balfour's proposals fell to Sir Courtenay Ilbert, First Parliamentary Counsel. Ilbert's draft proposals were circulated by Balfour to his Commons cabinet colleagues on 16 December 1901, incorporating the move of the default day for Supply business from Friday to Thursday.[193] The draft was subject to some comment from Balfour's colleagues, including a suggestion from Chamberlain that it should be amended to include Supplementary Estimates, with the number of allotted days increased in consequence, and some criticism of the proposal to move Supply from Fridays to Thursdays, but the proposals as published at the end of

[188] HC Deb, 23 Feb. 1899, col 342; TNA, CAB 37/50/47, Note from Balfour printed for the cabinet, with Proposed Standing Order, 25 July 1899

[189] TNA, CAB 37/58/79; TNA, CAB 37/58/80, The Question of Double Sittings, Note by Balfour, 19 Aug. 1901; TNA, 37/58/98, Note by Walrond, 16 Oct. 1901

[190] TNA, CAB 37/59/113, Reform of Parliamentary Rules, Note by Balfour, Oct. 1901

[191] "A Road not Taken", pp.280–283

[192] *PCJ*, Reform of Parliamentary Procedure 1902, Sandars to Ilbert, 4 Dec. 1901 and Suggestions for certain Reforms of Parliamentary Procedure

[193] *PCJ*, Reform of Parliamentary Procedure 1902, Balfour's paper on Rules of Procedure, 16 Dec. 1901

January were essentially unchanged from those proposed in mid-December.[194]

Balfour outlined the modified rule intended to become a Standing Order on 30 January 1902.[195] The Supply provisions were far less controversial than many other aspects of the package. Harcourt accepted that the order had "been worked fairly and well towards all parties in the House."[196] Nevertheless, debate stretched over four days in April. Most of the time was taken on amendments which rehashed arguments from 1896, confirming the entrenched opposition to the rule from Gibson Bowles and among Irish Nationalists and Radicals, as well as the consistent support from both frontbenches and most government backbenchers.[197] Balfour demonstrated his mastery of the subject matter in responding to the numerous amendments, and also offered some concessions, including one to exclude debate on estimates for new services from the calculation of allotted days, building on the concession already made in 1901 relating to war expenditure, after which the new Standing Order was agreed to by 222 votes to 138.[198]

Conclusions

The Supply order introduced in 1896 and which became a Standing Order in 1902 remained essentially untouched for nearly two decades,[199] and established a framework for the management of Supply business, and later Opposition days and Estimates days, which endures to this day. The change first introduced in 1896 had an impact on the nature of Supply proceedings which many have regretted. According to Ryle, the change meant that "the House's power to refuse or modify Supply" ceased to be "a very real weapon of direct control of expenditure in the hands of the House."[200] Gibson Bowles similarly contended at the time that the power to secure concessions on expenditure from the government by the threat of extended Supply proceedings had been lost. This reflected his own perspective that "Supply was far more important

[194] *PCJ*, Reform of Parliamentary Procedure 1902, Observations by Mr Chamberlain on Draft Rules of Procedure proposed by Mr Balfour; *PCJ*, Reform of Parliamentary Procedure 1902, Print Showing the Criticisms and Suggestions of the Chancellor of the Exchequer; Redlich, III.256–257

[195] HC Deb, 30 Jan. 1902, cols 1371–1372

[196] HC Deb, 6 Feb. 1902, col 716

[197] Redlich, I.201; Fellowes, *Standing Orders*, p.102; *CJ* (1902) 146–147, 175–176, 179–180, 184–185; HC Deb, 11 Apr. 1902, cols 71–111; HC Deb, 24 Apr. 1902, cols 1273–1312; HC Deb, 25 Apr. 1902, cols 1339–1432; HC Deb, 28 Apr. 1902, cols 54–101

[198] HC Deb, 25 Apr. 1902, cols 1386–1393, 1414; HC Deb, 28 Apr. 1902, cols 73–75, 81; *CJ* (1902) 185

[199] Fellowes, *Standing Orders*, p.103

[200] Ryle, "Supply and other financial procedures", p.348

than legislation."[201] This was a minority viewpoint at the time, barely reflecting the contemporary reality of Supply proceedings. Balfour's claim of 1902 that "The old system conduced to no economy of expenditure" was nearer the truth.[202] As Redlich stated, the new Supply rule "made much more deviation in principle than in practice from the historic order of business."[203] In Reid's words, "Balfour sought to sweep away all inhibitions from the overt use of Supply procedures for political polemics."[204] The introduction of the roll-up in August 1901, subsequently incorporated in the Standing Order, did not affect the number of Votes left undebated, but simply reduced the number of possible divisions when the knives fell.[205] The roll-up nevertheless heralded the gradual diminution of the time available for debates concerned with the authorisation of expenditure, so that the House of Commons ended up "rubber-stamping tablets of stone."[206]

Some critics of the order sought to confine their opposition to the operation of the guillotine on the concluding days on Supply, but in reality this provision was integral to the operation of the rule. Balfour's underlying aims concerned the effective use of the House's finite time and the balance of time within a session. The limitation on the number of days in Supply was essential if sessions were to be of a sensible length with reasonable shares of the time available for legislation and private Members. The date of 5 August for the conclusion of Supply proceedings, even though it could be varied by the provision of three additional days which could be after 5 August, came to be associated by critics of the government with a desire to close a session by the "Glorious Twelfth." As Winston Churchill put it after he had crossed the floor to become a Liberal, "there was a certain sacred bird to be killed on the 12th of August, and hon. Gentlemen opposite were impatient to get away to undertake its destruction."[207] This was not a pastime much to Balfour's taste,[208] and the terminal date was for him an effective restriction on government, that it would not use the opportunity of limiting days for Supply to expand its time for legislation, since

[201] HC Deb, 24 Apr. 1902, cols 1306–1308

[202] HC Deb, 11 Apr. 1902, col 104. See also Fraser, "Growth of Ministerial Control", pp.461–462

[203] Redlich, I.190

[204] Reid, *Politics of Financial Control*, p.70

[205] HC Deb, 28 Apr. 1902, cols 57–69

[206] C Lee, "Supply Motions and Bills in the House of Commons: the Impact of Resource Accounting and Budgeting", *The Table*, Vol 72 (2004), pp.14–25, at p.24, citing Andrew Mackinlay MP in 2002.

[207] HC Deb, 2 Aug. 1904, col 569

[208] "The Souls assembled not to shoot things … but to play clever games": R J Q Adams, *Balfour: The Last Grandee* (London, 2007), p.119

it was, in Lucy's words, "an essential and honourable condition of the bargain that the Session shall close on or about the 12th of August."[209]

The proposals introduced by Balfour built on the thinking of others. W H Smith had been the first to commission a proposal along the same lines in the particularly challenging circumstances of the summer of 1887. Milman had refined and developed such proposals, as well as bolstering the case for such a change. Chamberlain had been the most outspoken public advocate for limitations on the length of Supply proceedings. However, the credit for bringing the changes to fruition rightly belongs overwhelmingly to Balfour. Some historians have understated the achievement, either because of limited understanding of the background,[210] or by conflating their assessment with a verdict on the poorly managed legislative programme of 1896.[211] In Sandars's words, Balfour "set to work to master" the subject matter of the motion,[212] and Balfour's mastery was evident in his management of the 1896 debate and in ensuring the rule's effective operation through flexibility and with, in Harcourt's words, an "impartial and courteous manner."[213]

Both Milman and Chamberlain had stressed the idea that the Opposition frontbench would play a leading role in determining the priority of business on allotted Supply days. Balfour confirmed in 1897 the primacy given to requests from the Leader of the Opposition in scheduling Supply days.[214] However, the Official Opposition was keen to distance itself from avowed involvement in the management of business, seeing it, in Campbell-Bannerman's words, as "peculiarly the function of the Government and the Leader of the House" to determine the business.[215] In 1908, Balfour as Leader of the Opposition had no hesitation in holding Asquith as Leader of the House responsible for the alleged mismanagement of the allotted days.[216] Nevertheless, as Ryle observed, the rule change "facilitated the gradual transformation of Supply days from being occasions for considering Government requirements (the Votes) to being essentially Opposition business days."[217]

[209] Lucy, *Unionist Parliament*, p.49

[210] R F McKay, *Balfour: Intellectual Statesman* (Oxford, 1985), pp.50–51, which confuses Supply proceedings with those on the Finance Bill; Adam, *Balfour*, p.143, which misleadingly describes Balfour's scheme as being "to place Supply at the beginning of each session"

[211] P Marsh, *The Discipline of Popular Government: Lord Salisbury's Domestic Statecraft* (Hassocks, 1978), pp.247–254

[212] Bodl, MS.Eng.hist.c.771, fos 326–327, Note by Sandars on Balfour's career

[213] HC Deb, 25 Apr. 1902, col 1357

[214] HC Deb, 19 July 1897, col 489

[215] HC Deb, 11 Apr. 1902, cols 83–84

[216] Barker, "House of Commons Supply procedure", p.50

[217] Ryle, "Supply and other financial procedures", p.34

The fears of many—and the hopes of Chamberlain—that the method chosen for the control of Supply in 1896 would pave the way for the advance allocation of a limited number of days for the government's legislation did not materialise. The measure first introduced by Balfour did, however, mark a new approach to the management of the competing demands on the House's time. As such, it represented an important stepping stone towards the wider reforms effected in 1902, to secure greater government control over the House's time and greater predictability more generally, which will form one element of the subject matter of the next and final article in this series.

"YOUNG LADY AND PLACE": COURTSHIP AND CLERKSHIP, JANUARY–MARCH 1812

COLIN LEE
Clerk of Legislation, House of Commons, United Kingdom[1]

Introduction

On the morning of Saturday 14 March 1812, John Henry Ley, the Second Clerk Assistant of the House of Commons, held a meeting with John Hatsell, the Clerk of the House of Commons. A month earlier, J H Ley's youngest brother, William, had proposed marriage to Hatsell's niece, Frances Hatsell—known to all in the family as Fanny. The proposal was received by Fanny "in the most favourable manner",[2] but, a month later, neither family considered the engagement as other than provisional. Both Fanny and the Ley family had expected that, following the proposal, Hatsell would agree to William's appointment to the next vacancy for a position as a table clerk, but Hatsell had not done so. J H Ley described his aims going into the meeting on 14 March:

> "I really thought it was young Lady and Place, and not young Lady sine [without] the promise of the next appointment, & that if the appointment is not to be had … the whole was to be at an end."[3]

The meeting did not go well, with both questioning whether the marriage should go ahead. Although Fanny and William did get married at St Margaret's Church in Westminster on 2 July 1812,[4] the wedding took place only after a series of dramatic meetings and complex negotiations.

A limited picture of these events has been provided in the work of Orlo Williams,[5] and Clare Wilkinson,[6] but those accounts rely on a single source—

[1] The author is grateful to Peter Aschenbrenner, Chloe Challender, Dr Stephen Farrell and Dr Paul Seaward for comments on earlier drafts of this article.

[2] Devon Heritage Centre (hereafter DHC), 63/2/11/17, William Ley to Henry Ley, 13 Feb. 1812

[3] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

[4] *Morning Chronicle*, 3 July 1812, p.3. All newspapers cited have been accessed via the British Newspaper Archive.

[5] O C Williams, *The Clerical Organization of the House of Commons 1661–1850* (Oxford, 1954), pp.103–105

[6] C Wilkinson, "The Practice and Procedure of the House of Commons c. 1784–1832" (University of Wales, Aberystwyth, PhD thesis, 1998), pp.42–45

the diary of Charles Abbot, the Speaker of the House of Commons.[7] The present study also draws upon the extraordinarily vivid letters which William, J H Ley and their sister Mary Harris wrote to one or both of their parents or to their brother, the reverend Henry Ley, between 27 January and 1 April 1812, as well as drafts of letters from their father and of those from William to Fanny.[8]

The purpose of this study is two-fold. The first is to provide an example of courtship and the path to marriage which broadens understanding of that subject. It complements the case studies focused on accounts by the courting individuals themselves recently provided by Sally Holloway.[9] This case study supports the observation by Alan Macfarlane that

> "Each marriage was the outcome of the calculation of costs and benefits, principally by the couple themselves, but also by their friends and close relatives."[10]

It also bears out Amanda Vickery's suggestion, writing more specifically of the Georgian era and the social stratum of the Hatsells and Leys, that

> "the demands of Georgian gentility were such that matchmaking amongst the propertied remained a lengthy and complex process of negotiation involving a range of family and friends, rather than a simple matter of beating hearts and lovers' vows."[11]

The correspondence used in this study was within the family of only one of the principals, but it nevertheless provides insight on the hopes and fears of Fanny Hatsell as well as William Ley, drawing out her important role in seeking to shape and control her own destiny.

The second purpose is to shed further light on the three individuals who between them shaped the trajectory of the Clerk's Department over the period between 1768 and 1850—John Hatsell, John Ley and John Henry Ley. During these months, the interaction between professional and personal considerations became very evident for all three of them, and the ways in which they responded provide new insight into their personalities and priorities.

This article contains only the first part of the story. A subsequent article

[7] The National Archives (hereafter TNA), PRO 30/9/35, Charles Abbot, Journal with interpolated correspondence, etc, 1811–1816

[8] All of the letters cited are from within two collections: DHC, 63/2, Ley of Trehill papers 1583–1922; DHC, 2741M, Ley of Trehill papers, 1541–1878. When italics appear in citations from these letters or other sources, they reflect emphasis in the original.

[9] S Holloway, *The Game of Love in Georgian England: Courtship, Emotions, and Material Culture* (Oxford, 2019)

[10] A Macfarlane, *Marriage and Love in England—Modes of Reproduction 1300–1840* (Oxford, 1986), p.291

[11] A Vickery, *The Gentleman's Daughter*: Women's Lives in Georgian England (New Haven and London, paperback edition, 1999), p.45

will examine the progress of the negotiations from late March onwards, and how they exposed the underlying weakness of Fanny Hatsell's position. That article will then consider the wider consequences of the marriage, including the deterioration in relations between the Speaker of the House and some of the House's leading officials, and the creation of major fissures within the Clerk's Department.

"Mr Ley's feeble Efforts": the context of clerkly patronage

By the beginning of 1812, John Hatsell and John Ley (referred to hereafter in this article simply as Ley, to distinguish him from his nephew J H Ley) had known each other for well over 40 years. They had worked together as Clerk and Clerk Assistant between 1768 and 1797.[12] They retained a close relationship after Hatsell retired from his day-to-day duties; Ley became Deputy Clerk, sharing the profits of the office of Clerk equally with Hatsell; they continued to correspond for a number of years and saw each other often, not least because Hatsell kept his official residence in Cotton Garden. This friendship was shared across the extended families, and, in 1801, Hatsell agreed to the appointment of J H Ley, the eldest nephew of the bachelor Ley, to a newly-created role of third clerk at the table.[13]

However, relations between Hatsell and Ley subsequently deteriorated. Although Hatsell had agreed that Ley would take charge of junior appointments in the Clerk's Department, he jealously guarded his patronage in respect of more senior roles. In 1804, Hatsell rejected a suggestion from Ley that Ley's brother, Henry, should be appointed as Joint Clerk of Ingrossments on a sinecure basis. In 1807, Hatsell and Ley had another falling out when Hatsell had to adopt what he later termed "a peremptory mode" to persuade Ley to accept a cap on one of their shared income streams.[14]

Matters reached a new low in 1811. Ley had persuaded himself that his Deputy role was now so established that he had the right of appointment to any table vacancy. He was urged on in this belief by J H Ley, who stood to gain the most from such an understanding. Hatsell vehemently denied having ceded his power of appointment, and was strongly supported by Abbot. To

[12] P J Aschenbrenner and C Lee, *The Papers of John Hatsell*, Camden Fifth Series, Volume 59 (Royal Historical Society, Cambridge, 2020) (hereafter *Hatsell Papers*), pp.10–11; C Lee and P J Aschenbrenner, "'Upon a greater Stage': John Hatsell and John Ley on politics and procedure, 1760–1796", in *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments* (hereafter *The Table*), Vol 89 (2021), pp.66–119, p.67

[13] C Lee, "'Much more than sufficient': Clerkly profits and patronage, 1796–1802", in *The Table*, Vol 90 (2022), pp.78–120 (hereafter "Sufficient"), pp.79–83, 92–96, 106–108, 119–120

[14] C Lee, "'While the sun shone': Hatsell, Ley and the problems of patronage, 1802–1812", in *The Table*, Vol 91 (2023), pp.110–138 (hereafter "Sun Shone"), at pp.113–116, 119–121

circumvent their opposition, Ley proposed to retire from his day-to-day duties while retaining his office, enabling the Clerk Assistant, Jeremiah Dyson, to take the rightmost chair at the table, and J H Ley to assume the middle chair. Ley envisaged appointing William as third clerk at the table. This proposal was successfully resisted by Hatsell and Abbot in July 1811, the latter declaring his "express disapprobation."[15] J H Ley noted early in 1812 that William was "very probably not getting" into the House "unless some more powerful Support than Mr Ley's feeble Efforts comes to his Assistance."[16] Such support was to come from an unexpected source—Fanny Hatsell.

"Decided preference for the Person": Fanny's choice

Fanny Hatsell was born in the spring of 1784.[17] Her family had begun with relatively little money. Her paternal grandfather, Henry Hatsell, never earned more than £400 a year.[18] Her father, James Hatsell, was born in 1738, and apprenticed as a mercer. Until 1807, he ran a "very substantial" drapery shop in The Strand, with living quarters above. In that year, he retired, selling his stock and his lease.[19] Thereafter, the family moved to Spring Gardens Terrace, close to Charing Cross, "a fashionable quarter", "where government London met commercial London."[20]

Fanny's fortune, and to some degree her social standing, derived from her uncle. Hatsell had no children of his own and by 1808 both his stepsons were dead. Hatsell had set aside £20,000 of government stock for his two nieces and their younger brother Henry. Interest was payable on this stock at 3 per cent, which thus provided them each with a guaranteed annual income of £600. In 1809, Fanny's elder sister, Penelope, had married the reverend and honourable Littleton Powis, whom Penelope had probably met through her uncle, who was a longstanding friend of Littleton's father, Thomas Powis, Baron Lilford.[21]

At the start of 1812, Fanny was almost 28, four years above the average age

[15] "Sun Shone", pp.123–131

[16] DHC, 63/2/11/17, J H Ley to Henry Ley, 28 Jan. 1812

[17] *Hatsell Papers*, p.3; W R McKay, *Clerks in the House of Commons 1363–1989* (House of Lords Record Office Occasional Publications, 1989) (hereafter McKay, *Clerks*), p.69; DHC, 2741M/FC9/8a–8b, William Ley to Henry Ley, 28 Mar. 1812

[18] *Hatsell Papers*, p.168

[19] *Oracle and the Daily Advertiser*, 18 Mar. 1807, p.4

[20] 'Spring Gardens', in *Survey of London: Volume 20, St Martin-in-The-Fields, Pt III: Trafalgar Square and Neighbourhood*, ed. G H Gater and F R Hiorns (London, 1940), pp.58–65, British History Online british-history.ac.uk/survey-london/vol20/pt3/pp58-65; M Gayford, *Constable in Love: Love, Landscape, Money and the Making of a Great Painter* (London, 2009), pp.25–26

[21] *Hatsell Papers*, pp.2–3, 112, 113; "Sun Shone", p.117; TNA, PROB 11/1635, Will of John Hatsell, March 1818; DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812

for marriage for women at the time, and it was probably well over a decade since she 'came out'.[22] Her father was ill. As J H Ley put it with characteristic bluntness, "Mr James has not been well & appears very much shattered, & cannot last very long."[23] Perhaps conscious of her father's health, Fanny took the initiative about her own future. Fanny had a "very persevering" suitor called Brooksbank, who had "paid her marked attention for near 4 years." He had "renewed his address lately", but she confessed "that she could not say she had any great partiality for him." At the same time, Fanny was reluctant to rule out Brooksbank as a possibility—"she had as soon marry Mr B as any other person"—unless she was sure of a better offer.[24]

By 1811, Fanny and her parents had new neighbours in Spring Gardens Terrace—William's sister Mary Harris and her husband. Mary and Fanny spent much time together in 1811, becoming close friends. When Mary arrived in London on 28 January 1812, "Fanny called on me, & received me very affectionately." Fanny told Mary that there was no person's "opinion I should like to have as much as yours." When Fanny broached the subject of marriage, Mary "strongly represented" to Fanny "her own independent situation", and argued that nothing should "induce her to think of forming such a connection, but decided preference for the Person."[25] As Mary may have sensed, that preference was for Mary's brother. William had called on Fanny on several occasions in 1811 and Mary had concluded at that time that William "liked the Lady."[26] The feeling was mutual, as is evident from William's response to a letter which Fanny wrote to him subsequently: "I certainly feel much flattered at the Account you have given me of your feelings on my first arrival in Town."[27]

At the start of 1812, a mutual friend of the Leys and Hatsells—a Mr Mayse—gave currency to a rumour that a marriage between Brooksbank and Fanny was intended.[28] When William first called at James Hatsell's residence that year, he encountered Brooksbank, which reinforced the credibility of this rumour and discouraged William from renewing his own addresses to Fanny.[29]

[22] Holloway, *Game of Love*, p.12; Vickery, *Gentleman's Daughter*, p.83, identifies 16 as the usual age.

[23] DHC, 63/2/11/17, J H Ley to Henry Ley, 28 Jan. 1812

[24] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812; DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812

[25] DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812

[26] DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812; DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812

[27] DHC, 63/2/11/17, third draft of William Ley to Fanny Hatsell, 3 Mar. 1812

[28] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812

[29] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812; DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812

On 30 January, Mary repaid the visit Fanny had made to her two days earlier, planning also to invite Fanny to dinner. At this meeting, Fanny assured Mary that rumours that she was to marry Brooksbank "were without foundation", and she expressed "great anger at Mr Mayse" for spreading them. Mary then asked Fanny whether there was anyone else that she liked. At this point, Fanny replied that "never but one Person had made a serious impression", someone whom she liked better than Brooksbank. At this point, "her eyes filled with tears." Fanny had come to town having decided that she preferred William, but now "she thought it all off" because William had not "paid her any attention since he had come to Town." When Mary explained that William had been dissuaded by the rumoured engagement and by meeting Brooksbank at the Hatsell residence, Fanny said that it was "unlucky" that William had encountered Brooksbank.[30]

"The place secured beyond doubt": the presumption

Once Mary shared news of Fanny's enthusiasm for William with the family, they each began to consider the prospect. Given the closeness of the Ley and Hatsell families over many years, Fanny was known to all of them.[31] The most candid assessment came from J H Ley, in a letter to his father: "She certainly is a very good humoured sort of Girl, & I think the best of any of the Speculations he is likely to attain."[32] He went on:

> "It is quite absurd for you to make him think too highly of himself, & to make him suppose that he is to marry some great Beauty & fortune by his own personal attractions, without any comfortable Situation to offer to any one."

J H Ley had alighted on what was, for him at least, the heart of the matter. The marriage would transform William's professional prospects: "I have no Doubt of his succeeding if he chances, and I have likewise no Doubt of his getting into the House if he was to do it."[33] The Second Clerk Assistant later admitted to

> "having been a great adviser of the Measure at first, as I thought by such an union all disagreeable controversy might have been avoided, and the place

[30] DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812; DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812; DHC, 63/2/11/17, third draft of William Ley to Fanny Hatsell, 3 Mar. 1812

[31] William wrote to his father: "You have all had sufficient opportunity of seeing & judging of her Person, accomplishments, & manners": DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812

[32] DHC, 63/2/11/17, J H Ley to Henry Ley, 28 Jan. 1812

[33] DHC, 63/2/11/17, J H Ley to Henry Ley, 28 Jan. 1812

secured beyond Doubt, and also a very reputable fortune."[34]

He was joined in his support for the marriage at an early stage by his wife, Lady Frances. William later told his brother Henry that Lady Frances and J H Ley "certainly at first were very warm, in telling me that it was the best thing I could do", and persuaded him that "it would be a great Pity to let Mr Brooksbank have her" and that it would be "a sure means of procuring other good things."[35]

William's uncle was less supportive. In 1811, the Deputy Clerk had been uncertain about his health, and had entertained the possibility of some form of retirement.[36] However, on 10 February 1812, William wrote: "he certainly is wonderfully well, I really think him much stouter & better in every respect than he was last year."[37] Ley was initially cool about the match: "he said it was much too good a thing and not to be attained without great sacrifices on his Part." J H Ley tried to persuade his uncle that only a relatively small financial contribution would be required—"I thought £5000 on his part would be very handsome"—and at that point reported "he by no means seems to disapprove of the thing."[38] William was less optimistic: "it is the same in this as in all other cases—he won't give himself the trouble to think—or say a word of advice or opinion about it." William concluded that his uncle was against the match, because it would open the way to the retirement which Ley had contemplated the previous year, but now wished to avoid.[39]

William was confident about the professional consequences of the match: "That the advantages arising from such a connection would be considerable admits of no doubt." He thought that an appointment in the House or the promise of the next vacancy would also confirm that the relationship was supported by "the higher powers", namely Hatsell.[40] This presumption was shared by Fanny herself. When Hatsell raised the question of William's professional prospects with Fanny, she "suggested the Table of the House of

[34] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

[35] DHC, 2741M/FC9/6a–6c, William Ley to revd Henry Ley, 24 Mar. 1812. This sheet of the letter was marked "Private" and was on a separate leaf from the rest of the letter, so it could be detached before the letter was shown to their mother. It ended with the instruction "for Gods sake don't hint a syllable what I write & *burn* this." Frances was the daughter of the seventh Marquess of Tweeddale and had married John Henry in 1809 (McKay, *Clerks*, p.69). Her first name was Dorothea (sometimes recorded as Dorothy), but she was referred to as Lady Frances in Ley family letters.

[36] "Sun Shone", pp.126–127

[37] DHC, 63/2/11/17, William Ley to Henry Ley, 10 Feb. 1812

[38] DHC, 63/2/11/17, J H Ley to Henry Ley, 3 Feb. 1812

[39] DHC, 63/2/11/17, William Ley to Henry Ley, 7 Feb. 1812

[40] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812

Commons."[41]

Based on the account in Abbot's diary, Clare Wilkinson has characterised the marriage proposal as "an attempt by the Leys to gain leverage" over Hatsell.[42] The prospective marriage was certainly seen by them from the outset as a chance to secure an outcome which had not proved possible the summer before and to strengthen the professional ties which bound together Hatsell and the Leys with bonds of kinship.[43] However, the initiative came not from the Leys but from Fanny Hatsell, who herself saw the possibility of benefitting her future husband.

"Fanny sang delightfully": the start of the courtship

Based on the shared presumption, and Fanny's evident preference, a courtship began. Fanny attended a dinner at Mary's house, along with William and his eldest brother and family, on 30 January. According to Mary, "William held Fanny's hand & was very agreeable."[44] When the ladies withdrew, Fanny discussed the prospective match further with Mary and Lady Frances.[45]

The next day, Fanny was a guest along with the Ley family at a neighbour's house. They played Loo—a card game—and during the game Fanny was "advised by William."[46] Afterwards William and Fanny were seated next to each other at supper and had "a long conversation."[47] Fanny "most unequivocally disavowed all intention of any connection with Mr B" and begged William to "contradict it wherever I heard it", which William readily agreed to do.[48] William escorted Fanny to her home, where, "after a cordial squeeze & a mutual interchange of graciousness, we parted."[49] Mary thought that they "parted the best Friends possible."[50]

On 2 February, the Leys, the Harrises and Fanny were invited to dinner at

[41] DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812

[42] Wilkinson, "Practice and Procedure", p.42

[43] On this latter theme, see L Davidoff and C Hall, *Family Fortunes: Men and Women of the English Middle Class 1780–1850* (London, revised edition, 2002), p.219

[44] DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812

[45] DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812; DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812

[46] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812; DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812. Elizabeth Bennet was invited to play Loo, but preferred to read a book: J Austen, *Pride and Prejudice* (1813; Penguin edn 1972), p.83

[47] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812; DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812

[48] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812

[49] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812

[50] DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812

Hatsell's house. In playing host, Hatsell was signalling his support, as well as willingness to mend relations with the Leys. J H Ley noted that Hatsell was "very polite."[51] Hatsell also provided an opportunity for Fanny to be made the centre of attention: she demonstrated the expected social graces by singing from Handel's Messiah. According to Mary, "Fanny sang delightfully … and looked very genteel & well." Mary described Fanny as

> "a charming Girl perfectly good tempered and accomplish'd in a degree much beyond the generallity of young Women so as to be perfectly equal to any Society or set of People of any Rank."[52]

On 4 February, Fanny was confident enough to close off the other avenue which she had previously kept open, as she "finally refused" Brooksbank. That evening, Fanny went with Mary and William to the opera. The freedom with which Fanny was able to attend social events with the Leys confirmed that she had parental blessing. Fanny's mother was said to be "delighted, & only wishes her younger Days to come once again, that she might have such a husband."[53] The evening did not go as well as previous social encounters in William's view:

> "some how or other, I was not very well pleased with her behaviour that Eve[nin]g—rather heighty lighty, as the saying is—and I found it struck Mary the same."

However, Fanny subsequently told Mary of her meeting with Brooksbank, and William acknowledged that "perhaps some awkwardness & absentness may have been from this bearing on her mind—& having to decide upon it."[54]

A dinner at St Margaret Street planned for Saturday 8 February was postponed because Lady Frances and her daughter were ill, but it was agreed that Fanny would go again to the opera with William, this time with Mary's husband acting as chaperone while Mary stayed with Lady Frances. William recorded that Fanny "had taken some pains in adorning her person, & really looked decent enough, & endeavoured to be very agreeable." In William's view at least, they were able to make light of the issue that had blighted their previous encounter: "We talked & laughed a good deal ab[ou]t old B[rooksban]k."[55]

The next day, Fanny visited Hatsell in Cotton Garden and called on the Leys in St Margaret Street afterwards. This was ostensibly "to take home Mary", but Fanny also went to see William's uncle "& sat with him a little." Ley "was very polite, & appeared pleased with the visit." Afterwards, Ley told William that "he

[51] DHC, 63/2/11/17, J H Ley to Henry Ley, 3 Feb. 1812
[52] DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812
[53] DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812
[54] DHC, 63/2/11/17, William Ley to Henry Ley, 7 Feb. 1812
[55] DHC, 63/2/11/17, William Ley to Henry Ley, 10 Feb. 1812

thought her a very nice looking girl."[56]

"At sixes & sevens": William's indecision

William noted on 1 February that it was "pretty evident … that the Lady is to be had at this time, as far as She herself is concerned in the disposal of her own affections & person."[57] William's affection for Fanny was growing. William told Mary that "he now felt rather anxious to be with her" and that he "rather felt a pleasure" in Fanny's company.[58] William observed to his parents that Fanny was often anxious, but

> "I have no doubt that change of situation & being more contented & happy w[oul]d make her more animated & cheerful & greatly improve her."[59]

After the dinner at Hatsell's house, he remarked to his parents that "There really is no harm in her."[60] These were somewhat qualified assessments, as he himself admitted:

> "altho' I do not pretend to be in love, yet I will do her the justice to say, that altogether she has sufficient attraction about, to make me rather feel pleasure in her society than otherwise."[61]

He admitted that he was "spoilt by the notice of some pretty Ladies heretofore", and he also had reservations about her appearance on occasions:

> "if I had the dressing the Lady with some good advice, some better stays & fewer Petticoats—it would be more than passable."[62]

William was keen to separate his personal feelings from the professional benefits that were in prospect and to obtain his father's opinion "*unbiased* by *the advantages to be derived from the connection*." He wanted to know whether his father "*could love &* feel pleasure in having her one of your Family."[63] A letter William had received from his father had evidently been supportive, but left the ultimate decision to him, which William found frustrating:

> "I wish you had expressed rather a more decided opinion … I know very well it must chiefly depend upon myself—but then in such a case collateral circumstances have great Weight."[64]

On 3 February, he confided to his father:

[56] DHC, 63/2/11/17, William Ley to Henry Ley, 10 Feb. 1812
[57] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812
[58] DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812
[59] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812
[60] DHC, 63/2/11/17, William Ley to Henry Ley, 10 Feb. 1812
[61] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812
[62] DHC, 63/2/11/17, William Ley to Henry Ley, 10 Feb. 1812
[63] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812
[64] DHC, 63/2/11/17, William Ley to Henry Ley, 7 Feb. 1812

> "I am quite at sixes & sevens what to decide—I hate to be hurried to do a thing my mind is not satisfied on—& yet it may be foolish to lose it."[65]

On 7 February, he suggested that he found the pressure for a decision "very unpleasant altogether."[66] William intended to wait until after a planned visit to his family in Devon in mid-February: "all things considered it will be better perhaps that I sh[oul]d make a little excursion for a fortnight."[67]

"A proposition has been made": the marriage proposal and its immediate aftermath

William's hesitation was understandable. Although he had known Fanny for some time, and met her in the course of 1811, their courtship had been comprised of no more than half a dozen social encounters, each at least in part in the company of other family members. However, the matter was brought to a head quicker than he envisaged, and the women in both families played a decisive role. Mary told her parents on 3 February:

> "I have certainly been a main spring, and hope I shall in the end have essentially forwarded the good fortunes & happiness of dearest William who I love as affect[tion]ately as it is possible for one person to love another."[68]

On 11 February, Mary and Fanny had what William termed "some interesting conversation."[69] It seems likely that Fanny held out a favourable prospect for William's career in the House if a decision could be taken soon. On the basis of that meeting, Mary, J H Ley and Lady Frances persuaded William "not to hesitate about declaring myself at once"—to proceed with "an immediate avowal", rather than delaying until "I might have known my mind better as to her personally, whether I c[oul]d like her sufficiently."[70]

William was persuaded to write a letter to Fanny containing a proposal of marriage, which he entrusted to Mary. At the end of "a day big with events", on 13 February, William wrote to his father:

> "I must reserve particulars 'till we meet on Sunday—suffice it now to say, that a proposition has been made, in an interview with Mrs Harris this Mo[rnin]g who after a conversation which she deemed highly favourable delivered a Letter, written by myself, to the Party."

The letter was received "with the greatest agitation, & in the most favourable

[65] DHC, 63/2/11/17, William Ley to Henry Ley, 3 Feb. 1812

[66] DHC, 63/2/11/17, William Ley to Henry Ley, 7 Feb. 1812

[67] DHC, 63/2/11/17, William Ley to Henry Ley, 1 Feb. 1812; DHC, 63/2/11/17, William Ley to Henry Ley, 7 Feb. 1812; DHC, 63/2/11/17, William Ley to Henry Ley, 12 Feb. 1812

[68] DHC, 63/2/11/17, Mary Harris to Henry and Mary Ley, 3 Feb. 1812

[69] DHC, 63/2/11/17, William Ley to Henry Ley, 12 Feb. 1812

[70] DHC, 2741M/FC9/6a–6c, William Ley to revd Henry Ley, 24 Mar. 1812

manner."[71] William enclosed a copy of the letter to his father and wrote "I trust you do approve it—it is now too late to recall it." His description of his own feelings reflected how his own reservations had only partially been overcome:

> "I am happy in assuring you, that as far as I can judge of myself, altho' under some perturbation, I do not feel any sorrow or repugnance at the step we have taken."[72]

With William travelling as planned, it was left to J H Ley to lead negotiations with Hatsell about the professional consequences of the engagement.

Hatsell prepared for those negotiations in characteristic fashion by clearing his lines with the Speaker. Hatsell informed Abbot on Saturday 15 February of William's offer of marriage to Fanny. Hatsell explained that his only doubt about the proposed match was William "having no profession or situation in Life." Hatsell told Abbot that he would not appoint William as Second Clerk Assistant even if Ley were to retire, adhering to his previous offer to allow Abbot to nominate someone to any vacancy. Abbot responded with a remarkably generous offer:

> "I desired Mr Hatsell to consider himself as relieved by me so that no previous Engagement to me should stand in the way of his providing at once for his Niece's marriage."[73]

Abbot was confirming what the Leys expected—that ties of family would be accepted as taking priority. Had Hatsell accepted this offer, the expectations shared by Fanny and the Leys would have been fulfilled, and the marriage negotiations might have proceeded smoothly.

However, Hatsell "*positively* refused"; he would "not be relieved" of his former promise to Abbot.[74] Hatsell had several reasons for this stance. An exercise of his patronage to benefit William in these circumstances would be "unfit upon principle." Hatsell also thought "that no such unqualified person" should be appointed directly as a table clerk. Based on his exchanges with Abbot the previous July, he also knew that Abbot would continue to harbour concerns about two brothers serving together at the table.[75]

Hatsell had his own alternative plan which he thought would serve William well, telling Abbot of his plan to appoint William as "a supernumerary Clerk" to supply any "occasional absence" of the table clerks, with the right of succession to the vacancy after next at the table. Hatsell proposed that William's training post be awarded a salary of £500, to be paid initially by Hatsell and Ley from

[71] DHC, 63/2/11/17, William Ley to Henry Ley, 13 Feb. 1812
[72] DHC, 63/2/11/17, William Ley to Henry Ley, 13 Feb. 1812
[73] TNA, PRO 30/9/35, fo 119; "Sun Shone", pp.123–124
[74] TNA, PRO 30/9/35, fos 120, 89v
[75] TNA, PRO 30/9/35, fo 120; "Sun Shone", p.130

the income of the Clerk of the House which they shared.[76]

At the subsequent meeting with J H Ley, Hatsell suggested that "there were two things to be considered" in relation to "this great Affair"—"the Money and situation." He expected the financial terms to be settled between William's father and Fanny's. With regard to situation, Hatsell

> "thought that there would be no objection to the appointment of a supernumerary Clerk to learn his Business & to assist the Clerks at the Table to be paid £500 per annum out of the general fund of the Clerk before it was divided."

Hatsell also confirmed that William would stand second in succession to the table, that "the Speaker would have no objection to such a plan now" and that the offer of the nomination to the Speaker applied only to Abbot, and not to any subsequent Speaker.[77]

J H Ley probed various aspects of Hatsell's offer, including how it differed from the Leys' proposition in 1811. He asked about the possibility of William succeeding to the role of Clerk of Elections and Privileges when that post became vacant. This was an extremely lucrative post, especially in election years.[78] Hatsell "did not give a positive answer", but admitted that William "might have a Claim" and, more importantly, thought that there would not be the same objection if William, as supernumerary clerk, took on this post "as there would be to a person not connected with the Office."[79]

Much of the rest of the meeting was then spent discussing J H Ley's own prospects for advancement. Hatsell asked whether his uncle might retire:

> "I said I did not know of any such Intention at present, that he had great Confidence in me and that his going into the Office of a Morning was rather an amusement than not."

This answer hardly reflected well on Ley's commitment to his role. It also highlighted an issue that was to become of increasing importance—that Ley instinctively delegated matters to his nephew, rather than to Jeremiah Dyson as Clerk Assistant. J H Ley next asked Hatsell who he would appoint as Deputy Clerk if Ley did retire. Hatsell "said it would certainly be either Mr Dyson or myself." At this point, J H Ley passed on the substance of a conversation he had had the day before with Dyson, when, according to J H Ley, Dyson said "that he would rather be Cl[erk] Ass[istan]t with [£]2500 than be Deputy or Clerk

[76] TNA, PRO 30/9/35, fo 119

[77] DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812. This letter is undated. The meeting took place prior to or on the morning of Monday 17 February, when Hatsell reported the outcome to Abbot: TNA, PRO 30/9/35, fo 121

[78] "Sufficient", pp.96–97

[79] DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812

with £3500." J H Ley then went on:

> "I told him that I thought that Mr D: ought to have the place if he liked it, to which he agreed—but said that in case he did not like it, that I ought to have it and the Reversion of the Patent."[80]

J H Ley provided an account of the meeting to his father, also intended for William who was at the family home in Devon, alongside his own assessment. He suggested that, "Last Summer I think we should all have been glad to accept of such an arrangement." The new arrangement did not depend upon Ley's retirement, as had been the case with the 1811 proposals:

> "I think Mr H said that he saw no Reason why William's appointment should not take immediately even before Mr Ley's Resignation and the appointment of the new Clerk Assistant,—supposing that to be the case and if Mr Ley can continue two or three years longer the arrangement would be very advantageous."

It would be "quite impossible" to sustain his uncle's claim to make "the next appointment at the Table" against Hatsell and Abbot and, even if Ley could make his case, "it would be very disagreeable for all parties concerned." In those circumstances, J H Ley's advice to his father and brother was to "make a Virtue of necessity, and yield with as good a grace as possible." William would have "more than a nominal Office." He could look forward to an annual income of £500 from his supernumerary position, which would be combined with Fanny's annual income of £600. With additional contributions from his father and Fanny's, he could expect an annual income of £1,400 and "if that was not considered sufficient Mr Ley might give him an allowance of £200 or £300." He concluded:

> "I think by Mr Hatsell's behaviour he by no means objects but on the contrary likes the Match & I have no Doubt of great advantages arising from it and which will only be obtained by means of it. I think if they can get a clear Income of £1500 they may do very well at present, the ulterior advantages you can judge of as well as myself."

His advice to his father was "to come to London as soon as possible if you approve of the Business, to let it be concluded quickly." He noted a risk that Hatsell might change his mind, as his uncle "says now that he is quite surprized at Mr H['s] Consent, and [Hatsell] is trying to raise doubt about the propriety of having so many of one family in the same Office."[81]

"Our mutual wishes": the exchange of letters

The courtship of William and Fanny to the point when a proposal was made

[80] DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812

[81] DHC, 63/2/11/18, J H Ley to Henry Ley, 16/17 Feb. 1812

and accepted was unusually short, and at no time had they been apart for any length of time. The period of separation when William was in Devon enabled their relationship to enter a phase marked by correspondence. This was accepted at the time as a distinct stage of courtship, albeit taking place unusually in the case of William and Fanny after the marriage proposal.[82] Fanny wrote to William soon after his arrival in Devon, to which he replied on 24 February; she then wrote a further letter to which he replied on 3 March.[83] Fanny's letters do not survive, but a copy of William's first letter and three drafts of the second do. William's letters were respectful and formal, rather than intimate and emotional. In his first letter, William said that the receipt of Fanny's first letter gave William "the sincerest and most heartfelt Pleasure." Fanny's references "to the little topics of conversation for our amusement" brought "to my Mind the Pleasure I have always felt in your Society, which has at all times made the most pleasing Impression." Fanny's letter evidently reported that Fanny's friends and family approved the match:

> "It is indeed most gratifying to me to perceive the kind Interest which our Friends have taken, to promote, what I trust you will permit me to call, the Object of our mutual wishes, and I feel much flattered by the favorable Manner in which my Pretensions have been received by your Family."

William was also able to report that "I met with the kindest Reception on my arrival here from my Father & Mother, and I can assure you, you have already made great way in gaining their Esteem and Affection." Importantly, William then went on to concede how far Fanny had driven forward the match:

> "I am at a loss to express my Sense of Obligation & Gratitude for the honourable and decided part which you have taken in my Favor, and I contemplate with infinite satisfaction, what I trust will be the result of your favorable Opinion."

William's reply also suggested that Fanny had touched upon her uncle's stance on William's prospects, because William confirmed that he had received accounts from his brother and Mary, "from which I am willing to flatter myself, that every seeming Obstacle may in due time be removed."[84]

Fanny then wrote again to William, a letter to which he replied on 3 March. Her letter evidently conveyed her continuing concerns, as William replied:

"I trust the time will soon arrive when all our present Anxiety will subside &

[82] Holloway, *Game of Love*, pp.17, 44–53, 67

[83] DHC, 63/2/11/17, copy of William Ley to Fanny Hatsell, 24 Feb. 1812; DHC, 63/2/11/17, drafts of William Ley to Fanny Hatsell, 3 Mar. 1812

[84] DHC, 63/2/11/17, copy of William Ley to Fanny Hatsell, 24 Feb. 1812

our Minds become free from every ~~Anxiety~~ Apprehension."[85]

He went on:

"I hope that you do not perplex yourself with imagining Difficulties, whatever these may be, which arose in the Minds of those, to whose judgement we are always bound to pay due deference & respect."

William remained confident "that some means may be found for surmounting them, & that the[y] cannot ultimately frustrate our wishes."[86]

Fanny's letter evidently reported on a further gathering that had taken place at the Ley residence at Westminster, where Fanny had sung: "I am very glad that you were pleased with your day in St Margaret Street, & that my Uncle was so gay & polite." In the first draft of his letter, William wrote that his uncle was "a great singer, & I hope he joined in the Concert." In the subsequent draft, he moderated his expectations of his aging uncle: "He is a great singer himself sometimes & I dare say he was much delighted with your Exertions." It is evident, however, that Fanny was not alone in singing on this occasion, as William—perhaps with a hint of humour at his brother's expense—wrote that he did not doubt that the concert "was very brilliant, as John filled so conspicuous a part."[87]

"Ushered into the presence of the Bashaw": William's meeting with Hatsell

William arrived back in London on 10 March. He first visited Mary, and found her "very unwell." After then visiting the family in St Margaret Street, he noted a summons to see Hatsell:

"The Great Man had expressed himself anxious for my return, & I found a Note from him desiring to see me at 11 o'clock—the day after my arrival."

Before that, William met Fanny, who was "considerably agitated—but in a manner very flattering to my vanity—very glad to see me returned." They discussed how to approach the meeting with her uncle:

"We then talked about the proposed interview with Mr H—She disapproved about the Supernumerary & approved my opinion in demurring to the proposition, without a promise of next succession, & she entirely agreed with me on that Point—She was afraid I might think the mutiny rather tremendous—& hoped I w[oul]d preserve the same spirited tour & not mind it."[88]

As part of her "mutiny" against her uncle, Fanny compared the supernumerary

[85] DHC, 63/2/11/17, third draft of William Ley to Fanny Hatsell, 3 Mar. 1812; deletion in original

[86] DHC, 63/2/11/17, third draft of William Ley to Fanny Hatsell, 3 Mar. 1812

[87] DHC, 63/2/11/17, first and second drafts of William Ley to Fanny Hatsell, 3 Mar. 1812

[88] DHC, 63/2/11/18, William Ley to Henry Ley, 11 Mar. 1812

role which William was being offered "to that of a Candle Snuffer."[89] Ley had also told William "he wants no Assistant, or Supernumerary."[90] William and Fanny "parted mutually satisfied."[91]

William's account of his subsequent meeting began:

> "I then proceeded to C[otton] Garden—where I was immediately ushered into the presence of the *Bashaw* & rec[eive]d very cordially, & with a degree of familiarity which meant to be civil."[92]

Hatsell indicated that "he approved very much" of the match and "wished to promote it all in his power." However, "the difficulty was the want of profession & situation in life." Hatsell "regretted my not having been entered at the Temple so as to have a nominal Profession."[93] William then made reference to his attempts to study the conduct of business of the House cited in a previous article.[94] Hatsell stressed

> "That it was not at all necessary to the situation to have studied the law—that it w[oul]d not have signified if I had never opened a law book—as long as it could be asserted that I was in the profession—which would be an answer to all inquiries."

Hatsell "thought even now it w[oul]d be best for me to be entered at the Temple, which need be no expence, & the only trouble to dine twice a Year in the Hall." William was, at least in his letter to his father, dismissive of this proposal:

> "This upon the face of it is nonsense—& the truth of it is that he is vexed at his own conduct in giving away the patronage, is glad to catch hold of any thing to lessen his own delinquency."[95]

The discussion then turned to Hatsell's proposal for William to assume a supernumerary position, to which William "stated my objections fully." Hatsell responded by pointing out the benefits, as a chance of "introducing my name" and giving "me an opportunity to be about the House." William conceded that the supernumerary position would be "very desirable with a promise of the next succession" to a place at the table, but without it "the case was quite altered—as it would be very unpleasant to have a fresh person placed at the

[89] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

[90] DHC, 63/2/11/18, William Ley to Henry Ley, 12 Mar. 1812

[91] DHC, 63/2/11/18, William Ley to Henry Ley, 11 Mar. 1812

[92] DHC, 63/2/11/18, William Ley to Henry Ley, 11 Mar. 1812. The literal meaning of Bashaw is a man of high rank or office, but the figurative use of the term here also conveys pomposity.

[93] DHC, 63/2/11/18, William Ley to Henry Ley, 11 Mar. 1812

[94] "Sun Shone", p.128

[95] DHC, 63/2/11/18, William Ley to Henry Ley, 11 Mar. 1812

Table—& I continue on Supernumerary—which I c[oul]d not submit to."[96]

Hatsell then changed tack, suggesting that the post would be closely linked to assisting his uncle, so that William could leave the post if Ley retired and someone else was appointed to the table ahead of him. Hatsell noted that Ley would become Clerk in the event of Hatsell's

> "own demise, in which event the Patent w[oul]d revert to Mr L. in both of which cases it w[oul]d be a great advantage to me, to have it known That I had been a Candidate, & was actually prepared."

William asked Hatsell whether there was any prospect of the Speaker "waiving his claim, on seeing that it was the wanted effect of himself & my Uncle, & considering the nearness of the connection." Hatsell did not admit at this time that Abbot had already made this very offer, and that Hatsell had not accepted it. William expressed the hope that any difference about future appointments would "not impede my wishes about Miss H, that was my principal Object."[97]

"Throw cold water": the marriage in doubt

On the evening of William's meeting with Hatsell, Fanny went to Cotton Garden for dinner. There, she initially met Mary Barton, the widow of Hatsell's stepson and now Hatsell's chatelaine.[98] Mrs Barton told her that Hatsell "had expressed himself very pleased with" William and the manner in which he had conducted himself, but Hatsell had restated "that the promise to the Speaker was irrevocable, & that he did not see the chance" of William getting the next vacancy at the table. At that point, Mary Barton "appeared to throw cold water" on the idea of the marriage without the next succession at the table. Fanny's mood was not improved when she found that Hatsell had another guest for dinner so that "not a word was said" by Hatsell to Fanny "which made her more nervous & alarmed—& she was much troubled."[99]

Mary Harris unsurprisingly found Fanny "in a melancholy mood" when they met the next day. William suggested to Fanny that her fears were "groundless", as he was more optimistic about the outcome of the meeting. Fanny's reply was very revealing about her own personality:

> "She s[ai]d she was very anxious & very fearful, & her fears always predominated—insomuch that she had almost thought it w[oul]d be best not to see me any more."

She also said that her parents "were much disappointed" and "had begun to despond on hearing there was no chance of the situation." William and Mary

[96] DHC, 63/2/11/18, William Ley to Henry Ley, 11 Mar. 1812
[97] DHC, 63/2/11/18, William Ley to Henry Ley, 11 Mar. 1812
[98] "Sun Shone", p.117
[99] DHC, 63/2/11/18, William Ley to Henry Ley, 12 Mar. 1812

then sought to cheer Fanny up:

> "We laughed & joked with her, & got her into Spirits & we parted the better for the interview, at least it relieved & undeceived her, & gave me a further proof of the strength of the hold I have in her affections."

At the same time, William did not deny the difficulties. He saw the proposal in a new light as the strategy agreed between him and Fanny of seeking to force Hatsell's hand came unstuck. They were now beginning to contemplate the possibility of proceeding to marriage without any role for William at the House of Commons, relying largely on Fanny's annual income of £600 and additional income to be provided by the Leys. William was concerned that this would be "but a bare maintenance."[100] He thought that "the great advantages w[oul]d be much diminished by the want of the place" and that it was "an important & ticklish time."[101]

The next day, William visited Fanny's parents in Spring Gardens. They stressed that the proposed match "made them very happy & they only regretted that there should be any obstacles to prevent it taking place, which they hoped w[oul]d be got over." At this point, Fanny entered, having just come from a meeting with Hatsell at Spring Gardens, and she was "much pleased with her interview with him." She had told him "all her fears" and he had "laughed at her very much, & s[ai]d he saw no reason for there being alteration, unless she had seen any person since the walk that she liked better."[102]

"His situation is quite Monstrous": the 14 March meeting

The task of squaring the circle between Hatsell's position and the hopes of William and Fanny now fell to J H Ley at a meeting with Hatsell on the morning of Saturday 14 March. William's brother came into the meeting with a clear-cut view, thinking that William did not wish "for the Lady without the Office." He had also taken his discussions with William as a justification for adopting "a high Tone." Having earlier proposed acceptance of Hatsell's offer of a supernumerary position as the best deal available in the circumstances, J H Ley decided to use the meeting to launch a full-frontal assault on Hatsell's approach to and involvement in the management of the Clerk's Department.[103]

J H Ley began the meeting by dismissing the idea of the supernumerary position, noting "that Mr Ley wanted no such person as mere assistance to

[100] DHC, 63/2/11/18, William Ley to Henry Ley, 13 Mar. 1812. At the time, £400 to £500 a year was seen as sufficient to maintain a family "in a genteel manner" (Gayford, *Constable in Love*, p.10)

[101] DHC, 63/2/11/18, William Ley to Henry Ley, 12 Mar. 1812

[102] DHC, 63/2/11/18, William Ley to Henry Ley, 13 Mar. 1812

[103] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

himself, and moreover that he had no Thoughts of making any Vacancy by a Resignation." J H Ley believed that it was important to set this out immediately so as not to "give any grounds to make Mr L retire, on his own Confession of inability", particularly if the immediate beneficiary of any retirement would be "a Stranger", namely Abbot's nominee for the role of Second Clerk Assistant.[104] According to Hatsell's later account to Abbot, J H Ley still "talked much of his Uncle's *Right* to all situations at The Table—which Mr H. had as peremptorily *denied*."[105] This led to J H Ley claiming that "Mr Ley could not be considered in the light of a common Deputy." Hatsell replied "in a sort of sneer", saying "why then I suppose, he is an uncommon Deputy."[106] In William's later judgment, this remark provoked his brother, or "first set him off."[107] The Second Clerk Assistant claimed "that Mr Ley altho' naturally called Deputy was to all intents & purposes to be considered as Clerk, and that he had the undoubted right to all the Patronage whilst there and to making arrangements for his 'acting'." J H Ley then claimed that the provisions of the bill that had just passed the Commons prohibiting the appointment of a Deputy Clerk once Hatsell and Ley's patent rights expired cast doubt on the propriety of Hatsell's approach:

> "that it was the opinion of the Legislature by the late Act that had been passed that it was improper that the Clerk should appoint a Deputy."[108]

They then discussed the money that would be available to the young couple if William did not have a place in the House of Commons. J H Ley indicated that the most that the Ley family would be willing to provide towards the marriage settlement would be £5,000, the same amount provided to Mary on her marriage and half the amount provided to J H Ley on his.[109] This statement was hardly designed to endear him to Hatsell, given the older man's equal generosity to his nieces and nephew. J H Ley went on to say that it would be quite wrong to expect Ley to spend a penny more: "I believe it would be contrary to his Intentions to fritter away his fortune into small Shares which would be the sure means of annihilating the whole of it in a short period." J H Ley subsequently told his father:

> "I conceived it proper to hold this Language, so if Mr H wished the thing he could exert himself to find means for bringing it about, and told him it

[104] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

[105] TNA, PRO 30/9/35, fo. 129

[106] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

[107] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (2)

[108] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812. On the provisions and the passage of the Bill, see "Sun Shone", pp.131–137

[109] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812; DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3)

> appeared a most extraordinary thing that when his niece & Mr Ley's nephew were desirous of forming a connection that no situation could be found for them."[110]

Hatsell and J H Ley then agreed that the young couple's income would be barely adequate without a position at the House.[111] Hatsell expressed regret "that he had laughed her out of her fears & assured her all would do very well."[112] He said "I am sorry that I encouraged Fanny so much yesterday."[113] He would "now go, and talk to her in a different way—& tell her she had better think no more of it."[114] J H Ley did not demur from this. Indeed, he suggested that Hatsell "would do perfectly right" in advising her in that way.[115]

It is evident that both parties were furious by the end of the meeting. Mary realised that "they had both been very high."[116] As William noted afterwards, J H Ley was "apt … to be hasty & at times violent" in his temper, and "he certainly picked on his wrong Man, as Mr H. was the last man to take it quietly." Hatsell was, according to Mrs Barton "hurt & agitated."[117] J H Ley returned to St Margaret Street "violently agitated",[118] and seemingly remained in denial about how studiously offensive his approach had been, claiming that he had said "nothing more strong" than was merited. Any offence was, in his views, Hatsell's fault:

> "If Mr H chooses to take it amiss it is of no consequence, but he is a man that does like rather to talk with those who will coincide in anything he says than assert an Opinion of their own."
>
> He went on:
>
> "His Situation is quite monstrous, and he had best retain quietly what he has, than attempt to deprive others of their just & legitimate Rights and assume them to himself."

J H Ley suggested that, if Hatsell made the dispute public, "he shall not hear a little, and I have no Doubt of so representing the case to my friends that he will not like it." In concluding his letter to his father, he wrote "In short, my

[110] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

[111] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3); DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

[112] DHC, 63/2/11/18, William Ley to Henry Ley, 14 Mar. 1812

[113] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3)

[114] DHC, 63/2/11/18, William Ley to Henry Ley, 14 Mar. 1812

[115] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

[116] DHC, 63/2/11/18, Mary Harris to Henry Ley, 16 Mar. 1812

[117] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3)

[118] DHC, 63/2/11/18, Mary Harris to Henry Ley, 16 Mar. 1812

advice is to be firm, and not frightened."[119]

"Destroy the comfort of my official Life": the aftermath

When J H Ley returned from Cotton Garden, William was immediately "in great distress of mind", sensing from "the state of agitation" of his brother "that much irritation must have passed on both sides."[120] William wrote to his father to tell him that the meeting "has terminated in a manner very different to my & I think your wishes." Having himself worked hard to flatter Hatsell, William realised that his brother had not credited Hatsell "for so much liberality as he thought himself entitled to", which was "just", but "perhaps … unwise."[121] William was especially distraught to learn that Hatsell had said that "he s[houl]d go to Fanny & advise her very differently" to the advice he had previously tendered.[122] As William saw Hatsell ride by, William supposed that Hatsell was heading "to decide the business with Miss H—I need not add that I am perplexed & very nervous on the occasion."[123]

In fact, Hatsell's first recorded meeting afterwards was not with Fanny, but with Abbot, designed to pre-empt J H Ley's threats to escalate the dispute. Hatsell executed an almost complete about-turn in his position. In mid-February, he had sought and secured Abbot's blessing for the idea that William could be a supernumerary clerk, able to act as a table clerk for the occasional absence of any of the table clerks. Hatsell now invited the Speaker to "declare *my* disapprobation of introducing the young man to the Table upon any occasional absence of Mr Ley." Abbot replied that Ley

> "seemed to misconceive his Situation, if he supposed he could absent himself, & continue to be Deputy … if old Ley withdrew, there must be some other person at the Table who should be the legal Deputy."[124]

On the next day, Sunday, Hatsell went to see Abbot after church "to know my determination." Hatsell's framing made the outcome predictable, but Abbot was especially forthright, telling Hatsell

> "That *the arrangement proposed would destroy the comfort of my Official Life*, & in my opinion equally destroy that of any person who should succeed me; for *upon principle, two of a family* at the Table was objectionable; & upon *personal* grounds the objection would be much encreased in the present

[119] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

[120] DHC, 63/2/11/18, Mary Harris to Henry Ley, 16 Mar. 1812; DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (1)

[121] DHC, 63/2/11/18, William Ley to Henry Ley, 14 Mar. 1812

[122] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (1)

[123] DHC, 63/2/11/18, William Ley to Henry Ley, 14 Mar. 1812

[124] TNA PRO 30/9/35, fo 129

circumstances."[125]

The Speaker also restated his objections to Ley stepping aside: "t*he Ho:would not suffer the Deputy of a Deputy*." Finally, Abbot referred to "the inconvenience & impropriety of the proposed introduction at this time of a Super-numerary Clerk." Hatsell happily embraced the Speaker's rejection, which he had done much to bring about: "To all this *Mr H. assented,* & said upon the whole *He was not sorry for my determination*."[126] Hatsell then mentioned another possible plan to aid William, namely the idea of him being appointed as Clerk of Elections and Privileges when a vacancy arose, the idea that J H Ley had mentioned in mid-February. Abbot replied "that any benefit to him, except by a Seat at the Table, would give me very great pleasure."[127]

On Saturday evening, William had written to Hatsell to state how "distressed" he was at the conversation that had passed, and asking to meet Hatsell. He soon received "a civil note", suggesting that William call on Monday morning.[128] On Sunday morning, William first met his uncle, who said he "would willingly resign immediately" to make way for William, but that he "had no intention to resign, for the purpose of promoting the interests of a Stranger." Instead, he would stay on, hoping that Hatsell might pre-decease him. When William asked whether he should persist with the match, Ley replied:

> "why I would not have you by any means give it up—I think the connection good & 600 a y[ea]r is a very good thing & I would advise you to keep her tight."

Later that day, William met Fanny, who, he was relieved to discover, "was in very good spirits."[129] Ahead of Fanny's planned dinner engagement with Hatsell, Mary and William updated her on the previous day's events. Fanny assured them that "she should be very steady in resisting the idea of giving it up."[130] William supported her to "be very firm with her Uncle & not give up her point in the least."[131]

When Fanny went to Cotton Garden, Hatsell was "very kind to her indeed." He admitted that he had been "much hurt" by the meeting on Saturday and "many things that were said." He confirmed that he had on Saturday expressed an intention to "desire her to give it up", but now affirmed "that he had no

[125] TNA PRO 30/9/35, fo 130

[126] TNA PRO 30/9/35, fo 130

[127] TNA PRO 30/9/35, fos 130, 129v

[128] DHC, 63/2/11/18, Mary Harris to Henry Ley, 16 Mar. 1812.; DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (1)

[129] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (1)

[130] DHC, 63/2/11/18, Mary Harris to Henry Ley, 16 Mar. 1812

[131] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (1)

intention of not consulting their wishes, & feelings." He liked William "very much" and thought that "his manners were mild, & pleasing." In contrast, he would refuse to discuss the matter further with J H Ley, "as they did not understand each other so well." Hatsell emphasised that he had "engaged his interest to *Mr Abbot* which could not be undone." Hatsell affirmed "That he did not persuade her to give it up, as he thought it would be a connection for her happiness." He said that he expected that an agreement could be reached with William's father and Mr Ley to "make up their Income for the present & that they must live prudently at first." Finally, Hatsell insisted that William "must be called to the Temple."[132]

All in all, "Fanny was very much pleased, & said nothing could be kinder." Mary returned from the House of Commons to Spring Gardens with Fanny that evening to get her account of the meeting, and passed it on to William the following morning. Mary took comfort in the unease which the whole episode had engendered in William, as it confirmed the strength of his feelings for Fanny: "William is really attached to her sufficiently to feel very much distressed at the thoughts of its being off."[133]

"We are left in the dark": the second meeting between Hatsell and William

When William went to see Hatsell on Monday morning, he found the Clerk "excessively civil." Hatsell received him "cordially", apologising for "any uneasiness" arising from Saturday's meeting and for what he had said at the close:

> "I am very sorry that any thing sh[oul]d have fallen from me, to Mr John, to make you think I intended to advise Fanny to give the thing up—far from it—indeed I should never have thought of doing so without apprizing you both of my opinion."

At the same time, Hatsell left William in no doubt that he was "highly displeased with John." He also said that "Mr John and I did not agree on other Subjects, but I wish to forget the conversation." When William attempted to defend his brother, "he cut me short", making clear that all communication on the subject would have to be with family members other than J H Ley.[134]

Hatsell then told William about his meetings with Abbot, alluding to concerns raised by Abbot of which Hatsell "was not before aware." William tried to probe a little further, asking whether the concerns related to "me personally, to my education, & the way of life I may be supposed to have been leading."

[132] DHC, 63/2/11/18, Mary Harris to Henry Ley, 16 Mar. 1812

[133] DHC, 63/2/11/18, Mary Harris to Henry Ley, 16 Mar. 1812

[134] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (2); DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3)

Hatsell denied this was the case, saying "Not at all, on the contrary, from my representation of you to him, he did not object to that." William next asked whether these objections arose from Hatsell's wish not to break any promise made in relation to the nomination of the next table vacancy to someone chosen by Abbot. In reply, Hatsell acknowledged Abbot's offer of 15 February: "No—indeed he so far spared me That he should not think of holding me to that Promise."[135]

Hatsell said that Abbot had raised "more material difficulties, which I was not before aware of—& which I can't tell you of." Moreover, Hatsell said that he had asked Abbot whether he could pass on those reasons to Ley, at which Abbot "hesitated & then s[ai]d No, I think you had better not." Hatsell remarked that "I don't see how his objections can be removed." Hatsell was almost certainly alluding to Abbot's statement the day before that the appointment of a second Ley brother as a table clerk "*would destroy the comfort of my Official Life*." Without permission from Abbot, Hatsell was placed in the invidious position of being unable to share the basis for Abbot's position with William, and William was placed in the equally unenviable position of being unable to know the barrier to his nomination. William replied:

> "that it certainly was a very great disappointment The idea of me not succeeding to the Table—& that it would be so to all family—that that would be a situation I would feel proud of placing Miss H. in & which I conceived w[oul]d be highly gratifying to the feelings of the Families on both sides."

Hatsell tried to be encouraging by mooting possibilities that might change the situation, including Abbot ceasing to be Speaker, although they agreed that was "not probable." Hatsell urged the Leys to let the matter lie in the absence of a vacancy: "it is unnecessary agitating the Question more—especially as it may create ill blood."[136]

Notwithstanding what he had said on Saturday, Hatsell was keen to promote the idea that the match could take place independently of any appointment to the table. He assured William that he would be his "friend" and held out the prospect of some other appointment—"There are many good things to be had"—which he and Ley could arrange. This was probably an allusion to the possibility of William becoming Clerk of Elections and Privileges in the event of any vacancy, a matter that had been raised by William's brother in February, and by Hatsell with Abbot. Hatsell indicated that the exact financial support available to the couple could be discussed between the Hatsells and William's father when he came to town after Easter. However, Hatsell emphasised that no

[135] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (2); DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3)

[136] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3)

more money could be expected from the Hatsells; any remaining fortune held by James would be needed to support his wife as a widow. He invited William and Fanny to "calculate what you think you can live on comfortably", stating that Fanny would be satisfied with an establishment equivalent to that of Mary Harris, and asking William to ascertain its cost.[137]

William said that he was "most unwilling to relinquish my claims to Miss H", but questioned whether "any adequate provision could be made" according with Fanny's "feelings as well as my own." Both of them had "been brought up, & had continued to live to this day, in the most liberal & handsome manner" and "any considerable curtailment" would not "tend to the happiness of the Parties." They agreed that it was best to consider the whole matter as "in abeyance" until William's father came to London. Hatsell told William that "he saw no reason for despairing", again hinting at his willingness to take further steps to support them.[138]

William rightly observed to his father that "the ground of *objection* to my appointment *is changed*." Hatsell now conceded that the Speaker had been willing not to hold Hatsell to his promise, but had told William "that there are *Difficulties* in the *Sp[eake]r's* mind as to future arrangements at the Table, which he does not see can be got rid of, whilst he is there." Not knowing what the basis of the objection was, William was puzzled as to why Hatsell was taking the Speaker's "interference …very quietly." He saw it as a case of "giving away, to an innovator, a piece of property as much their [Hatsell and Ley's] right as any thing they possess!!" To make matters worse, "we are left in the dark as to what those obstacles are!"

William took some comfort from Hatsell's non-specific offer to do more, and acknowledged that "there has been every facility & kindness shown." Although William felt that Hatsell's position had "*contradictions*", he also concurred with Hatsell's judgment that little was to be gained by pursuing an appointment at the table:

> "for altho' it may be the matter will soon be forgotten, yet ill blood of this sort once raised, is seldom forgotten entirely & if the thing now takes place, it may prevent that harmony which can alone contribute to happiness in families."[139]

"Room for meditation": the period of abeyance

After concluding his account of the meeting with Hatsell, William sought his

[137] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (2); DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3)

[138] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3)

[139] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (2)

father's opinion on the dilemma he faced. He could pursue the match "under the distant expectations held out, & the probable Income that may be mustered." However, he also believed that he could "take advantage" of the new situation to adopt "the mode of retreat" when he felt this was now possible "without acting dishonourably." William felt that rescinding the proposal of marriage would not be dishonourable because "no Situation" was now on offer, and the proposal had been founded on "the *Prospect* I had of one." He confessed that his feelings towards Fanny and the professional prospects that had seem to be held out were "very much connected—& that the case w[oul]d be altered … if the Situation could not be had." He admitted that his approach would be different if his fiancée was "a girl I was *much* in love with"; if there were "strong feelings of that sort, one is heedless of *all difficulties*." However,

> "where these sentiments are not so strong, & when there is a lack of *handsome* maintenance, why then it strikes me that there is room for meditation before you embark on the Service."[140]

His father subsequently endorsed this approach, advising William via a letter to his eldest brother that

> "if he is precluded from every Chance … of acquiring adequate Situation, perhaps he has a right to pause, upon the ground, that the other object may become impracticable, from the want of means to obtain it with comfort for either of the Parties."[141]

William and Fanny continued to meet, albeit without the frequency of the initial phase of their courtship. William accepted an invitation to dinner with James Hatsell and his family and some friends on 19 March. The next day William reported that "it went off very well, & F[ann]y behaved very well & I think looked so—Played & sang after dinner."[142] On 22 March, Fanny went to dinner at St Margaret Street. Fanny was seated next to J H Ley, and William was at the far end of the table, but thought that "the y[oun]g Lady looked & conducted herself quite to my Mind."[143] On 27 March, Good Friday, William and Fanny went for a walk together.[144] On 30 March, William and his sister again dined with Fanny and her parents. The following day, they went with others in Hatsell's coach to visit some Panoramas, and later played cards with some friends.[145]

William used these encounters and conversations with others to re-assess his

[140] DHC, 63/2/11/18, William Ley to Henry Ley, 16 Mar. 1812 (3)
[141] DHC, 2741M/FC9/2c, draft of Henry Ley to J H Ley, 23 Mar. 1812
[142] DHC, 2741M/FC9/3a, William Ley to Henry Ley, 20 Mar. 1812
[143] DHC, 2741M/FC9/5a–5d, William Ley to Henry Ley, 22 Mar. 1812
[144] DHC, 2741M/FC9/8a–8b, William Ley to Henry Ley, 28 Mar. 1812
[145] DHC, 2741M/FC9/10a–10b, William Ley to Henry Ley, 1 Apr. 1812

prospective marriage partner. He looked forward to the dinner on 19 March because he thought it right to see Fanny "in different situations with other people, as it aids & matures ones Judgement."[146] He secured an invitation for the dinner on 22 March for his friend Templer, who was often his hunting companion, so that Templer could "survey the points, & give me his opinion, as to the movements & actions of the *Filly*."[147] On 24 March, he met Fanny's sister, Penelope, her husband and their son, Littleton Powis, born in December 1810. William noted that the infant was "thinner than you can form a conception of, & appears afflicted with many a complaint." This led him to some dark reflections on the health of his own prospective progeny. He confided to his father:

> "I trust that the Ley blood & stamina would do wonders in improving the breed—but more I believe depends on the Dam than the Sire."[148]

A few days later he discovered that Fanny was "4 Months *older*" than him and reflected: "It w[oul]d be better were she as many years younger—she certainly *looks* such."[149] After the meetings on 31 March, William passed his judgmental eye over Fanny's dress sense and demeanour:

> "really last night she looked very well—a great deal depends on dress—which she sometimes hits off—but not often—but having the *capability*, hereafter, if it takes place, it will be my fault if that is ever neglected—& certainly with good advice & taste on such subjects—& being made contented & happy great improvement may be expected."[150]

William did have the decency to acknowledge the extraordinary ordeal that Fanny was facing. Writing to his father after the dinner on 22 March, when Fanny was seated between J H Ley and Templer, William noted:

> "I have more reconciled, have felt more pleasure & satisfaction in the object than I have done before—indeed I defy any person, male or female, of what description soever, to have conducted themselves, with more decency, gentlewomanness, propriety, & good sense than she did today."

He acknowledged how difficult the dinner was for Fanny, who "must have been conscious that most of the Party knew the state of the case, & that their observation was on her." He went on:

> "whatever may be the termination, I shall always do her the justice to say that

[146] DHC, 2741M/FC9/1a, William Ley to Henry Ley, 19 Mar. 1812

[147] DHC, 2741M/FC9/3a, William Ley to Henry Ley, 20 Mar. 1812

[148] DHC, 2741M/FC9/7a–7b, William Ley to Henry Ley, 25 Mar. 1812; McKay, *Clerks*, p.57. In 1838, he changed his name to Littleton Hatsell-Powis. He was a barrister, but also held a clerkship between 1845 and 1853, possibly on a sinecure basis.

[149] DHC, 2741M/FC9/8a–8b, William Ley to Henry Ley, 28 Mar. 1812

[150] DHC, 2741M/FC9/10a–10b, William Ley to Henry Ley, 1 Apr. 1812

> in point of openness at first, steadiness after, & the advantages derived from a good education & good sense, she has proved herself eminently entitled to the respect & approbation of all those who have had an opportunity of judging her conduct."[151]

William was also aware of the changing attitudes of his family to the match, including his sister-in-law:

> "The tone is altered especially in her Ladyship, who now says she thinks I am a simpleton to think of doing it without the place &c—That her [Fanny's] fortune is nothing in itself, & that there is nothing in her personally to make such a sacrifice—without the other things."[152]

William was also beginning to wonder whether Hatsell was questioning the match. On 24 March, Fanny was invited by Hatsell to a dinner at his house at Cotton Garden with Viscount Sidmouth and his family. The former Speaker and Prime Minister was Hatsell's most distinguished friend and William, perhaps understandably, was disappointed that he was not invited:

> "By the by, it has occurred to us, that it is rather odd, Old H. has never asked me to dinner … & yesterday … it would have been a good opportunity—had he been *very* anxious about the thing & wished to introduce me, to have had me dine with Lord S[idmouth] as she [Fanny] dined there."[153]

On 28 March, William told his father that his feelings "are much the same", and that "the warmth of sentiment does not increase as much as might be wished."[154] The next day he told his uncle that Fanny had not "gained so much upon my affections by more intimate intercourse, as I might have hoped for." While he admired Fanny, he was not convinced that his own feelings were sufficiently strong to make the reduction "to my present comforts & way of life" entailed by marriage.[155]

William was very conscious of, and apologetic about, his own indecision. On 22 March, he wrote to his father about "the rather wavering state of my feelings" and confessed to being "a sad changeable sort of Gentleman I fear." He felt his indecision was justified "where the Affections & passions have not been strongly & early engaged." He also thought that anything was better than the possibility of repenting "almost at the Church door."[156] On 25 March, William described himself as "doubtful & changeable & perplexed", partly

[151] DHC, 2741M/FC9/5a–5d, William Ley to Henry Ley, 22 Mar. 1812
[152] DHC, 2741M/FC9/6a–6c, William Ley to revd Henry Ley, 24 Mar. 1812
[153] DHC, 2741M/FC9/7a–7b, William Ley to Henry Ley, 25 Mar. 1812
[154] DHC, 2741M/FC9/8a–8b, William Ley to Henry Ley, 28 Mar. 1812
[155] DHC, 2741M/FC9/9a–9c, William Ley to Henry Ley, 29 Mar. 1812
[156] DHC, 2741M/FC9/5a–5d, William Ley to Henry Ley, 22 Mar. 1812

due to "not having sufficiently strong prepossession."[157] Four days later, he remained "wavering" and "changeable."[158] The matter was now left hanging, to await the arrival of William's father in London in mid-April.

Conclusions

An overall assessment of the events leading to the marriage of William and Fanny, and the interaction between the feelings of the principal parties and the matters of position and money which exercised the families, must await the completion of the story. However, based on events to the end of March, it is possible to draw some conclusions about the courtship, and the roles played by the two principals.

Courtship during the Georgian era was often subject to familial oversight,[159] and William Ley was keenly conscious of this. Lacking either a deep emotional commitment to Fanny or confidence in his own feelings, he was very alert to the feelings of others in his family. He was sensitive about his lack of a university education or profession in life. His thoughts on Fanny were occasionally immature, and certainly jarring to a modern reader. He thought it his right to pass judgment on her dress sense and appearance and yet did not reflect at all on how Fanny might see him. He admitted that he himself was changeable, and this tendency was accentuated when the prospects for professional advancement, which he initially assumed would flow from the engagement, receded.

Amanda Vickery has written that "courtship was the supreme adventure for an agreeable young lady with a genteel fortune" when "a woman was the absolute centre of attention, and often the protagonist of a thrilling drama."[160] Fanny comes to life from this correspondence in a way that would not be possible otherwise in the absence of her own letters or other papers. She was at times fearful and assumed the worst, perhaps reflecting the prolonged wooing by Brooksbank for whom she showed little enthusiasm. In the early months of 1812, she sought to take control of her own fate. Her constancy and determination stand in stark contrast to William's uncertainty. Late in March, William recorded that Fanny "seems to have quite made up her mind that it must be, & does not seem to consider there can be any difficulties to prevent it."[161] She chose William as her preferred future husband, navigated the social circle that linked the Leys and Hatsells and drove the match forward. She was

[157] DHC, 2741M/FC9/7a–7b, William Ley to Henry Ley, 25 Mar. 1812
[158] DHC, 2741M/FC9/9a–9c, William Ley to Henry Ley, 29 Mar. 1812
[159] Holloway, *Game of Love*, p.13
[160] Vickery, *Gentleman's Daughter*, p.82
[161] DHC, 2741M/FC9/8a–8b, William Ley to Henry Ley, 28 Mar. 1812

placed in an extraordinarily difficult position by Hatsell's reluctance to exercise his patronage too directly in favour of her future husband, and by the doubts about the match which the Leys did little to disguise. William rightly admired her fortitude in these testing circumstances.

The ordeal faced by William and Fanny offers an opportunity for an insight into the personalities of leading figures in the Clerk's Department. John Ley was towards the end of his long career, and was seen by his nephews as weak and ineffective. J H Ley did not necessarily give a ringing endorsement for his uncle's work ethic when he said to Hatsell that, for his uncle, "his going into the Office of a Morning was rather an amusement than not." As an elderly bachelor, Ley did not like things that threatened his wish to go on "quite in his own way."

Along with his wife, Lady Frances, J H Ley viewed William's prospective marriage to Fanny almost entirely in terms of patronage and professional advancement. J H Ley was committed to doing the best professionally for his brother out of family loyalty, even though he noted that "certainly for my own case I might have preferred some one more accustomed to Business."[162] His initial advice that William should accept the supernumerary role offered by Hatsell was rejected by others in the family, as well as by Fanny. J H Ley then vigorously, if at times insensitively, pursued his brother's cause. J H Ley emerges as assertive and short-tempered, sure of his own opinions and reluctant to defer to the patronage and personality of Hatsell which still dominated the Clerk's Department.

The character of John Hatsell which emerges from the Ley family correspondence and Abbot's diary for this period confirms that he handled the all-important relationship with the Speaker deftly, able to manipulate Abbot's opinions so that they suited Hatsell's wider interests. William's letters give a sense of Hatsell's tendency to stand on his own dignity. J H Ley was characteristically blunter in his assessment, most notably when referring to Hatsell as "a man that does like rather to talk with those who will coincide in anything he says than assert an Opinion of their own." Hatsell was greatly attached to his niece, and keen to support Fanny's primacy in the decision about marriage. At the same time, he was conscious of the risks associated with the exercise of his powers of patronage, risks which were to become all too apparent in the concluding stage of the drama.

[162] DHC, 2741M/FC9/2a–2b, J H Ley to Henry Ley, 19 Mar. 1812

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Dissent from ruling moved and negatived

During Question Time on 6 September, following points of order from the Leader of the Opposition and the Manager of Opposition Business, the Speaker ruled that a minister's response to a question without notice was directly relevant and therefore in order under standing order 104. The Manager of Opposition Business moved that the Speaker's ruling be dissented from, as the opposition was of the view that the minister's response was not relevant to the question asked. Debate ensued until the Leader of the House moved a closure motion, which was agreed to on division. The motion of dissent was then defeated on division.

Senate divides House bill in two

The Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 was first introduced on 4 September. Debate was held across 15 sitting days, subject to several debate management motions and late sittings, during which four second reading amendments were negatived and 92 detail amendments were agreed to. The bill passed the House on 29 November.

On 7 December, the Speaker reported a message informing the House that the Senate had divided the House bill into two bills and had transmitted one with amendments, seeking the House's concurrence with the amendments and the action taken by the Senate to divide the bill. The position of the House has been that the division of a bill in the house in which it did not originate is undesirable. In response to the Senate's message, the House agreed to a motion concurring with the Senate's action and agreeing to the Senate amendments, while acknowledging the House's position on division of a bill and distinguishing this occasion as it involved division of a government bill in the Senate at the initiation of a minister. A second bill containing the remaining provisions from the original bill, the Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023, was returned to the House with amendments on 12 February 2024. The amendments and the bill were agreed to by the House.

Special sitting following death of sitting Member

Following the death in office of the Member for Dunkley on 4 December, the Speaker notified Members that the House would meet on 6 December rather than 7 December as scheduled. The House met at 10 am on 6 December and

agreed to suspend standing orders to set the order of business for the day. The Speaker then announced the death of the Member for Dunkley and the Prime Minister moved a motion of condolence. The motion was supported by the Leader of the Opposition and a further 81 Members spoke to it during the day; at the conclusion of debate, as a mark of respect to the memory of the Member for Dunkley, Members rose in their places before debate was adjourned. As a further mark of respect, the sitting was then suspended for 30 minutes before business resumed.

Senate

Constitution alteration

A Constitution alteration bill passed the Australian Parliament in June 2023, leading to a referendum in October 2023. Following passage through the House of Representatives, the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 passed the Senate on 19 June by an absolute majority, as required by section 128 of the Australian Constitution, with 52 votes in favour and 19 against the motion that the bill be read a third time.[1]

For the most part, the legislative process for a bill to alter the Constitution is the same as for ordinary bills. The Senate's standing orders include 2 additional provisions for such bills. Standing order 110, requiring a roll call, is usually suspended. The Constitution requires that a proposed alteration must pass each House with an absolute majority. The Senate observes that requirement by recording the votes on the third reading, regardless of whether senators call for a division. An alteration bill is set aside if there is not an absolute majority in favour of its third reading: standing order 135.

In October, voters were asked whether they approved a proposed law 'to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice'; text taken from the long title of the bill. In order to pass, a referendum must be supported by a 'double majority'; a majority of voters in a majority of the states (4 or more) and a national majority of all voters. The proposal was not carried, with a majority being obtained in none of the 6 states, and the national vote being 60.06% no and 39.94% yes.

Deferral of housing bills

In February 2023 the government introduced into the House of Representatives a package of bills to implement measures relating to its housing policy. The bills passed the House 3 sitting days later. In the Senate during the May sittings, the

[1] aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7019

government sought unsuccessfully to impose a guillotine on the package.[2] On 19 June, an Australian Greens motion to defer consideration of the bills until 16 October 2023 passed with the support of the opposition and some crossbench senators.

The representing minister told the Senate that the government considered that the deferral would amount to a 'failure to pass' the bills for the purposes of section 57 of the Constitution.[3] That section deals with disagreements between the Houses on bills. If a House bill is rejected by the Senate, passed again by the House no sooner than 3 months later and is again rejected by the Senate, it becomes (colloquially) a trigger for a double dissolution election. The process and timeframes are clear where the Senate unambiguously rejects a bill by voting it down at one of the stages. However, section 57 also operates where the Senate 'fails to pass' a bill. There is less clarity here, particularly around the question of when the Senate should be deemed to have failed to pass a bill.

The guidance from the High Court of Australia is chiefly about what doesn't constitute a failure to pass. The principal guidance is that '[t]he Senate has a duty to properly consider all [b]ills and cannot be said to have failed to pass a [b]ill because it was not passed at the first available opportunity; a reasonable amount of time must be allowed'.[4] In this case, the bills had gone through all of the processes that ordinarily precede substantive debate and the government's usual power to give them precedence in debate had been taken out of its hands.

The question whether decisions of the Senate in relation to a disputed bill constitute a failure to pass is a matter for judgement of the government in the first instance and of the Governor-General in the event that the government wishes to put the case that the bill has failed to pass the Senate. The High Court does not have a role in determining whether the procedures mandated by section 57 have been met unless the validity of an Act passed in apparent compliance with those provisions (following a dissolution of both houses and an election) is challenged. If the Court subsequently finds such a law to be invalid this does not invalidate the dissolution of the 2 Houses.

In any event, the question of whether the bills had 'failed to pass' the Senate became moot when support for the bills shifted in September and the Senate agreed to override its previous order and bring the bills on for consideration.

[2] aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6970

[3] aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution/chapter1/Part_V_-_Powers_of_the_Parliament#chapter-01_part-05_57:~:text=Disagreement%20between%20the%20Houses

[4] Odgers' Australian Senate Practice, 14th ed., p.720

The bills passed both Houses on 14 September, with the House agreeing to government amendments and requests for amendments moved in the Senate.

Compliance with orders for the production of documents

On 14 September, the Senate agreed to an order requiring the Minister representing the Minister for the National Disability Insurance Scheme to attend the Senate on the first day of each sitting week to explain the Minister's failure to comply with a number of previous orders for the production of documents relating to the NDIS financial sustainability framework. Following the explanation any senator can move a motion to take note of the explanation with a 30 minute debate. The requirement stands until the Senate resolves that there has been satisfactory compliance with the orders. A government motion to discharge this requirement was defeated on 19 October (and at the time this entry was prepared the order was still in place). This is an example of a 'procedural penalty' in response to government reluctance to provide information in response to orders for the production of documents.

Fair Work (Closing Loopholes) Bill – procedural manoeuvres

Consideration of the government's omnibus Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 involved several unusual procedural manoeuvres.[5] The bill was introduced into the House of Representatives in September, passing with amendments in November.

Private senators' bills

On 6 November 2023, 2 members of the cross bench, Senator Jacqui Lambie (Jacqui Lambie Network) and Senator David Pocock (Ind) introduced 4 private senators' bills which replicated 4 aspects of the closing loopholes bill. The senators argued that these aspects of the bill should be passed immediately, while further consideration of other more contentious aspects of the bill was required. A few days after the bills had been introduced, Senator Lambie successfully moved a motion to suspend standing orders to limit debate and all 4 bills passed the Senate on the voices.

After it became clear that the bills had stalled in the House, the Senate, on the motion of Senator Pocock, resolved to send a message to the House requesting that the House 'immediately consider' the 4 bills. The message was reported in the House but was not further considered.

[5] aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7072

Conferences

Conferences to resolve disagreements between the Houses have been rare in the Australian Parliament, with only 2 conferences held, both occurring in the 1930s at the request of the House. Conferences requested by the Senate are rarer still. Until this Parliament only one such request had been made, in 1950. Odgers' notes that: '[t]he main reason for conferences falling into disuse is the rigidity of ministerial control over the House of Representatives. It is more efficient for senators involved with legislation to negotiate directly with the ministers who control what the House does with the legislation.'

Senate standing orders prescribe that conferences on Senate bills should occur while the bills are in the possession of the Senate and after the House has indicated its disagreement by message. Despite neither of these conditions being satisfied, on 28 November, the Senate resolved, on the motion of Senator Lambie, to send a message to the House requesting a conference on the bills. When the message was reported in the House, an opposition motion to have the message considered immediately was defeated, and there was no subsequent consideration of the message.

Division of a bill

Senate standing orders provide for an instruction to be given to the committee of the whole for the division of a bill into multiple bills, a step which the Senate has taken on several occasions. The House of Representatives has held the view that it is not desirable for a bill to be divided by a house, unless the bill originated in that house. For that reason, the House has previously declined to consider bills divided by the Senate.

On the final day of sittings in 2023, the government proposed that its closing loopholes bill, which had originated in the House, be divided into 2 bills, not through an instruction to a committee of the whole, but via a novel motion to incorporate various (more contentious) provisions into a separate bill to be dealt with later, and to require a vote on the original bill, as amended, at midday that day. The motion was agreed to, and what was left of the original bill was passed (with further amendments).

When the House resolved to concur with the Senate's amendments to the bill it accepted for the first time that the Senate could divide a House bill. In doing so, the House re-stated its view on the undesirability of the division of a bill in such a manner and attempted to distinguish this occasion from previous occurrences 'on the basis that it involves the division of a government bill in the Senate, at the initiation of the government.' Whether the Senate will accept such restrictions as a precedent remains to be seen.

Australian Capital Territory Legislative Assembly

Cost of living select committee established

On Thursday 9 February 2023 the Leader of the Opposition moved a motion to establish a Select Committee on Cost of Living Pressures in the ACT which would inquire into and report on the cost of living pressures facing Canberrans, with the Committee being comprised of two opposition MLAs and two government MLAs, with the Chair to be an Opposition MLA, and the reporting date being the last day of sitting in 2023.

A Greens MLA moved an amendment to alter the terms of reference of the committee, change the composition of the Committee to a three member committee – one Green member, one Labor member and one Canberra Liberals member, with the Chair being the Greens MLA nominated, and the deputy Chair being the Labor MLA, also to alter the reporting date to 11 May 2023, some 13 weeks later. Following some more amendments which the Assembly divided on, the amended motion resulted in the Committee being established with a Greens MLA being the Chair and reporting dated shortened.

The Committee reported on 11 May 2023 with the Committee making 52 recommendations, and two Members (including the Chair) attaching additional comments. One of the terms of reference was to provide timely recommendations to help inform the considerations of the Expenditure Review Committee of Cabinet in the Budget process, and the ACT Budget was presented to the assembly on Tuesday 27 June 2023.

Order to table documents – redacted report tabled

On 9 February an Opposition MLA, pursuant to notice, moved a motion requiring the tabling of the full report of the Review of the Heritage Council which was the basis for the relevant Minister to sack the whole council late in 2022. The Minister for Heritage moved an amendment (which was agreed to) to the effect that the report be tabled as released on the Disclosure Log following the completion of the process currently underway under the Freedom of Information Act 2016 that is considering any issues to protect public interest. On 22 March 2023 the Minister made a ministerial statement concerning the outcome of the freedom of information officer's decision to release the full (with redactions) report into the review and tabled the redacted report. The subsequent document contained no significant detail, having around 70% redacted.

Variation in Sex Characteristics (Restricted Medical Treatment) Bill 2023

On 22 March 2023 the Chief Minister, pursuant to notice, presented a Bill which was an internationally significant reform (and a first in an Australian legislatures) in protecting the rights and choices of people with variations in sex

characteristics. It recognises that people with variations in sex characteristics should not be subject to harm through inappropriate medical interventions. It affirms that they are entitled to make their own decisions about medical treatments that affect their bodies. On 8 June 2023 the Bill was passed by the Assembly after some Opposition and Government amendments were made.

Modern Slavery Legislation Amendment Bill 2023

On 28 March 2023 a Private Member's Bill was introduced by a Greens MLA which would require government agencies to volunteer to submit modern slavery statements under the Commonwealth Modern Slavery Act 2018 (Cth) and prevent the Territory tendering with entities which have not complied with their requirements under that Act. To be considered for tenders over $25,000, all tenderers, unless exempted, will have to provide a statement setting out the risks of modern slavery in their provision of goods or services to the Territory and explain specifically what steps they have taken to eliminate modern slavery in their supply chains. The Bill will also establish a new Anti-Slavery Commissioner to monitor, report on and promote requirements relating to modern slavery. The Bill was referred to the Standing Committee on Public Accounts who made four recommendations, with the last one being that the Bill not pass in its current form. The Bill is still before the Assembly.

Snakes in the Precincts

On 28 March 2023, a government backbencher moved a motion during private members' business in relation to protection and education programs for eight different species of snakes (five of which are regarded as venomous to humans) that exist in the Territory.

The motion called on the ACT Government to explore possible changes to the 48-hour window that snake catchers can care for an injured snake that has been caught for as long as they need veterinary supervision.

In order to promote awareness of the motion, the member sought, and after various safety assurances, approval was given, for four snakes to be brought into the Assembly precincts (see image).

Image: Australian Capital Territory MLAs inspect some snakes

Report on the conduct of a Member
On 9 May 2023 the Speaker tabled a report by the Standing Committee on Administration and Procedure about an alleged breach of the Members Code of Conduct by a Minister which had been referred to and investigated by the Assembly's Commissioner for Standards. The Committee made four recommendations including that the Minister apologise in the Chamber for the inappropriate use of Assembly resources. After the report was presented, the Minister apologised for her actions.

Period products in Legislative Assembly building
On 7 June 2023 the Period Products and Facilities (Access) Bill 2022 (a private member's bill) was passed. The bill establishes requirements to enable the provision of free period products in designated places in the community, as well as ACT workplaces. As a consequence, period products and sanitary waste facilities will be placed throughout the Assembly precincts.

Trial of a nine-day fortnight
In June 2023 the Office of the Legislative Assembly introduced a trial 9-day fortnight for staff who are interested as a key component of the Office's flexible work strategy. It is designed to operate on Fridays and staff who nominate will need to work for 8 hours 10 minutes each day to accumulate the necessary hours to participate in the trial. Members have been informed that the trial is being undertaken, but staffing will be spread across different Fridays to ensure

that services to members can still be delivered. Teams have been encouraged to discuss and agree alternate Fridays, so each team has a staff member working every Friday. The Executive Management Committee endorsed an opt in nine-day fortnight for the Office in December 2023.

It is expected that the 21 staff who undertook the trial will now take up the new arrangements.

Speaker's ruling on Payroll Tax Amendment Bill 2023 – Dissent from Speaker's ruling moved

On Thursday 31 August 2023 the Speaker ruled that the Payroll Tax Amendment Bill 2023 (introduced the day before by the Leader of the Opposition) contravened the standing orders in relation to the financial initiative of the Crown, and was therefore out of order. The Leader of the Opposition, by leave, moved that the ruling of the Speaker be dissented from, and after debate, the motion was negatived.

Resignation of Member and establishment of review of how allegations against a Member were handled

On Tuesday 28 November 2023 the Speaker, pursuant to continuing resolution 2, presented a copy of a letter from a member who had resigned on 12 November, as well as a letter advising the Electoral Commissioner of the vacancy. On Wednesday 29 November the Speaker informed the Assembly that the Electoral Commissioner had conducted a countback and that Miss Laura Nuttall had been elected, whereupon she took her affirmation before the Chief Justice of the ACT Supreme Court in the Chamber and affirmed her commitment to the code of conduct.

On 28 November the Assembly resolved to authorise the Speaker to engage an independent person with extensive experience in public administration, governance or integrity matters to review the way allegations (which involved allegations of serious sexual misconduct against the Member who had resigned) had been handled by current Members, and review best practice and possible changes to laws, policies and procedures to ensure that allegations of sexual misconduct against an MLA (particularly against a child or young person) are appropriately reported and investigated, and in a way that is trauma informed and responsive to the needs of the victim/survivors. The Speaker announced in December that she had appointed Ms. Lynelle Briggs, AO to conduct the review, and the resultant report is expected in February 2024.

Number of female Members rises to 56%

On Tuesday 28 November 2023 the Speaker informed the Assembly of the resignation of Mr Davis as a member of the Assembly. The Speaker then

announced that the Electoral Commissioner had conducted a countback and that Miss Laura Nuttall has been declared as the new member for Brindabella in place of the resigned Member. The replacement of a male MLA with a female MLA means that 14 of the 25 Members are now women, up to 56% from 52%.

Re-affirmation of amended code of conduct

On 29 November 2023, on the motion of the Speaker, the Assembly passed a resolution that all Members of the 10th Assembly, having adopted a revised code of conduct for Members, reaffirm their commitment to the principles, obligations and aspirations of the code.

New South Wales Legislative Assembly

Election of minority Government in 2023

NSW State elections were held on 25 March 2023. The elections saw the installation of a minority Labor Government in the Assembly. Of the 93 seats in the Assembly the Australian Labor Party won 45, the Liberal Party won 25, the Nationals won 11 (the Liberals and the Nationals have a coalition arrangement when in Government), the Greens won 3 seats, and 9 seats were won by independent candidates.

Three of the nine independent members – Mr Greg Piper, Member for Lake Macquarie, Mr Alex Greenwich, Member for Sydney and Dr Joe McGirr, Member for Wagga Wagga agreed to provide the Labor Government supply and confidence. The terms of the written agreement were that these members would vote to pass the Budget and oppose motions of no-confidence, except in the case of corruption or maladministration. All other legislation and motions would be voted on based on merit. The last time a minority Government was elected in NSW was 1991.

The first session of the 58th Parliament was opened by the Lieutenant-Governor, His Excellency the Honourable Andrew Bell, on 9 May 2023.

Election of independent member as Speaker

At the start of each new Parliament on the first sitting day a Speaker is elected by the House. The Speaker of the Assembly does not exercise a deliberative vote but does exercise a casting vote when there is an equality of votes on the floor of the House. Typically, the Speaker is drawn from the party forming Government and which itself typically holds a clear majority in the House. This was the first election of a Speaker since changes to the relevant Standing Orders in November 2022, which provided for a nomination and election process more closely aligned to the provisions of the Constitution Act 1902.

On 9 May 2023, Mr Greg Piper, the independent Member for Lake Macquarie, was elected Speaker of the Legislative Assembly. The last time an

independent member was elected Speaker was in 2007.

Following his election as Speaker, Mr Piper made a statement of acknowledgement and respect to the traditional owners of the land on which the Parliament meets, the Gadigal People of the Eora Nation. The Speaker also recognised the events suffered by Aboriginal people in NSW, spoke on the work of the Parliament in response to those events and acknowledged the work still to be done.

Order for Papers

The Legislative Assembly has the power to order the Executive to produce all relevant documents (with the exception of Cabinet documents) in its possession or control in relation to a specified subject matter. This is referred to as an Order for Papers. This power of the House to order the production of papers is an inherent common law power, as the House has such powers as are reasonably necessary for the proper exercise of its functions, including holding the Executive to account.[6]

The Assembly has exercised this power only rarely in recent times, as would be expected when the Government has commanded a clear majority on the floor of the House. On 25 May 2023, on the motion of the independent member, Mr Alex Greenwich MP, the House resolved to order the production of papers, held by the Government, relating to investigations into money laundering in clubs and pubs, an issue which had been the focus of a 2022 inquiry by the NSW Crime Commission.[7] This was the first Order for Papers made by the Assembly since 1998.

The resolution of the House ordering the production of papers stipulated the scope of the documents to be produced and the date they should be returned. The resolution also provided that, until such further time as ordered by the House, the inspection of the documents be restricted to Members of the Legislative Assembly only and that no copies or extracts of the documents be allowed.

Between the date of the original resolution and prior to the return of the documents, the House made a number of variations to the Order, including to extend the return date; vary the scope of the documents required; and to provide for some of the documents to be made available for public inspection

[6] Egan v Willis and Cahill (1996) 40 NSWLR 650 at 664–665 per Gleeson *CJ*, at 676–677 per Mahoney P and at 692-693 per Priestley JA; Egan v Willis (1998) 195 CLR 424 at 453-454 per Gaudron, Gummow and Hayne JJ, at 500 per Kirby J, at 513-514 per Callinan J, at 467 per McHugh J in dissent.

[7] NSW Crime Commission, Project Islington: Inquiry into Money laundering via Electronic Gaming Machines in Hotels and Clubs, 26 October 2022 (crimecommission.nsw.gov.au/inquiry-into-money-laundering-in-pubs-and-clubs)

on return.

The variations made were largely the result of discussions between the mover of the original motion and the NSW Crime Commission.

On Friday 4 August 2023, the documents were provided to the Clerk of the Legislative Assembly and, where applicable, made available for public inspection. An additional public document was returned on Friday 18 August 2023, and was also made available for public inspection from that date. On Tuesday 22 August 2023, receipt of the documents was announced in the House by the Clerk.

Of particular note, during the same period, the NSW Legislative Council made its own Order for Papers calling for exactly the same documents with the same return date and time as those stipulated by the Assembly.

The 2023-24 State Budget Speech given by a Legislative Council Treasurer

The 2023-2024 Budget Bills were considered by the House in September 2023. Standing and Sessional Orders were suspended to permit the Treasurer, currently a member of the Legislative Council, to be invited on to the floor of the Legislative Assembly to speak to the Budget. As the Treasurer is a member of the Legislative Council and thus precluded from participating in any of the legislative procedures for the passage of a bill in the Legislative Assembly, this was referred to as 'a speech in relation to the NSW Budget' rather than as the second reading speech. At the conclusion of the Treasurer's speech and after he had departed the Chamber, an Assembly Minister moved that the Budget bills be read a second time.

The last time that the Treasurer, being a Member of the Legislative Council, had appeared in the Assembly to speak to the Budget occurred in 2010 which was the end of a 16-year continuous period where the Treasurer was a Member of the Council.

Referral of a Government Bill to a select committee

On 23 May 2023, the House resumed debate on the Government's Residential Tenancies Amendment (Rental Fairness) Bill 2023. The Leader of the House, the Hon. Ron Hoenig, moved on the commencement of the debate that the question on the second reading be amended to provide for a referral to a Select Committee on the bill, which was to report on a specific provision (cl.22B) of the Bill. The last occurrence of a Government Bill being referred to a committee occurred in 1992 when the Constitution (Fixed Term Parliaments) Amendment Bill was referred to a joint select committee.

The Select Committee tabled its report on 9 June, recommending the omission of the referred clause and urgent consideration of the remaining provisions of the bill. The Minister sought pre-audience on the resumption

of the second reading debate, moving amendments that gave effect to several committee recommendations, which were agreed on the voices. The Residential Tenancies Amendment (Rental Fairness) Bill 2023 passed the Parliament on 22 June and received assent on 3 July 2023.

Committee referrals and establishment

The establishment of the Select Committee on Rental Fairness was an early sign of things to come in the 58th Parliament. In June 2023 the House referred a private member's bill banning offshore drilling to the Standing Committee on Environment & Planning. This trend of referring private member's bills to standing committees continues in 2024.

In 2023, two more select committees were established on water privatisation and rural health. By December 2023, the number of select committees matched those established in the entirety of the 57th Parliament, which spanned four years. Also by December, the Legislative Assembly had administered 19 committees in the first year of the 58th Parliament, compared to 16 by the end of the first year of the preceding parliament. The number of inquiries adopted had also increased to 24 compared to 18 in the first year of the 57th Parliament. Other notable trends include the changing composition of our committees, with several committees being chaired by Independent members and with two statutory oversight committees also now having non-government majorities and Independent chairs.

Other new committees were also established, including the Joint Select Committee on the NSW Reconstruction Authority. Although it has 'select' in the title, this committee was established as a result of an amendment to the NSW Reconstruction Authority Act 2022 from the then-opposition. The committee has the dual functions of reviewing the Act to determine the validity of its policy objectives and terms and reviewing the operations of the Authority following natural disasters. Unusually, the Legislative Council resolution appointing members to the committee asked the Clerk of the Legislative Assembly to set the time and date for the first meeting, despite anything to the contrary in the standing orders. This sought to overcome the effect of Assembly Standing Order 320, which provides that the House originating the message for the appointment of a joint committee shall not nominate the time and place for the first meeting.

In late November 2023, the Committee on Transport and Infrastructure tabled an interim report recommending that the Legislative Assembly consider making an order for papers to enable the Committee to complete its inquiry into the Sydney Metro West project. The terms of reference, which had been referred by the Minister for Transport, determined that the Committee would inquire into and report on the original business case for the project, among

other matters. The interim report outlined the attempts of the Committee to obtain a copy of the original business case through written requests and sworn evidence at committee hearings. To date, the relevant agencies have declined to provide a copy of the original business case on the grounds that it is cabinet in confidence.

In August 2023, the following matters were referred to the Legislative Assembly's Committee on Parliamentary Privilege and Ethics for report:

- Findings and conclusions of the report entitled, "Leading for Change Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022" (the Broderick Report), clarified to involve examination of recommendations that directly refer to the Committee.
- The adequacy of current procedures to protect parliamentary privilege in circumstances where law enforcement and investigative bodies seek to use coercive, intrusive or covert investigatory powers.

Introduction and second reading of a private member's bill by the Speaker

On 23 November 2023, Mr Piper in his capacity as the Member for Lake Macquarie introduced a private member's bill entitled, Human Tissue Amendment (Ante-mortem Interventions) Bill 2023. (Note amendments to the Constitution Act 1902 in 2007 provided that when not presiding, the Speaker may take part in any debate and vote on any question that may arise in the Legislative Assembly; see Constitution Amendment Speaker Act 2007).

Bill laid aside

On Tuesday 28 November 2023 the Legislative Assembly passed the Thoroughbred Racing Amendment Bill and sent a message to the Legislative Council seeking concurrence.

On Thursday 30 November, nearing the conclusion of the House's final sitting day of the year, the Speaker reported a message from the Legislative Council in the early hours of Friday morning, 1 December, stating that the bill had been agreed to with amendments. The Speaker ordered that the House consider the Legislative Council amendments forthwith.

The Minister in charge of the bill moved that the bill be laid aside as the proposed amendments of the Legislative Council ran contrary to the intent of the bill. The House agreed that the bill be laid aside on the voices.

The option of responding to Legislative Council amendments by laying aside a bill has existed in the Assembly's Standing Orders since 1894. Laying a bill aside is an alternative to the outright rejection of Council amendments and is an option that has rarely been used in the Assembly.

Rescission of Legislative Council amendments to the Industrial Relations Amendment Bill

Introduced into the Legislative Assembly on 23 November 2023, this Government Bill was amended in the Legislative Council and returned to the Assembly on 30 November for concurrence. The two amendments forwarded from the Legislative Council were agreed to by the Assembly, but it was later discovered that one of the amendments had been negatived in the Council and mistakenly forwarded to the Assembly.

The Assembly was on one long bell at the time the error was identified, and when it resumed the sitting, the Speaker reported a message from the Legislative Council advising of the mistake and forwarding a revised schedule with one amendment, in which the Assembly's concurrence was requested. Given that the correction was not minor and it was the last sitting day for the year, Standing and Sessional Orders were suspended to permit the rescission at the same sitting of the previous resolution agreeing to the two Legislative Council amendments, and instead the House resolved to agree to the revised schedule containing just one amendment. The House's consideration of the first message with two amendments as originally received, and the revised message with one amendment, were both recorded in the *Votes and Proceedings*. The bill received assent on 5 December 2023.

New South Wales Legislative Council

Periodic Council election and opening of the 58th Parliament

Following the expiry of the 57th Parliament, the New South Wales state election took place on 25 March 2023. With a change in government (the first in 12 years), the composition of the new House is now as follows: government - 15 members; opposition - 15 members; crossbench - 12 members. On the crossbench, two parties were represented for the first time, each with one member: the Legalise Cannabis Party (represented by the Honourable Jeremy Buckingham, formerly a Greens member of the House) and the Liberal Democratic Party (represented by the Honourable John Ruddick).

On 9 May 2023, the 58th Parliament was officially opened with three commissioners. 21 new members were sworn in as members of the Legislative Council, with the Lieutenant-Governor of New South Wales, His Excellency the Honourable Andrew Bell, delivering the speech outlining the new government's legislative program. During ceremonial proceedings members were invited to participate in a Smoking Ceremony that accompanied the day's Welcome to Country. The Opening speech was also preceded by the presentation of the Aboriginal Message Stick in the chamber as a reminder of the ongoing two-way dialogue between the Aboriginal community and Parliament.

The Honourable Benjamin Franklin, a member of the opposition, was

elected as the President of the Legislative Council.

Government responses to committee reports of the previous parliament
At the commencement of the 58th Parliament in May 2023, a somewhat perennial issue arose again concerning government responses to reports tabled in the last parliament in circumstances where the government has changed.

The new Leader of the Government in the Council argued that the Government was not required to provide responses to reports where the responses were due after prorogation – a view disputed by the House based on the standing order that a response is required 'notwithstanding prorogation of the House or the expiry of the Legislative Assembly' and precedents from several past parliaments. Maintaining its position, the Government requested that the Council pass a resolution requiring a response to reports tabled in the previous parliament and advised its intention to voluntarily provide the responses by the end of June. A motion was subsequently passed in the House and, as indicated, the Government provided all responses "voluntarily."

Implementation of Broderick Review reforms
Progress continued on implementing the recommendations of the 2022 review into workplace culture at NSW Parliament (the "*Broderick Review*"), with a temporary position established to provide secretariat support to the Legislative Council Privileges Committee.[8] The Privileges Committee is considering a number of the Broderick Review recommendations in two separate inquiries – the inquiry into recommendations arising out of an Independent Commission Against Corruption report, and a review of the Independent Complaints Officer (ICO) role established in 2022 to investigate complaints against members.

The Legislative Council has also progressed a number of other Broderick Review recommendations alongside the Legislative Assembly and the Department of Parliamentary Services, including undertaking a significant review of parliament's bullying and harassment policy and commencing dedicated Respect, Inclusion, Safety and Empowerment (RISE) face-to-face training sessions for members and senior staff, with other staff to follow.

Landmark inquiry into birth trauma
In June 2023, the NSW Legislative Council established a Select Committee on Birth Trauma. This followed media reports regarding complaints that about 30 women had made to the Health Care Complaints Commission about their birth experience at a regional hospital. As part of the terms of reference, the committee examined the prevalence and impacts of birth trauma as well as the

[8] parliament.nsw.gov.au/about/Documents/Independent%20Broderick%20Report.pdf

causes and factors contributing to birth trauma.

The inquiry is the first of its kind in Australia and has garnered significant public attention, with the committee receiving over 4,300 submissions from across the country. Owing to the nature, context and timing of the inquiry, the committee has been cognisant of the need to ensure as many individuals as possible have their voice and views shared publicly. This has required innovative solutions to manage the submission process, including bulk processing of submissions by jurisdiction.

In addition, given the highly sensitive nature of information canvassed in the inquiry, staff, member and witness welfare has been a high priority for the Council and committee. This has led to additional supports being put in place such as on site and telephone psychological support, and the reallocation of resources to spread inquiry work and impacts, particularly given the long duration of the inquiry and high volume of evidence received.

Orders for papers: Protocol for provision of government information to members

On the final sitting day in June 2023 prior to the winter break, the Special Minister of State, the Honourable John Graham, tabled *a protocol for the proactive release of government information to members of the Legislative Council*.[9] The protocol sets out a process for members to attend briefings and request documents from Ministers in order to "facilitate the efficient provision of government information to members", to "avoid the necessity of pursuing an order for papers under standing order 52" so frequently, and "to ensure the efficient and effective use of public resources" in providing information to members.

The implementation of this protocol was no doubt a response to the record number of orders for papers made by the Legislative Council during the previous Parliament from 2019 to 2023 under the former government.

Orders for papers: Operation of new 'personal information' provisions

The second half of 2023 saw the bedding down of new provisions under standing order 52. One important change was the creation of an additional category of documents, to provide for the increase in agencies returning documents over which so-called 'personal information' privilege was claimed, meaning they could not be published or copied. Members routinely sought redacted versions of these documents for publication by disputing the claims of privilege, and in the vast majority of cases, the independent legal arbiter did not uphold the government's claims.

The revised standing order sought to reset the domain of disputes by

[9] parliament.nsw.gov.au/tp/files/84672/DOC290623.pdf

establishing a third category of documents beyond 'privileged' and 'non-privileged': documents containing personal information that should not be made public but which are not otherwise subject to a claim of privilege (such as legal professional privilege). Like privileged documents, this third category of 'personal information' documents are available for inspection by members only, however there is now a process for members to formally request that the executive provide redacted versions of documents, for the purposes of publication, without requiring a dispute and subsequent arbitration. Agencies have since made extensive use of the personal information category in their returns to orders.

Inquiry into the Parliamentary Evidence Act 1901

In September 2023, the Council's Privileges Committee commenced an inquiry into the provisions of the Parliamentary Evidence Act 1901, which governs the taking of evidence by the Houses of Parliament and their committees in New South Wales. The inquiry arose as a result of a recommendation of Portfolio Committee No. 7 – Planning and Environment in its report entitled "Allegations of impropriety against agents of the Hills Shire Council and property developers in the region", dated March 2023. This inquiry saw committee staff, and then professional process-servers, travel around the state seeking to serve summonses upon three elusive, reluctant witnesses (including two brothers of the then Premier). With all attempts being unsuccessful, the inquiry exposed the limits on committees' ability to summons reluctant witnesses, leading the committee to recommend that in the new Parliament, the Legislative Council refer an inquiry into the Parliamentary Evidence Act 1901 to the Privileges Committee, with a view to identifying amendments to ensure it is fit for purpose and modernised, including in relation to the summoning of witnesses.

Igniting 'The Spark' for the Council's bicentenary

2024 is the official Bicentenary year for the NSW Legislative Council, with Australia's oldest legislature set to be commemorated through activities big and small. While the Bicentenary aligns to the 200-year anniversary of the Council's first meeting in August 1824, 1823 was of course also an incredibly significant year – this was when the NSW Act was passed by the UK Parliament, providing for the establishment of both a Legislative Council and a Supreme Court.

The importance of the Act in laying the foundations for 200 years of evolving parliamentary democracy and rule of law was something the Council explored in November 2023, with special Bicentenary conference 'The Spark: The Act that brought Parliament and the Supreme Court to NSW'.

Asking a question of oneself

On 23 November 2023, the House had the new experience of a member of the crossbench, the Honourable Jeremy Buckingham (Legalise Cannabis Party) asking himself a question during question time in relation to an item of business he had on the notice paper. Standing Order 64 (3) states: 'Questions may be put to other members relating to any matter connected with the business on the Notice Paper of which the member has charge.' After a point of order was raised, Mr Buckingham argued that the question related to an item of business of which he had carriage, and that the word 'other' means other than a Minister or a Parliamentary Secretary, and hence it was within the standing orders to ask himself a question. The President noted that 'other' is also defined as 'intrinsically different from and alien to oneself', and hence ruled the question out of order.

Industrial Relations Amendment Bill 2023

On 30 November 2023, the Council debated and passed the Industrial Relations Amendment Bill 2023. During committee of the whole, one Opposition amendment was agreed to and one Opposition amendment was negatived. However, when the message was sent to the Assembly forwarding the schedule of amendments agreed to for its concurrence, that schedule contained an error, in that it incorrectly reflected two Opposition amendments being agreed to by the Council.

By the time the issue was identified, the Assembly had already agreed to the two amendments contained in the schedule. Accordingly, the Leader of the Government in the Council moved a motion, by leave and without notice, that:

- noted that the schedule of amendments referred to in the message to the Assembly contained an error, in that it included an amendment that had not been agreed to,
- the Council send a message to the Assembly forwarding a revised schedule of an amendment as agreed to by the Council in which the concurrence of the Assembly is requested, and
- the terms of this resolution be communicated in the message to the Assembly.

This motion was then debated and agreed to and a message containing the single amendment, which had been agreed to in committee of the whole in the Council, was subsequently sent to the Assembly.

South Australia House of Assembly

South Australia Voice to Parliament

In 2023, legislation passed the Parliament of South Australia to allow for a South Australian First Nations Voice to Parliament. On Sunday 26 March 2023, the

Parliament held a special sitting for each House to pass the legislation, followed by the Governor immediately signing the assent to the First Nations Voice Act 2023. The historic signing occurred on the steps of the South Australian Parliament and was witnessed by a gathering of an estimated 5,000 people.

Work is now underway to facilitate the implementation of the legislation, including a review of Standing Orders and Joint Standing Orders. The new legislation requires the Presiding Member of the Voice to give an annual address to a Joint Sitting of Parliament; the Clerks of each House to advise the Voice in writing of each Bill introduced to the House; and that one of the joint Presiding Members of the Voice is entitled to address either House on a Bill. At the close of the reporting period the Standing Orders Committee has commenced it review of Standing Orders and Joint Standing Orders and envisages reporting back to the House in early 2024.

Amendment to Sessional Orders for Private Members' Statements

New Sessional Orders have been introduced to manage the number of Private Members notice of motions being listed on the House of Assembly Notice Paper.

The giving of a notice of a motion is governed by Standing Order 88, that requires the Member to read the proposed motion at least 1 day prior to the motion appearing on the Notice Paper. Prior to the new sessional order, following the release of the yearly sitting calendar, the giving of notices of motion by Private Members could take up to an hour or more as each Member is required to read aloud their notice of motion which could be listed on the Notice Paper for up to 1 year in advance. Further, due to the limited time to debate Private Member Motions, few would be dealt with in each sitting week with the remainder being set down on the next sitting day scheduled for Private Members Business. Towards the end of a session there could be in excess of 150 Notices of Motions listed on the Notice Paper.

In November 2023, the House of Assembly adopted new Sessional Orders that allowed notices of motion to only remain on the Notice Paper for 12 sitting days before being withdrawn. This has reduced the number of notices of motion being given on any day, and the time taken for the giving of notices which has been reduced to approximately 5-10 minutes per week. Since the adoption of the new Sessional Order, the practice has been for 6 notices of motion to be given on a sitting Wednesday (split 50/50 between Opposition and Government with alternating priority each week and with allowances for independent MPs).

We recently had the first (12 sitting day) anniversary of the adoption of the sessional order. As a consequence the Notice Paper has become more manageable as unmoved notices of motion are automatically withdrawn after

the 12 sitting day period. There also appears to be a practice forming of notices being withdrawn from the notice paper and subsequently being resubmitted for a later date.

Private Members' Statements
At the same time as the sessional order addressing Private Members' motions was adopted, a new sessional order was adopted that provided for four Private Members to make short, 90-second statements to the House on Tuesdays and Wednesdays (2 of the 3 sitting days per week). These Private Members' Statements provide for a short statement, which can be sufficient to acknowledge and recognise key people, organisations or activities in a Member's constituency, without moving a motion or grievance.

Community Education Office
The Parliament of South Australia's Community Education Office progressed several education initiatives which extended participation with the Parliament. The office formally launched an initiative called "Civics in the City," where the Parliament funded regional and remote schools to come into the CBD to participate in an education program and law-making roleplay. 26 schools accessed funding and over 500 regional and remote students were supported.

The Office conducted 4 week-long regional visits, travelling to different areas across South Australia to facilitate education programs. Over 2,500 students participated in this initiative.

The Office also launched a video incursion program, where a law-making roleplay is undertaken via video link. This new experience was highly successful, with 35 schools participating in its inaugural year.

The culmination of these initiatives was that out of the students learning with the Parliament in 2023, 46% were from regional and remote sites.

Tasmanian House of Assembly

Minority Government
Friday 12 May 2023, saw the Tasmanian Liberal Government lose two members of their party, with the Member for Lyons, John Tucker MP and the Member for Bass, Lara Alexander MP announcing that they had resigned from the Liberal party. Mr Tucker and Mrs. Alexander continued their roles in parliament as independent members. This left Government with only 11 of the 25 seats in the House, which resulted in a number of instances of procedural interest.

No Confidence in the Premier
The first sitting day back following Mr Tucker and Mrs Alexander's move to

the crossbench, saw a no confidence motion in the Premier debated. Debate stretched close to midnight, and the motion was unsuccessful following a division with 12 Ayes and 12 Noes, with the Speaker exercising his casting vote with the Noes.

Production of documents

On 24 May 2023 the Leader of the Opposition moved a motion that the House order the Premier to table, before adjournment on 30 June 2023, unredacted copies of the '(a) agreements and any associated documents pertaining to the deal to secure a Tasmanian AFL license; and (b) advice from the Department of Treasury and Finance pertaining to the development of a new stadium in Hobart.'

An amendment was proposed by the Premier, and this amendment was amended by the Independent Member for Bass, Mrs. Alexander MP. The resulting resolution was that the House ordered the Premier to table:

1. All signed agreements and documents relating to the AFL agreement by Thursday 1 June 2023;
2. All departmental and departmental-commissioned assessments, advice and reports relating to the Macquarie Point Stadium by Thursday 1 June; and
3. All minor redactions from the signed agreements and documents be made confidentially available to all MP's at the earliest opportunity.

On 1 June 2023 the Premier tabled a number of documents in relation to the Macquarie Point Stadium as ordered above. The Premier subsequently advised the House that certain documents that would have otherwise been covered by the above order were not tabled as they were cabinet-in-confidence.

A separate motion was moved by the Premier and agreed to by the House on 22 June 2023 in accordance with paragraph (3) of the above resolution, for all minor redactions from the agreements and documents to be tabled by lodging them with the Clerk of the House and inspection restricted to Members only. This is the first time the House has used such a procedure to restrict access to tabled documents to Members only.

Matter of privilege

On 20 June 2023, the Leader of the Opposition raised a matter of privilege and sought to move a motion claiming that the Premier had not complied with the order of the House of 24 May 2023 for the production of documents, instead raising claims of cabinet in-confidence. The Opposition Leader's motion set out a procedure for an independent arbiter to be appointed to advise on whether the claim of cabinet-in-confidence should be upheld.

The Speaker suspended the sitting to consider whether to give the matter

precedence as a matter of privilege under the Standing Orders. On returning from the suspension the Speaker indicated that he had determined not to give the matter precedence, citing an order of the House of 24 May 2023 which provided the process for the budget debate to take place as a matter of precedence over other business.

The Leader of the Opposition subsequently sought leave to move the privilege motion without notice. The Speaker ruled this to be out of order in accordance with the relevant precedents which provide that such motions are out of order while Government Business has precedence, in accordance with the order of the House setting out the process for consideration of the Budget Bills.

The Leader of Opposition Business moved to dissent from this ruling. The dissent motion was agreed to on division, with 12 Ayes and 10 Noes.

The House then proceeded with the seeking of leave motion. The leave motion was successful following a division (Ayes 12, Noes 10) and the House proceeded to a motion to suspend standing orders. This motion however failed, as the suspension of standing orders requires a two-thirds majority (following a division the result was Ayes 12 and Noes 10).

Cabinet in-confidence and orders for the production of documents

On 21 June 2023, the Leader of the Greens had sought to move a motion ordering that the Premier table a list of the documents that the government was claiming cabinet in-confidence over in relation to the departmental assessments, reports and advice on the Macquarie Point Stadium. Ultimately this motion was not debated as the suspension of standing orders was unsuccessful as it required a two-thirds majority. However, on 22 June 2023, the Government tabled a letter from the Acting Secretary of the Department of Premier and Cabinet providing a list of documents held by the department that would be covered by the motion of 24 May but for cabinet in-confidence claims.

On the morning of the 22 June 2023 the Premier made a ministerial statement in relation to the House's access to cabinet in-confidence documents, noting that the government will task the Department of Premier and Cabinet with preparing advice in relation to disputes around cabinet in-confidence documents. Such advice would consider the approaches of other jurisdictions. The Premier noted a report of this advice would be available to the Members of the House to consider on Tuesday 8 August 2023. When that report was tabled, the matter was referred to the Standing Orders Committee for consideration. The inquiry lapsed upon the dissolution of the House.

Recall of Parliament

On 5 December 2023 the Attorney-General, Hon Guy Barnett made a

statement that Parliament would be recalled on Tuesday 12 December for the consideration of legislation to establish an inquiry into Justice Gregory Geason. Justice Geason, a sitting Tasmanian Supreme Court Judge, had been charged with common assault and emotional abuse or intimidation. On Wednesday 13 December the Government announced its intention to introduce a bill on that recalled sitting day that would establish a Parliamentary Commission of Inquiry to provide advice to the Parliament relating to Justice Geason's fitness to remain a judge. Consultation for this bill was open until 8 December 2023.

Following the consultation period, the Attorney-General announced that the Government would not be proceeding with the Commission of Inquiry legislation, instead announcing the intention to move a motion in the House calling on the Governor to suspend Justice Geason.

Subsequently however, when Parliament did return on 12 December 2023, following acknowledgement and prayers, and the reading of the proclamation recalling the Parliament, the Attorney-General advised members that he had received further advice that morning and wished to brief members in this regard. Subsequently, the Attorney-General moved that the Speaker leave the Chair until the ringing of the bells at 2.30 p.m. Following a debate of the House the motion was negatived.

Despite the next order of business for the day been listed as Questions seeking information, the House proceeded through a number of leave motions to make motions without notice. Consequently, the House eventually adjourned at 7.16 p.m. having not proceeded with Question Time.

CANADA

House of Commons

Joint Address to the Senate and the House by the President of the European Commission

On 6 March, the House agreed by unanimous consent to adjourn the sitting of Tuesday 7 March, following the time provided for Oral Questions, for the purpose of a joint address by the President of the European Commission before members of the Senate and the House of Commons. On 7 March, Her Excellency Ursula von der Leyen delivered her address, which was printed as an appendix to the Debates of 7 March.

Joint Address to the Senate and the House by the President of the United States

On 10 March, the House agreed by unanimous consent to stay adjourned on Friday 24 March, for the purpose of a joint address by the President of the United States of America before members of the Senate and the House of Commons. On 24 March, the Honourable Joe Biden delivered his address,

which was printed as an appendix to the Debates of 23 March.

Coronation of His Royal Highness King Charles III
On 6 May, the Speaker attended a Canadian celebration for the Coronation of His Majesty King Charles III. Sitting parliamentarians as well as members of the King's Privy Council for Canada were amongst the guests to this event taking place on Parliament Hill, at the Sir John A. Macdonald Building. The event included official remarks, unveilings, and musical performances. Canada's 30th Field Regiment, Royal Canadian Artillery, fired a 21-gun salute on Parliament Hill for the coronation. To mark the coronation, the Speaker granted permission for the Peace Tower and Centre Block to be lit in emerald green from sunset to midnight on 6 and 7 May, as was also planned elsewhere in the Commonwealth.

A committee granted the power to expand the scope of a bill
On 18 April, the 15th report of the Standing Committee on Citizenship and Immigration was presented in the House. The report sought the House's permission, during the committee's consideration of Bill S-245, An Act to amend the Citizenship Act (granting citizenship to certain Canadians), to expand the scope of the bill. On 24 April, Jenny Kwan (Vancouver East) moved concurrence in the report and, following a deferred recorded division, the House concurred in the report on 25 April.

Joint Address to the Senate and the House by the President of Ukraine
On 21 September, the House agreed by unanimous consent to adjourn on Friday 22 September for an address by the President of Ukraine to the members of the Senate and House of Commons. President Volodymyr Zelenskyy gave an address, which is printed as an appendix to the Debates of 21 September 2023.

Election of Speaker and appointment of Interim Speaker of the House of Commons
On 28 September 2023, Louis Plamondon (Bécancour—Nicolet—Saurel), Dean of the House, was appointed Interim Speaker following the resignation of Speaker Anthony Rota (Nipissing—Timiskaming) on 27 September 2023. This appointment was proposed to enable the House to continue sitting while preparations were made for the election of a new speaker. The election of the speaker of the House of Commons is governed by a provision of the *Constitution Act, 1867*. Since the House had never before faced a situation requiring the appointment of an interim speaker, this temporary position was a historic precedent for it. Mr. Plamondon's term as Interim Speaker lasted from 28 September 2023 to 3 October 2023 making him the shortest-serving speaker of the House. Pursuant to the order adopted on 26 September 2023,

the House proceeded with the election of a new speaker on 3 October 2023. Seven members stood as candidates. The Interim Speaker presided over the election. Each candidate made a speech, and members voted by secret ballot. The Interim Speaker announced that Greg Fergus (Hull—Aylmer) had been elected the 39th Speaker of the House of Commons. After being escorted to the Chair by the Prime Minister, Justin Trudeau (Papineau), and the Leader of the Opposition, Pierre Poilievre (Carleton), the new Speaker thanked the House for the honour it had bestowed on him. The Prime Minister and representatives of the various parties rose to congratulate the Speaker. The sitting was suspended to allow the new Speaker to present himself to the Senate. Unlike after the election of the speaker that takes place at the opening of a Parliament, no Speech from the Throne was made. Speaker Fergus visited the Senate in order to receive an acknowledgement from the Governor General.

Rules of order and decorum

On 18 October 2023, before the beginning of Question Period, the Speaker made a statement regarding order and decorum in the House of Commons.

He outlined his commitment to fostering respectful debate and improving decorum in the House. Emphasis was placed on the need to reduce excessive heckling, provocative language, and personal attacks during parliamentary proceedings. The Speaker pledged to work towards this goal through discussions with individual members and party representatives.

The Speaker concluded by reaffirming his role as a servant of the House and his authority to enforce its rules. He expressed the hope that members would work collectively to improve decorum in the House and invited them to approach him for further discussions on the matter. In the months following this statement, the Speaker has ruled on numerous points of order related to unparliamentary language and has reiterated his commitment to improving the level of decorum in the House.

Redistribution of electoral boundaries

As of 24 April 2024, the House of Commons has 343 electoral districts, each of which sends one Member to the House of Commons. The Electoral Boundaries Readjustment Act requires that the number of seats in the House of Commons and the boundaries of federal electoral districts be reviewed after each decennial (10-year) census. This process of readjustment is a federal matter and allows for changes and movements in Canada's population to be reflected in House of Commons representation, while ensuring that less-populated regions maintain sufficient representation within the House.

The readjustment process is carried out by Electoral Boundary Commissions, each of which is responsible for a single province. Commissions operate

independently of Parliament and the Chief Electoral Officer though there are substantial opportunities for parliamentary committees and individual Members to review and provide input on the commissions' draft reports. The most recent readjustment took place between October 2021 and April 2024, with the highest level of parliamentary involvement occurring during 2023.

The formula used to allocate seats in the House of Commons was first set out in the *Constitution Act, 1867*, subsections 51(1) and 51(2), but the process by which this readjustment takes place is set out in the Electoral Boundaries Readjustment Act, 1985.

As soon as possible after each decennial census, the Chief Statistician prepares and sends the relevant population data to the Minister responsible for implementing the Electoral Boundaries Readjustment Act, and to the Chief Electoral Officer. The Chief Electoral Officer then calculates the total number of seats to be distributed among the provinces. This information is then published in the Canada Gazette, after which the process of appointing members to each commission begins. Each commission consists of three members: the Chair, appointed by the chief justice of the province, and two other members, appointed by the Speaker of the House.

Before the expiry of 60 days after the date on which the Minister receives the population data from the Chief Statistician, or six months after the first day of the month fixed for taking the census, whichever comes first, the Governor in Council sets up an electoral boundaries commission for each province. During the most recent redistribution process, the commission memberships were announced on 1 November 2021. Upon their formation, each commission receives the census data for their province, enabling them to begin their work. Each commission publishes a report setting out its recommendations for the division of a given province into electoral districts, and the description of the boundaries of each district.

Section 20(1) of the Electoral Boundaries Readjustment Act, which establishes a framework for this process, states that each commission has ten months from the date of receipt of its population data to submit their report to the Chief Electoral Officer. This may be extended by a period not exceeding two additional months, if required.

It should be noted that the Electoral Boundaries Reform Act treats the provincial redistributions as ten separate but concurrent processes. In addition, it does not provide a uniform series of deadlines by which stakeholders must complete their tasks. Rather, when one stage is completed, the Act provides that the next stage begins immediately, with a specified period in which it must be completed. This period of time is usually, but not always, 30 calendar days. A common outcome of this system is that the pace of each province's redistribution process will diverge from others, sometimes to considerable

degrees. This divergence can be due to a variety of factors, most commonly the size of the province in question, the scale of its recent population change, the amount of feedback received from stakeholders, and any possible extensions granted to individual provinces.

Each commission must draw the boundaries of the electoral districts in such a way that the population of each district is as close as possible to the quotient obtained by dividing the provincial population figure following the census by the new number of seats allocated to the province. As a general rule, no electoral district may have a population of less than 75% or more than 125% of the quotient. However, commissions may exceed these limits in extraordinary circumstances. Commissions may vary the size of districts within this range, taking into account specific geographic considerations, such as population density in various regions of the province, as well as the size of these regions. Since accessibility, transportation and communication problems are often obstacles to effective representation and canvassing, commissions generally ensure that there is a smaller electorate in rural ridings than in urban ones. There may also be variations due to a certain "communities of interest" of a particular riding. For example, a historic population of an official-language group, which is a linguistic minority within its province, would not be divided among multiple electoral districts.

As soon as possible, each commission must prepare, with supporting reasons, a proposal for the number of seats, the boundaries of the electoral districts and the names to be assigned to them. This proposal must be published in the Canada Gazette, as well as in at least one newspaper of general circulation in the province concerned. Each commission must also host at least one public hearing, at least 30 days after the publication of its proposal. Members of Parliament and members of the public are invited to make representations at these public hearings. Following the public hearings, each commission reviews its proposals, drafts a report, and forwards it to the Chief Electoral Officer, who will then present the report to the Speaker of the House for further consideration.

Once a commission's report is presented to the Speaker, it is automatically referred to the Standing Committee on Procedure and House Affairs (PROC) for further study. Since 1994, this committee has been tasked with examining the reports of the commissions. Members have 30 days after the tabling or publication of reports to submit written objections, to the Clerk of the committee. Since each commission submitted its report to the House on different dates, the deadlines for the objection period were equally as varied. The first report was received by PROC on 17 December 2022, and the last report reached the end of its 30-day objection period on 12 March 2023.

During this stage, several proactive measures not commonly seen in other

committee proceedings are undertaken by the Clerk and other committee staff, to ensure that the objection period is carried out smoothly. This is because the electoral district redistributions occur once every ten years, making it difficult for stakeholders such as Members, their staff, and political parties, to retain first-hand institutional memory of the process.

Before the first commission report is received, members and political parties are briefed on the entire redistribution process. The roles of the commissions and PROC are explained in depth. It is emphasised that, while Members may submit objections, such actions are purely advisory and do not constitute a veto.

When a provincial commission's report is first sent to PROC, the Clerk of the committee will inform all Members that the 30-day period for them to submit objections has begun. Members are briefed that no statutory provision exists for requesting an extension to an objection period.

An objection must be presented in the form of a motion, using a prepared form which has been signed by a minimum of 10 Members. It must specify the provisions to which they object, as well as the reasons for their objection. A Member is free to include as much detail as they wish to support their objection.

One interesting note is that Members may object to elements of any report from any provincial commission, not just the report on their home province. This allows for dissenting opinions to be heard if a province's elected delegation consists entirely of Members from a single political party. During the recent 2021-2024 redistribution, this was the case for the provinces of Saskatchewan and Prince Edward Island. A small number of objections were raised by Members regarding the report of a province they did not reside in. The Clerk and other staff of the committee communicated proactively with Members to inform them that this procedure was allowed.

Another noteworthy aspect of the objection period is that a formal "objection" does not necessarily have to be negative. It was not uncommon during the 2022-2023 objection periods for Members to submit an objection form, with text indicating their support for a particular commission's report.

After the 30-day deadline for Members' comments, PROC has 30 sitting days to consider them. Unlike all other stages of the redistribution process, the time allocated for the "Consideration of Objections" stage is counted by number of sitting days, rather than calendar days. During the 2022-2023 redistribution process, the committee held its first meeting to consider the objections to a commission's report on 31 January 2023. It held its last meeting to consider objections to a commission's report on 30 May 2023.

There is no statutory or procedural rule which requires that every member who has submitted an objection be invited to appear before the committee to answer questions about their concerns. However, it is a long-standing practice

that the committee will give each member the opportunity to appear.

The amount of time that the committee spends examining the objections to each provincial report can vary considerably. Provinces with smaller populations, and provinces with little population change, tend to generate fewer proposed electoral boundary changes, and therefore fewer objections from Members. Sometimes, a report will generate no objections from Members at all. In the most recent redistribution process, this was the case with the commission reports on Newfoundland and Labrador, as well as Prince Edward Island. The committee was therefore able to concur in the commissions' reports for both provinces in a single meeting.

Conversely, provinces with large populations, and provinces which have seen high population growth in the past decade, naturally require their commission to propose a large number of electoral boundary changes. This, in turn, impacts a larger number of communities, and generates greater numbers of objections from Members. In the case of the largest provinces, the committee will schedule several meetings to discuss a single province, broken down by geographic region. For example, the report and objections for Canada's largest province, Ontario, were allocated five meetings at committee.

The Electoral Boundaries Readjustment Act allows for the committee to request that the House grant an extension on the deadline for the study of a specific provincial commission's report. During the 2023 consideration process, the committee made this request on 18 April 2023, for four provinces: Ontario, Québec, British Columbia, and Alberta. These requests were granted by the House on 24 April 2023.

Once it has completed its examination, the Committee submits the reports, together with a copy of the objections and its minutes, to the Speaker of the House. The latter immediately forwards the reports and attachments to the Chief Electoral Officer for distribution, where applicable, to the various electoral boundary commissions for consideration.

The Electoral Boundaries Readjustment Act states that commissions must review objections within 30 calendar days. The commissions are required by the Act to consider all reports and objections within. It should be noted that the commissions are not required to accept any objections and may choose to disregard any of them. Each commission then submits a final report, with or without amendments, to the Chief Electoral Officer, who forwards it to the Speaker of the House. Once tabled in the House by the Speaker, a commission's decision is final and not subject to appeal.

After each commission has submitted its final report, the Chief Electoral Officer prepares a draft representation order. This document indicates the number of members to be elected in each province, divides the provinces into electoral districts and describes their respective boundaries and populations, as

well as the names to be assigned to them. The Chief Electoral Officer forwards the draft representation order to the Minister responsible for implementing the Electoral Boundaries Readjustment Act.

Within five days of receiving the order, the Governor in Council proclaims it to be law. For the new boundaries to be used, at least seven months must have elapsed between the date of proclamation of the writ and the date of dissolution of a legislature for the purposes of a general election. The representation order and the proclamation giving it the force of law must be published in the Canada Gazette within five days of the proclamation. The representation order was proclaimed on 22 September 2023. Due to the requirement that seven months must elapse before the new electoral district boundaries come into force, these did so on 23 April 2024.

Senate

Unusual proceedings on bills

On 31 January, the Speaker made a statement informing the Senate of an administrative error concerning Bill C-18, An Act respecting online communications platforms that make news content available to persons in Canada, and invited senators to reflect on the best approach going forward. Later that week, on 2 February, a motion was moved and adopted to declare all proceedings to date on the bill null and void, after which the Speaker read a message from the House of Commons with the corrected version of the bill, which was then read a first time and placed on the Orders of the Day for second reading two days hence.

On 17 May, the Standing Senate Committee on Agriculture and Forestry presented a report on Bill S-236, An Act to amend the Employment Insurance Act and the Employment Insurance Regulations (Prince Edward Island), recommending that the Senate not proceed further with the bill, pursuant to rule 12-22(5). In June 2022, following its initial examination of the bill, the committee had presented a report with an amendment, which was adopted. In November 2022, during third reading of the bill, an amendment was adopted to refer the bill back to the Agriculture and Forestry Committee in order to hear from additional witnesses. On 13 June 2023, the committee's report recommending that the bill not be proceeded with was adopted, thereby ceasing proceedings relating to it.

On 8 June, with leave, the Senate adopted a motion concerning Bill S-241, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (great apes, elephants and certain other animals). The motion stipulated that, if the bill was adopted at second reading – which occurred later the same day – it be referred to the Standing Senate Committee on Legal and Constitutional

Affairs, and both the Standing Senate Committee on Agriculture and Forestry and the Standing Senate Committee on Energy, the Environment and Natural Resources be simultaneously authorized to examine and report on the subject matter of the bill.

On 13 June, with leave, the Senate adopted a motion concerning Bill C-234, An Act to amend the Greenhouse Gas Pollution Pricing Act. The motion stipulated that, if the bill was adopted at second reading – which occurred later the same day – it be referred to the Standing Senate Committee on Agriculture and Forestry, and the Standing Senate Committee on National Finance be simultaneously authorized to examine and report on the subject matter of the bill.

New Speaker of the Senate

Senator George Furey, Speaker of the Senate, retired from the Senate on 12 May. He was appointed to the Senate in August 1999, on the recommendation of Prime Minister Jean Chrétien, and represented the province of Newfoundland and Labrador. Prior to his appointment, Senator Furey worked in education and was a lawyer. As a senator, he was an active member of several committees, including the Standing Committee on Internal Economy, Budgets and Administration and the Standing Senate Committee on Legal and Constitutional Affairs, both of which he chaired. Senator Furey was appointed Speaker of the Senate in December 2015, by Prime Minister Justin Trudeau, a position he held until his retirement.

On 16 May, Senator Raymonde Gagné was appointed Speaker of the Senate by Prime Minister Trudeau and is the first woman to hold this position in 44 years. Representing Manitoba in the Senate since 2016, Speaker Gagné is a strong advocate of language rights and was an active member of the Standing Senate Committee on Official Languages. Prior to her appointment as Speaker, she held the position of Legislative Deputy to the Government Representative in the Senate. Speaker Gagné is a member of the Order of Canada and a member of the Order of Manitoba.

Time allocation

On 25 April, a point of order was raised regarding the procedure for time allocation on a government matter and whether the Representative of the Government in the Senate, who is not currently the head of a recognised party, can initiate this process under the provisions of the *Rules of the Senate*. These provisions had not been invoked for several years. The Speaker ruled that the Government Representative could initiate this process, noting that the Rules are inherently flexible and must take account of current circumstances, and that this process could not be imposed on the Senate; the Government

Representative can propose such a measure, but the Senate itself must agree to the proposal. The ruling was sustained on appeal to the Senate.

On 12 December, Senator Marc Gold, the Government Representative in the Senate advised the Senate that he had been unable to reach an agreement with the representatives of the recognized parties to allocate time for the debate at the third reading stage of Bill C-21, An Act to amend certain Acts and to make certain consequential amendments (firearms). Senator Gold then gave notice of a motion that, pursuant to rule 7-2, not more than a further six hours of debate be allocated at third reading stage of the bill. The motion was adopted on December 13.

Senators

Twelve vacancies were filled in 2023. All new senators were selected using the Senate appointment process established by Prime Minister Justin Trudeau in 2015, which allows Canadians meeting the assessment criteria to apply for a seat in the Senate. The Prime Minister then selects individuals from a list of candidates recommended by the Independent Advisory Board for Senate Appointments.

The standings in the Senate at the end of 2023 were as follows: 40 senators with the Independent Senators Group (ISG), 15 senators from the Conservative Party of Canada, 15 senators with the Canadian Senators Group (CSG), 14 senators with the Progressive Senate Group (PSG), 12 non-affiliated senators and 9 vacancies. The ISG, therefore, represented 42% of sitting senators.

Alberta Legislative Assembly

Provincial general election

A provincial general election was held in Alberta on 29 May 2023. The United Conservative Party (UCP) prevailed, winning 49 of the 87 seats in the Assembly, while the New Democratic Party (NDP) gained 38 seats, thereby becoming the largest Official Opposition in the province's history.

In addition, during the election campaign, a UCP candidate made offensive remarks about the LGBTQ community. In response, Premier Danielle Smith wanted to prohibit this individual from running for office as a UCP candidate, but it was too late; nomination day had already passed. The candidate was elected as a member of the UCP. Following the election, Premier Smith removed the new Member from the UCP caucus. This Member continues to sit in the Assembly as an Independent. The current caucus standings are: 48 UCP; 38 NDP; and 1 Independent.

Interestingly, the Legislative Assembly did not convene in the weeks following the general election, as has been the practice following general elections in the recent past. Instead, the Assembly came together on 20 June 2023 to elect its

presiding officers and then adjourned until 30 October, at which time the First Session of the 31st Legislature opened with the Speech from the Throne.

Manitoba Legislative Assembly

Broadcasting enhancement

The Digital Media Branch has created an enhancement to all Assembly broadcasts by enabling name keys for each Member as they are speaking in debate. Whenever a Member rises to speak in debate the Member's name, constituency or portfolio, and their party (with an appropriate colour code) will appear at the bottom of the screen, greatly enhancing the viewer experience.

Development of new online information Portal for MLAs and staff

All Members of the newly elected October 2023 Legislature have a brand new means to stay current on a wide range of Assembly information. The purpose of this project is to greatly reduce the amount of information provided to Members in hard copy, shifting all of this material to an online portal. Members who prefer paper would still have an opportunity to receive documentation in that form however.

The Portal will house orientation and reference materials from across the Assembly but it will also be a place where Members will find items related to House and Committee business, such as the Order Paper, copies of Bills and their current status as well as Committee information (including presentations and written submissions). In addition, information from other departments such as Finance, Members' Allowances, Human Resources and Security will make frequent updates available to Members. The Portal will not be a static tool and will evolve in accordance with the needs expressed by Members.

Ontario Legislative Assembly

Censure of a member

On 18 and 23 October 2023, the House debated a motion to censure a Member. The text of the motion was as follows:

"That this House expresses its disapproval of, and dissociates itself from, continued disreputable conduct by the Member for Hamilton Centre, most specifically her use of social media to make antisemitic and discriminatory statements related to the existence of the State of Israel and its defence against Hamas terrorists; and

That this House demands the Member desist from further conduct that is inappropriate and unbecoming of a Member of the Legislative Assembly of Ontario; and

That the Speaker is authorized to not recognize the Member for Hamilton Centre in the House until the Member retracts and deletes her statements on social media and makes an apology in her place in the House."

The Member for Hamilton Centre participated in the debate and voted on the motion. The House adopted the motion in a recorded division on 23 October 2023. At the time of writing, the Order of the House remains in effect.

Pursuant to the Order of the House, the Member is ineligible to be recognised during debates and other proceedings, such as Question Period, Members' Statements, Introduction of Bills, Introduction of Visitors, and responses to ministerial statements. The Member retains all procedural entitlements that do not require recognition by the Speaker, including voting and tabling documents such as notices of motion and written questions. Similarly, the Member may table petitions but is not eligible to be recognised to present them in the House.

The censure does not prohibit the Member from being recognised to speak during committee proceedings. On 29 February 2024, she was appointed to the Standing Committee on Government Agencies and has been recognised by the Chairs of this committee and others to participate in committee proceedings.

In the last Parliament (the 42nd Parliament of the Legislative Assembly of Ontario), the House adopted two separate motions to censure the former Member for Lanark—Frontenac—Kingston, one of which authorised the Speaker not to recognise the Member until he had apologised for certain conduct. Before the 42nd Parliament, the House had not censured a Member since 1936.

Prince Edward Island Legislative Assembly

250th Anniversary of the House of Assembly

The year 2023 marked the 250th anniversary of democracy on PEI, as it was in 1773 that members of the original House of Assembly were elected and met for the first time. In the 1770s, Prince Edward Island – then known as St. John's Island – was a fledgling British North American colony. Its first Governor, Walter Patterson, arrived in 1770. He appointed a small council to assist him in governing but was informed by colonial authorities that a body of elected representatives was also required in order to properly pass legislation. Thus in 1773 he held a general election and 18 local men were elected at large, rather than in individual districts. When they first met on 7 July of that year, it inaugurated the House of Assembly. The legislature was bicameral until 1893, at which point the council and assembly merged to form the Legislative Assembly, the institution in which Islanders continue to be represented provincially today. Prince Edward Island is the second oldest democracy in Canada, with only Nova Scotia (1758) being older.

Dissolution of 66th General Assembly

On 6 March 2023, on the advice of Executive Council, Lieutenant Governor Antoinette Perry dissolved the Legislative Assembly and ordered that writs be

issued for a general election to take place on 3 April 2023. Under the *Election Act* a general election would have occurred on 2 October 2023, but the Act also provides for the dissolution of the Legislative Assembly when the Lieutenant Governor sees fit.

Election results
In the 3 April election, Progressive Conservative Party candidates won 22 districts, Liberal Party candidates three districts, and Green Party candidates two districts. The Progressive Conservative Party was returned to government, led by Premier Dennis King. He later chose eleven Progressive Conservative members to join him in Cabinet. The Liberal Party formed the Official Opposition, whereas they were the Third Party in the previous Assembly. Interim party leader Hal Perry became the Leader of the Official Opposition. The Green Party formed the Third Party, after serving as the Official Opposition in the previous Assembly. During the election they were led by Peter Bevan-Baker, but he subsequently resigned the leadership and Karla Bernard became interim party leader and Leader of the Third Party.

Opening of 67th General Assembly, New Speaker and Deputy Speaker
Members of the 67th General Assembly were sworn in on 12 May and the new Assembly met for the first time the same day. Darlene Compton, a re-elected Progressive Conservative member, was elected Speaker by secret ballot. Sidney MacEwen, also a re-elected Progressive Conservative member, was appointed Deputy Speaker upon resolution of the House. Following this, Lieutenant Governor Antoinette Perry delivered the Speech from the Throne.

Resignation of member
On 10 November Jamie Fox, a Progressive Conservative member, announced that he was resigning his seat in order to run in the next federal election. At the close of the year a by-election had not yet been held, and membership in the Assembly was 21 Progressive Conservative members, three Liberal members and two Green members.

Speaker's Rulings
On 8 November, Government House Leader Matthew MacKay rose on a point of order to question the admissibility of Bill 106, *An Act to Amend the Employment Standards Act*, citing Rule 65(3) that stipulates that private members' bills cannot call for nor imply the expenditure of public funds or the imposition of any tax. He requested that no further debate on the bill occur until the Speaker ruled on the matter. Speaker Darlene Compton found that the bill was not out of order as it did not impose taxes nor appropriate public money and therefore

did not require a royal recommendation from the Lieutenant Governor. She pointed out that the bill contained a clause indicating that moneys required for its purpose would be paid out of moneys appropriated for that purpose by the Legislature, as have other private members' bills.

On 24 November, Minister of Environment, Energy and Climate Action Steven Myers rose on a point of order to object to comments made by Leader of the Third Party Karla Bernard during Oral Question Period, as he saw them as reflections on a vote already taken by the House. Speaker Compton agreed that the Leader of the Third Party had reflected on a vote and directed her to retract her comments and apologize to the House, which she did.

Quebec National Assembly

Electronic voting

In November 2022, parliamentarians agreed to replace roll call voting with an electronic voting system. In April 2023, the Assembly authorities adopted a solution which allows deputies to vote using a remote control and see the results displayed in real time on a screen.

In June 2023, the Standing Orders were amended to replace roll call voting with electronic voting for the following resumption. The first electronic vote took place on 12 September 2023.

Saskatchewan Legislative Assembly

Recall of the Legislative Assembly

In the fall of 2023, at the government's request, the Speaker of the Legislative Assembly of Saskatchewan recalled the Assembly, scheduling the session for 10 October 2023. Notably, the sitting did not mark the beginning of a new session but was a resumption of the third session of the twenty-ninth legislature. The purpose of the sitting was to introduce a "parental bill of rights" in response to an injunction granted by a Court of King's Bench judge in September against the Saskatchewan government's parental inclusion and consent policy requiring parental consent for students to change their gendered name and pronouns in schools. The injunction, which temporarily halted the application of the policy until a court could rule on its legitimacy, was granted on the grounds that affected students might suffer "irreparable harm." The Premier subsequently committed in the media to invoking the notwithstanding clause to pass legislation implementing the policy.

Bill No. 137, *The Education (Parents' Bill of Rights) Amendment Act, 2023*, was introduced on 12 October 2023 on a recorded division of 37-12. It was subsequently considered for a total of 40 hours in accordance with the time allocations laid out in a sessional order — 33 hours at second reading, 5 hours in Committee of the Whole on Bills, and 2 hours at third reading. The bill

was passed on recorded division at each stage of consideration, including in Committee of the Whole on Bills, where each individual clause was agreed on recorded division. Two amendments were moved by opposition members during clause-by-clause consideration, both of which were negatived, also on recorded divisions.

On 20 October 2023, Bill 137 was passed on a recorded vote of 40-12. It received royal assent and came into force immediately afterwards. At that time, the special sitting was officially adjourned in accordance with an order of the Assembly made the same day.

Bill 137 makes several changes to *The Education Act, 1995* concerning the rights and responsibilities of parents and guardians. These include requiring schools to obtain consent from the parents/guardians of any child under age 16 wishing to use an alternative gendered name and identity at school; and requiring schools to provide 2 weeks' notice prior to the presentation of sexual health content, including the subject matter and dates, and allowing parents/guardians the choice to withdraw their child from the presentation of the content. The bill also establishes that the sections pertaining to parental consent regarding gender identity will operate notwithstanding both the *Canadian Charter of Rights and Freedoms* and the *Saskatchewan Human Rights Code*.

CYPRUS

House of Representatives

Election of a new President

Following the Presidential elections of February 2023, Mr. Nicos Christodoulides, who previously served as Foreign Minister, was elected as the 8th President of the Republic of Cyprus. An official investiture ceremony took place at the House of Representatives on 28 February 2023, where Mr. Christodoulides was officially sworn in, in the presence of the President and all Members of the House.

Foundation for Parliamentarism and Participatory Democracy

The House of Representatives established a "Foundation for Parliamentarism and Participatory Democracy" with the purpose of promoting dialogue and interactive communication between the Parliament and civil society and the overall principles of parliamentarism. The Foundation is housed at the "House of the Citizen", a restored colonial-era building, that is now equipped to host exhibitions, meetings, as well as press conferences and a variety of other events.

Establishment of an Internal Audit Unit

In regards to the Services of the House, in 2023 a separate Internal Audit Unit

was established with the aim of assessing and evaluating internal processes and thus contributing constructively to the improvement of the administrative work of the House and the mitigation of possible risks. Furthermore, in 2023 the House prepared for the first time a three-year Strategic Plan for 2023-2025, where the mission, vision, values, strategic aspirations, objectives and activities of the Parliament are recorded and linked to its budget, through tailored performance indicators and evaluation benchmarks.

Internship programme
The traineeship programme of the House for university students that was inaugurated in 2022 continued in 2023 as well. Nearly 30 students took part, successfully completing a two-month internship period between June and July 2023. Students came both from academic institutions in Cyprus and abroad. A similar initiative, in the context of activities planned for International Women's Day, had been undertaken by the President of the House Office, through which female students have followed the activities of different female MPs for a day.

Artwork on display in Parliament
Finally, through an initiative of the President of the House, the main building of the Parliament now houses works of the State Collection of Contemporary Cypriot Art. The hosted artwork showcases various artists and a diverse range of techniques. The aim of this initiative is to showcase Cypriot art to all visitors of the House and to promote further cultural expression in Cyprus.

INDIA

Lok Sabha

Shifting to New Parliament Building
During the Thirteenth Session of the Seventeenth Lok Sabha (18-21 September 2023), the Lok Sabha witnessed the historic event of shifting from the earlier Parliament House (renamed as *Samvidhan Sadan*) to a new Parliament building (named as Parliament House of India). Consequently, from 19 September 2023 onwards, Parliamentary Sessions are being held at the Parliament House of India.

Passing of Law to reserve seats for women in the House of the People, Legislative Assemblies of States and Union Territories
The very first legislative proposal that was considered and passed by the Lok Sabha in the New Parliament House on 20 September 2023 was *the Constitution (One Hundred and Twenty-Eighth Amendment) Bill, 2023*, popularly known as "*Women's Reservation Bill, 2023*." On 28 September 2023, the Bill *as passed*

by the Houses on receiving the assent to by the President of India became *the Constitution (One Hundred and Sixth Amendment) Act, 2023*.

The said Law reserves as nearly as may be one-third of the seats to be filled by direct elections for Women in House of the People and Legislative Assemblies of States as well as that of National Capital Territory of Delhi and also reserves as nearly as may be one-third of the seats for Women within the seats reserved for Scheduled Castes and/or Scheduled Tribes, as the case may be, in the above said elected bodies.

On similar lines, two more Bills namely, *the Jammu and Kashmir Reorganisation (Second Amendment) Bill, 2023* and *the Government of Union Territories (Amendment) Bill, 2023*, were introduced in and passed by Lok Sabha on 12 December 2023 to reserve as nearly as may be, one-third of total seats for women in the Legislative Assemblies of Union Territories of Jammu and Kashmir and Puducherry respectively. Enacted as Act Nos. 38 and 39 of 2023 respectively, while *the Jammu and Kashmir Reorganisation (Second Amendment) Bill, 2023* stipulate that reservation for women will also apply to the seats reserved for Scheduled Castes and/or Scheduled Tribes; *the Government of Union Territories (Amendment) Bill, 2023* provides the same for seats reserved for Scheduled Castes.

These above said three legislations have similar clauses providing that the rotation of seats reserved for women in respective elected bodies shall take effect from such subsequent exercise of delimitation as Parliament may by law determine. Moreover, they also provide for a sunset clause for expiration of a period of 15 years from commencement.

Uttar Pradesh Legislative Assembly

Procedural changes

The Uttar Pradesh State Legislative Assembly took a major decision to rewrite all the rules of procedure and conduct of business of the House under the guidance of present Hon'ble Speaker, Sri Satish Mahana.

The new set of rules of procedure and conduct of business has been adopted by the State Legislative Assembly recently. These rules have been termed as "Rules of Procedure and Conduct of Business of the U.P. Legislative-2023." The new rules of procedure take into account all the developments which have taken place in the last 75 years. Some major procedural changes are as follows:

- Under new arrangement questions from members for the upcoming session can be received after 15 days from the date of adjournment of the House. Previously, new questions for the upcoming session were submitted only after the prorogation of House. A provision has been made to receive members' questions 24 hours, seven days a week through an online process. In order to answer as many questions as possible from

those listed for oral answers in the agenda of any session day and to enable the members to prepare supplementary questions arising out of the answers to their questions, the agenda of questions and answers to the questions is displayed on the tablets installed on the seats of the Hon'ble members in the House half an hour before the commencement of the proceedings of the House.

- During the consideration of the Bills, introduced in the House, all Hon'ble members are given an opportunity to speak on the amendments with the permission of the Hon'ble Speaker along with the members who bring amendments on the Bills.
- The provisions regarding giving notices relating to urgent public matters and raising point of order has been improved. Hon'ble members can give these notices at the end of the sitting until one hour before the next sitting. Previously these notices were given one hour before sitting of the House.
- When more than one Member rises at the same time to speak in the House, the Hon'ble Speaker may give precedence to female members.

ISLE OF MAN

Tynwald

Debate on the role of the Attorney General

The role of His Majesty's Attorney General for the Isle of Man was debated in Tynwald in July 2023 following a review by Stephen Wooler CB. Mr Wooler's review had been commissioned by the Isle of Man Government following a debate in 2021 on an earlier review by the Standing Committee of Tynwald on Constitutional and Legal Affairs and Justice.

An appointee of the Crown since the late eighteenth century, the Attorney General's position as a Member of Tynwald was enshrined in statute in 1919. The statutory framework was modified in 1971 when the Attorney General was deprived of the right to vote.

By 2021 the core functions of the office included acting as chief legal advisor to the Government, as legal advisor to Members of Tynwald, as guardian of the rule of law and the public interest, and as prosecutor in the criminal courts. The Tynwald Committee considered that these duties gave rise to inherent conflicts when performed by a single person. It drew a number of conclusions from this including that the Attorney General should no longer be a Member of Tynwald.

Stephen Wooler in his 2023 report argued that the Tynwald Committee had understated the intangible value and importance of the role of the Attorney General as a Crown Officer and ex officio member of Tynwald, describing that presence in the legislature as a core responsibility for any attorney general. However, Mr Wooler recommended that in the interests of the efficient use

of the Attorney General's time, the general requirement that every Member of Tynwald be in attendance for every moment of every sitting should be disapplied in the Attorney General's case.

At the conclusion of the July 2023 debate a number of recommendations were agreed to which concerned the operation of specific functions of the Attorney General's Chambers. The broader matter of the Attorney General's membership of the legislature was referred back to the Isle of Man Government for further consideration.

Appointment of the first Tynwald Auditor General

The year 2023 saw the appointment of the first ever Tynwald Auditor General. This development, which had significant implications for the operation of the Public Accounts Committee and for public financial scrutiny more generally, had had a long gestation period.

The Island had until 1969 come under the purview of the UK's Comptroller and Auditor General but the Governor explained to Tynwald in February of that year that this arrangement was coming to an end at the UK's request. Tynwald established a Public Accounts Committee in the early 1980s but it operated for the first four decades of its existence without the assistance of an Auditor General. The campaign to establish the new function began in earnest in July 2006 with the approval of a recommendation of a Select Committee on Scrutiny and the Functions of the Standing Committee on Expenditure and Public Accounts. Enabling legislation was enacted in 2011 but the necessary funds were not made available for a further 10 years. The first holder of the new office is Stephen Warren, formerly Deputy Comptroller and Auditor General of Jersey. His appointment was approved by Tynwald in March 2023 and took effect from 1 May 2023.

COVID-19: two related reviews

During the first half of 2020, as the Isle of Man Government responded to the onset of COVID-19, Tynwald's parliamentary scrutiny regime devoted the majority of available resources to a series of quick-fire inquiries by the Public Accounts Committee. In its last report before the August 2021 Dissolution of the House of Keys, the PAC published a recommendation that a statutory public inquiry be established.

The General Election to the House of Keys took place in September 2021, and few weeks later the pre-Dissolution recommendation by the PAC was debated. A Government amendment was approved in favour of a non-statutory review, with the reviewer to be appointed by the Government but the terms of reference to be developed jointly by the Government and the PAC and subject to a further Tynwald approval. Terms of reference were approved in April 2022

and were amended in November 2022 on the advice of the Review Chair, Kate Brunner KC, and the review was completed by the end of December 2023.

Meanwhile in May 2023 a separate review was established on the Isle of Man Government's handling of the Equality and Employment Tribunal case of Ranson v Department of Health and Social Care. This arose as a result of two decisions by the Tribunal: first that Dr Ranson, who had been appointed as the Island's Medical Director just before the pandemic, had been constructively dismissed as a result of whistleblowing; and second that she should be awarded some £3.2 million in compensation and some £200,000 in costs. This time the reviewer was to be appointed, and their terms of reference to be developed, by a Select Committee of Tynwald with no input from the Government, other than that the terms of reference were again subject to Tynwald approval. The appointee was Richard Wright KC, the terms of reference were approved in July 2023 and the review was completed by the end of January 2024.

JERSEY

States of Jersey

Continuing professional development for Members

In September 2023 we launched a certificated professional development programme for Members in conjunction with a local mediation skills company and Queen Margaret University, Edinburgh. The programme covers communication, conflict resolution, negotiation, critical thinking, integrity, leadership and resilience over 10 x 2-hour sessions for which records of achievement can be provided either per module or for all 10 sessions. 26 Members (out of total 49) signed up as the first cohort and feedback has been extremely positive so far.

Members Remuneration Review

In April 2022 the Assembly agreed a new system for setting Members' pay through the implementation of the States of Jersey Remuneration of Elected Members) Law 2022. Prior to this we had a Remuneration Board which put forward recommendations periodically. Our current legislation does not allow for differential pay and all Members receive the same monthly sum. The new process saw a reviewer appointed to undertake a review and produce a report within 12 months of appointment. The current Reviewer's determination was presented to the States in October 2023 and her recommendations took automatic effect.[10] To summarise, the recommendations in respect of States Members' salaries were as follows:

[10] statesassembly.gov.je/assemblyreports/2023/r.157-2023.pdf

The salary for each States Member shall be increased each year in line with the Average Earnings Index (AEI) published that year by Statistics Jersey.

The first adjustment took effect from 1st June 2023.

The second adjustment will take effect from 1st October 2024, with subsequent adjustments taking effect each 1st October thereafter.

NEW ZEALAND

House of Representatives

Resignation and appointment of Prime Minister

On 19 January 2023, Rt Hon Jacinda Ardern announced her intention to step down from her roles as Prime Minister and leader of the New Zealand Labour Party. Ms Ardern had led the Labour Party from 2017 and became Prime Minister following the general election in the same year. The Labour Party elected Hon Chris Hipkins as its new leader, and he was sworn in as Prime Minister on 25 January. Before becoming the Prime Minister, Mr Hipkins was the Leader of the House, Minister of Education, Minister for the Public Service, and Minister of Police. He had also previously been the Minister responsible for COVID-19 Response.

General election and 54th Parliament

Held on 14 October 2023, the general election resulted in substantial changes to the House of Representatives for the 54th Parliament. Almost one-third of seats in the House went to members outside the two-largest parties, the largest proportion since the 2002 election. The largest party received 40 percent of seats, the lowest outcome for the largest party since the first MMP election in 1996. This contrasted with the result from the 2020 general election, when a single party received over 50 percent of seats—an unprecedented result for New Zealand under MMP.

The general election brought 40 new members to the House, with a further 7 members returning after not being members during the previous term. The New Zealand First Party (with 8 members) returned to the House after a 3-year absence. This high turnover of the House's membership gave rise to a considerable undertaking for the parliamentary agencies as they offboarded departing members, onboarded and provided induction for incoming members, and supported members in setting up new offices (half of electorate seats changed hands).

On 24 November, 6 weeks after the election and 3 weeks after the official results were declared, the National Party, ACT Party, and New Zealand First Party announced the details of their coalition agreement. The agreement included ministerial portfolios for all three parties, both inside and outside

Cabinet, and commitments to progress specific policies. Unusually, the agreement provided for the role of Deputy Prime Minister to be held in turn by the leader of the New Zealand First Party (for the first half of the term) and then by the leader of the ACT Party.

Accordingly, Rt Hon Christopher Luxon was sworn in as Prime Minister on 27 November 2023. Mr Luxon had become Leader of the National Party and Leader of the Opposition in November 2021, after first being elected to the House in October 2020. The Government he leads is New Zealand's first three-party coalition Government. While Governments have previously emerged from agreements involving three or more parties, in those cases the parties concerned have not all formally joined in coalition.

The 54th Parliament has 123 members, with an "overhang" of 3 over the normal number of 120. Two of these additional seats resulted from Te Pāti Māori winning more electorate seats than the number of seats it would have won from its share of the party vote. Moreover, another seat was added following a byelection that was required when a candidate in an electorate died after the close of nominations and before polling day. In line with the requirements of the Electoral Act 1993, the Electoral Commission cancelled the poll for that electorate seat. As the consequent byelection occurred after the general election, it could not be taken into account in the allocation of list seats in the House. This meant an additional seat was added to the House, increasing the total number of members to 123.

Tai a Kiwa: Stronger Pacific Parliaments

Since 2019, the Office of the Clerk in New Zealand has provided services to Pacific parliaments through Tai a Kiwa: Stronger Pacific Parliaments, a programme funded by the New Zealand Government. The programme delivers technical assistance to improve capacity and capability of MPs and staff, enhances interparliamentary relations in the Pacific region, and promotes the role and function of parliaments to encourage greater understanding and engagement with the public.

The programme has been renewed, and funding has been secured to 2029. Face-to face engagement will be expanded, with wider support and activity across the Pacific. This will include relevant and technical assistance through study exchange visits, mentoring, and peer to peer support and learning. In addition, there will be training workshops, seminars, and conferences on emerging topics that are of interest to Pacific parliaments.

The intended outcomes of the programme are:

- Pacific parliaments function more effectively with a reduced delay and disruption to the parliamentary process.
- Pacific parliaments' capacity and capability to provide oversight are

improved, particularly regarding the Budget process.
- Pacific political parties' and communities' perception of women as credible politicians is improved. Women are better supported and informed to participate in parliament and engage more meaningfully and safely.
- There is greater public understanding in the Pacific of the role and functioning of parliament, and citizens are more actively engaged in the democratic process.

Commissioner for Parliamentary Standards

In 2023, the New Zealand Parliament appointed its first Commissioner for Parliamentary Standards. The function of the commissioner is to inquire into and, if possible, facilitate the resolution of, complaints about members' conduct that is alleged to be inconsistent with the principles set out in the Parliament's code of conduct. Complaints may be made by members or staff. For staff, complaints must first go through their employer's complaints process.

The commissioner may initiate an inquiry in response to a complaint, and may produce a report making findings in relation to whether the conduct complained about occurred and, if so, whether the member concerned has behaved in a way that is inconsistent with the code of conduct. If the matter is serious, the commissioner may, with agreement of the complainant, report the matter to the Speaker. Such a report will be presented to the House.

The creation of this role, and the code of conduct, follow a review in 2019 that found bullying and harassment were systemic in the parliamentary workplace. They form part of the Parliament's response to the 85 recommendations to improve parliamentary culture that resulted from that review.

Declarations of inconsistency relating to the voting age

In 2022, the House adopted procedures to deal with declarations of inconsistency with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. Declarations of inconsistency may be made by senior courts if they find that legislation is inconsistent with the rights and freedoms protected under these two Acts. An amendment to this legislation in 2022 provides a statutory mechanism for bringing declarations of inconsistency to the attention of the House, with the aim of facilitating consideration by the House and the Government. A sessional order was adopted in 2022, and the Standing Orders have now been amended to include these procedures. More information was provided in the 2022 edition of *The Table*.

In November 2022, the first declaration was made that could be considered through these procedures. The Supreme Court declared that New Zealand's minimum voting age of 18 is inconsistent with the right to be free from discrimination on the basis of age, following a case taken by the Make It 16

campaign. The Attorney-General accordingly presented a paper to the House, drawing its attention to the declaration, which was referred to the Justice Committee for consideration. The committee called for public submissions and received additional advice from a number of Government departments.

In New Zealand, the voting age for parliamentary elections is entrenched and may be amended only following a majority vote in a referendum or with the support of at least 75 percent of members in the House. The voting age for local elections is not entrenched, and may be amended by a simple majority.

The committee made two separate recommendations by majority. For local elections, the committee recommended lowering the voting age. For parliamentary elections, the committee suggested the Government investigate lowering the minimum voting age. This difference reflected the committee's awareness that legislation to lower the minimum voting age was unlikely to reach the higher threshold required.

The committee's report contained two differing views that rejected the majority's conclusion that the voting age was inconsistent with the right to freedom from discrimination. They noted that the court's declaration was that the inconsistency had not been demonstrably justified based on the evidence in the proceedings before them, leaving open the possibility that it could be demonstrably justified based on the consideration of further evidence or other factors. Both opposed the recommendations made by the majority.

The then Government introduced legislation to lower the voting age for local elections. That bill was withdrawn by the incoming Government in the 54th Parliament.

Petitions Committee

The House adopted a permanent Petitions Committee in 2020 to meet the challenge of an increasing number of petitions, which had followed the launch of an online portal for petitions in 2018. The committee takes on some of the petitions-related workload of other committees, and has oversight responsibilities for petitions across Parliament. August 2023 marked the end of the first term in which the committee had been operating. Over the course of the 53rd Parliament, committees reported back on 513 petitions, compared with 240 in the previous Parliament. Despite a continued increase in the number of petitions, the number of petitions required to be reinstated between parliamentary terms was significantly lower, with 69 reinstated in the 54th Parliament, compared with 200 in the 53rd Parliament.

The committee, in addition to considering petitions or referring a petition to another committee, may refer a committee directly to a Minister. Towards the end of the Parliament, the Petitions Committee reported on responses by Ministers. The committee raised some concerns with the timing of some

responses. It also recommended changes to the manner of the responses, including providing them in a form that was easier for petitioners to understand.

SOUTH AFRICA

United Council of the Provinces

In 2023, the Electoral Amendment Bill was signed into law, enabling independent candidates to stand for elections into provincial legislatures and the National Assembly.

A fire on 2 January 2022 gutted parts of the National Assembly and Old Assembly Buildings. This continues to affect the operation of Parliament as it has limited the meeting spaces for committees and available office spaces for Members of Parliament and staff. The buildings are currently under reconstruction.

UNITED KINGDOM

House of Lords

Foreign Secretary in the House of Lords

Former Prime Minister David Cameron was appointed to the House of Lords in November 2023 as Lord Cameron of Chipping Norton, so that he could take up the post of Secretary of State for Foreign, Commonwealth and Development Affairs. Lord Cameron became the first holder of one of the 'Great Offices of State' (Prime Minister, Chancellor of the Exchequer, Foreign Secretary, Home Secretary) in the Lords since the 1980s.

A process for a dedicated question time to scrutinise Secretaries of State in the House of Lords was first established in 2009, and extended in 2021 to cover Ministers of State attending Cabinet, so that the House could question Lord Frost in his role concerning the United Kingdom's relationship with the European Union.[11] Following the appointment of Lord Cameron, the Procedure and Privileges Committee published a report recommending further adjustments to this procedure, primarily to increase the number of questions asked of the Foreign Secretary and extend the length of the time for questions on statements made by him.[12] The report was agreed on 28 November and Lord Cameron's first oral questions took place on 5 December.

[11] Original report: publications.parliament.uk/pa/ld200910/ldselect/ldprohse/13/13.pdf. 2021 report: committees.parliament.uk/publications/4999/documents/49914/default

[12] committees.parliament.uk/publications/42253/documents/210056/default

Northern Ireland Assembly

No Speaker elected

2023 began with the Northern Ireland Assembly still not having elected a Speaker following the election in May 2022.

The Assembly only met once during 2023. That sitting was on 14 February and, as per each of the five sittings that took place in 2022 following the election, the Assembly again failed to elect a Speaker with cross-community support (i.e. a certain level of support from both nationalist and unionist Members). The DUP - the largest unionist party at the Assembly - maintained their position of refusing to support the return of the devolved institutions until their concerns about the Windsor Framework (the successor to the Protocol on Ireland/ Northern Ireland) were addressed. Without their support it was impossible to elect a Speaker and consequently impossible for the Assembly to carry out any other business. Those issues remained outstanding at the end of 2023.

Scottish Parliament

Resignation of the First Minister

Former First Minister, Rt Hon Nicola Sturgeon MSP, resigned as Leader of the SNP in March 2023. Following a short, contested leadership campaign, Humza Yousaf MSP was elected as her successor, first as Leader of the SNP, then as First Minister of the Scottish Parliament. In October that year, Ash Regan MSP, who had also been a leadership candidate, defected to the Alba Party. She now sits as the sole member of that party in the Scottish Parliament.

Amendment of bill to match legislative competence

The United Nations Convention on the Rights of Children (Incorporation) (Scotland) Bill was passed by the Scottish Parliament in March 2021. However, before it could be sent for Royal Assent, it was challenged by UK law officers and subsequently found to make provisions outwith the legislative competence of the Scottish Parliament. In September 2023, the Parliament agreed, for the first time, to use standing orders rules to reconsider and amended the bill to bring it within legislative competence. Following committee consideration of proposed government amendments, those amendments were finally disposed of in Chamber proceedings in December. The Bill has now been enacted.

Gender Recognition Reform (Scotland) Bill

In another first, in January 2023, the UK Government made an order under section 35 of the Scotland Act to prevent the Gender Recognition Reform (Scotland) Bill from being summitted for Royal Assent. That bill had been passed by the Scottish Parliament at the end of 2022. Section 35 allows UK Government to make such an order if it considers that a bill would have an

adverse effect on the operation of the law as it applies to reserved matters. The Scottish Government was subsequently unsuccessful in an attempt to challenge that order in the courts. The bill has not been withdrawn, however, and the Scottish Government has announced that it will not appeal the court ruling at this time. On that basis, it could be reconsidered by the Parliament at future date, although that currently seems unlikely.

COMPARATIVE STUDY: EXCLUSION OF MEMBERS ON TEMPORARY OR PERMANENT BASIS

This year's comparative study asked: What are the procedural arrangements for removing a member from your chamber on a temporary or permanent basis? How frequently does this occur and for what reasons? What is the authority for any removal, e.g. constitutional, statutory, standing orders, etc? This was not intended to cover a chamber's standards arrangements more generally (which have been subject of previous studies).

AUSTRALIA

House of Representatives

There are no procedural arrangements for removing a Member from the Chamber on a permanent basis. Section 8 of the *Parliamentary Privileges Act 1987* stipulates that the House does not have the power to expel a Member. Before this provision was enacted the House had the power to expel Members derived from the privileges and practices of the UK House of Commons passed to the Australian Parliament at Federation, under section 49 of Australia's written Constitution. That power had only been used once by the House, in 1920, when the Member for Kalgoorlie was expelled on the motion of the Prime Minister in relation to a speech the Member had made outside of the House, which was deemed 'conduct unfitting him to remain a Member'.

Under the Constitution, a Member's seat may become vacant due to disqualification (ss. 44 and 45) or absence from the House for two consecutive months without permission of the House (s. 38), which in effect removes the Member from the Chamber permanently, unless later re-elected. However, the House has no procedural role in these matters.

The House does, however, have powers to temporarily remove a Member from the Chamber. In respect of Members whom the House determines have committed contempts, the House's power to punish has been considered to include suspension for a period from the service of the House. There have been three instances where Members have been suspended by resolution of the House as punishment for contempt (1913, 1987 and 1989), one of which was expunged by a further resolution of the House.

Members may also be removed from the Chamber on a temporary basis as a sanction against disorderly conduct, under standing order 94:

- A Member may be ordered to leave the Chamber for one hour (SO 94(a)). This direction by the Speaker is not open to debate or dissent, and

a Member failing to leave the Chamber immediately upon being ordered to do so may be named.

- A Member may be named and suspended. The Speaker can name a disorderly Member and, on a motion being moved, the Speaker then puts the question 'That the Member be suspended from the service of the House'. This question must be resolved without amendment, adjournment or debate (SO 94(b)).
- If a Member is named and suspended, the term of the suspension is 24 hours from the time of suspension on the first occasion; three consecutive sittings following the day of suspension on the second occasion in the same calendar year; and seven consecutive sittings following the day of suspension on the third or later occasions in the same calendar year. Suspensions in previous sessions or directions to leave the Chamber for one hour are disregarded in this calculation (SO 94(d)).
- A Member who is subject to an order to leave the Chamber for an hour, or a suspension of 24 hours or more, is excluded from the Chamber, its galleries and the Federation Chamber (SO 94(e)), but may take part in committee proceedings during the period of suspension.

The Speaker's ability to direct a Member to leave for one hour has been in place since the 37th Parliament (adopted 10 February 1994) and is generally used in instances of disorder that may not rise to the significance of naming and suspension, enabling situations to be defused quickly and without disrupting proceedings to a great extent. While the number of Members named and suspended each Parliament has been in decline over recent years, use of standing order 94(a) has grown significantly since its introduction.

Parliament	Directed to leave for 1 hour	Named and suspended	
		1st Occasion (24 hours)	2nd Occasion (3 days)
37th	16*	9	2**
38th	58	15	-
39th	110	11	-
40th	81	15	1
41st	215	8	-
42nd	154	13	1

Parliament	Directed to leave for 1 hour	Named and suspended	
		1st Occasion (24 hours)	2nd Occasion (3 days)
43rd	273	4	-
44th	515	7	1
45th	415	-	-
46th	246	2	-
47th#	161	-	-

* following the provision coming into effect on 21 February 1994
** one Member was suspended for 7 days in 1993 under the rule then applying
# to date, as at 27 March 2024

Table: Instances of Members directed to leave or named and suspended since 37th Parliament

The only time a Member has been suspended on a third occasion in a calendar year was during the 7th Parliament, in 1919. That Member was suspended for one month under the rule then applying.

The provisions under standing order 94 are not available to the Deputy Speaker in the Federation Chamber, which is a debating committee of the House and considers a restricted range of business. Although disorderly Members may be directed to leave the Federation Chamber for a period of 15 minutes, this exclusion does not extend to the Chamber, and any subsequent actions under standing order 94 must be taken in the House (standing order 187). This direction has only been given on three occasions (2014, 2016 and 2017).

Senate

Sections 49 and 50 of the Australian Constitution, respectively, provide each House of Parliament with the power to determine its own constitution (in so far as it is not determined by constitutional or statutory law - which is largely the case), and the power to make its own rules and orders on the operation of its powers and proceedings.

Before 1987, each House could exercise the power of determining its own constitution by the expulsion of members who were regarded as unfit to be members. This power was abolished by section 8 of the *Parliamentary Privileges Act 1987* which specifies that a House does not have the power to expel a

member from membership of the House.[1]

While the Senate cannot therefore expel a senator, it does have the power to suspend senators from the chamber for disorderly behaviour.

Under standing order 203, a senator is guilty of an offence if the senator:

(a) persistently and wilfully obstructs the business of the Senate;

(b) is guilty of disorderly conduct;

(c) uses objectionable words, and refuses to withdraw such words;

(d) persistently and wilfully refuses to conform to the standing orders; or

(e) persistently and wilfully disregards the authority of the Chair.[2]

The President may report to the Senate that a senator has committed an offence. A senator who has been reported is called upon to make an explanation or apology. The explanation or apology may be accepted by the Senate. If the explanation or apology is not acceptable, a motion may be moved that the senator be suspended from the sitting of the Senate, and that motion must be put and determined without any amendment, adjournment or debate.

Standing order 204 sets out that the suspension of a senator is for the remainder of that day's sitting, but if a senator commits a second offence in the same calendar year, the suspension is for 7 sitting days.[3] For any subsequent offences within a calendar year, a suspension is for 14 sitting days. A senator who has been suspended from the sitting of the Senate may not enter the Senate chamber during the period of the suspension.

It is rare for a senator to be suspended, with the most recent suspension occurring on 27 November 2018 when a senator used objectionable words and refused to withdraw them.

A 14 sitting day suspension has never been applied.

Australian Capital Territory Legislative Assembly

The authority to suspend members rests in the standing orders. Members may be removed from the Chamber under standing orders 202 to 204. The period of suspension varies depending on the frequency – 3 sitting hours, 2 sitting days and 3 sitting days (over a 12 month period). Practice is that the Speaker will "warn" a member to advise them they are in danger of being named and suspended. Upon a member being named, the Speaker puts the question "That such Member be suspended from the service of the Assembly." There is no amendment, debate of adjournment permitted to the question.

[1] legislation.gov.au/C2004A03430/latest/text

[2] aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/b00/b31#standing-order_c31-203:~:text=203%20Infringement%20of%20order

[3] aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/b00/b31#standing-order_c31-203:~:text=204%20Suspension%20of%20senator

The ability of the Assembly to suspend a Member outside the naming procedure has not been tested. The Assembly does not have the ability to expel a member. The Assembly does not have the power to imprison or fine.

In the past 4 Assemblies (each a four-year term) the number of members named and suspended were:

- 10th Assembly (2020 to 2024 to date): 2
- 9th Assembly (2016 to 2020): 5
- 8th Assembly (2012 to 2016): 2
- 7th Assembly (2008 to 2012): 3

Reasons for suspension include:

- persistently and willfully obstructed the business of the Assembly; or
- been guilty of disorderly conduct; or
- used offensive words, which the Member has refused to withdraw; or
- persistently and willfully refused to conform to any standing order; or
- persistently and willfully disregarded the authority of the Chair

New South Wales Legislative Assembly

The existence of the New South Wales Parliament's inherent power to expel a Member was recognised by the Supreme Court of New South Wales in *Armstrong v Budd* (1969) 71 SR (NSW) 368. This power cannot be used by the House to punish, rather it may be used when reasonably necessary as a self-preservation measure to protect the dignity of the House and to maintain public confidence in the Parliament.

While the *Constitution Act 1902 (NSW)* does not expressly provide the legislative authority for the power of the House to expel one of its Members, the Act does acknowledge the existence of this power. Section 13A of the Act details a number of conditions that, if any of which are met, automatically disqualify a Member and render his or her seat vacant. Subsection 13A(3) states: 'Nothing within this section affects any power that the House has to expel a Member of the House.'

What are the procedural arrangements for removing a member from your chamber?
Chapter 20 of the Standing Orders of the Legislative Assembly outlines the procedures to remove a member from the chamber, both temporarily and permanently.[4]

Temporary basis

Standing Order 249 – Member repeatedly called to order

If a member is called to order by the Speaker more than three times, the Speaker

[4] parliament.nsw.gov.au/la/houseprocedures/standingorders/Documents/Consolidated%20Standing%20and%20Sessional%20Orders%20August%202023.PDF

may direct the Serjeant-at-Arms to remove the member until the adjournment of that sitting.

Standing Order 249A – Member removed from the Chamber

The Speaker may ask the member to leave the chamber for a specified amount of time up to three hours.

Standing order 250 – Member named for disorderly conduct

A member may be named by the Speaker for disorderly conduct. The procedures are as follows; the Speaker puts the question. The member may give an explanation for five minutes, otherwise there is no debate, amendment or adjournment. For a first suspension the member is suspended for two sitting days, then four sitting days and eight sitting days for any subsequent suspension. The suspension means the member cannot enter the parliamentary precinct during the time allotted, even on non-sitting days.

Permanent basis

Standing Order 254 – Expulsion

Standing order 254 provides for the expulsion of a member adjudged guilty of conduct unworthy of a Member of Parliament.

Standing Order 255 – Criminal trial pending

In circumstances when it is then considered that expulsion by the House might prejudice criminal court proceedings, Standing Order 255 provides for the House to not proceed with any expulsion proceedings and to instead suspend the Member until the verdict of the jury is returned or until further ordered.

How frequently does this occur and for what reasons?

Standing Order 249 – Member repeatedly called to order

In the current Parliament session (commenced May 2023), no member has been removed under SO 249. In the last Parliament (May 2019 – March 2023), 12 members were removed under SO249.

Standing Order 249A – Member removed from the Chamber

There have been 11 instances of members removed under SO 279A in this Parliament session (commenced May 2023). There were 25 instances in the last Parliament (May 2019 – March 2023).

This includes an occasion when a member was directed to leave for just 2 minutes. Members are directed to leave due to disorderly behaviour disrupting the business of the House and it usually occurs during Question Time. There is a practice that the Speaker may reverse or reduce his or her direction if the member conveys an apology.

Standing order 250 – Member named for disorderly conduct

This is not common and the most recent occasion was in 2019. In 2021, the Speaker named a member but withdrew the motion following the members

explanation. In both instances, members continued to disrupt the House after being called to order repeatedly by the Speaker.

Standing Order 254 – Expulsion

This Standing Order has been rarely utilised with only three notable occasions in 1881, 1890 and 1917 where a Member was expelled. More recently in 1980 and 1998 expulsion motions were considered by the House but defeated on division. The stated grounds for all the expulsion motions were allegations of corrupt conduct, apart from the 1890 case which related to the Member's disruption of proceedings and repeated refusals to follow the directions of the Speaker.

New South Wales Legislative Council

Removal of a member called to order

Standing Order 196 provides that where a member is called to order three times by the President or Chair of Committees in the course of any one sitting for any breach of the standing orders, or a member conducts themselves in a grossly disorderly manner, that member may, by order of the President or Chair of Committees, be removed from the chamber by the Usher of the Black Rod for a period of time as the President or Chair may decide, but not beyond the termination of the sitting.

A member removed is excluded from the chamber and the galleries (but not from the parliamentary precincts), and may not serve on or attend any proceedings of a committee of the House during the period of suspension. The power to remove a member under Standing Order 196 may also be supplemented by prior rulings of the Chair.

The removal of a member most commonly occurs during Question Time and on most occasions where this has happened, the President has ordered that the member be removed from the chamber until the conclusion of Question Time. However, there have been some instances of members being removed until a later hour or until the termination of the sitting.

In 2023, the removal of a member from the Chamber occurred once. The President called the relevant member to order for a third time during Question Time on 13 September 2023 and subsequently ordered that the member be removed from the chamber by the Usher of the Black Rod until the end of Question Time.

Suspension of a member

Under Standing Order 198, a member found guilty of an offence under the standing orders may be suspected from the service of the house by motion moved without notice for any period of time that the House decides. Any suspension may have effect until it is terminated by the House, until the

submission of an apology by the offending member, or both.

South Australia House of Assembly

Temporarily removed from the House

The most frequently used mechanism for removing Members from the House is Standing Order 137A (referred to as the 'Sin Bin'), where the Speaker directs a disorderly member to leave the Chamber for up to one hour. This is often used during question time for a Member who persistently interjects. The Speaker often directs the Member to leave the Chamber for the remainder of question time. It can also be used at other times and the Speaker will nominate the period the Member is excluded, such as 10 minutes. However, this is much less frequent.

Alternatively, to directing a Member to leave the House pursuant to standing order 137A, the Speaker can, under Standing Order 137, name the Member and reports the Member's offence to the House. The Chairman of Committees, under SO 138, can similarly name a Member and then immediately report it to the House. Following the naming, the Member has the right to be heard in explanation or apology. If the explanation or apology is not accepted by the House, the Member then withdraws from the Chamber. The question is then immediately put (without amendment or debate) that the member be suspended from the services of the House. The period of time applying to the suspension is set out in the standing orders:

- on a first occasion – for the remainder of the day, or the following day if the adjournment debate has commenced;
- on a second occasion in the same session – for 3 consecutive sitting days
- on any subsequent occasion in the same session – for 11 consecutive sitting days. (Standing Order 139).

Permanently removed from the House

There is a constitutional obligation to attend the service of the House (*Constitution Act 1934* (SA) section 31). If any member is absent from the House for 12 consecutive sitting days without the leave of the House, their seat becomes vacant. Standing Order 62 allows for extended leave, such as for illness, family responsibilities, or maternity leave.

The Constitution further includes a number of other circumstances by which a Member may no longer be eligible to be a Member of the House of Assembly. This includes:

- is not or ceases to be an Australian citizen
- takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power
- does, concurs in, or adopts any act whereby the member may become a

subject or citizen of any foreign state or power
- becomes bankrupt or an insolvent debtor within the meaning of the laws in force in the State relating to bankrupts or insolvent debtors
- becomes a public defaulter
- is attainted of treason
- is convicted of an indictable offence
- becomes of unsound mind.

Tasmanian House of Assembly

The Tasmanian House of Assembly has a number of standing orders dealing with the temporary removal of Members from the Chamber.

Members can be suspended from the House for a period of time, with this occurring most often during Question Time. Under standing order 149 the Speaker may ask a Member to withdraw from the House for any period of time up to twenty-four hours if an offence has been committed. If a Member is instructed to withdraw in this manner by the Speaker, they are still able to attend the House for the purposes of voting in a division or being counted for a quorum but must withdraw immediately following the vote or the conclusion of the count of the House.

In 2023 there were 24 instances of Members been suspended from the House due to repeated interjections. In most instances Members have been suspended for an hour or less. In comparison there were also 24 instances of Members being suspended in 2022.

Standing order 148 outlines the procedure for the suspension of a member for disorder by 'naming' the Member:

"Any members who has –

1. Persistently and wilfully obstructed the business of the House, or
2. Been guilty of disorderly conduct, or
3. Used objectionable words, and refused to withdraw, or
4. Persistently or wilfully refused to conform to any standing order, or
5. Persistently or wilfully disregarded the authority of the Chair,

May be named by the Speaker, or if any of the above-named offences committed by a member in Committee, the Chair."

Upon the Speaker naming the Member, a motion without notice is made, usually by the Leader of the House, 'that such Member be suspended from the service of the House.' Such motion is put immediately and usually results in a division of the House. Periods of suspension are set out in standing order 150 and range from twenty-four hours on the first occasion, seven days on the second and twenty-eight days of the third occasion. Such occasions must be within the same twelve-month period, and the days are calculated from the event, exclusive of the day of the event. A Member suspended from the service

of the House is excluded from the Chamber. This includes the Speaker's Reserve, Advisor's Boxes, and the Media and Public galleries. Members may still participate in committees.

In 2023 there were no instances of Members being named. There was one instance in 2022 and one in 2021.

Under the section 34 of the *Constitution Act 1934* a Member's seat will become vacant for the following reasons –

- if they fail to attend an entire session of parliament without permission from the House;
- if they take an oath or make any declarations of act of acknowledgement of allegiance or adherence to a foreign prince or power;
- become bankrupt or take benefit of any law relating to bankruptcy;
- be attained of treason or be convicted of any crime and is sentenced or subject to a sentence of imprisonments exceeding a year, or
- become of unsound mind.

The Tasmanian House of Assembly has no precedent of the expulsion of members, and it is unclear as to whether the House would have that power. Potentially, the House may be able to permanently expel one of its members but only because it was deemed reasonably necessary to the existence of the House or the proper exercise of its function. Such an assertion follows the proposition in the case of *Armstrong v Budd* (1969) 71 SR NSW 386, which stated:

"…a House of Parliament possessing only those powers and privileges reasonably necessary for its self-protection and defence may expel one of its members for something said or done outside the House – for conduct involving want of probity and honesty – provided the circumstances are special and expulsion is not a cloak for punishment of the offender."[5]

It appears that the doctrine of 'reasonable necessity' may then allow the House to expel a member. If such a member were expelled, then a vacancy would occur under the section 226(2) *Electoral Act 2004*. This would have the effect of a recount occurring in which the expelled member would not be able to nominate to contest. However, there would likely be no barrier to the expelled member contesting a subsequent general election.

[5] Griffith J, para 3.7

Victoria Legislative Assembly

Procedure for removing a member from the Assembly chamber on a temporary basis.

Standing Orders	#124 Chair Ordering member to withdraw[6]
	#125 Naming a member[7]
	#126 Procedure following naming[8]
	#127 Suspension of member following naming[9]
	#129 Grave Disorder[10]
	#130 Contempt[11]
Sessional Orders	#12 Chair ordering member to withdraw — application during oral questions without notice and ministers' statements[12]

[6] parliament.vic.gov.au/parliamentary-activity/orders/assembly-standing-orders#ids0_124-854241

[7] parliament.vic.gov.au/parliamentary-activity/orders/assembly-standing-orders#ids0_125-854242

[8] parliament.vic.gov.au/parliamentary-activity/orders/assembly-standing-orders#ids0_126-854243

[9] parliament.vic.gov.au/parliamentary-activity/orders/assembly-standing-orders#ids0_127-854245

[10] parliament.vic.gov.au/parliamentary-activity/orders/assembly-standing-orders#ids0_129-854246

[11] parliament.vic.gov.au/parliamentary-activity/orders/assembly-standing-orders#ids0_130-854247

[12] parliament.vic.gov.au/parliamentary-activity/orders/assembly-sessional-orders#12-chair-ordering-member-to-withdraw---application-during-oral-questions-without-notice-and-ministers--statements

Procedure for removing a member from the Assembly chamber on a permanent basis.

Constitution Act 1975	EXPULSION Expulsion of a sitting member is not provided for in the *Constitution Act 1975*. However, by longstanding practice and privilege of the Victorian Parliament, it is considered a reason for a place of a member 'to fall vacant'.
	INELIGIBILITY There are many matters which can render a member ineligible and cause his or her seat to become vacant, if the member: 1. Is no longer entitled to enrol as an elector. 2. Now resides in another State. 3. Becomes a judge of a court in Victoria. 4. Becomes a member of either House of the Commonwealth. 5. Becomes an undischarged bankrupt. 6. Is convicted or found guilty of an indictable offence which is punishable upon conviction by imprisonment for life or for a term of five years or more, committed by him or her when off or over the age of 18 years. 7. Becomes directly or indirectly concerned or interested, or profits from any bargain or contract entered into by the State of Victoria. 8. Becomes bankrupt or applies to take the benefit of an Act for the relief of bankrupt debtors. 9. Accepts any office or place of profit under the Crown or is in any manner employed in the public service of Victoria for salary, wages or fees, unless there is express provision in an Act for it. 10. Becomes a member of the Legislative Council. 11. Fails to attend the Assembly without the permission of the Assembly for one entire session. If a member does not take and subscribe the oath or affirmation before the Governor, or a person authorised by the Governor, that member is not permitted to sit or vote in the Assembly.

Removal of a member from the chamber in 2023
Members were suspended 142 times in 2023.

- 130 times during question time
- 12 times outside of question time
- 5 during government business
- 5 during formal business
- 1 during introduction of bills
- 1 during a matter of public importance

Victoria Legislative Council

Suspending a member by order of the President
Under Standing Order 13.03, if the President of the Victorian Legislative Council considers the conduct of a member to be disorderly, the President may order them to withdraw from the Chamber for up to 30 minutes. That order is not open to debate or dissent. The member may, whilst suspended, return to the Chamber for the purpose of voting in a division.

Alternatively, under Standing Order 13.04, the President may name any member for disorderly conduct, meaning they are suspended from the House for a specified period. This includes for wilfully and persistently interrupting or making a disturbance, using offensive words and refusing to withdraw the same, wilfully and persistently refusing to conform to the Standing Orders, wilfully disregarding the authority of the Chair or refusing to withdraw from the Chamber.

If any member is named, the President will put the question "That such member be suspended from the service of the Council during the remainder of the sitting [or for such period as the Council may think fit]." The motion cannot be amended, adjourned or debated, and if passed the member must immediately withdraw from the Chamber.

If a member is suspended from the Council after being named, a fine is imposed on the member under section 7B(1) of the *Parliamentary Salaries, Allowances and Superannuation Act 1968*. The fine is the daily rate of the basic salary of the member multiplied by the number of days the member is suspended.

A member who is ordered to withdraw, or who is suspended, cannot enter the Chamber or any of its galleries during the period of the suspension. The Council may discharge an order of suspension if the member makes a satisfactory apology in writing.

Suspending a member by order of the House
The House can agree to suspend a member for a period of time specified in the motion. The two most recent suspensions by order of the House:

1. four members were suspended for failing to comply with a motion requiring members to submit evidence of their COVID-19 vaccination status to the Clerk
2. the Leader of the Government was suspended for six months for failing to comply with six resolutions of the House to produce certain documents.

In the previous 10 years, a total of seven members have been suspended from the Council, either by order of the President, or by order of the House.

Western Australia Legislative Council

Non-compliance with an order of the Council

The suspension of a member is a very rare event, yet in 2022 two members of the Legislative Council were suspended, albeit for vastly different reasons.

On its first sitting day of 2022 the Council passed an Order updating an Order from 2021 requiring members to provide proof of their COVID-19 vaccination status, or proof of a valid exemption, to the Clerk. The terms of the order were such that any member who was non-compliant would be subject to an automatic and immediate suspension from the Chamber, Parliament House and the Committee Office.

One member of the Legislative Council was immediately suspended as they had not complied with the 2021 order and were instantly captured under the updated order just passed.

As the suspended member was also appointed to a standing committee, the effect of the order posed the question as to whether that member was prevented from participating in committee meetings remotely.

The President provided a ruling to the committee, and the Council, that the member was subject to a physical suspension only as the suspension did not arise from circumstance such as disorderly conduct in the proceedings of the Council. The suspension was specific in its effect in that it expressly suspended the member from '*attending*' various rooms and buildings, not from their service to the Council.

Alleged misrepresentation of the Council's rules

On 19 May 2022, a matter of privilege was raised in the Legislative Council following media reports of a bail variation application hearing in the Magistrates Court. The hearing involved a member of the Council facing serious criminal charges.

The issue prompting the matter of privilege were media reports of the court proceedings. It was reported that the member had suggested in a sworn affidavit that he would have to resign from a Select Committee if his bail variation application was denied. The member had applied for the bail variation for the

purposes of travel to Queensland to attend the Australian Medicinal Cannabis Symposium with the Select Committee into Cannabis and Hemp.

The member raising the matter of privilege alleged that the sworn affidavit misrepresented the practices and rules of the Legislative Council which had the potential to bring the Council into ridicule or disrepute.

The matter was referred to the Procedure and Privileges Committee (PPC) for inquiry.

The inquiry traversed questions regarding *sub judice* and comity between the Parliament and the courts, and focused on the obligations of members to be honest and truthful in all their public *and private* dealings, particularly where their conduct may reflect on the Council and its reputation.

The PPC found that the member had knowingly misrepresented the Council's practices and rules to the Court, and this conduct had the potential to negatively affect the reputation of the Council and its Committees. The PPC also found that the member had sought benefit in the bail variation proceedings by virtue of his membership of the Council and the Select Committee.

In its 68th Report, tabled on 18 October 2022, the PPC recommended that the member be suspended for the remainder of 2022, and:

- be found in contempt of the Legislative Council;
- be discharged from membership of any Committee of the Parliament for the remainder of the 41st Parliament; and
- undergo further training on parliamentary privilege and ethics, to be provided by the Clerk of the Legislative Council.[13]

On 20 October 2022, the Council considered and agreed to all recommendations and the member was suspended.

CANADA

House of Commons

Removal of a Member on a permanent basis

Once a person is elected to the House of Commons, there are no constitutional provisions and few statutory provisions for removal of that Member from office. The statutory provisions rendering a Member ineligible to sit or vote do not automatically cause the seat of that Member to become vacant. By virtue of parliamentary privilege, only the House has the inherent right to decide matters affecting its own membership. Indeed, the House decides for itself if a Member should be permitted to sit on committees, receive a salary, or even be allowed

[13] parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/64C671AF8E1D590C482588DF002021F3/$file/PPC Report 68.pdf

to keep his or her seat.

The power of the House to expel one of its Members is derived from its traditional authority to determine whether a Member is qualified to sit. A criminal conviction is not necessary for the House to expel a Member; the House may judge a Member unworthy to sit in the Chamber for any conduct unbecoming the character of a Member. Even the laying of a criminal charge against a Member has no effect on his or her eligibility to remain in office. If convicted of an indictable offence, a formal resolution of the House is still required to unseat a Member. Expulsion terminates the Member's mandate: the House of Commons declares the seat vacant and orders the Speaker to address a warrant to the Chief Electoral Officer for the issue of a writ of election.

Given that the determination of whether a Member is ineligible to sit and vote is a matter affecting the collective privileges of the House, a motion to expel a Member is initiated without notice and is given precedence over all other House business. When there has been a criminal conviction, the House of Commons has acted only when sufficient evidence against a Member has been tabled (i.e., judgments sentencing the Member and appeals confirming the sentence). Any Member may move a motion to expel a Member and have his or her seat declared vacant. If the motion is adopted, the Speaker addresses a warrant to the Chief Electoral Officer for the issue of a writ of election.

Since Confederation, there have been four cases where Members of the House of Commons were expelled for having committed serious offences. Three cases involved criminal convictions: Louis Riel (Provencher) was expelled twice, in 1874 and in 1875, having been accused of the murder of Thomas Scott; Thomas McGreevy (Quebec West) was expelled in 1891 after having been found guilty of contempt of the authority of the House; and in 1947, Fred Rose (Cartier) was expelled after having been found guilty of conspiracy under the *Official Secrets Act*.

Expulsion does not disqualify a Member from standing for re-election, unless the cause of the expulsion constitutes in itself a disqualification to seek election to the House (such as being convicted of an illegal or corrupt election practice). Indeed, on two occasions a Member who had been expelled from the House sought re-election: following his first expulsion from the House in April 1874, Louis Riel was re-elected in a by-election in September 1874, and Thomas McGreevy was re-elected to the House in a by-election on 17 April 1895.

Removal of a Member on a temporary basis

If a Member challenges the authority of the Chair by refusing to obey the Speaker's call to order, to withdraw unparliamentary language, to cease irrelevance or repetition, or to stop interrupting a Member who is addressing

the House, the Chair has recourse to a number of options. In the first instance, the Speaker may recognise another Member, or refuse to recognise the Member until the offending remarks are retracted and the Member apologises. Should the Member not comply, the Speaker can refuse to allow them to speak in the House until they apologise and withdraw their remarks. This power is not set out in any statutory authority or Standing Order but has emerged as an informal tool at the Speaker's disposal.

If a Member refuses to heed the Speaker's requests to bring their behaviour into line with the rules and practices of the House, the most severe disciplinary power at the Speaker's disposal is to "name" the Member, that is, to address the Member by name rather than by constituency or title as is the usual practice, and to order his or her withdrawal from the Chamber for the remainder of the sitting day. Naming is a coercive measure of last resort. An order to withdraw also prevents the Member from voting for the remainder of the sitting. This authority is established in Standing Order 11(1)(a).

Following the implementation of virtual participation in the House in June 2023, naming a Member also prevents them participating in House proceedings via videoconference, or voting via the electronic voting application.

In 2023, there was only one instance of a Member being named by the Speaker. On 6 December 2023, Damien Kurek (Battle River–Crowfoot) accused the Prime Minister of lying. When Deputy Speaker Chris d'Entremont (Nova West) demanded that the Member retract the statement and apologise, Mr. Kurek refused. As a result, the Deputy Speaker named the Member and ordered him to withdraw.

Senate

In the Senate, there are four ways in which a member can be removed (in the first two cases temporarily, in the second two permanently): leave of absence, suspension, expulsion and disqualification.

Leaves of Absence, Suspensions and Expulsion

Although senators are under an obligation to attend sittings, rule 15-2(1) provides that the Senate may order a leave of absence or suspend a senator if there is sufficient cause.

A leave of absence is automatically granted by the Senate when a senator is charged with a criminal offence prosecuted by indictment (rule 15-4(2)). The Senate is informed of this fact either by the accused senator sending a written notice to the Clerk of the Senate, who tables it, or by the Speaker tabling proof of the charge provided by the court (rule 15-4(1)). The leave of absence remains in effect until the charge is withdrawn; proceedings are stayed; the charge is proceeded by summary conviction proceedings; or the senator is

acquitted, convicted, or discharged (rule 15-4(3)).

A senator found guilty of a criminal offence in proceedings by indictment, and who receives a sentence other than a discharge, is automatically suspended from the time of the sentence (rule 15-5(1)). The suspension lasts until the conviction is overturned on appeal or replaced by a discharge on appeal, or until the Senate decides whether the senator's place has become vacant by reason of the conviction (rule 15-5(2)). When suspended, a senator does not receive a sessional allowance, although the unpaid amounts will be paid if the conviction is overturned on appeal (rule 15-3(1) and (3)). Suspension also leads to a loss of the use Senate resources for carrying out parliamentary functions, and for moving, transportation, travel, and telecommunication expenses (rule 15-3(1)). A leave of absence does not have the same effect, and if the leave of absence is related to charges, the senator is automatically presumed to be on public business, preventing deductions from sessional allowances.

These are not the only cases in which the Senate can grant a leave of absence or suspend a member. Other cases have involved the adoption by the Senate of a substantive motion or a report of the Standing Committee on Ethics and Conflict of Interest for Senators recommending such a sanction.

Pursuant to rule 12-7(3), the Standing Committee on Ethics and Conflict of Interest for Senators has the mandate to exercise general direction over the Senate Ethics Officer (SEO) and to be responsible, on its own initiative, for all matters relating to the *Ethics and Conflict of Interest Code for Senators* (the Code), subject to the general jurisdiction of the Senate.[14] In cases where the SEO has determined that a senator has breached their obligations under the Code, the committee can recommend various remedial measures, outlined under subsection 49(4) of the Code. Additional information on the Code and the role of the SEO can be found on the Senate Ethics Officer's website.[15]

In cases where a motion or report is adopted by the Senate, the leave of absence or suspension would begin upon adoption of such a motion or report and would typically last for the remainder of the session of Parliament underway.

The Senate has granted a leave of absence on two occasions.[16] It has suspended five senators (including one who was suspended twice).[17]

While on leave of absence or suspended, a senator is not allowed to attend sittings of the Senate or its committees. A senator who is on a leave of absence or suspended for more than a full session may, however, attend the Senate once

[14] seo-cse.sencanada.ca/en/code

[15] seo-cse.sencanada.ca/en

[16] See *Journals of the Senate*, June 22, 2007, p.1848; and February 12, 2013, p.1907

[17] See *Journals of the Senate*, February 27, 2020, p.379; May 9, 2019, p.4715; November 5, 2013, pp.140–145; and February 19, 1998, p.460

each session to avoid disqualification (rule 15-1(2)). The senator must first send a signed notice to the Clerk of the Senate indicating an intention to attend a sitting. The Clerk will table the notice, which is recorded in the *Journals of the Senate*. The senator is then permitted to attend on the sixth sitting day after the notice was tabled.

The expulsion of a senator was once recommended by the Standing Committee on Ethics and Conflict of Interest for Senators (see the second report of the committee presented on May 2, 2017, which deals with expulsion), but the report was discharged from the Order Paper following the resignation of the senator.[18]

Disqualification of a Senator

A senator may be disqualified from membership in the Senate on one of the following grounds:

- failing to be present in the Senate at least once over two consecutive sessions;
- taking an oath of allegiance to a foreign power;
- filing for bankruptcy;
- being found guilty of treason, or convicted of a felony or an "infamous crime;" or
- ceasing to meet the requirements with respect to residency or ownership of property.[19]

The question of disqualification is determined by the Senate (*Constitution Act, 1867*, s. 33) and the last time a senator's seat was declared vacant was in 1915. A committee report concluded that, given their failure to attend the Senate for two consecutive sessions, the seats of two senators were considered to have become vacant. The report recommended that a motion to that effect be adopted by the Senate. Following the adoption of the report, the Senate adopted a motion declaring the seats vacant.

Alberta Legislative Assembly

In Alberta, as in other Westminster jurisdictions, the process by which a presiding officer may remove a Member of the Legislative Assembly on a temporary basis is called "naming."

The authority for naming is Standing Order 24 of the Standing Orders of the Legislative Assembly, which provides as follows:

> **24** 1. If a Member, on being called to order for an offence, persists in the offence or refuses to follow the Speaker's directions in the matter, the

[18] sencanada.ca/en/committees/CONF/reports/42-1

[19] *Constitution Act, 1867*, s. 31 (laws-lois.justice.gc.ca/eng/const/page-1.html)

Speaker shall name the Member to the Assembly.

2. When a Member has been named by the Speaker and if the offence is a minor one, the Speaker may order the Member to withdraw for the balance of the day's sitting, but if the matter appears to the Speaker to be of a more serious nature, the Speaker shall put the question on motion being made, no amendment, adjournment or debate being allowed, "that the Member be suspended from the service of the Assembly", for any time stated in the motion, not to exceed 2 weeks.
3. When a Member is named by the Chair in committee,
    a. if the Assembly is then sitting, the Chair shall immediately suspend the proceedings of the committee and report the circumstances to the Assembly, or
    b. if the Assembly is not then sitting, the Chair shall adjourn the matter until the circumstances can be reported to the Assembly and the committee may continue the proceedings.
4. When the Chair reports the circumstances to the Assembly, the Speaker shall then proceed according to suborder (2), as if the offence had been committed in the Assembly itself.
5. If any Member suspended from the service of the Assembly refuses to obey the direction of the Speaker when summoned under the Speaker's order by the Sergeant-at-Arms, the Speaker shall call to the attention of the Assembly that force is necessary to compel obedience and any Member named by the Speaker as having refused to obey his or her direction is, without any further question put, suspended from the service of the Assembly during the remainder of the session.

Naming Procedure

The purpose of naming a Member is to address a persistent disregard for the standards of order and decorum or parliamentary language and the authority of the chair. When faced with disorder or unparliamentary language in the Chamber, a presiding officer adopts an incremental approach to disciplining the Member or Members who are violating the rules or conventions. The presiding officer utilises the following approach before he or she names a Member:

- The presiding officer stands in place on the dais and waits for the Member to come to order. (When a presiding officer rises, other Members must take their seats. Further, all mics are disabled except for that of the presiding officer.)
- If the disruption persists, the presiding officer may move on to the next speaker.
- A final step in this progression, when disorder persists, is for the presiding officer not "to see" the Member for the balance of the sitting day.

If the above-noted incremental approach fails to quell the disorder, the presiding officer may proceed to name the Member, taking the following steps:

1. If the disorder persists, the Member is informed that a failure to comply will result in their being named:
   "I warn the Member for _____ that persistent disregard for the authority of the Chair will result in the Member being named to this Assembly and required to withdraw from the Chamber for the remainder of the sitting day."
2. The warning is repeated, usually at least once, often multiple times.
3. The Member is named:
   "[Mr./Mrs./Ms./Member] [Last name], I name you to this Assembly."
4. When the offence is "minor" [Standing Order 24(2)], the Speaker may order the Member to withdraw for the remainder of the day's sitting by saying: "Please exit."
5. If the matter is more serious, the Speaker may entertain a motion disciplining the Member, which would usually be made by the Government House Leader, saying, for example:
   "The Chair is of the opinion that the matter is not minor, and in accordance with Standing Order 24(2) will now entertain a motion '*That the Member for _____ be suspended from the service of the Assembly*', which motion must specify a period of not more than two weeks. This motion is not debatable, cannot be amended, and cannot be adjourned."
6. Upon the motion being moved, the Speaker puts the question and announces the result. Assuming the motion is carried, the Speaker would then instruct the Member to leave the Chamber, and the Member would be "summoned" by the Sergeant-at-Arms.

Frequency of Naming

The naming of a Member of the Legislative Assembly of Alberta typically happens infrequently. Prior to the 30th Legislature (2019-2023), during which two Members were named, a presiding officer named a Member perhaps once a decade on average. In total, since the Assembly's inception in 1906, nine Members of the Assembly have been named.

The reasons for removal are invariably that the Member repeatedly failed to follow the direction of the presiding officer in terms of discontinuing disorderly or unparliamentary behaviour. (Usually, disorderly conduct is resolved when the Member apologies, and, if relevant, withdraws the offensive words that were spoken. Hence, naming is rarely required.)

Ontario Legislative Assembly

In Ontario, Members may be removed from the Chamber by the Speaker for disciplinary reasons, or by Order of the House. The authority to do so is rooted in the Standing Orders and in parliamentary privilege.

Naming

Naming is the most common mechanism for the removal of a Member from the Chamber. It is a serious penalty that the Speaker may impose on a Member who persists in an offence against a Standing Order. These offences can include refusing to come to order, refusing to withdraw unparliamentary language, or otherwise causing disorder.

If when called to order a Member continues the disorderly conduct, the Speaker typically issues a warning to that Member. If the Member refuses to come to order, the Speaker may proceed to name the Member to the House. In announcing the naming, the Speaker uses the Member's name rather than their parliamentary title or electoral district. The Sergeant-at-Arms then escorts the Member out of the Chamber. Upon being named, the Member is required to withdraw from the House for the balance of the sessional day. The Member will also be unable to participate in committee proceedings that day.

Since 1971, a total of 276 Members have been named. The frequency varies by Parliament; there have been Parliaments where fewer than 10 Members were named and others where 30 or more Members were named.

Although not provided for in the Standing Orders, the Speaker has ordered a Member to leave the Chamber at least once without naming them in 1981.

Suspension from the Service of the House

For more serious breaches of order and decorum, a motion may be moved to suspend the Member for up to eight sessional days. However, there are no known instances of such a motion being moved.

On rare occasions when a Member who has been named refuses to withdraw from the Chamber, the Sergeant-at-Arms indicates to the Speaker that force is necessary to remove them (although force is not actually used). When this occurs, a Member is suspended for the remainder of the Session. On one occasion, a suspended Member was allowed to return early after sending a written apology to the Speaker. The House Leaders also wrote to the Speaker to request that the suspension be lifted.

Expulsion

The power of the House to expel a Member is rooted in parliamentary privilege and the ability of the House to regulate its own affairs. This has only occurred once in the Assembly's history. In 1884, the House adopted a motion to expel

a Member and declare his seat vacant.

Removal due to Members' Integrity Act violations
The *Members' Integrity Act, 1994*, provides that when the Integrity Commissioner finds that a Member has contravened the Act or parliamentary convention, they may recommend that the Member be suspended for a period of time or until a condition imposed by the Commissioner is fulfilled. The Commissioner can also recommend that the Member's seat be declared vacant. Whether to adopt the recommendation is a decision of the House. A Member has never been suspended or had their seat declared vacant by the House on a recommendation of the Integrity Commissioner pursuant to the Act.

Removal for Code of Conduct violations
A Member may also be suspended or expelled due to a violation of the *Members' Code of Conduct on Harassment*. A select committee appointed under the code to review a complaint can recommend expulsion or suspension, and the House then determines whether to accept the recommendation. This process has not been used since the adoption of the code in 2018.

Prince Edward Island Legislative Assembly

The Rules of the Legislative Assembly provide for the temporary suspension of a member from the services of the House. Under rule 38, a member who disregards the authority of the chair or abuses the rules of the House by persistently and willfully obstructing its business or otherwise, may be named by the Speaker immediately after the commission of the offence. Then, a motion may be made that the member be suspended for a period of time not to exceed two weeks. The Speaker puts the question on the motion immediately, with no debate or amendment permitted. If the motion carries, the Speaker instructs the Sergeant-at-Arms to escort the member from the Chamber.

Naming and suspension of members is rare. It is known to have occurred in 2017, 2011, 1999, 1988 (twice) and 1967. In most of these occurrences, members were named for disregarding the authority of the chair after they refused to retract unparliamentary language despite the Speaker directing them to do so more than once. Most commonly they were suspended from the services of the House for the remainder of the sitting day.

The *Legislative Assembly Act* provides for the temporary or permanent removal of a member in several ways:

- As punishment for a breach of privilege or contempt, in which case the member's right to sit and vote in the House and receive remuneration as a member may be suspended for a stated period or until the fulfilment of a condition; the Assembly is a court of record for inquiry into, judgment

and punishment of privilege and contempt matters, and its determination is final;
- An election candidate who is found guilty by a court of competent jurisdiction of a corrupt practice under the *Controverted Elections (Provincial) Act* is not eligible to sit or vote in the Legislative Assembly for a period of five years;
- If a person who is ineligible to be a member of the Legislative Assembly (such as a person already elected to another provincial legislature) is nonetheless elected, the election is null and void and the person may not sit nor vote in the Legislative Assembly; the same result applies if a member accepts an office that makes him or her ineligible to sit and vote in the Legislative Assembly; and
- A member who is absent for an entire session without leave of the Speaker on behalf of the Legislative Assembly will have his or her seat declared vacant if still absent on the first day of the next session.

Quebec National Assembly

Under parliamentary privilege, the National Assembly has the power to expel or suspend a Member for any cause it deems sufficient: see Harvey v. New Brunswick (Attorney General), [1996] 2 S.C.R. 876. The Assembly has never exercised this power to expel or suspend a Member.

Members may also be temporarily excluded from the Chamber for the remainder of the sitting if they disregard the authority of the Chair. Under Standing Order 42, a Member may first lose the right to speak after being called to order twice. If he then continues to speak, he may be ordered to withdraw from the Chamber for the remainder of the day. This is exceedingly rare. The most recent recorded precedents date back to 2001 and 1996.

Furthermore, the Act respecting the National Assembly (CQLR, c. A-23.1, s. 17) provides that a Member's seat becomes vacant in a number of situations, including:
- if he is sentenced to imprisonment for an indictable offence punishable by imprisonment for over two years;
- if he is convicted of treason;
- if he is convicted of corrupt electoral or referendum practices under the Election Act (CQLR, c. E-3.3);
- if he is in a situation that makes him disqualified within the meaning of the Election Act.

The Act also provides that a Member who breaches the privileges of the Assembly is liable to various sanctions, including the loss of his or her seat (s. 134).

Finally, if the Ethics Commissioner concludes that a Member has violated the

Code of ethics and conduct of the Members of the National Assembly (CQLR, c. C-23.1), he may recommend in his report that various sanctions be applied, including the loss of the Member's seat (s. 99). Any sanction recommended by Ethics Commissioner is applicable upon adoption of the report by a two thirds vote (s. 104).

No Member has lost his seat under these provisions.

Saskatchewan Legislative Assembly

Temporary Basis

The Rules and Procedures of the Legislative Assembly of Saskatchewan govern members' conduct in the Legislative Assembly of Saskatchewan and oversee the procedural arrangements for temporarily removing a member from the Chamber.[20] The Speaker of the Assembly preserves the order and decorum of the Chamber and may apply sanctions for disorderly conduct. Under rule 57, the Speaker has the authority to revoke a member's access to participate in proceedings and may name a member who persistently disregards the authority of the Speaker. Typically, the Speaker gives the member multiple opportunities to apologise verbally, but if they do not comply, the member is expelled from the Chamber for the remainder of the sitting day. Rule 57 also includes a provision for a House Leader or a Deputy House Leader to move a motion to extend the suspension period of a named member if deemed necessary.

The Board of Internal Economy, a statutory body responsible for the financial and administrative policy of the Assembly and its members, has outlined in its directives the penalty for being suspended. BOIE Directive #21 2(b) outlines a fine of $400 per day for each day of suspension imposed on a member.[21]

The durations between the naming of members have varied dramatically over the years. For example, no members were named at all between 1999 and 2006, yet in the fourth session of the twenty-ninth legislature, it has occurred three times so far.

Alternatively, any member can move a substantive motion to remove a member from proceedings for a period of time. This last occurred in 1999 when a motion was moved to suspend a criminally charged member from proceedings until all appeals were exhausted or, if he were found guilty, to declare his seat vacant. The motion was later withdrawn when the member resigned.

Permanent basis

The power to permanently expel a member when convicted of an indictable

[20] legassembly.sk.ca/about/rules

[21] legassembly.sk.ca/media/3wwnaucq/directive-21-annual-indemnity-and-allowances.pdf

offence is outlined in section 31(1) of *The Legislative Assembly Act, 2007*. This Act gives statutory authority for such expulsion and states that when a sitting member of the Legislative Assembly is convicted of an indictable offence and sentenced to imprisonment for a term of two years or more, the Legislative Assembly may, by resolution, (a) suspend the member from sitting and voting as a member; or (b) declare the seat of the member to be vacant. Additionally, section 31(2) of the Act specifies that if a member has been suspended under this provision, all payments and allowances are suspended until the member is reinstated or until the seat is declared vacant. This resolution is presented as an ordinary motion following the customary 48-hour notice period. Subsequently, the motion can undergo debate, potential amendments, and a vote.

The last time a member was expelled through this provision was November 1984, when the Assembly declared the Thunder Creek constituency vacant upon the conviction of Mr. Colin Thatcher for first-degree murder, resulting in a life sentence with no possibility of parole for 25 years. This restricted Mr. Thatcher's right to sit or vote as a member if he chose to run in a by-election.

CYPRUS

House of Representatives

The authority for the removal of a member of the House, is derived from the Constitution of the Republic. Such removal will be permanent. Article 71 of the Constitution stipulates that the seat of a Representative shall become vacant in the case of death, or through written resignation or election to a different public office/appointment to a state office or if the Representative is arrested/prosecuted for an offence punishable with imprisonment for five years or more or if the Representative is caught in the act of committing an offence. To this day we have only had instances of seats becoming vacant due to death, resignation or election/appointment to another public office. There was no case of a member having to be removed from their seat due to the other reasons mentioned above.

INDIA

Lok Sabha

Procedural arrangements for removing a member from Chamber on permanent basis

Article 101 of the Constitution of India provides for Vacation of Seats in Parliament. It lists out the following situations where the seat of a member in either House of Parliament is declared vacant:

1. Election to Other House

   Article 101(1) of the Constitution of India provides that no person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

   Accordingly, Section 69 of the Representation of the People Act, 1951 provides that if a person who is already a member of either House of Parliament is chosen as a member of the other House, his seat in the House becomes vacant with effect from the date on which he is chosen as a member of the other House.

2. Election to State Legislature

   Article 101(2) of the Constitution of India read with the Prohibition of Simultaneous Membership Rules, 1950 provides that if a person is chosen both as member of either House of Parliament and House of Legislature of a State, his seat in Parliament becomes vacant unless he has resigned his seat in the State Legislature within a period of 14 days from the publication of the result in the Gazette of India or State, as the case may be.

3. Absence of Members

   Article 101(4) of the Constitution of India provides that if for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

4. Resignation

   Article 101(3)(b) of the Constitution of India provides that if a member of either House of Parliament resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, his seat becomes vacant.

5. Disqualifications for Membership

   i. Article 102 of the Constitution of India lists down the following disqualifications for membership of Parliament:

      1. Holding any office of profit under the Government of India or Government of State other than an office declared by Parliament by law not to disqualify its holder;
      2. On being declared by a competent court to be of unsound mind;
      3. On becoming an undischarged insolvent;

4. If not a citizen of India or has voluntarily acquired citizenship of a foreign state or is under any acknowledgement of allegiance or adherence to a foreign state;
5. On being disqualified by or under any law made by the Parliament.

ii. On being disqualified under the Tenth Schedule to the Constitution of India (Anti-Defection Law). The membership can also be terminated in the following situations:
1. On Election being declared Void by High Court under Section 100 of the Representation of the People Act, 1951.
2. On adoption of a motion of expulsion of its members by respective Houses.
3. On being elected and entering upon the office of the President of India
4. On being elected and entering upon the office of the Vice-President of India
5. On being appointed as and entering upon the office of the Governor of a State.

Procedural arrangements for removing a member from Chamber on temporary basis
A member can be removed from Chamber on temporary basis by way of Withdrawal and Suspension.

1. Rule 373 of the Rules of Procedure and Conduct of Business in Lok Sabha provides for withdrawal of member. It states that the Speaker, if is of the opinion that the conduct of any member is grossly disorderly, may direct such member to withdraw immediately from the House, and any member so ordered to withdraw shall do so forthwith and shall remain absent during the remainder of the day's sitting.
2. Rule 374 of the Rules of Procedure and Conduct of Business in Lok Sabha provides for Suspension of a Member. It states that the Speaker, may, if deems it necessary, name a member who disregards the authority of the Chair or abuses the rules of the House by persistently and wilfully obstructing the business thereof. If a member is so named by the Speaker, the Speaker shall, on a motion being made forthwith put the question that the member (naming such member) be suspended from the service of the House for a period not exceeding the remainder of the session.

   Provided that the House may at any time, on a motion being made, resolve that such suspension be terminated.

   A members suspended under the said Rule is to withdraw from the precincts of the House.
3. Rule 374A of the Rules of Procedure and Conduct of Business in Lok

Sabha provides for Automatic Suspension of a Member. It states that in the event of grave disorder occasioned by a member coming into the well of the House or abusing the Rules of the House persistently and willfully obstructing its business by shouting slogans or otherwise, such member shall, on being named by the Speaker, stand automatically suspended from the service of the House for five consecutive sittings or the remainder of the session, whichever is less.

Provided that the House may, at any time, on a motion being made, resolve that such suspension be terminated.

It further provides that on the Speaker announcing the suspension under Rule 374A, a member shall forthwith withdraw from the precincts of the House.

ISLE OF MAN

Tynwald

Procedural arrangements for removing a Member on a temporary or permanent basis

There are statutory provisions for both the House of Keys and the Legislative Council which make it clear when and how a Member's seat would be permanently vacated on the grounds of criminal conviction, mental incapacity, acceptance of another remunerated public sector role, insolvency or absence without leave. It is difficult to say "never" in the world's oldest continuous parliament, but it is safe to say that these provisions have been rarely if ever called on in the century and a half during membership has been governed by statute.

In 2020 legislation was enacted under which a recall procedure can be triggered if a Member of the House of Keys is suspended for a period of at least four sitting days, or 14 calendar days on a recommendation of the House of Keys Management and Members' Standards Committee. This provision has not yet been used and there is no similar provision for the Legislative Council.

A Member can be suspended on a temporary basis either by resolution of Tynwald Court or by resolution of the Branch in which that Member sits (that is, the House of Keys or the Legislative Council). There are no special procedures applicable to the making of such a resolution. However, in practice before reaching the floor of any Chamber, any such matter would normally be the subject of an inquiry by a Committee. Certain allowances cease to be payable to a suspended Member but the lion's share of their salary continues to be paid.

The remit of the Tynwald Standards and Members' Interest Committee includes the following provision:

Tynwald may, on the recommendation of the Committee, require a Member to apologise for inappropriate conduct. In cases where a Member refuses to do so, or apologizes in a way which is unacceptable in the view of the President, the Member should be suspended until he/she complies properly with the Order of Tynwald.

The last time a Member was suspended was in May 2016 when this provision was deployed and the Member in question refused to apologise. He remained suspended up until the expiry of his term of office around three months later, and at the following election he was not returned.

JAMAICA

Parliament of Jamaica

Removing a Member from the Chamber is very rare occurrence in this jurisdiction. The authority for the removal of a Member from the Chamber comes from the Standing Orders of both the Senate and the House of Representatives. The procedural arrangements for such removal on a temporary or permanent basis are outlined in Standing Order 43 of the Standing Orders of each House. The period of suspension is to be stipulated by the respective House on each occasion.

JERSEY

States of Jersey

Removals from our Chamber are rare. In the last 25 years there have only been two instances where a Presiding Officer came near to exercising the Standing Order provisions relating to the withdrawal of a Member from the Chamber. The first was on 5 December 2007, when former Senator Stuart Syvret as 'Father of the House', was called on to make what is usually a short and uncontroversial speech to mark the last sitting of the Assembly before Christmas; instead the Senator made an emotional plea to the then Chief Minister and other politicians for being, he claimed, complicit in covering up "decades of child abuse." Several Members attempted to interrupt his speech and when he refused to stop speaking, the Presiding Officer took the unusual step of adjourning the meeting.

On 7 October 2015 during a Budget debate, Deputy Montfort Tadier, making a point about how the Island deals with poverty, was ordered to leave the Chamber after he suggested Jesus would not have been at the Conservative party conference (an opaque reference to the fact that the then Chief Minister had recently been in attendance at that event). The Presiding Officer said his comments might be deemed offensive for those who held religious beliefs and asked him to withdraw them. When he refused to do so, the Presiding Officer

ordered him to leave the Chamber, but he refused. The Assembly voted to adjourn the meeting for an hour and when they returned Deputy Tadier was allowed to continue his speech without apologising or withdrawing it.

Under Standing Order 110 the Presiding Officer may require a Member of the Assembly to withdraw from the Chamber, either for the remainder of the day or for a lesser period, if the Member has obstructed the meeting; conducted themselves in a grossly disorderly manner; used offensive, objectionable, unparliamentary or disorderly words and refused, when directed to withdraw the words or apologise; persistently or wilfully refused to conform to any Standing Order; or persistently or wilfully disregarded the authority of the Presiding Officer.

Under Standing Order 111, where the Presiding Officer has required a Member of the States to withdraw from the Chamber, another Member of the States may propose without notice that the Member be suspended from the service of the States. The proposer of the suspension must also propose the duration of the suspension. The proposal may only be made on the meeting day or continuation day following the day on which the Member is required to withdraw and the States may decide to debate the proposal immediately or later in the same meeting, or to list the proposal for debate at another meeting.

Standing Order 21A allows for propositions to be lodged and debated which seek to suspend a Member as a sanction for certain actions. Such propositions would normally be lodged by the Privileges and Procedures Committee (PPC) following an investigation by the Commissioner for Standards. An independent Member or Members can only lodge such a proposition after the matter has been considered by PPC and that Committee has decided to take no action. In that instance, the proposition has to be signed by 6 Members of the Assembly and propose the duration of the suspension which must not be for longer than 28 days.

Standing Order 21AA provides that PPC can lodge a proposition to suspend a Member of the Assembly as a neutral act; the duration has to be proposed and the debate must be held in camera, although the vote has to be held in public.

NEW ZEALAND

House of Representatives

Speaker maintains order and decorum in the Chamber

In New Zealand, the Speaker has authority under the Standing Orders for maintaining order and decorum in the Chamber. The Speaker often orders disorderly members to desist and may require an immediate, unqualified apology. Harsher penalties are available, though the Speaker resorts to them relatively rarely. If a member's conduct is highly disorderly, the Speaker may

order them to withdraw from the Chamber for a period up to the remainder of the day's sitting. This means that the member cannot re-enter the Chamber at all during the exclusion period. A member who is ordered to withdraw before the end of question time is automatically excluded for the rest of question time—they cannot ask an oral question or have one asked on their behalf, but they can carry out other duties, such as voting (that is, the member is not suspended from the service of the House). If a Minister is ordered to withdraw, another Minister may answer a question on their behalf, as the behaviour of one Minister should not reduce the Government's accountability to the House. When the Speaker orders a member to withdraw from the Chamber, the disorderly conduct is considered dealt with, and that generally is the end of the matter. Sometimes, if a member has continued to create disorder while leaving the Chamber, the Speaker (through the Serjeant-at-Arms) may require the member to return and apologise before withdrawing again.

In the exceptional event that the Speaker considers that a member's conduct is so grossly disorderly that simply ordering their withdrawal from the House would be an inadequate punishment, the Speaker can "name" the member and call on the House to judge the member's conduct. In this instance, the Speaker immediately puts the question that the member be suspended from the service of the House. This question is put without any amendment or debate. If the motion is carried, the member is suspended for 24 hours, or for seven days if this is the second time they have been suspended in the same term of Parliament, or for 28 days if it is the third or a subsequent occasion. In the latter two cases, the day the member is suspended is not counted as one of the seven or 28 days of suspension. By law, a deduction is taken from the member's salary for each day of their suspension. If a suspended member refuses to withdraw voluntarily from the House at once, the Speaker will call on the Serjeant-at-Arms to enforce the House's direction. A suspended member who refuses to obey the Speaker's order to leave the Chamber is automatically suspended from the service of the House for the rest of the calendar year.

Chairperson maintains order and decorum in committee of the whole House

The rules for maintaining order in the Chamber during a committee of the whole House are similar to those for House. The Chairperson is responsible for keeping order in the committee in the same manner as the Speaker, holding the same authority as the Speaker to require a member whose conduct is highly disorderly to withdraw from the committee for a specified period. If this happens, the period cannot exceed the time that the House spends in committee that day, and the exclusion does not apply whenever the House resumes during the course of the sitting (for example, to take a ruling from the Speaker). If the member has not been readmitted to the Chamber by the time the committee

reports back to the House that day, the exclusion automatically lapses.

The Chairperson may name a member for grossly disorderly conduct. In such a case, the committee must be suspended immediately, and the naming reported to the House. A committee of the whole House cannot punish a member; only the House can do that. When a committee reports the naming of a member to the House, the Speaker starts the same procedures, as if the naming had been made by the Speaker in the House, and immediately puts a question for the member's suspension.

SOUTH AFRICA

National Council of Provinces

Under Rule 52 of the Rules of the National Council of Provinces (NCOP Rules), the presiding officer may order a delegate to leave the Chamber for the remainder of the day's sitting if the presiding officer is of the opinion that:

a. the delegate is deliberately contravening a provision of these Rules;
b. the delegate is in contempt of or is disregarding the authority of the Chair;
   or
c. the delegate's conduct is grossly disorderly.

If a presiding officer is of the opinion that the behaviour of a delegate is of such a serious nature, that an order to leave the Chamber for the remainder of the proceedings is insufficient; the presiding officer may order the delegate to leave the precincts of Parliament. The matter is then addressed by the Chairperson of the National Council of Provinces, who may report the delegate to the provincial legislature concerned or suspend the delegate. The procedure taken by the presiding officer must be announced in the Council. This is in keeping with Rule 53 of the NCOP Rules, regarding censure of a delegate.

Under Rule 54 of the NCOP Rules, should a delegate face suspension for the first time, the period of suspension is five days. The delegate is barred from entering the precinct of Parliament. In the event of a second and ensuing suspension, the delegate faces a period of suspension of 10 working days and 20 working days respectively.

A delegate does have the opportunity to submit a written apology to the Chairperson regarding his/her suspension. According to Rule 55 of the NCOP Rules, the Chairperson may accept or reject the apology, following which, a suspension could be revoked or placed under reconsideration. The Council is duly informed of the developments.

In 2023, there were no incidents of suspension. However, with the implementation of a hybrid system (physical and virtual attendance), there have been incidents (no more than five), where a delegate was asked to leave

the Chamber or the virtual platform for the remainder of the proceedings.

UNITED KINGDOM

House of Commons

This response encompasses the various means by which a Member might, either temporarily or more permanently, lose, or be limited in, their right to participate in proceedings of the UK House of Commons.

Constitutionally, the House has power to regulate its own proceedings, and can expel or suspend Members as appropriate. In practice, the system has evolved to ensure that this power is not used arbitrarily, and only for good reason. The removal of MPs can follow the rules set down in the House's Standing Orders, in statute or be determined by the interaction between the two.

A Member's disorderly conduct in the Chamber can lead to their removal. The Chair can informally tell Members to leave the Chamber. Under the authority of the Standing Orders, particularly Standing Orders No. 43 (Disorderly conduct) to No. 45A, the Chair can order a Member to withdraw from the Chamber. If, despite repeated warnings, a Member persists in disorderly conduct, or if they conduct themselves in a "grossly disorderly" manner, the Chair (under the authority of Standing Order No. 43) may order a Member to withdraw immediately from the Chamber for the remainder of the day's sitting and they are escorted off the Parliamentary estate.[22] Since 2020, four Members have been ordered to withdraw for the remainder of the day's sitting. While Members are unable to participate in the proceedings of the Chamber in person, they may still be able to table questions and amendments to bills remotely.

If the Chair deems that their powers under Standing Order No. 43 are "inadequate", for example if a Member declines to withdraw from the Chamber or they commit an offence that warrants a firm response from the Chair, they may use the provisions of the Standing Orders to pursue further options. The Chair may "name" the Member by declaring "I name [name of Member]." The "naming" of a Member is followed at once by a motion moved by the Leader of the House (or a senior Minister present) that the Member be

[22] Standing Order No. 43. It is within the discretion of the Chair to deem what is disorderly conduct. For example, Paul Bristow MP was ordered by the Chair to withdraw from the Chamber on 24 May 2023 following repeatedly interrupting the Leader of the Opposition as he was speaking (hansard.parliament.uk/Commons/2023-05-24/debates/36596791-44CF-46BA-A393-E364CE19B1BD/Engagements#contribution-C5BA7C60-35FE-4888-BBDA-EC0232BAAA78).

suspended. In extreme circumstances, the motion can be moved a Member other than a Minister. The question on the motion is put without debate and decided on immediately.[23] The duration of the suspension for the first instance a Member is "named" is five sitting days, under Standing Order No. 45A. On the second instance a Member is "named" within a Session, the suspension is for 20 sitting days.[24] Any further instances where the Member is "named" within the same Session lead to their suspension until the House resolves to terminate the suspension. For the duration of their suspension, a Member's salary is withheld and they are unable to participate in any proceedings of the House of Commons. Since 2012, four Members have been "named" due to their conduct in the Chamber.

In very rare circumstances, if a Member still refuses to withdraw despite being "named" and the Serjeant at Arms is compelled to use force to ensure that a Member complies with the order to withdraw,[25] then, under Standing Order No. 44, the Member is suspended for the remainder of the Session. The Serjeant at Arms then escorts the Member off the Parliamentary estate. The last instance where the Serjeant at Arms was compelled to use force against a Member was in the 1930s.

A Member may also be suspended following an investigation into their conduct by the Parliamentary Commissioner for Standards which leads to a recommendation from the Committee on Standards or the Independent Expert Panel or following an investigation and recommendation from the Committee of Privileges.[26] A motion to approve such a recommendation is put before the House for decision, without debate or the possibility of amendment. If approved, this leads to the suspension of a Member for a number of days specified in the motion. The Committees or the Independent Expert Panel are also able to recommend that a Member be expelled.

There are also a number of statutes which are relevant here, including the House of Commons Disqualification Act 1975 and the Representation of the

[23] A motion to suspend a Member following the Chair "naming" them has never been disagreed to. If it were to be disagreed to, the authority of Chair could be called into question.

[24] The period between a General Election and dissolution is known as a Parliament. A Parliament is normally divided into Sessions that last roughly a year.

[25] The Serjeant at Arms is responsible for keeping order within the Commons side of the Parliamentary Estate.

[26] The Committee on Standards, under the authority of Standing Order No. 149, considers any matter related to the conduct of Members. The Committee on Privileges, under the authority of Standing Order No. 148A, considers matters of privilege referred to it by the House. The Independent Expert Panel determines appeals and sanctions in cases where complaints have been brought against MPs of bullying, harassment or sexual misconduct under the Independent Complaints and Grievance Scheme, as set out in Standing Orders No. 150A to 150E.

People Acts 1981 and 1983. The reasons that a Member may be disqualified include being elevated to the Peerage; being subject to a bankruptcy restrictions order; committing treason; being sentenced or ordered to be imprisoned or detained indefinitely for more than one year; incurring statutory penalties for corrupt or illegal practices at elections and becoming one of the Lords Spiritual (i.e. those archbishops or bishops who are members of the House of Lords). The terms of the disqualification are clearly set out in Chapter 3 of Erskine May. The Recall of MPs Act 2015 further provides that a Member who receives a custodial sentence of less than a year or is found guilty of expenses fraud is subject to a recall petition.

There is interplay between the operation of the Standing Orders and statute since, under the Recall of MPs Act 2015, if the Committee of Standards has recommended a suspension of at least 10 sitting days, or at least 14 days if sitting days are not specified, and this is agreed to by the House of Commons, then a recall petition is triggered. The recall procedure allows the electorate of a parliamentary constituency to trigger a by-election provided the required number of signatories is achieved.[27] The Speaker of the House of Commons has ruled that a recommendation of the Committee of Privileges has the same effect as one from the Committee on Standards, if agreed to by the House, in triggering the recall process. Since June 2023, three Members have been suspended and later lost their seats due to a by-election being triggered.[28]

A Member may also opt to resign their seat. However, under a Resolution of the House of Commons of 2 March 1623, Members cannot directly resign from their seats. Therefore, a Member wishing to resign has to be appointed to a paid office of the Crown which automatically disqualifies them from holding a seat in the House of Commons. Currently, there are two nominal offices of profit under the Crown: Crown Steward and Bailiff of the three Chiltern Hundreds of Stoke, Desborough and Burnham and the Crown Steward and Bailiff of the Manor of Northstead. In such cases, the Chancellor of the Exchequer makes the appointment and notifies the Speaker.

On 13 May 2024 the House of Commons approved a motion by the Leader of the House which would exclude MPs from the parliamentary estate on a temporary basis subject to a risk assessment that would take place if an MP has been charged with a violent or sexual offence.

[27] A recall petition can also be triggered if the Member is convicted in the UK of any offence and sentenced or ordered to be imprisoned or detained, after all appeals have been exhausted or if the Member is convicted of an offence under section 10 of the Parliamentary Standards Act 2009 (making false or misleading Parliamentary allowances claims).

[28] House of Commons Library, *Recall elections*, 26 March 2024 (commonslibrary.parliament.uk/research-briefings/sn05089/)

House of Lords

The House of Lords Reform Act 2014 provides that a member convicted of a serious offence (a criminal offence for which they are sentenced to imprisonment for more than one year) ceases to be a member of the House. No members have been subject to this provision.[29]

The 2014 Act also provides that a member who does not attend the House of Lords during a session of more than six months in length, and who has not taken leave of absence at any point during that session, ceases to be a member of the House at the beginning of the following session. Since 2014 sixteen members have been excluded from the House for non-attendance.

In respect of both provisions of the 2014 Act, the Lord Speaker is required to issue a certificate to the effect that the criteria for ceasing to be a member of the House have been met.

The House of Lords (Expulsion and Suspension) Act 2015, in concert with Standing Order 11, provides a mechanism for the House to resolve to expel or suspend a member.[30] A motion to this effect may only follow a recommendation from the Conduct Committee that the member be expelled or suspended because the member has breached the Code of Conduct. Seven members have been suspended under this provision; none has been expelled.[31] Of the seven members suspended, two were for breaching provisions related to lobbying, three for bullying or harassment, one for inappropriate expenses claims and one for misuse of House facilities for non-parliamentary purposes.

Prior to the passage of the 2015 Act, 10 members were suspended from the House between 2009–2014 on the basis of the House's decision in 2009 that its inherent power to regulate its own procedures included a power of suspension until the end the parliament then in existence (although not a power to expel, as this would interfere with the rights of a peer conferred by the writ of summons issued by the Crown).[32] These suspensions were for inappropriate expenses claims or breaching provisions related to lobbying.

In February 2024, the Procedure and Privileges Committee, at the request of the House of Lords Commission, proposed a new Standing Order to provide for the temporary exclusion of members for safeguarding purposes.[33] Standing Order 21A states that a member charged with a "serious violent or sexual offence" (any offence against the person or any sexual offence which

[29] legislation.gov.uk/ukpga/2014/24

[30] legislation.gov.uk/ukpga/2015/14

[31] These figures exclude three Members who have resigned following publication of a report recommending suspension or, in one case (that of Lord Ahmed) expulsion from the House.

[32] See *The Table*, 78 (2010), pp.5–21

[33] publications.parliament.uk/pa/ld5804/ldselect/ldproced/64/6403.htm#_idTextAnchor000

carries a maximum sentence of more than two years' imprisonment) will be temporarily excluded from the Parliamentary Estate until criminal proceedings are completed or, if the member is convicted and sentenced to a term of imprisonment that does not engage the provisions of the House of Lords Reform Act 2014, until the House has decided on any sanction recommended by the Conduct Committee.

During the period of temporary exclusion, a member may not enter the Parliamentary estate, participate in any proceedings in person or remotely, or undertake external visits or other activities supported or funded by Parliament. They may continue to transact business that does not require personal presence on the estate, such as tabling Questions for Written Answer. They may also be escorted on the Estate solely for the purpose of taking the oath of allegiance or making the solemn affirmation. No members have been subject to these provisions.

Northern Ireland Assembly

Standing Orders provide that the Speaker may order a Member to withdraw immediately from Parliament Buildings during the remainder of that day's sitting if, in the view of the Speaker, that Member is guilty of disorderly conduct or other offences set out in Standing Orders.

Standing Orders provide that, in circumstances where a Member has disregarded the authority of the Speaker, or has persistently and wilfully obstructed the business of the Assembly by abusing the rules of the Assembly or otherwise, the Assembly may resolve "That such member be suspended from the service of the Assembly" for a period of up to five working days.

Standing Orders provide that, where it appears to the Committee on Standards and Privileges that a Member has failed to comply with any provision of the Code of Conduct or related matters, the committee may make a report to the Assembly. The report may include a recommendation that a sanction be imposed upon the Member. Sanctions may include, but are not limited to exclusion of the Member from proceedings of the Assembly for a specified period and withdrawal of any of the Member's rights and privileges as a Member for that period. The rights and privileges withdrawn may include the rights to salary and allowances.

None of these mechanisms for excluding a Member are used frequently. In fact, it has been many years since any of them have been used.

Scottish Parliament

Standing Orders rule 7.3 sets out procedural arrangements for removing a member from the Chamber. It states that:

1. Members shall at all times conduct themselves in a courteous and

respectful manner and shall respect the authority of the Presiding Officer. In particular, members shall not speak or stand when the Presiding Officer is speaking.

2. Members shall at all times conduct themselves in an orderly manner and, in particular, shall not conduct themselves in a manner which would constitute a criminal offence or contempt of court.
3. Any member who is in breach of paragraph 2 may be ordered by the Presiding Officer to leave the chamber and may be excluded from the chamber—
   a. on the order of the Presiding Officer for such period as the Presiding Officer thinks fit but not beyond the end of the next sitting day; and
   b. for such further period as the Parliament may decide, on a motion of the Parliamentary Bureau.
4. A motion under paragraph 3(b) may not be amended. If the motion is debated only the following may speak, namely—
   a. the member concerned; and
   b. one member for the motion and one member against the motion.

This procedure tends to be used sparingly, and no member has been removed from the Chamber this way in Session 6 (which began in May 2021).

Senedd Cymru

Under Standing Order 13.11 of the Welsh Parliament, a "Member may be required by the Presiding Officer to withdraw from Senedd proceedings for the remainder of the day if the Presiding Officer considers the conduct such as to warrant withdrawal."

If the Member fails to do so, a motion to exclude the Member from Senedd proceedings must be proposed by the Presiding Officer (commonly known as the Llywydd) under Standing Order 13.12 and voted on immediately.

If the motion is agreed, the exclusion of a Member has immediate effect and, in accordance with Standing Order 13.13, must be:

i. on the first occasion during any 12-month period, until the end of the working day immediately following the day of exclusion;
ii. on a second occasion during the same 12-month period, for five working days immediately following the day of exclusion; and
iii. on a third or any subsequent occasion during the same 12-month period, for 20 working days immediately following the day of exclusion.

During the period of a Member's exclusion under Standing Orders 13.12 and 13.13, they are not entitled to receive any salary from the Senedd and are not permitted to attend any Senedd proceedings.

The Senedd's Code of Conduct sets out the rules and principles that

Members of the Senedd must abide by.[34] It indicates that Members' conduct during plenary sessions of the Senedd is "normally dealt with by the Llywydd" through application of the Senedd's Standing Orders relating to maintaining order during proceedings.

However, should the Llywydd consider that the conduct "requires further or fuller investigation" he or she may also refer the matter to the Senedd Commissioner for Standards for a decision.

Under Standing Order 12.18, in any case where the Llywydd thinks it appropriate to do so (including any case of grave disorder arising in Plenary meetings), he or she may adjourn proceedings without putting any proposition to the vote, or may suspend proceedings for a specified time.

There are few instances in practice of Members being removed from the Chamber and none in the current Senedd (the Sixth Senedd, which commenced in 2021). Those instances, which occurred between 2004 and 2020, are as follows:

- The Llywydd ordered a Member who refused to withdraw a disorderly expression to withdraw from the Chamber; and
- On two occasions, the Llywydd required a Member to withdraw from proceedings for making a live broadcast on social media whilst attending a meeting of Plenary being held by video conference (during the COVID-19 pandemic), contravening the Llywydd's guidance to Members prohibiting them from making or broadcasting any audio or video recording, photographs or screenshots of the meeting.

There have also been instances where Members have voluntarily withdrawn prior to being removed. For example, a Member was ruled out of order for asking a question about the exercise of the functions of the Llywydd as a supplementary to a tabled question, as this was not within the scope of the question. The Member did not comply and the Temporary Chair repeatedly asked the Member to resume his seat.

The Member eventually left the Chamber at the Chair's suggestion, though was not removed.

It is more common for Members to be excluded from proceedings for a specified period of time as a result of a motion proposed by the Standards of Conduct Committee, following an inquiry into issues of conduct.

[34] Senedd Cymru, Code of Conduct on the Standards of Conduct of Members of the Senedd (senedd.wales/media/kxxndohb/cr-ld14238-e.pdf)

PRIVILEGE

AUSTRALIA

House of Representatives

Economics Committee identifies unauthorised disclosure

On 30 May, the Chair of the Standing Committee on Economics raised a matter of privilege, informing the Speaker of two media articles containing information provided to the committee in a private briefing and undertaking to investigate the apparent breach and report back to the House. On 1 June, the Chair of the committee informed the House that the committee had found the unauthorised disclosure was unlikely to have caused substantial interference to its work such as to amount to a potential contempt. He also noted that it would be difficult to determine with any certainty the source of the disclosure.

Outcome of Clubs NSW vs Stolz

As previously reported in *The Table* (Vol 90), in 2021 a matter of privilege had been raised in relation to a Federal Court case between Clubs NSW and one of its former employees, Mr Troy Stolz, who had provided information to the Member for Clark as a whistleblower; the then Speaker subsequently instructed a solicitor to write to the parties in the legal matter about the interests of the House and potential issues of parliamentary privilege. In February 2023, it was reported in the media that the Federal Court case had ended, following an out-of-court settlement between the parties.

Senate

Possible obstruction of the work of the Parliamentary Joint Committee on Law Enforcement

On 7 March 2023, the Committee of Privileges tabled its report on its inquiry (referred in October 2022) into whether Senator Thorpe's failure to declare a relationship with a particular person obstructed the work of the Parliamentary Joint Committee on Law Enforcement, of which she was a member.[1] Media reports which prompted the inquiry suggested that the person was a former member of an outlaw motorcycle gang and that the committee was examining matters related to such gangs.

The Privileges Committee noted that the media coverage was intended to suggest Senator Thorpe had used her membership of the joint committee to further the interests of an outlaw motorcycle gang. The committee also noted that such conduct, if it was proven, could only be addressed by the Senate

[1] aph.gov.au/-/media/Committees/priv_ctte/183/183rd_Report.pdf?la=en&hash=5AE5F4565C9AA03B20569BA516B0E101A2739474

exercising its power to determine and punish contempts.

However, on the basis of submissions from the joint committee and from the senator, the Privileges Committee concluded that the media coverage was inaccurate in some important respects. The implication that the senator used her position inappropriately or even had access to information of the type speculated about in the media coverage was not borne out. The Senate adopted the committee's conclusion that a contempt should not be found.

The Privileges Committee did conclude that the senator should have declared her relationship as a potential conflict of interest with her work on the joint committee (because it was possible that she would receive sensitive material of interest to outlaw motorcycle gangs through her work on the committee). The committee urged senators to exercise caution in relation to the possibility of conflicts of interest as well as the perception that their personal relationships may conflict with their official duties. To support a more consistent approach to these matters, the committee recommended that declarations of any conflicts of interest should be a standard agenda item at all private meetings of committees.

South Australia House of Assembly

The Minister for Infrastructure and Transport raised a matter of privilege, alleging that the Member for Dunstan had misled the House in his Grievance debate. Later that day, the Member corrected the record, and the Speaker indicate that the personal explanation was sufficient for him to discharge the matter of privilege.[2]

Tasmania House of Assembly

On Thursday 7 September the Leader of the Opposition, the Hon Rebecca White MP moved a motion to refer the Minister for Energy and Renewables, the Hon Guy Barnett MP to the Privileges and Conduct Committee. Such referral was on the basis that the Minister had failed to produce cost estimates for a number of energy projects to the House, after having been ordered by the House to do so.

The motion for referral was agreed to by the House and the Privileges and Conduct Committee commenced an inquiry. The inquiry lapsed however on the dissolution of Parliament.

Western Australia Legislative Council

At the commencement of the 2023 sittings a member of the Legislative Council resumed his seat following a period of suspension imposed for the contempt of having knowingly misrepresented the practices and rules of the Legislative

[2] 29 Nov 2023 – HA *Votes and Proceedings* p.545–546

Council for a benefit. The member's suspension resulted from the findings of the Council's *Procedure and Privileges Committee's* 68th Report tabled on 18 October 2022.[3]

A matter related to the member's suspension included the very serious criminal charges being faced by the member. In August 2023 a jury found the member guilty of two of the offences of which he was charged. A judgement of conviction for the two offences was entered against the member on indictment under section 320(4) of Western Australia's *Criminal Code* – a person convicted of these offences is subject to a penalty of up to 10 years' imprisonment.

Section 32 of Western Australia's *Constitution Acts Amendment Act 1899* provides for the disqualification of a member in the event that the member is convicted on indictment of an offence for which the indictable penalty is or includes imprisonment for life or imprisonment for more than five years. Furthermore, section 38 of the *Constitution Acts Amendment Act 1899* provides that the seat of a member disqualified for membership of a House of the Parliament of Western Australia under section 32 shall thereupon become vacant.

On 29 August 2023 the President of the Legislative Council advised the House of the now former member's conviction, his disqualification from membership of the Legislative Council and the resulting vacancy in the membership of the Council. Following this advice a few procedural steps were subsequently taken in the Council.

Firstly, the Leader of the House in the Legislative Council moved the following motion:

> "That a vacancy in the membership of the Legislative Council is declared by reason of [the member] being disqualified as a Member for the South West Region pursuant to sections 32 and 38 of the Constitution Acts Amendment Act 1899, following his being convicted for indictable offences in the District Court of Western Australia on Monday, 28 August 2023, for which the indictable penalty includes imprisonment for more than 5 years."

The motion provided a means to commence several procedural steps that have to occur to fill the vacancy in the Council, including the re-count procedure for the filling of vacancies and the organisation of a member-elect's swearing-in and induction to the Council.

The Council then took an unusual step to further sever ties with the former member. A motion described as a motion to address the "ongoing concerns of the Council" following the member's conviction in the District Court was

[3] parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/64C671AF8E1D590C482588DF002021F3/$file/PPC Report 68.pdf

moved by the Leader of the House as follows:

"That the Council revokes any and all privileges granted by the Council to [the member] as a former Member."

The above motion completed the cycle that commenced with the Council's referral to the *Procedure and Privileges Committee* in 2022.

CANADA

House of Commons

Foreign intimidation campaign against a member of Parliament

On 2 May 2021, Michael D. Chong (Wellington—Halton Hills) rose on a question of privilege and alleged that a diplomat of the People's Republic of China, accredited by the Government of Canada, targeted him and his family as a consequence of his 22 February 2021, vote on a Conservative opposition day motion condemning the government of the People's Republic of China and its treatment of the Uyghur minority as a genocide. On 8 May, the Speaker ruled that there was a *prima facie* case of privilege, whereupon Mr. Chong moved that the matter be referred to the Standing Committee on Procedure and House Affairs. Later that day, Parliamentary Secretary to the Minister of Foreign Affairs Robert Oliphant (Don Valley West) informed the House that the Government of Canada had declared a diplomat from China, Mr. Zhao Wei, persona non grata. After debate on the motion by Mr. Chong, it was adopted on 10 May. The Standing Committee on Procedure and House Affairs was studying this matter at the time the House adjourned for the summer.

Question of privilege regarding the impartiality of the Speaker

On Monday, 4 December 2023, the Speaker of the House issued an apology to the House following his appearance by video in a provincial party convention. The Speaker explained that he had received a request to record a video for a personal friend's intimate gathering and that instead, the video had been played at the provincial party convention. The Speaker emphasised the non-political nature of the message, noting his longstanding friendship with the individual. Notwithstanding, the Speaker apologised to the House and reassured members that such an incident would not happen again. Additionally, he offered to recuse himself from any debate related to the subject of his statement, should members wish to raise questions. The Deputy Speaker then took over the matter.

This statement was later followed by a question of privilege raised by Andrew Scheer (Regina—Qu'Appelle) on an alleged breach of the Speaker's impartiality. Scheer proposed a motion to denounce the Speaker's participation in partisan events publicly and suggested that the Procedure and House Affairs Committee should investigate the matter.

On 5 December 2023, the Deputy Speaker delivered a ruling acknowledging the serious allegations against the Speaker's impartiality. Typically, such matters are addressed through a substantive motion with 48 hours' notice, as per parliamentary practice. However, given the unique nature of the situation, the Deputy Speaker allowed the House leader of the official opposition to move his motion, prioritising it over other orders of the day.

The Deputy Speaker emphasised that future concerns about the Speaker's conduct should be addressed through substantive motions rather than points of order or questions of privilege. Following this ruling, Mr. Scheer moved a motion to refer the matter to the Standing Committee on Procedure and House Affairs for recommendations on an appropriate remedy. Later that same day, Luc Berthold (Mégantic—L'Érable) proposed an amendment outlining a timeline for the committee to meet, prioritise the matter, utilise House resources, and report back to the House by a specific date. The debate on the sub-amendment collapsed, and the recorded division was deferred until the next day.

On 6 December 2023, the sub-amendment was adopted, and the main motion was agreed to later that day, thus referring the matter to the Standing Committee on Procedure and House Affairs. On 14 December 2023, Bardish Chagger (Waterloo) presented the 55th report of The Standing Committee on Procedure and House Affairs, entitled "Speaker's Public Participation at an Ontario Liberal Party Event." It recommended that the Speaker reimburse Parliament for the misuse of resources. Furthermore, it stated that he should receive clear guidelines on impartiality for future reference, and issue a thorough apology emphasising respect, impartiality, and decorum, while outlining measures to prevent similar incidents.

On 15 December 2023, the Speaker addressed the House in response to the Standing Committee on Procedure and House Affairs' report. Expressing gratitude for their work, the Speaker admitted a serious mistake in recording the video. Apologising, the Speaker assured such incidents would not recur and outlined a stricter communication protocol. Emphasising impartiality, the Speaker promised scrutiny in consultation with the House administration. Acknowledging second chances and understanding dissent, the Speaker urged collaboration, pledging efforts to regain trust.

Senate

On 21 November, a question of privilege was raised concerning attempted intimidation of senators that occurred within the Senate Chamber and Senate of Canada Building on 9 November. It was argued that, following a motion to adjourn debate on a motion in amendment to a commons public bill, the ability of certain senators to perform their parliamentary duties without obstruction

or intimidation was impeded and also raised concerns about on-line posts after the sitting. The Speaker agreed to hear additional arguments on 23 November.

In her ruling on December 5, the Speaker provided an account of the events that transpired on the day in question from the perspective of the chair. She noted how the Senate has evolved and urged senators to exercise caution when using social media and to consider the possible effects of what is posted. The Speaker reviewed the question of privilege in light of the four criteria set out in rule 13-2(1) and determined they had all been met. Since the question of privilege had *prima facie* merits, the senator who raised it moved a motion to refer the case to the Standing Committee on Ethics and Conflict of Interest for Senators. Debate began on the same day and concluded on 7 December, when the motion was adopted. At the time of writing, the committee had not yet reported on the matter.

Manitoba Legislative Assembly

On 13 April 2023, Hon. Mr. Khan (Minister of Sport, Culture and Heritage) rose on a Matter of Privilege regarding an incident that occurred earlier that day during an event in the Legislative Building Rotunda. The Minister alleged that Mr. Kinew (Leader of the Official Opposition) attempted to verbally and physically intimidate him, using profane language and shoving him. Hon. Mr. Khan declared that this incident left him shaken and caused him to experience difficulty in rising to speak in the House. He concluded his remarks by moving:

> "THAT this matter be immediately referred to a permanent Standing Committee of this House for investigation."

Mr. Kinew then spoke to the Matter of Privilege. The Member voluntarily apologised while also disputing some of the facts of the incident in question.

The matter was taken under advisement.

On 25 April 2023, the Speaker ruled that a *prima facie* case of privilege was not established, as events that occur outside of the Chamber or in a Committee do not fall under the purview of the Speaker. Furthermore, in order for a Member's privileges to be breached, that Member must have been participating in a proceeding of Parliament at the time of the alleged breach. Finally, the Speaker has no authority to rule on statements made outside of the House by one Member against another. However, the Speaker did remind all Members to be civil and kind to one another.

On 26 April 2023, MLA Asagwara (Member for Union Station) rose on a Matter of Privilege regarding comments made during Oral Questions by Hon. Mr. Ewasko (Minister of Education and Early Childhood Learning) the previous day, in which he said, ""He's no Adam Beach," in reference to Mr. Kinew (Leader of the Official Opposition). MLA Asagwara stated that, due to the fact that both actor Adam Beach and Mr. Kinew are Indigenous,

this comment had racial overtones, and Hon. Mr. Ewasko was "singling out" Mr. Kinew on the basis of his race. MLA Asagwara argued that this comment was disrespectful and demeaning, and that comments like it interfere with the performance of parliamentary functions by discouraging Members from racialised groups from participating fully. They concluded their remarks by moving:

> "THAT the House call on the Minister of Education to apologize immediately, and to fully and unconditionally retract his remarks."

Hon. Mr. Ewasko then spoke to the Matter of Privilege, at which time he offered a conditional apology while disputing MLA Asagwara's allegations and elaborating on his previous comments.

The matter was taken under advisement.

On 29 May 2023, the Speaker ruled that a *prima facie* case of privilege was not established, stating that, while she did not condone Hon. Mr. Ewasko's comments, the principle of freedom of speech in the Chamber is essential. In her ruling, she added, "Rather than apologising unequivocally, the Minister chose to dispute the matter and, in my opinion, he made the situation worse with more insensitive comments. In the future I would encourage Members to make such apologies unequivocally."

On 15 May 2023, Mr. Lamont (Member for St. Boniface) rose on a Matter of Privilege regarding an incident that allegedly occurred following Oral Questions on the previous sitting day, in which Hon. Mr. Goertzen (Minister of Justice, Member for Steinbach) and Mr. Maloway (Member for Elmwood) allegedly approached Ms. Lamoureux (Member for Tyndall Park) and asked her to tell Mr. Lamont to stop asking questions about taxpayers directly financing second homes for Members. Mr. Lamont alleged that Mr. Maloway told Ms. Lamoureux that asking such questions was "dangerous," and that Hon. Mr. Goertzen threatened retaliation if this line of questioning were to continue.

Mr. Lamont stated that this interaction constituted intimidation and an attempt to silence a Member carrying out his parliamentary duties, and concluded his remarks by moving:

> "THAT the Members for Elmwood and Steinbach be asked to apologize to the House for the violation of privilege and that it be referred to an all-party committee for immediate consideration."

The matter was taken under advisement.

On 31 May 2023, the Speaker ruled that a *prima facie* case of privilege was not established, as she could not draw any conclusions regarding the alleged incident in question because the comments were made off the record, and sufficient evidence was not provided to prove the incident occurred.

Saskatchewan Legislative Assembly

On 1 November 2023, Saskatchewan's Government House Leader raised a question of privilege following an interruption of proceedings of the Legislative Assembly of Saskatchewan which had occurred the previous day. The interruption had been caused during question period by a group of protesters seated in the public galleries who began chanting and calling for a ceasefire between Israel and Hamas. When the protestors refused to come to order, the Speaker recessed the sitting on account of grave disorder and the Legislative District Security Unit (LDSU) proceeded to clear out the galleries and escort the protestors from the building. Proceedings resumed after approximately 40 minutes.

The Government House Leader alleged that members of the opposition caucus had helped to promote and organise the protest because they had invited the protesters to the building, provided them with overflow seating, obtained gallery passes for them, escorted them through the building, and offered support for their cause. In response, the Opposition House Leader, in accordance with rule 12(4),[4] issued a written statement asserting that the opposition had no advance knowledge of the protesters' intentions to disrupt proceedings and that the Government House Leader had provided no evidence to indicate otherwise.

The Speaker deferred his decision until 22 November 2023, at which time he ruled that although a *prima facie* case could be established on the grounds that both House leaders agreed the disruption obstructed members from fulfilling their duties, the evidence presented by the Government House Leader proposing that the opposition caucus and an opposition member had in some way facilitated the protest did not meet the extremely high threshold of proof required to prove the intent of members.

The Speaker allowed the Government House Leader to amend his question of privilege motion to remove any allegation of wrongdoing and ask leave to move the amended motion. Leave being granted, the amended motion, which alleged that the disruption and occupation of the Assembly constituted a breach of privilege that should be referred to the Standing Committee on Privileges for a full investigation and report, was passed on recorded division, with the opposition voting against it on the premise of the wording that the protesters held an "occupation." The matter was accordingly referred to the Standing Committee on Privileges.

The Standing Committee on Privileges met on 6 December 2023, at which time the Government House Leader moved a motion condemning the protesters' actions, expressing thanks to security and staff, and requesting

[4] legassembly.sk.ca/media/1877/currentruleswithdestinations.pdf#page=4

that the LDSU review the incident and develop proposals to prevent further breaches of privilege. The motion was passed 4 to 2 and the committee's first report was subsequently adopted by the Assembly on 7 December 2023 on a recorded vote of 36-10.[5]

INDIA

Lok Sabha

Motion adopted by the House on 10 August 2023 leading to suspension of Shri Adhir Ranjan Chowdhury MP

The matter was referred by the House to the Committee of Privileges on 10 August 2023 for examination and investigation and report. The Sixth Report of the Committee of Privileges, 17th Lok Sabha on the subject was presented to the Speaker on 30 August 2023 and laid on the Table of the House on 18 September 2023.

The Committee observed that deliberate attempt on the part of Shri Adhir Ranjan Chowdhury, Member of Parliament, Lok Sabha by way of frequently interrupting or disturbing the proceedings of the House during the speech of Hon'ble Prime Minister or other Ministers thereof is a clear case of Contempt of the House. Nevertheless, in view of the regrets expressed by Shri Adhir Ranjan Chowdhury during his evidence before the Committee, the Committee observed that no further punitive action was called for in the matter. The Committee, therefore, recommended that the suspension suffered by Shri Adhir Ranjan Chowdhury so far, be regarded as sufficient punishment and the Hon'ble Speaker may consider revoking the suspension of Shri Adhir Ranjan Chowdhury at the earliest, even without waiting for the House to re-assemble for the Winter Session in November/December 2023.

Motion/resolution adopted by the House on 18 December 2023 leading to suspension of Dr. K. Jayakumar, Shri Abdul Khaleque and Shri Vijayakumar alias Vijay Vasanth, MPs

The matter was referred by the House to the Committee of Privileges on 18 December 2023 for examination, investigation and report. The Sixth Report of the Committee of Privileges, 17th Lok Sabha on the subject was presented to the Speaker on 30 January 2024 and laid on the Table of the House on 31 January 2024.

The Committee observed that deliberate attempt on the part of Dr. K. Jayakumar, Shri Abdul Khaleque and Shri Vijayakumar, Members of Parliament by way of creating grave disorder in the House including shouting

[5] docs.legassembly.sk.ca/legdocs/Legislative Committees/PRV/Reports/231207Report-PRV.pdf

slogans, displaying placards and advancing towards the podium of the House during the debate on Post Office Bill 2023 thereof is a clear case of Contempt of the House.

Nevertheless, in view of the regrets expressed by Dr. K. Jayakumar, Shri Abdul Khaleque and Shri Vijayakumar during their evidence before the Committee, the Committee were of the considered view that no further punitive action was called for in the matter. The Committee, therefore, recommended that the suspension suffered by Dr. K. Jayakumar, Shri Abdul Khaleque and Shri Vijayakumar so far, be regarded as sufficient punishment and the Hon'ble Speaker may consider revoking the suspension at the earliest.

Uttar Pradesh Legislative Assembly

In a rare occurrence in the history of the state legislature, the UP Assembly turned into a court on Friday 3 March 2023 and awarded one-day simple imprisonment (till midnight) to six policemen found guilty of breach of privilege in a 2004 case related to an MLA.

The MLA had served the privilege notice after being allegedly assaulted by the policemen when he was taking part in a procession. The privilege committee of the House had found them guilty in 2006.

NEW ZEALAND

House of Representatives

Duty to correct a misleading answer promptly

On 30 May 2023, the Speaker referred a question of privilege to the Privileges Committee concerning the time taken to correct a misleading statement to the House. A Minister had unintentionally made a misleading statement in the House in response to a question for oral answer. Shortly after giving the answer in the House, the Minister received information that contradicted it, but did not correct the response until 13 sitting days (close to 10 weeks) had elapsed.

Previous complaints to the Privileges Committee about the House being misled related to the knowledge held by members at the time they made the statements concerned. This was the first complaint where the issue arose from a delay in a correction, rather than the original statement. The committee accepted that a delay in a correction could amount to a contempt. A delay impedes the House's ability to carry out its role in scrutinising the Executive. The House remains impeded while the information available to it is inaccurate. The committee also noted that while some leniency is given to inadvertent misleading statements in the House, as they involve a single moment in the pressure of the debating chamber, a failure to correct an answer may be more serious, as it involves a sustained course of action and judgment, rather than a

single moment.

In the particular case, the committee found that the Minister had been highly negligent in failing to correct the answer in a timely manner, but that their behaviour fell short of a contempt of the House, as it reflected an error in judgement rather than a deliberate attempt to mislead. The committee recommended the member be required to apologise to the House. The committee also encouraged all Ministers to ensure they had processes in place to review their answers to oral questions.

Threatening a member on account of their conduct in Parliament

On 1 August 2023, the Speaker referred a question of privilege to the Privileges Committee concerning a member's conduct towards a select committee chairperson. The complaint alleged threatening behaviour from the member towards the chairperson. The behaviour occurred shortly after the committee had concluded a hearing, and followed a disagreement between the member and the chairperson about the allocation of questions during the hearing.

The members involved had differing accounts of events, and there were a number of witnesses, including parliamentary staff. Rather than questioning the witnesses itself, the committee felt it was more appropriate to appoint an independent reviewer, who could fairly approach the question of what had occurred. The reviewer was required to establish the facts by the civil law standard of proof (that is, on the balance of probabilities), and the terms of reference made clear that the purpose of the review did not include passing judgement on the facts or inquiring into the events beyond the alleged incident. The reviewer was directed to maintain the anonymity of the parliamentary staff present at the time of the incident.

The reviewer provided the committee with a description of the behaviour and concluded that the member's conduct had been aggressive and threatening but not violent. The committee consequently determined that the conduct met the threshold for "assaulting, threatening, or disadvantaging a member on account of the member's conduct in Parliament," and was sufficiently serious to be deemed a contempt. On recommendation of the committee, the member was censured by the House on 29 August 2023. The member also made a personal explanation to the House to apologise for their conduct.

Dealing with a suspected reference to a matter suppressed by an order of a court

A member made a comment in an oral question that indicated a person was subject to a name suppression order. The individual was not named, but a sufficient description was given for the individual's identity to be discovered. The Standing Orders are clear that it is a contempt of the House to knowingly make reference to a matter supressed by an order of a court (other than with

prior approval of the Speaker). While the Speaker did not know whether the individual concerned was in fact subject to a suppression order, the Speaker concluded, based on the member's comments, that the member believed this was the case when making the remarks. At the start of the next day's sitting, the Speaker therefore ruled that the member's conduct was grossly disorderly, and named the member. The House accordingly ordered that the member be suspended from its service for 24 hours.

The Speaker also referred a general question of privilege to the Privileges Committee, asking the committee to consider how the Speaker should deal with cases such as this. He contemplated the extent to which even investigating the existence of a suppression order risks compounding the harm caused by the original breach. The matter is still before the Privileges Committee.

Complaint relating to a member's declarations of interests

Members make declarations of interests in February each year. In doing so, they are required to address specified pecuniary and non-pecuniary interests, including companies, business entities, trusts, and real property. Members are also required to declare certain activities that may give rise to an interest, including gifts and payments for activities.

The Standing Orders oblige members to give an accurate account of their interests, and set out a process for dealing with allegations that a member has failed to meet their obligations. Members may write to the Registrar of Pecuniary and Other Specified Interests to request an inquiry into another member's obligations. The Registrar will conduct a preliminary investigation to determine whether an inquiry is warranted, and may then undertake an inquiry.

In 2023, the Registrar conducted an inquiry for the first time. A member had a shareholding that they had failed to declare. On becoming a Minister, and on a closer examination of their interests, they discovered the interest. They sought to divest themselves of the interest, but, due to a misunderstanding, retained it. The member discovered their error in a later year and began declaring their interest. They did not, either on initial discovery of their interest or on discovering that they had not divested it, make any attempt to correct their previous returns, which is required under Standing Orders. An amendment was made following the complaint.

The Registrar determined that the matter under inquiry involved a question of privilege and referred it to the House, expressing concern both at the member's failure to make a genuine attempt to identify their interests over the five-year period, and at the member's failure to correct their previous returns.

The Privileges Committee considered the member's original failure to declare, and found the member to be negligent, noting "it is difficult to conclude that he made a genuine attempt to identify his interests or that he

sufficiently turned his mind to them when making his annual returns over this five-year period." It also considered that the member's failure to correct the register, arising from a lack of knowledge of the requirement, was negligent. On the other hand, the committee did not consider the member's shortcomings were of such a nature as to amount to a contempt. In the meantime, though, the member had resigned as a Minister, on account of undisclosed conflicts of interest.

UNITED KINGDOM

House of Commons

The Committee of Privileges concluded its inquiry into the Conduct of John Nicolson MP on 19 October.[6] This case arose from a further privilege matter. The then Secretary of State for Culture, Media and Sport had been accused of misleading the Committee on Culture, Media and Sport. That Committee published a special report on the matter in 2022, concluding:

> "We are concerned Ms Dorries appears to have taken an opportunity, under the protection of privilege, to traduce the reputation of Channel 4.
>
> Had Ms Dorries remained Secretary of State, driving a policy of selling the channel, we may have sought a referral to the Privileges Committee but, as her claims have not inhibited the work of the Committee and she no longer has a position of power over the future of Channel 4, we are, instead, publishing this Report to enable the House, and its Members, to draw their own conclusions."[7]

Mr Nicolson, a Member of the Committee wrote to the Speaker requesting the matter be given time on the floor of the House. The Speaker declined, on the grounds that the Committee had not requested it. Mr Nicolson then posted a video on X saying that he had done this but the Speaker "says that he's considered my letter but he's decided to take no further action and not to refer Nadine Dorries to the Privileges Committee. In other words, she'll suffer no consequences for what she's done. And I thought you should know." When asked whether a detailed reason for the decision had been given, he said that it had not. Mr Nicolson refused to apologise for the partial account of the letter, or the consequent abuse suffered by the Speaker's team.

One key issue was the confidential status of correspondence. The Committee noted that while "there has been an expectation, grounded in precedent and a past decision of the House, that correspondence with the Speaker on matters of privilege should remain confidential unless the Speaker authorises publication", this expectation had not been clear to Members. In response to

[6] committees.parliament.uk/publications/41766/documents/206810/default/

[7] committees.parliament.uk/publications/30386/documents/175488/default/special

this (fair) criticism work has been done on revising key sources such as the leaflet on rules of behaviour for Members and Erskine May to put this beyond a doubt. The Committee considered that Mr Nicolson's behaviour had been highly regrettable and that "Members should not, by their actions or inaction, imply a lack of impartiality on the part of the Speaker when there are no reasonable grounds for supposing this." Since he had offered an apology to the Speaker, through the Committee, the Committee recommended there should be no further action, but noted the referral was appropriate and had allowed it to clarify some important issues.

STANDING ORDERS

AUSTRALIA

House of Representatives

On 30 March, the House agreed to further amend standing orders relating to divisions and quorum counts after 6.30 pm, following changes made to the standing orders at the beginning of the new parliament in 2022 (see *The Table*, Vol 91). The standing orders agreed to at the start of the parliament meant that most divisions and quorum counts called between 6.30 pm and 7.30 pm would be deferred, which posed potential difficulties if the House considered business beyond 7.30 pm. The exception was for divisions called on any motion moved by a minister.

The changes made in 2023 included amendments to standing orders 34 (order of business), 55 (lack of quorum), 85 (proceedings on urgent bills) and 133 (deferred divisions). The effect is that divisions and quorum counts after 6.30 pm on Mondays, Tuesdays and Wednesdays, and during consideration of urgent bills in accordance with standing order 85, will be deferred until the following day except on a motion to suspend standing and other orders moved by a minister. Motions of closure of Members or questions are no longer permitted during these periods.

Senate

Confidential review of documents subject to public interest immunity claims

On 22 November 2022, the Senate referred an inquiry to the Procedure Committee on a proposal to establish a procedure in the standing orders to review public interest immunity claims made in relation to documents subject to an order for the production of documents (OPDs).

On 31 March 2023, the committee tabled its report and maintained its previously expressed view that the Senate should determine disputes on a case-by-case basis, using the remedies already available to it.[1] The committee noted, however, that the inquiry had provided it with an opportunity to consider 'some of the current challenges and constraints' around OPDs, and indicated its intention to examine matters further and report back to the Senate.

Matters of public importance and urgency motions

On 16 June 2023 the President referred to the Procedure Committee a letter

[1] aph.gov.au/-/media/Committees/proc_ctte/reports/2023/Report.pdf?la=en&hash=E5CE192B62434C8EE75B8B6B268A6DCAED6FFBAA

relating to proposals for discussion or debate under standing order 75.[2] The letter asked the committee to consider removing the requirement for 4 (or more) senators, in addition to the proposer, to stand to indicate support for matters of public importance and urgency motions prior to those items being discussed or debated.

The committee tabled its report in September 2023 concluding that the threshold is appropriate and should not be removed.[3] However, the committee noted that the requirement for senators to stand in support should be interpreted as indicating support for the discussion or debate taking place, rather than necessarily indicating support for the substance of the proposal. The committee asked that the procedural wording for the Chair to report such proposals be amended to clarify that point.

Set the Standard—Recommendation no. 10

Recommendation 10 of *Set the Standard*, the report of the Independent Review into Commonwealth Parliamentary Workplaces, proposed a review of standing orders and parliamentary conventions 'with a view to eliminating sexism and other forms of exclusion in the chamber' and improving safety and respect in the chambers.[4] The matter was referred by the President to the Procedure Committee on 25 October 2022. As part of its consideration of recommendation 10, the committee also had regard to the work of the Joint Committee on Parliamentary Standards.[5]

In its report tabled on 12 September 2023, the Procedure Committee concluded that the current language of the standing orders, and the practices of the Senate in applying Presidents' rulings, are sufficiently flexible to enable that framework to cover matters identified in *Set the Standard* and the report of the Joint Committee on Parliamentary Standards.[6]

The committee indicated that it remains open to assessing the need for changes to the language and interpretation of standing orders as the final recommendations of *Set the Standard* are implemented, including the establishment of an Independent Parliamentary Standards Commission and the consequent formalisation of codes of conduct for parliamentarians and their staff.

[2] aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/b00/b12#standing-order_c12-075:~:text=75%20Proposal%20for%20debate

[3] aph.gov.au/-/media/Committees/proc_ctte/reports/2023/Second_report/Report0223.pdf?la=en&hash=93F1506DB97B422B1024546B4330F1CEF92F8BDC

[4] humanrights.gov.au/set-standard-2021

[5] aph.gov.au/Parliamentary_Business/Committees/Joint/Parliamentary_Standards

[6] aph.gov.au/-/media/Committees/proc_ctte/reports/2023/Second_report/Report0223.pdf?la=en&hash=93F1506DB97B422B1024546B4330F1CEF92F8BDC

Australian Capital Territory Legislative Assembly

Speaker tables report on four yearly Review of Standing Orders and Continuing resolutions

On Thursday 31 August 2023 the Speaker, as Chair of the Standing Committee on Administration and Procedure and pursuant to standing order 16, presented the four yearly review of the Assembly standing orders and continuing resolutions. The report recommended 74 changes to the standing orders, 10 changes to continuing resolutions and 8 other recommendations. Amongst the major changes to the standing orders (all of which were adopted by the Assembly) were:

- Altering the Administration and Procedure Standing Committee terms of reference to include that the committee can advise the Speaker on the management of the Assembly precincts including Work Health and Safety obligations and developing a guidance note for all members outlining who is responsible for various undertakings and activities of the legislative Assembly, recognizing the unique working environment of the Legislative Assembly, within 6 months of the commencement of a new term;
- Expanding the ability of the Speaker to grant leave of absence to members with a primary or secondary caregiver or adoption leave in-line with provisions of leave that exist for ACT public servants;
- Providing a 10-minute period each sitting day for members to make 90 second statements;
- Inserting a new standing order that, in addition to the Assembly setting sitting days, allowing the Speaker to fix an hour or day of sitting upon receipt of a request in writing from an absolute majority of Members;
- All references to the Queen were replaced with references to the Sovereign;
- Inserting a new standing order which codifies the practice that a Member may move, without notice, a dissent from Chair's ruling as soon as practical after the ruling has been made;
- Inserting a requirement that, if the establishment of a privileges committee is proposed, a copy of the relevant motion must be circulated by the Speaker 90 minutes prior to the time at which the motion is proposed to be moved;
- Where a petition with more than 500 signatures has been referred to a standing committee, a new standing order was inserted requiring that the committee inform the Speaker of their intention to inquire or not within 28 days of the Ministers response being tabled in the Assembly;
- Inserting a 500-word limit on notices of motion being given by Members (with specified exceptions);
- Inserting a standing order that a member may inform the Clerk that they do not want a condolence motion moved in the event of their death;

- Expanding the length of time that a committee can inquire into a referred bill from 2 months to 3 months;
- Providing a period of time in the routine of business after private members business for a 30-minute debate noting papers that have been tabled after question time earlier that day.
- Inserting a standing order that requires overall membership of committees to comprise members of all genders as nearly as practicable proportional to their representation in the Assembly; and
- Significant amendments to the code of conduct for members in relation workplace safety and wellbeing and bullying, sexual and other harassment and discrimination.

New South Wales Legislative Assembly

On the first sitting day of the new Parliament Standing Orders were adopted to enshrine a previous Sessional Order that provided for no question to be asked after 55 minutes or the answering of 14 questions, whichever is the longer and for the maximum period for Question Time not to exceed 70 minutes. Reflecting the composition of the House, the fifth and thirteenth question were designated for the Independent and Cross Bench Members.

New South Wales Legislative Council

The Legislative Council commenced the 58th Parliament with newly minted standing orders. As previously reported, the revision of the standing orders took place over 2021 and 2022. Following a successful trial from June to November 2022, the Council's revised standing orders were adopted by the House in November and were approved by Her Excellency the Governor on 20 February 2023.[7]

Victoria Legislative Assembly

On 29 November 2023, the Legislative Assembly unanimously agreed to amend its standing and sessional orders. This followed recommendations from an interim report of the Standing Orders Committee which recommended that eight sessional orders be included in the standing orders.

These sessional orders:

1. Required replies to questions on notice to be provided to the Clerk within 30 days.
2. Allowed supplementary questions to be asked during oral questions.
3. Allowed members to ask constituency questions.

[7] parliament.nsw.gov.au/lc/rules/Documents/Legislative%20Council%20Standing%20rules%20and%20orders%20-%202023.pdf

4. Imposed time limits on answers and questions.
5. Provided that additional time for a "lead speaker of any other party" does not apply to a party in a formal coalition agreement with another party
6. Extended the time that the bells ring for a division.
7. Prescribed a procedure for redacting documents on safety or security grounds.
8. Required a joint sitting when a member gives notice to disallow a pandemic order.

The amended standing and sessional orders came into effect on 1 January 2024. The Standing Orders Committee is continuing to consider whether there should be any changes to standing or sessional orders.[8]

Western Australia Legislative Council

The Legislative Council is currently trialling temporary orders giving effect to the facilitation of e-petitions. The final review of the e-petitions rules and orders will be presented in the second half of 2024 and it is anticipated that the Council will adopt and merge the orders within its ordinary petitions standing orders (SOs 101 and 102). As part of this review, consideration may be given to amending the terms of reference for the Standing Committee on Environment and Public Affairs which has a function to review all petitions presented to the Council. This committee may become a dedicated Standing Committee on Petitions, whose sole function will be inquiring into the petitions presented.

CANADA

House of Commons

On 30 May, the government tabled its response to Report No. 20 of the Standing Committee on Procedure and House Affairs regarding the future of hybrid proceedings in the House of Commons. In its response, the government expressed its agreement with the committee's report and stated its intention to table a proposal in the House to make permanent changes to the Standing Orders as recommended by the committee. On 8 June, Leader of the Government in the House of Commons Mark Holland (Ajax) tabled the government's proposed amendments to the Standing Orders. The changes permanently enshrine in the Standing Orders the ability to participate remotely in sittings of the House, as well as in committee meetings. The changes were adopted on 15 June under closure and took effect on June 2024.

[8] parliament.vic.gov.au/4add4b/globalassets/sections-shared/get-involved/inquiries/committees/la-committees/la-standing-orders/lasoc-60-01-sessional-and-standing-orders.pdf

Senate

On 7 February, the Standing Committee on Rules, Procedures and the Rights of Parliament presented its fourth report, proposing various amendments to the *Rules of the Senate*.[9] The report was amended and adopted by the Senate on 6 June, resulting in 17 amendments to the Rules. Many of the changes reflect minor corrections, errors in translation or elements that are no longer required due to legislative changes, such as the removal of the prohibition on smoking in Senate and committee proceedings.

Another change deals with the preparation and publishing of Senate bills, reviewing a rule which had not been updated since 1923 and had not kept up with modern practices. With this change, the Law Clerk and Parliamentary Counsel is authorized to make administrative and typographical corrections to bills, thus simplifying clause-by-clause consideration, reducing the risk of errors in legislative texts, and minimising the risk of having to adopt additional amendments to correct errors.

During the pandemic, the Senate adopted a sessional order enabling the electronic tabling of documents with the Clerk of the Senate, thus limiting the number of people needing to enter the Senate of Canada building to deliver hard copies. The benefits of such a process were self-evident, and it was decided that an amendment to the Rules to this effect would be highly beneficial.

Another change allows the Speaker of the Senate or the chair of a committee to authorise reasonable adjustments to the application of a rule or practice to allow a senator's full and equal participation in the Senate Chamber or in a committee room. This rule entrenches a long-standing but informal practice where the Speaker and senators have exercised discretion, compassion, and common sense to allow senators to continue to participate, even though they may not be able to strictly conform to certain provisions of the Rules.

Alberta Legislative Assembly

On 20 November 2023, the Standing Orders of the Legislative Assembly of Alberta were amended to include an Indigenous land acknowledgement. This amendment to the Standing Orders came about by way of a Private Member's motion, which itself was amended to designate that the land acknowledgement occur during the first sitting day of each week following the singing of *O Canada*.

In October, the Standing Orders were amended such that the time limit for the item of business "Introduction of Guests" was increased from four to six minutes; the number of Members' Statements was reduced to a total of six each day; and the size of all standing committees (except for the Standing Committee on the Alberta Heritage Savings Trust Fund) was set at 10.

[9] sencanada.ca/content/sen/committee/441/RPRD/reports/4thReportAmended_e.pdf

Manitoba Legislative Assembly

Virtual participation expected to be permanent

The Clerks have prepared a new set of Rules which would permanently incorporate provisions to enable virtual participation of Members, as the newly elected October 2023 43rd Legislature is expected to embrace that structure which was successfully incorporated in the previous Legislature. Virtual sittings were initiated on 7 October 2020 by a Sessional Order to deal with the Pandemic. The Sessional Order was extended on numerous occasions due to its successful implementation. The Sessional Order was allowed to lapse however upon the dissolution of the 42nd Legislature in order to allow the newly elected Assembly to decide upon it being accepted on a permanent basis.

Ontario Legislative Assembly

The Legislative Assembly of Ontario made two notable changes to its Standing Orders in 2023, as follows:

- Since a 2022 amendment to the *Legislative Assembly Act*, the honorific title "The Honourable" may be granted via Order in Council to former Clerks of the Legislative Assembly. On 29 May 2023, the Legislative Assembly of Ontario made a minor amendment to the Standing Orders to honour former Clerks of the Assembly who have been awarded the honorific title "The Honourable." Clerks who have been granted this title are permitted to attend the floor of the Chamber while it is in session and take an honourary seat at the Table at their pleasure.
- Immediately after the Standing Order was amended, the Assembly held a ceremony to honour two former Clerks of the Legislative Assembly – the Honourable Claude L. DesRosiers and the Honourable Deborah Deller. The Orders in Council granting them the honorific title were read to the Assembly and they took their honourary seat at the Table.
- On 30 November 2023, the Assembly adopted changes to the Standing Orders to vest the Standing Committee on Procedures and House Affairs ("SCPHA") with the mandate to "…inquire into and make recommendations respecting any project to restore the legislative building...."
- A few months prior, the Assembly enacted the *Queen's Park Restoration Secretariat Act, 2023* (the "*Act*") which created a statutory framework for the restoration, refurbishment, rehabilitation, and preservation of the Legislative Building (including a full decant of the Assembly to an alternative site within the Province).
- Under the *Act*, the Minister responsible for the Queen's Park Restoration Secretariat (the "Minister") has overall charge of the restoration project. The Minister is required to report and consult with the SCPHA, the

responsible Standing Committee, as designated by the amendment to the Standing Orders.

Prince Edward Island Legislative Assembly

Rule change on committee membership

The Assembly adopted a new form of committee membership in 2023. At the outset of the first session, the Special Committee on Committees appointed members to the Standing Committee on Rules, Regulations, Private Bills and Privileges, and recommended that that committee review the rule on committee membership to consider the advisability of appointing non-voting permanent members to the standing committees. The Rules Committee considered this and recommended to the Assembly that committees continue to be composed of two members from each of the recognised parties, but that up to two additional "observing members" be appointed to a committee at the discretion of the Special Committee on Committees. These observing members would have the same rights and privileges as other committee members, but would not be able to vote, move motions or count toward quorum. After some debate, the Assembly adopted the Rules Committee's report. The Committee on Committees subsequently appointed members to the remaining standing committees, including two observing members on each one.

Extended Sitting Hours

Though it was not a rule change, extended sitting hours were held for the first time in 2023. On 9 June, Government House Leader Matthew MacKay tabled a motion proposing that the House continue to sit beyond the normal 5pm adjournment and until 11:59pm on three consecutive upcoming sitting days. The Government House Leader is uniquely empowered to table such a motion under Rule 4(4), and it must be decided without debate or amendment. This rule was established in the previous General Assembly and this was the first instance of its use. The motion passed on 14 June, and the House sat from 1pm until 11:59pm on 14 and 15 June and from 10am to 11:59pm on 16 June.

Saskatchewan Legislative Assembly

On the first day of the recall to introduce the "parental bill of rights," the Rules and Procedures of the Legislative Assembly of Saskatchewan were modified, by motion in the Assembly, to ensure expedient consideration and passage of the legislation.[10] For the duration of the recall, sitting hours would be extended to 9 a.m. to 11 p.m., seven days a week; daily items of business under routine proceedings would be limited; typical notice provisions would not apply; use

[10] legassembly.sk.ca/about/rules

of rule 93(1) regarding suspension of bills and rule 61 regarding motions of urgent and pressing necessity would be out of order; and debate on bills would be limited to a predetermined number of hours for each stage of consideration set out in the motion.

ISLE OF MAN

Tynwald

The Standing Orders Committee of Tynwald brought forward two reports in 2023 recommending changes to Standing Orders of Tynwald Court. The first, which was debated in February 2023, was primarily technical and concerned matters which had come to the Committee's attention in the light of the experience of the 2021 Dissolution of the House of Keys and subsequent post-election procedures. This report also formalised the abolition of the Standing Committee of Tynwald on Emoluments. This Committee had previously had a remit to consider the remuneration of Members of Tynwald, the judiciary, the Attorney General and the Clerk of Tynwald. However, it had been determined in October 2022 that a parliamentary committee of this kind should no longer remain a permanent feature of the landscape given the prevailing consensus that such matters were better determined as far as possible from any political process.

Consequential technical changes to the Standing Orders of the House of Keys were approved in March 2023.

The second report, which was debated in May 2023, addressed more contentious matters including the dates and times of sittings, and the time limits for the submission of business. The Committee's proposals to align the Tynwald calendar more closely with that of the Island's state schools were defeated, but its proposals for earlier starting and finishing times on sitting days were approved.

JAMAICA

House of Representatives

The House of Representatives amended their Standing Orders, to include a Standing Order 73F, a new Standing Order, which specifies the terms of reference for the Caucus of Women Parliamentarians. This follows the amendment of the House Standing Orders in 2022 to allow for the creation of a Bicameral Caucus of Women Parliamentarians by establishing a Caucus of Women Parliamentarians as a Sessional Select Committee of the House of Representatives.

Senate

The Standing Orders of the Senate were significantly amended in 2023. The

first amendment was the insertion of a new Standing Order 66(1)(e) to add a new Sessional Select Committee, the Caucus of Women Parliamentarians, to the existing list in this provision. This Committee is to sit jointly with a similar Committee which has been established by the House of Representatives. In addition, a new Standing Order, 70A, was inserted to outline the terms of reference of the Sessional Select Committee on the Caucus of Women Parliamentarians. Both amendments were included as recommendations in reports submitted to the Senate, and after being accepted and ratified by the Senate, were incorporated into the Standing Orders.

With respect to the review of the Standing Orders Committee of the Senate, a comprehensive review, which commenced in 2019 is still in train and was more than 50% complete as of December, 2023. To date, significant amendments have been made to the Standing Orders. In addition to the two amendments mentioned above, an amendment was made to allow for virtual (fully virtual and hybrid) meetings of the committees of the Senate (Standing Order 74 amended), as a response to the COVID-19 pandemic to allow for continuity in the work of these committees amidst the restrictions of movement and on public gatherings; and to deal with any future emergencies that might emerge. This amendment was made in 2020. In 2021, the Standing Orders were further amended to allow Members to join and participate in sittings of the Senate using available information communications technology, with restrictions (new Standing Order 82B). Guidelines to govern virtual meetings of the Senate and its committees were also established, although these were not formally embedded in the Standing Orders.

NEW ZEALAND

House of Representatives

The House has a settled pattern of reviewing its rules and practices during each term of Parliament, with amendments to the Standing Orders having effect for the next term. This means the Standing Orders are reviewed and amended every three years—a regular cycle allowing the procedures to evolve while adhering to a strong convention that the rules are changed only with overwhelming support across the benches.

A separate article in this edition of *The Table* discusses two of the major areas dealt with during the *Review of Standing Orders 2023*: the improvement of financial scrutiny procedures, and changes to the House's procedures for dealing with proposals for legislative entrenchment.

Other changes resulting from the *Review of Standing Orders 2023* include

- reducing the length of first reading debates for Government bills, to balance the loss of House time to facilitate new financial scrutiny procedures

- clarifying the Clerk's authority, as the broadcaster of official coverage, to delay or alter coverage of select committee procedures if warranted in exceptional circumstances
- updating parliamentary language to make it more understandable, most notably by replacing the term "Supplementary Order Paper" with "Amendment Paper."

UNITED KINGDOM

Scottish Parliament

A proxy voting pilot began on 4 January 2023, using temporary rule procedures. Following an evaluation of the pilot by the Standards, Procedures and Public Appointments Committee, a permanent rule change was agreed by the Parliament on 20 December 2023. Accordingly, MSPs are able to vote by proxy for any of the following reasons –

a. maternity leave, paternity leave, parental leave, adoption leave, or shared parental leave;
b. complications arising from pregnancy;
c. serious long-term illness or injury;
d. bereavement; or
e. attending to a person who is near the end of their life.

Remote voting arrangements, introduced during the Covid 19 pandemic, continue to operate and the digital voting system has been undated to accommodate proxy voting.

Senedd Cymru

Proxy voting

The Senedd's Business Committee completed a review of temporary Standing Orders on proxy voting for Members on parental leave in March 2023.

Since the introduction of proxy voting for parental leave in March 2020, working practices in the Senedd had changed significantly – primarily in response to the COVID-19 pandemic. In particular, the Business Committee had previously concluded (in July 2022) that the ability to participate and vote in Plenary meetings remotely should be permanently incorporated into Standing Orders following a review of temporary procedures introduced to facilitate the continuation of business at the start of the pandemic.[11]

When the terms of reference for the review of proxy voting provisions were

[11] Welsh Parliament Business Committee, Amending Standing Orders Standing Order 34 and remote participation in Senedd proceedings, July 2022 (senedd.wales/media/itmhk3si/cr-ld15227-e.pdf)

considered, the Business Committee agreed that it would consider both: the operation of the temporary provisions covering parental leave and the possibility of making these permanent; and, extending the scope of the scheme to cover absence from the Senedd due to long-term illness or injury and other caring responsibilities.

The Business Committee also agreed at the outset of the review that, in all cases, eligibility for proxy voting should be limited to situations in which a Member was to be absent from all Senedd proceedings (to include Plenary and committee proceedings).

A consultation was held with current Members of the Senedd and those (current and former) Members who had utilised proxy voting provisions during the period that the temporary Standing Orders had been in operation (spanning the current and part of the previous Senedd terms). The majority of responses supported both the temporary provisions becoming permanent and for them to be extended to cover a broader range of absences. However, over a third of those responding were opposed to both.

Arguments made in favour suggested that proxy voting would support a more diverse and representative Senedd and that formal arrangements are better suited to prolonged periods of absence than informal 'pairing' of Members, which was considered to be dependent on 'political goodwill'.

Those not in favour of proxy voting favoured the use of the pairing system to accommodate any periods of absence from proceedings, and considered formal arrangements to be unnecessary.

The Business Committee's report to the Senedd recommended that the temporary Standing Orders be made permanent, with some amendments based on experience, and that proxy voting provisions be extended to include long-term illness or injury, caring responsibilities (where these would necessitate a period of absence) and bereavement.[12] Durations for the dispensation to vote by proxy varies according to the reason for a Member's absence.

The Business Committee also proposed that that the applicability of proxy voting should be extended so that it is permitted in all forms of voting in Plenary and in a Committee of the Whole Senedd, including those that require a resolution or motion to be passed on a vote in which the number of Members voting in favour is not less than two-thirds of the total number of Senedd seats.

The changes to Standing Orders were agreed in Plenary on 29 March 2023.[13]

[12] Welsh Parliament Business Committee, Amending Standing Orders: Proxy voting, March 2023 (senedd.wales/media/bufp1gme/cr-ld15751-e.pdf)

[13] Welsh Parliament, Plenary Agenda, Wednesday 29 March 2023 (business.senedd.wales/ieListDocuments.aspx?CId=700&MId=13268&Ver=4)

Committee "co-chairing"

On 24 May 2023, the Senedd agreed a motion to appoint two Members (one Labour and one Conservative) as Co-chairs of the Wales COVID-19 Inquiry Special Purpose Committee. Pending further consideration by the Business Committee of the full procedural implications of appointing Co-chairs, the motion also proposed that references in Standing Orders to a "chair" of a committee would be interpreted to mean "Co-chair" and that the functions of chairs of committees outlined in Standing Orders would have to be exercised jointly by the Co-chairs of the Wales COVID-19 Inquiry Special Purpose Committee.[14]

On 5 July 2023, the Business Committee published a report proposing the Senedd agree to establish a new temporary Standing Order relating to the Wales COVID-19 Inquiry Special Purpose Committee.[15] The report distinguished between the concepts of co-chairing and job-sharing. Specifically, it emphasised that the joint exercise of chair functions meant that neither of the Co-chairs would be able to act unilaterally in relation to the Committee's work. The temporary Standing Order will expire when either the Wales COVID-19 Special Purpose Committee is dissolved by the Senedd, or upon the dissolution of the Sixth Senedd, whichever occurs first.

The Senedd agreed with the Business Committee's proposal that a protocol should be agreed between the Co-chairs outlining how they will approach their joint procedural and operational/practical functions in practice. This was published by the Wales COVID-19 Inquiry Special Purpose Committee in July 2023.[16] The protocol notes agreed ways of working in respect of the division of chairing functions. It sets out:

i. functions that may be performed by either Co-chair in their capacity as a member of the Committee
   For example, each Co-chair is counted individually when calculating quorum and each Co-chair may cast their vote individually.
ii. formal functions that may only be exercised by, or with the consent of, both Co-chairs
   For example, formal functions including (but not limited to) maintaining order and behaviour in committee, deciding to adjourn or suspend a meeting, or calling a meeting in a non-sitting week.
iii. functions that Co-chairs may agree on a case-by-case basis can be

[14] Plenary Agenda, 24 May 2023 (business.senedd.wales/ieListDocuments.aspx?CId=700&MId=13347&Ver=4

[15] Welsh Parliament Business Committee, Amending Standing Orders: Wales COVID-19 Inquiry Special Purpose Committee, July 2023 (senedd.wales/media/2pwp4mjg/gen-ld15933-e.pdf)

[16] Welsh Parliament, Wales COVID-19 Inquiry Special Purpose Committee , Co-chairing Protocol, July 2023 (business.senedd.wales/documents/s138614/Co-Chairing%20Protocol%20-%20July%202023.pdf)

exercised by one Co-chair on behalf of both
For example, meeting management, sign-off arrangements, representing the committee publicly, engagement with each other and committee staff, correspondence, participating in Plenary business in the capacity of a Co-chair, liaison with other committees, attendance at the Chairs Forum and dispute resolution.

In its meeting on 12 October 2023, the Independent Remuneration Board determined that the Co-chairs of the Covid Committee would both be eligible for the full additional office holder salary paid to a committee chair.[17] This reflects the Senedd's decision that the Co-chairs would both be undertaking the full range of a committee chair's responsibilities rather than 'job sharing'.

Procedures required for scrutiny of SIs flowing from the Retained EU Law (Revocation and Reform) Act 2023

The Retained EU Law (Revocation and Reform) Act 2023 ("the REUL Act") of the UK Parliament became law on 29 June 2023. It made significant changes to the domestic body of law referred to as "retained EU law" ("REUL"). REUL was created by the EU (Withdrawal) Act 2018 ("the EUWA") and came into effect at the end of the UK's post-Brexit transition period at the end of 2020.

The Business Committee considered the implications arising from these changes and proposed amendments to the Standing Orders to reflect the impact of the passing of the REUL Act and the expiry/repeal of relevant provisions with the EUWA and the European Union (Future Relationship) Act 2020 on the making of Statutory Instruments. On 27 September 2023, the Senedd agreed the amendments to Standing Orders proposed by the Business Committee.[18]

These included:

- the introduction of a sifting procedure for changes to statutory instruments under the REUL Act; and
- the expiry/repeal of provisions relating to the making of statutory instruments in the EUWA and the Future Relationship Act.

[17] Remuneration Board, Summary of the Remuneration Board Meeting Held on 12 October 2023 (business.senedd.wales/documents/s141645/Update%20to%20Members%20of%20the%20Senedd%20following%20the%20Remuneration%20Boards%20meeting%20on%2012%20October%202023.pdf)

[18] Senedd Cymru, Plenary Agenda, Wednesday 27 September 2023 (business.senedd.wales/ieListDocuments.aspx?CId=700&MId=13488&Ver=4); Welsh Parliament Business Committee, Amending Standing Orders: The making of statutory instruments following EU withdrawal, September 2023 (senedd.wales/media/lfdpv2dm/cr-ld16042-e.pdf)

SITTING DAYS

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Aus House of Representatives	0	8	12	0	9	8	1	7	8	4	8	2	67
Aus Senate	0	4	13	0	3	8	1	7	8	4	14	4	66
Aus Australian Capital Territory LA	0	3	6	0	4	7	0	3	6	4	5	0	38
Aus New South Wales LA	0	0	0	0	8	7	0	6	6	6	6	0	39
Aus New South Wales LC	0	0	0	0	8	7	0	6	6	6	6	0	39
Aus South Australia HA	0	6	7	0	8	6	1	3	6	4	8	0	49
Aus Tasmanian HA	0	1	8	0	8	4	0	6	9	4	5	1	46
Aus Victoria LA	0	6	6	0	9	3	0	9	0	7	8	0	48
Aus Victoria LC	0	6	6	0	8	4	0	9	0	7	8	0	48
Aus West Australia LC	0	6	9	0	6	6	0	9	6	6	9	0	57
Can House of Commons	2	13	14	10	16	15	0	0	9	16	16	10	121
Can Senate	1	8	9	6	11	10	0	0	6	10	11	8	80
Can Alberta LA (election)	0	1	12	0	0	0	0	0	0	2	14	3	32
Can Manitoba LA	3	0	15	15	14	5	0	0	0	0	8	5	65
Can Ontario LA	0	5	14	12	11	5	0	0	4	13	13	3	80
Can Prince Edward Island LA (election)	0	0	0	0	11	12	0	0	0	0	14	0	37
Can Quebec National Assembly	1	11	9	9	11	6	0	0	9	10	11	6	83
Can Saskatchewan LA	0	0	16	12	12	0	0	0	0	12	17	4	73

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Cyprus House of Representatives	1	1	5	2	4	5	3	0	2	3	5	2	33
India Lok Sabha	1	9	12	3	0	0	8	9	4	0	0	14	60
India Punjab LA	0	0	7	0	0	2	0	0	0	1	2	0	13
India Telangana LA	0	7	0	0	0	0	0	4	0	0	0	6	17
India Telangana LC	0	5	0	0	0	0	0	4	0	0	0	1	10
India Uttar Pradesh LA	0	8	3	0	0	0	0	5	0	0	3	1	20
Isle of Man House of Keys	2	3	3	1	3	2	0	0	0	2	3	2	21
Isle of Man LC	2	3	3	1	2	1	0	0	0	1	2	1	16
Isle of Man Tynwald Court	2	1	1	2	2	2	3	0	0	2	2	2	18
Jamaica House of Representatives	3	5	6	4	9	5	5	0	2	7	9	3	58
Jamaica Senate	1	3	3	1	3	2	3	0	0	4	3	4	27
Jersey Estates of Jersey	2	2	2	2	4	3	5	0	2	3	3	4	34
New Zealand House of Representatives (election)	0	4	8	3	11	10	5	9	0	0	0	5	55
UK House of Commons	15	14	21	8	13	16	12	0	10	9	15	10	143
UK House of Lords	15	13	21	9	14	18	16	0	12	8	14	11	151
UK Northern Ireland Assembly	0	1	0	0	0	0	0	0	0	0	0	0	1
UK Scottish Parliament	10	9	14	6	14	13	0	0	12	7	14	9	108
UK Senedd Cymru	7	5	8	2	8	8	4	0	6	8	8	4	68

Figures are for full sittings of each legislature in 2023. Sittings in that year only are shown. An asterisk indicates that sittings were interrupted by an election in 2023.

UNPARLIAMENTARY EXPRESSIONS

AUSTRALIA

House of Representatives

"Sometimes I wonder if the Rhodes committee have asked for their money back!"	7 February
"You're an idiot!"	9 February
"…his contribution in defending his role in doing this was a conga line of so-called conservatives pretty much kissing his ring and saying, 'Job well done, mate.'"	13 February
"…sneakily avoiding any scrutiny of due process."	13 February
"WTF"	14 February
"Yet he was shafting him from behind…"	14 February
"You're such a moron."	14 February
"…you're really clueless."	14 February
"The biggest threat we've got happens in the coalition party room, which I"m genuinely concerned is a mass hypnosis event."	16 February
"Calm down, Hairspray!"	16 February
"Nodding like goats, I see, or like some other animal perhaps—a lemming or something like that."	16 February
"Sit down, sunshine."	16 February
"Jimbonomics"	16 February
"Can you trust 'Tricky Tony'?"	7 March
"Come on, Miss Daisy!"	22 March
"You are a sad political hack."	23 March
"Their blind ideology means women are getting raped and children are getting bashed that weren't beforehand—"	23 March
"ringleader for rorts"	28 March

"I ask the Member … to stop gaslighting the dead and the bereaved!"	29 March
"…run by a bunch of misogynists … but he did need to implement the 'bonk ban'…"	29 March
"This, old son, is why nobody takes you seriously."	11 May
"the grub"	25 May
"I get that the deputy leader is familiar with the concept of what it does look like when someone breaches the ministerial code."	1 June
"You've got to hand it to Blinky, the Member … he keeps swimming."	1 June

Australian Capital Territory Legislative Assembly

"Buying votes"	8 February
"Suck it up, Princess"	11 May
"Scaremongering"	7 June
"Oh, Jeremy! Can you shut up ever?"	30 August
"Keep telling yourself lies"	12 September
"Porkies"	12 September
"Conned"	12 September
"Deliberately rigging the property market"	21 September
"Dodgy"	21 September
"Complete lack of ethics"	21 September
"Fossil-fuel captured"	21 September
"Sociopathic"	21 September
"Gaslighting"	28 November

New South Wales Legislative Council

"Dog whistling"	22 June

Victoria Legislative Assembly

"Bloody"	9 February

"Shit-eating grin"	22 February
"Pull its finger out"	15 August
"Shit show" *word contained in quoted material*	2 November

Victoria Legislative Council

"Shut up"	9 February
"Transphobic, vile opinions"	22 February
"cock-up"	21 June
"Praise God!"	16 August
"Arrogant display"	1 September
"Mansplaining"	10 October
"Transphobe"	18 October
"Led by the man who attempted to conjure up fears about African gangs"	18 October
"something you are obviously proud of" [in relation to an increase in the number of deaths on roads]	

CANADA

House of Commons

"Gutless"	2 May
"Stranger to the truth"	8 May
"The Cons" [for Conservatives]	12 May
"Hell"	15 May
"I have absolutely zero respect for anything that this member says. When I was House leader, he proved himself not to be honourable and to not conduct himself with integrity, so every word he says in this place tonight I take with a grain of salt."	16 May
"thin skin"	13 June
"Jackass"	20 June

"NDP-Liberal cover-up coalition"	23 October
"Hamas supporters"	23 November
"Cronies"	23 November
"Cozying up to Russian dictator Vladimir Putin"	29 November

Manitoba Legislative Assembly

"Fictitious"	15 May
"Made up"	15 May
"Talking out of both sides of his mouth"	1 June
"Hell"	5 December

Ontario Legislative Assembly

"playing politics"	23 February
"hiding behind weasel words"	27 February
"misleading" "mislead"	27 February 2 March 9 March 27 March 19 April 18 October
"It would be nice if the Premier answered instead of enrolling in the minister protection program, but I won"t hold my breath"	28 February
"gaslight"	1 March
"disinformation campaign"	21 March
"another fable"	19 April
"There's a smell coming from that station, and it"s not construction dust. The smell is corruption"	26 April
"this member proves himself to be more ludicrous every time he stands up and speaks"	8 May
"is he just full of it?"	9 May

"immoral and irresponsible"	15 May
"misinformation"	29 May 26 October
"dishonest and mockery"	25 September
"In his attempt to distract from the corruption of his government"	25 September
"focused on benefiting wealthy and connected elites"	28 September
"corruption"	5 October
"shut up"	19 October
"shady deals and doublespeak"	25 October
"I"m surprised that the member actually knows where the greenbelt is, to be honest with you, but there we go. He knows it's not in Ontario Place."	31 October
"I think there's a chihuahua barking somewhere."	15 November
"If you're going to quote another member, you"ve got to get it accurate"	15 November
"When will the Premier tell the people of Ontario the truth?"	16 November
"They're the party of gimmickry and stupidity"	16 November
"a complete fallacy"	21 November
"used to pay off the Premier's ultra-rich friends…"	27 November
"long Conservative tradition of misleading titles"	29 November
"the people of Ontario are sick of deceit. They deserve transparency and—"	04 December
"not only disingenuous but deeply disappointing—"	05 December

Prince Edward Island Legislative Assembly

"Group of Bandits"	16 May

Quebec National Assembly

"Induire en erreur (la population, la population et les parlementaires)" *Translation: misleading the people, the parliamentarians*	15 February
"Jouer avec les chiffres" *Translation: playing with the numbers*	23 February
"Malhonnête (interprétation) (être)" *Translation: a dishonest interpretation; to be dishonest*	23 February
"Tricoter les chiffres" T*ranslation: cooking up the numbers*	23 February
"Fanfaron (faire le)" *Translation: clowning around*	23 March
"Ridicule(s) (ils sont) (a l'air de plus en plus)" *Translation: they are looking more and more ridiculous*	20 April 31 May
"Rouler (le monde dans la farine)" *Translation: literally, "rolling people in flour", to fool, to scam, to deceive people*	27 April
"Cacher (se) (dans le silence) (derrière une étude) (derrière des supposés) (le gouvernement… derrière les tribunaux) (aller… pour l'été) (derrière des excuses)" *Translation: hiding in silence, behind a study, behind suppositions, behind the courts, go hiding for the summer, hiding behind excuses*	25 May
"Petite politique (faire de la)" *Translation: petty politics*	30 May
"Cabotin(age)" *Translation: show-off, showing off*	1 June
"Digne (ce n'est pas)" *Translation: this is unworthy*	2 June
"Petit bâtisseur (grand parleur,…)" *Translation: big talker, little builder*	21 September
"Catimini" *Translation: on the sly*	27 September
"Frime" *Translation: showing off, bluff*	27 September
"Détourner (de l'argent, les fonds)" *Translation: to embezzle money, funds*	28 September
"Girouette, girouette nationale" *Translation: national weathervane*	5 October
"Incompétence" *Translation: incompetence*	24 October
"Bullshit(er)"	26 October
"Cheap"	7 November

"Chum (qui a nommé son)" *Translation: appointing his buddy*	8 November
"Manipuler" *Translation: to manipulate*	22 November
"Indécent" *Translation: indecent*	23 November
"Exploiter les femmes (le gouvernement…)" *Translation: to exploit women*	28 November
"Faire peur (au monde) (aux aînés) (aux entreprises) (aux Québécois)" *Translation: scaring the people, the elderly, businesses, Quebecers*	1 December
"Bloquer (les projets de loi) (les travaux)" *Translation: obstructing bills, proceedings*	8 December
"Faux (fausse)" *Translation: false*	8 December

Saskatchewan Legislative Assembly

"Mr. Speaker, I'm not even going to address the alternative facts that that member used in her preamble, but let's just talk about some facts of how our province is doing well."	8 March
"Oh my goodness, Mr. Speaker. The NDP have constructed this alternative narrative. I think some of them actually believe it, Mr. Speaker, that everything is terrible. One of them actually said the economy is a dumpster fire, Mr. Speaker."	22 March
"And they're woo-ing each other. They're woo-ing themselves over there. I'm not sure if they're actually listening to the subject matter. Perhaps you wouldn't be acting like woo girls over there . . . Mr. Deputy Speaker, and it's not just . . A woo girl is somebody who is always down for a good time and just goes 'woo,' much like members opposite."	27 November

Yukon Legislative Assembly

"Fearmongering"	24 October
"Peddling fear"	24 October

INDIA

Lok Sabha

"Scope of your duty" (Aspersion on the Chair) "Sir, you have to be neutral" (Aspersion on the Chair) "I will show you your place" (Aspersion on the Chair) "You are speaking non-stop" (Aspersion on the Chair)	7 February 3 August 8 August 19 December
"Anti-Bengalis"	7 February
"Arrogant"	20 September
"Ashamed"	9 August, 10 August
"Bastard"	7 February
"Betrayal"	8 August
"Black deeds/evil deeds"	27 July
"Black money"	27 July
"Blind/unmindful of"	10 August
"Bought"	3 August
"To cheat"	7 February
"Corrupt"	3 August, 7 February
"Dacoity"	10 February
"Deceit" "Deceiving"	9 August
"…Deception"	9 August
"Devils"	9 February
"Dictator"	3 August
"Disgraced"	8 February
"Dishonest"	8 December
"Dishonour"	9 February

"He has become mental after divorce" "Become mental" "To become mental" "You are totally mental, you sit down"	9 February
"Miscreants"	21 September
"Monsters"	3 August
"Murder"	9 August
"Murder of democracy"	8 December
"Murderer"	9 August
"Overacting"	10 August
"Pressuring the Judiciary"	7 February
"Puppets"	3 August
"Robbers"	3 August
"Rotting"	3 August
"Scamster"	18 September
"Shame" "…Shameless" "Shameful"	7 February, 13 March, 1 August, 8 August, 8 August, 10 August, 11 December, 9 August, 8 February
"Slap"	8 August
"Do stealing"	10 February
"Stopping"	8 February
"Taint"	27 July
"Terrorist"	21 September

"Theft"	7 February, 10 February
"Thief"	10 February
"Either throw him out"	7 February
"Thug"	10 February
"Thug coalition/gang of thugs, cheaters"	10 February
"Traitor"	9 August
"Use"	10 August
"Wrong mentality/low mentality"	10 August

Rajasthan Legislative Assembly

"Uncle"	24 January
"When I was sitting with him the day before yesterday, he said that Chandrabhan ji, my condition is so bad that you cannot even imagine, my condition is very critical."	30 January
"If you want to get advertisements then print my words. If you want advertisements then print as I say"	31 January
"Queen Mother…Crown Prince"	13 February
"When the Chief Minister himself retracts from the promise he made to an MLA, then it cannot be more regrettable than this."	13 Feburary
"You should also be serious."	14 February
"The bribe money goes up to the CM"	14 February
"Liar"	14 February
"lie"	14 February
"arrest warrants"	15 February
"liar a lie"	15 February
"Atheist"	17 February

"Is it your father's kingdom"	17 February
"Nirmala Devi"	28 February
"Gopal Poonia."	28 February
"This is our honorable MLA, he should not face any kind of trouble. He will have to be shown arrested on paper under pressure, but such a (weak) case should be made that he immediately gets bail"	28 February
"Digambar Jain"	2 March
"Dr Sudhir Bhandari"	3 March
"Honorable Chief Minister must have told you that this is an opposition MLA, he has to be killed today here itself."	3 March
"terrorist"	13 March
"terrified"	13 March
"novice"	13 March
"traitor … treason…"	13 March
"As he has a habit of … terrified"	13 March
"Then she got married to someone else. Now after marrying she says the job should be given to her brother-in-law."	13 March
"whom did she marry, whom she did not. . . she got married to someone else."	13 March
"Terrorist"	13 March
"irritation"	13 March
"Modi ji … Honorable Modi Ji"	13 March
"poor woman"	13 March

"Just now I have come to know that terrorists entered Rajasthan yesterday. The people of Rajasthan are very terrorized due to the entry of terrorists. The Police are not taking any action right now. That terrorist has openly said that eliminate Modi. The government has not yet caught that terrorist. Honorable Chairman Sir, this is a serious matter. Terrorists have entered Rajasthan and the government is sitting silently There is a conspiracy to assassinate Modi ji. There is a conspiracy to assassinate Modi ji. … Honorable Chairman Sir, there is a conspiracy to assassinate Modi ji"	14 March
"Randhava"	14 March
"And there was talk of eliminating Modi ji, what about that?"	14 March
"Just as when former Prime Minister Indira Gandhi ji was alive, her then bodyguard was Sardar Beant Singh ji, it was he who killed Indira Gandhi. The kind of statement that has come in Rajasthan today, the statement given by the in-charge Randhawaji, the messiah of our farmers, PM Modi has been asked to be killed, a case should be registered against him, this is my request. Honorable Chairman Sir, a case should be registered against him. I request that a censure motion should be passed in the House against those who made such statements."	14 March
"the courage you had to change the decision of the High Command, Minister sir, I appreciate the courage because you forced the High Command to step back. Not only this, you did not talk with your eyes down. You have also shown your strength by staring at the High Command. When you can deal with the high command with such power."	15 March
"high command"	15 March
"to defy the high command"	15 March
"They threaten to kill the Prime Minister of the country… They engage in the work of defaming the nation… They engage in the work of defaming the nation… Destruction of sin, injustice, unrighteousness, and falsehood from the sacred land of India… Congress has played the game of corruption, dishonesty, looting, and exploitation… all of them would be put behind bars… The supreme leader of the nation"	15 March

"Dishonesty"	15 March
"looting"	15 March
"high command… Randhava ji -terrorist you are doing character assassination in the name of marriage"	15 March
"marriage … character assassination … terrorist"	15 March
"Deeds"	15 March
"State of men"	16 March
"We've said outside today that you should become the leader of the opposition. This is what he desires. Look, Raghu Ji and I are speaking the truth. We genuinely want this by our hearts."	16 March
"You are scheming that I don't succeed… I apologise."	16 March
"Don't take it otherwise, We want it from our heart. You are the natural choice of the entire house. We respect the Rathores also because my mother is a Rathore. You get the voting done, you will win. Get people from both sides voting. ..Here, everyone supports you. You have support here also. Isn't it? The people from here should speak up. Do you want the leader of the opposition or not?"	16 March
"has our support as well"	16 March
"How much corruption have you done, and how did we stop corruption."	16 March
"Yes, that must have been kept. I will speak the whole thing. What I have come to tell, I will speak that for sure, whatever be the will"	16 March
"pointing to the chair, he said that he would speak whatever he wanted, no matter what the chair said."	16 March
"What is the problem with you, Honorable Chairman sir, that you would intervene before even listening to the reference of what I am saying?"	20 March
"Intermeddler … intermeddlers"	21 March
"Fake Guru"	21 March

"Chairman sir, Guru is such a word, Guru and God stand together, whom should I bow down first to. Chairman sir, the bell, you see, it rings 'tan, tan, tan'. . . It's only about ringing, there's a lack of knowledge. That's why you are my Guru, but you are also like the bell too."	21 March
"the meaning of "Ghantal" is to ring the bell and leave"	21 March
"Yogeshwari Soni … Needha Behlim"	17 July
"Sunita Yadav"	17 July
"land of men"	17 July
"you would have got a scolding from the Delhi High Command somewhere after placing this bill, then either at the behest of Sonia Gandhi ji, at the behest of Rahul Gandhi ji or at the behest of Priyanka ji, you named this university after Rahul Gandhi ji"	17 July
"Ramakant Mishra"	17 July
"No, their own people were involved in that rape, in raping that minor girl. Their workers were involved and that's who you didn't want."	17 July
"workers of your organization have committed rape on university campus…"	17 July
"insolent"	18 July
"Government officials are thieves"	18 July
"Thieves … Your officers are thieves … Officials are thieves … officer theft"	18 July
"All Officers"	18 July
"Chavali Devi"	18 July
"Baby Taira"	18 July
"If you can't understand then it's not my fault."	20 July
"domineering … Rathore"	20 July
""domineering … delete … repeat"	20 July
"you sell exam papers … have sold exam paper"	20 July

"whore"	20 July
"In Rajasthan it should be accepted … the truth is that we have failed in the safety of women. The way atrocities against women have increased in Rajasthan, we should look inward rather than looking at Manipur"	21 July
"Point of Order Mr. Chairman, I am raising a point of order because the government operates under collective responsibility as per Article 164(2). It is written in our constitution that when one minister speaks for the government, it implies the entire government is speaking, By the minister's statement, this government has been exposed. I will congratulate him, but Minister sir belonging to the state of men it's shameful."	21 July
"people belonging to the state of men… This is the state of men. This is the land of men. This is the state of men. Because it is the land of men, rapes happen"	21 July
"Because this is a man's state, more rapes are committed here"	21 July
"Salman Khurshid sir"	21 July
"Shri Govind Singhji Dotasara"	21 July
"Dotasara ji"	21 July
"pepper"	21 July
"The pepper was black, red, or green."	21 July
"Rooster"	21 July
"The wife of an advisor whose name is coming up in R.P.S.C."	21 July
"you will get worms"	24 July

NEW ZEALAND

House of Representatives

"It starts with 'H' and it ends with 'ypocrisy'. "	21 February

"The fact that the Opposition think that that's a good idea means that they're thinking, I don't know, maybe with their financial backers in their back pocket."	10 May
"This was payback for the unions."	17 May
"The nature of these questions are absolutely intended to raise racist opinions amongst the New Zealand public."	20 June
"You can't put rent up just at the drop of a hat, like Mr Luxon and his rich mates would do."	15 August
"There could be more sinister motives. Are they in the pocket of the CCP? I don't know."	22 August
"You've cooked the books."	29 August

UNITED KINGDOM

Senedd Cymru

"Mad as a box of frogs"	7 February
"Insane"	14 February
"Woke agenda"; "they don't contribute to society or pay their way"; and "we don't want them" [in relation to provision of sites for travellers]	1 March
"Let's bloody well make sure they stay in Wales"	24 May
"Dirty deals"	11 October

BOOKS ON PARLIAMENT IN 2023

AUSTRALIA

'Order, Order!': A Biographical Dictionary of Speakers, Deputy Speakers and Clerks of the Australian House of Representatives, Edited by Stephen Wilks, ANU Press, ISBN (print): 9781760465759, ISBN (online): 9781760465766.[1]

This biographical dictionary paints an informative and entertaining picture of the lives of key figures in the Australian House of Representatives since Federation in 1901, showing the diversity of backgrounds and personalities of those who held office. It includes biographical entries prepared by the National Centre of Biography at the Australian National University, as well as introductory essays on the roles of Speaker, Deputy Speaker and Clerk contributed by current and former staff of the Department of the House of Representatives.

CANADA

Antoine-Aimé Dorion et le déclin du libéralisme républicain et émancipateur, by Yvan Lamonde, Presses de l'Université Laval, ISBN 9782766302598.

A written constitution for Quebec?, by Richard Albert and Léonid Sirota (ed.), McGill-Queen's University Press, ISBN 9780228013853.

Canada's Parliament: A Primer, by Steven Chaplin, Irwin Law Inc., ISBN: 9781552216613

Claude Morin, un espion au sein du Parti québécois, by Pierre Dubuc, Les Éditions du Renouveau québécois, ISBN 9782924770313.

De constitutionnalisme et de diversité : essai sur la démocratie fédérale, by Dave Guénette and Félix Mathieu, Presses de l'Université Laval, ISBN 9782766302260.

Droit électoral québécois : repères et enjeux contemporains, by Pierre Vallée, Wilson & Lafleur, ISBN 9782896896264.

Godin, by Jonathan Livernois, Lux Éditeur, ISBN 9782898331114.

Legislating under the Charter: Parliament, Executive Power, and Rights, by Emmett Macfarlane, Janet Hiebert, and Anna Drake, University of Toronto Press, ISBN: 9781487558178.

Le parlementarisme canadien, 7e édition, by Manon Tremblay (editor) and Manon Cornellier (preface), Presses de l'Université de Laval, ISBN 9782763757995.

[1] The full text of the book is available freely from the ANU Press (doi.org/10.22459/OO.2023) and linked through the Parliament's website (aph.gov.au/About_Parliament/House_of_Representatives/Biographical_Dictionary).

Les têtes brûlées : carnets d'espoir punk, by Catherine Dorion, Lux Éditeur, ISBN 9782898330063.

Le sucre rouge de Duplessis, by Stéphane Lussier Johnson, Éditions du Tullinois, ISBN 9782898093104.

Louise Harel : sans compromis, by Philippe Schnobb, Les Éditions La Presse, ISBN 9782898251399.

Papineau l'incorruptible : une enquête biographique, by Anne-Marie Sicotte, Carte blanche, in two volumes: vol. 1, $44,95, ISBN 9782895904342; vol. 2, ISBN 9782895904458.

The Paradox of Parliament, by Jonathan Malloy, University of Toronto Press, ISBN: 9781487551001

The Senate of Canada, by Gary William O'Brien, Irwin Law Inc., ISBN: 9781552216583

Une fausse avocate berne l'Assemblée nationale: la vérité défendue avec courage, by Alexandre Dumas et Claude Surprenant, Preztij - La Boîte à souvenirs – no known ISBN.

NEW ZEALAND

McGee Parliamentary Practice in New Zealand, edited by David Wilson, Clerk of the House of Representatives, Wellington: Clerk of the House of Representatives, ISBN: 9780473678722; 9780473678739.[2]

First published in 1985 by long-serving Clerk of the House, David McGee, *Parliamentary Practice in New Zealand* is the definitive guide to practice and procedure in the New Zealand House of Representatives. This edition incorporates developments since 2017 and provides an authoritative snapshot of parliamentary practice, law, and procedure as at early 2023. Some of the key features of this new edition include a major restructure of the text into thematic parts, with new chapters, chapter introductions, and numbered sections; expanded and revised content on the operation of select committees; rearranged and updated material about the legislative process, electoral law, parliamentary engagement, international treaties, officers of Parliament, and parliamentary privilege; and substantial developments like the establishment of the Petitions Committee and other changes resulting from the *Review of Standing Orders 2020*, the enactment of the Legislation Act 2019, and the COVID-19 pandemic.

Electoral law in Aotearoa New Zealand, Third Edition, by Andrew Geddis, Wellington: LexisNexis NZ Limited, ISBN: 9781988598031.

Written from a legal perspective, Geddis provides a comprehensive

[2] The work also is fully available online at parliament.nz. (Visit and Learn » How Parliament works » *Parliamentary Practice in New Zealand*).

exploration of New Zealand's electoral framework, incorporating developments over that landscape since the second edition published in 2014. He covers a range of topics like political funding rules; enrolment practices and voting procedures; the effects of the COVID-19 pandemic on New Zealand's 2020 general election; and even matters such as the declaration of inconsistency with the New Zealand Bill of Rights Act 1990, made by the Supreme Court of New Zealand, which determined that the voting age of 18 for local and parliamentary elections is inconsistent with that Act. *Electoral law in Aotearoa New Zealand* is written in a way that is not only a valuable resource for those who are legally or politically minded, but is for anyone wanting a deeper understanding of New Zealand's electoral system and the legal principles that underpin it.

A guidebook to Parliament, by Sasha Greig and edited by Ben Logan-Milne and Daniela Maoate-Cox, Wellington: Parliamentary Service, ISBN: 9780473674380.

This handy guidebook is an essential introduction into New Zealand's Parliament. It sets the scene about the parliamentary buildings and the land they rest upon, the people of Parliament, and the procedures that guide it all. The book serves as the perfect short explainer of key topics and ideas, featuring an informative timeline about Parliament, rich photography, and overviews of the history, current practices, and the future of New Zealand's Parliament. It is a great book for anyone in a hurry, wanting a snapshot into the New Zealand Parliament.

UNITED KINGDOM

The Parliamentary Battle over Brexit, by Meg Russell and Lisa James, Oxford University Press, ISBN9780192849717. Liam Laurence Smyth writes:

> Professor Meg Russell and her research fellow colleague Lisa James, also of the Constitution Unit at University College London, have succeeded in producing a very readable and well-informed study of how the United Kingdom legislated in 2019 to withdraw from the European Union which it had joined, after an earlier series of parliamentary battles, in 1973.
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> The authors' careful and balanced account draws upon contemporary official reports, secondary sources and interviews with protagonists, the latter taken with an appropriately sceptical pinch of salt. The first of the five questions they explore (what actually happened?) is fully answered by their thorough and reliable story-telling. Each substantive chapter is linked to key themes in recent academic literature, which need not detain the general reader.
>
> They ask what went wrong, with an accompanying counter-factual challenge as to what might realistically have happened differently. For example, if the 2016 vote had been better planned for, the EU Referendum Act could have provided legal certainty — and avoided the need for the UK

Supreme Court decision in Miller — by including formal authorisation for a Leave decision to trigger the withdrawal process under Article 50 of the Treaty of European Union. New Clauses had been tabled for report stage in the Commons on the referendum bill addressing the conditions for or consequences of a Leave vote, but they were not selected for debate by the Chair.

Theresa May's decision to call an early general election in 2017 proved a mistake, with the Conservatives losing their overall majority and Labour leader Jeremy Corbyn doing better than expected: "the sum total therefore was that both parties were left with unpopular leaders whom they already feared were incapable of the task ahead."

They identify a missed opportunity in May 2018 for Theresa May to build a majority for continued membership of the European Economic Area when Labour failed to back in the Commons a defeat inflicted on the Government in the Lords on the European Union (Withdrawal) Bill.

Russell and James pose the question whether the insistence by Remainers on parliamentary approval by resolution of any deal in advance of implementation legislation was a blunder, since it was the prolonged failure of Prime Minister May to win a "meaningful vote" on her withdrawal agreement that led to her replacement as Prime Minister by Boris Johnson, an unlawful prorogation of parliament, the early general election of 2019, the rapid passage of his alternative "oven-ready" Withdrawal Agreement and finally the ramming-through of the European Union (Future Relationship) Act 2020 in single day so that the UK could leave EU at the end of January 2020, coincidentally just as the first cases of the Covid pandemic were being reported.

Another of the authors' questions is what the Brexit process demonstrates about parliament's constitutional role. The story of 2019 is one of frustration as the Government found itself incapable of winning key votes, while a potential cross-party majority was unable to cohere around any definite course of action. As the authors put it, "in the end the only thing MPs could agree on was delay." The authors note that at times Speaker Bercow chose not to follow the advice of the clerks, being on weakest ground over his disregard of "forthwith" and his handling of the "same question" rule, but while in their view "his grandstanding may sometimes have increased tensions, it seems unlikely that his decisions (at either stage) fundamentally altered the direction of Brexit."

Unlike the UK Supreme Court in Miller (No. 2), Russell and James pay attention to the amendments made in July 2019 to the Northern Ireland Executive Formation Bill, which forestalled any lengthy prorogation of parliament by requiring parliament to be recalled if necessary for periodic

debates in parliament on developments in the province. They describe the gap allowed for a conference recess as a "serious tactical error." They note in fairness that the amendments did ensure that the purported prorogation, though abnormally long, filled no more than the window left in the Northern Ireland Executive Formation Act from the first periodic debate in September until parliament was required to resume for another periodic debate in October, before the expiry of the Article 50 negotiating period. In Miller (No. 2) the UK Supreme Court ruled that the tactical use of a lengthy prorogation was unlawful, thereby teetering on the edge of telling Parliament how to do its job. After all, periodic summer adjournments normally interrupt scrutiny for longer than the handful of September sitting days which were overtaken by the unlawful prorogation.

In their conclusion the authors admit that "the Brexit period demonstrated some of the risks of parliament overreaching itself in policy making, and of the benefits of stable government as the prime 'maker' of policy." They complain that under the Johnson government primary legislation was too often rushed, a trend which has continued under his successors in the 2019-2024 Parliament, and note the emphasis that has been placed by the Hansard Society and others on the need for improved control of delegated legislation.

Russell and James are unenthusiastic about the case for a codified constitution, focussing rather on the urgent need for solutions to cultural challenges such as the rise of populism and disillusionment with the imperfections of politics. The reader is almost bound to agree with the authors that after the political polarization of the Brexit period, it is now a critical priority to rebuild norms and standards in the spirit of compromise on which democratic politics depends.

How Westminster Works … and Why It Doesn't, by Ian Dunt, Weidenfeld & Nicolson, ISBN9781399602730. Liam Laurence Smyth writes:

Columnist and pundit Ian Dunt is by no means the first to point out the deficiencies in how democracy actually functions in the UK. His sustained critique draws on his own experience as well as upon conversations with an impressive range of observers and insiders including Professor Emma Crewe, Speaker Sir Lindsay Hoyle, the former Lord Chief Justice Ivor Judge, Professor Lord (Philip) Norton and Jill Rutter of the Institute of Government. Paul Evans, former Clerk of Committees at the UK House of Commons, was among those who fact-checked the book as well as giving interviews, thereby conferring a degree of credibility on Dunt's analysis. Dunt includes a handy glossary for the general reader as well as a useful chapter of references and further reading.

Looking at the short-lived privatisation of the probation service, now widely seen as a failure of public policy, he comments that "the most remarkable thing about what happened is how unremarkable it is." Long-lasting deep-set

structural problems (such as social care, productivity, national health service, regional economic imbalances and an irritational tax system) go unresolved, while ministers engage a "frenzy of activity, much of it completely pointless, a lot of it positively harmful."

Starting with how Members become candidates, he finds that the qualities evaluated in the selection process have no connection with the demands of life at Westminster. He indicts the first-past-the post electoral system on four counts: reducing scrutiny, increasing political tribalism, corrupting the policymaking process and allowing either of the two main parties to amass executive power on the basis of a minority of the popular vote.

The business managers, at least in the Parliaments from 2017 to 2024, would ruefully detect a note of hyperbole in his assertion that "the Commons is set up for MPs to fail. No matter how much they scrutinise a piece of legislation the government majority means it will go through anyway." He is not the first person to criticise Erskine May's eponymous treatise which in his words is "full of convoluted and archaic jargon describing an impossibly tangled web of rules going back centuries."

His critique of the centre of the Government starts with the architecture of 10 Downing Street which he finds to be "cramped, badly organised and irrationally structured." He commends the Blair-era Delivery Unit for its focus, curiosity and lack of aggression which he contrasts with the Whitehall norm of ill-thought through and partisan reactions to unforeseen events. The merry-go-round of ministerial reshuffles prevents the accretion of Cabinet competence and personal responsibility. Specialist advisers (spads) contribute to the moulding of government to the things Westminster finds important: party politics and media handling. Dent joins others in blaming the Treasury for being "almost pathologically sceptical of the argument for long-term investment", for its secretiveness and for its long-running failure to bring rationality to the complex mess of taxation. The civil service as whole is characterised by lack of expertise, excessive churn and over-reliance on external consultants.

The media fares no better in Dunt's comprehensive onslaught. The lobby system fosters homogeneity of outlook and a myopic obsession with the internal dynamics of party politics rather than casting an objective eye over policy outcomes. Press and broadcast journalists compete with online and social media for eye-catching instant responses to stories. Tamed political journalists have become dependent on a new brigade of media spads.

In a telling interlude, Dunt describes the chaotic evacuation from Kabul in 2021 as a systematic and existential failure of ministers with no competence, civil servants with no expertise and an infantilised media focussed on stories of domestic interest (Pen Farthing and the Nowzad animal rescue).

As for the Commons, Dunt commends the 1979 St John-Stevas reforms

of select committees and their strengthening by the post-expenses scandal Wright reforms in 1979, though he is saddened by the failure of the Wright committee's other proposals which resulted in little but faintly disappointing debates on Thursday afternoons. Dunt commends Speaker Bercow for his prolific granting of urgent questions and for his innovative approach to the subject matter of emergency debates.

Dunt is scathing about the growth of delegated legislation which reeled completely out of control in the coronavirus pandemic. He describes the reality of legislative scrutiny in the Commons as grim: overly political, under-resourced and ruthlessly programmed. One example of Dunt's gloomy outlook is the story he tells of the lone Green MP Caroline Lucas being knocked back in her attempt to require mandatory elucidations of amendments on the notice paper. In fact, thanks to pressure from her and others, nowadays all bill amendments tabled by the Government, and most other bill amendments, do carry such explanatory statements; they are indeed not mandatory, but only to avoiding imposing an extra burden on backbenchers.

After all this despair and disparagement, only partially dispelled by the select committees in the Commons, his chapter on the House of Lords ("a baffling state of affairs") comes as a unexpected bonus. Dent finds that "a bizarre half-feudal remnant of historical progress is operating at the peak of constitutional efficiency and promoting more rational behaviour from government in turn." The Lords is everything the Commons is not —it has no majority, it values expertise and careful deliberation over partnership, it rejects the culture of political aggression, and it controls its own timetable.

A fairly standard shopping list of potential solutions to the ills Dent has identified is outlined in an epilogue: open candidate selection; proportional representation; an Ombudsman service to replace most constituency casework; more resources for backbenchers; simpler parliamentary language and procedures; a spad code; tax reform; better scrutiny of statutory instruments; electronic voting; more debates at bill report stages; and, as the most urgent reform of all, the Commons to take control of its own agenda. According to Dent reform of the Lords is the least pressing issue, quite simply because (even as it now) it actually works.

Necessary Women: The Untold Story of Parliament's Working Women, by Dr Mari Takayanagi and Dr Elizabeth Hallam Smith, History Press, £22, ISBN: 9781803990156. Andrew Makower, Clerk of Procedural Practice, House of Lords, writes:

> This book is an illuminating slice of history and a rattling good read. Anyone interested in the history of Parliament as an institution, the Palace of Westminster as a building and a place of work, or women in politics and the workplace, will find plenty here to enjoy. For instance I cannot be the only

person working in the House of Lords who has wondered for years about "Miss Bell's bell"; Chapter 11 explains.

Mari Takayanagi is a historian and Senior Archivist at the Parliamentary Archives. She has worked there since 2000. She regularly appears on TV and radio and in 2018 she co-curated Voice and Vote: Women's Place in Parliament, an exhibition in Westminster Hall.

Liz Hallam Smith was the first woman Librarian of the House of Lords and the first Director of Information. Before that she was Director of Public Services at The National Archives. She retains a lively interest in Parliament. Her discovery of a forgotten doorway in Westminster Hall in 2020 made news.

Their academic credentials are strong and their sources and notes fill 24 pages but this general reader found the book (250 pages) wholly accessible. The story is told chronologically in 15 chapters, each focussed on an individual or group at a particular time, introduced in most cases by something "in their own words."

We start in 1792, with women selling biscuits and fruit in the Commons lobby. Further on, "upstairs" we meet Speakers' and Clerks' wives and daughters. "Downstairs" we are introduced to housekeepers and cleaners, waitresses (recently seen on the London stage in the English National Opera's Iolanthe, receiving treatment from members which definitely breached the Behaviour Code), typists, "Girl Porters/Messengers", accountants and catering managers. Among them we find closet suffragists and, literally hiding in a closet, we spot a suffragette: Emily Wilding Davison, the only character most readers will have heard of.

By the Second World War there were women Members in the Commons but they are not the focus. Instead we meet first aiders and fire watchers, Home Guard auxiliaries and the Westminster Munitions Unit. As the story reaches living memory and draws to a close, we begin to meet Clerks, Hansard reporters and journalists. In the final chapter Liz and Mari take us to their home ground, the Library and the Archives.

Along the way, we see Parliament evolve from a very closed shop to something more democratic. We watch the Palace turn from a jumble of royal rooms and residences to a purpose-built Parliament which was still a warren of private domains when I arrived to work in 1984. We witness the fires of 1834 and 1941. Some families (the Andersons, the Bellamys, the Courts &c) keep turning up, and we see parliamentary service evolve from a collection of jobs for (mostly) the boys, run by nepotism and patronage, towards a meritocracy. We watch the painfully slow progress of women seeking to take part in politics even as spectators, and to receive equal pay for equal work.

Readers may wonder how the Civil Service having a women's pay scale

lower than the men's (see p.227) can ever have seemed reasonable, even to men. The authors told me, "This is the "male breadwinner" rationale, where it was deemed necessary for all men to receive a salary sufficient to support a family, but women were assumed to work only before marriage and to need pin money, otherwise living off parents or husbands. It was applied regardless of anyone's actual personal situation, and the Civil Service defended it to the end as (in conjunction with the marriage bar) it gave them a cheap young female workforce.

Some parts of the story are more "untold" than others. Liz and Mari draw on unpublished primary sources from collections including the Parliamentary Archives, The National Archives (to which the Parliamentary Archives are currently relocating), the British and Bodleian Libraries, the Westminster City and London Metropolitan Archives, and the Women's Library at the London School of Economics. Published primary sources include both Houses' Journals and Official Reports and the reports of select committees. It is encouraging to those of us who labour to create these records to see them put to such good use. The book also draws on census returns, online newspapers, family history and works of art. Some individuals feature in the Oxford Dictionary of National Biography, but most only because Mari put them there. The history of women in politics and the workplace, and the history of the Palace, are well documented but not from this angle.

There is much in the story which provokes righteous rage. An author might be tempted to rant. Liz and Mari adopt a dispassionate tone, lightly flavoured with sympathy with their subjects and ironic amusement at the antics and attitudes of the men who so often belittle their abilities, ignore their achievements and make their lives harder than they need to be. They let the story speak for itself, without telling us to how to feel about it.

For instance, here, from Chapter 6 'Losing their reason': Eliza Arscot and her fellow Housekeepers, is their dry but cutting comment on the condition which caused Eliza to be dismissed and consigned to an asylum in 1901:

"Her behaviour was suggestive of a psychotic condition such as schizophrenia rather than a depressive illness ... Male doctors frequently blamed female madness on the instability of women's reproductive systems, often linked to pregnancy or childbirth, but in Arscot's case it was menopause, with 'change of life' included on her case notes at admission. Had she been a man, it seems likely that her condition might have been attributed to the intellectual and economic pressure from her job and precarious living conditions; but there were no social workers and no resource for doctors to investigate this."

Arscot's photograph, taken five years later, is the most striking in a fine set of illustrations.

Reading *Necessary Women* did not take me long and I was sorry to reach the end. Baroness (Frances) O'Grady, reviewing *Necessary Women* for The House Magazine and Politics Home, concluded, "On the evidence of this brilliantly written and researched book, I hope the authors will reconsider and write *Necessary Women* – the sequel." Hear hear. Until they do, let's enjoy Book 1.

TABLE 2024 INDEX

This index is in three parts: a geographical index; an index of subjects; and lists of members of the Society who have died or retired, of privilege cases, of the topics of the annual questionnaire and of books reviewed. The following regular features are not indexed: books (unless substantially reviewed), sitting days, amendments to standing orders and unparliamentary expressions. Miscellaneous notes are not indexed in detail.

ABBREVIATIONS

ACT	Australian Capital Territory;	NI	Northern Ireland;
Austr.	Australia;	NSW	New South Wales;
BC	British Columbia;	N. Terr.	Northern Territory;
Can	Canada;	NZ	New Zealand;
HA	House of Assembly;	PEI	Prince Edward Island;
HC	House of Commons;	Reps	House of Representatives;
HL	House of Lords;	RS	Rajya Sabha;
LA	Legislative Assembly;	SA	South Africa;
LC	Legislative Council;	S Austr.	South Australia;
LS	Lok Sabha;	Sask.	Saskatchewan;
Man	Manitoba;	Sen.	Senate;
NA	National Assembly;	Vict.	Victoria;
NF & LB	Newfoundland and Labrador;	WA	Western Australia.

GEOGRAPHICAL INDEX

SUBJECT INDEX

Sources and authors of articles are given in brackets.

LISTS

Members of the Society

Abbreviations: R retirement, O obituary.

Privilege cases

⋆ Marks cases when the House in question took substantive action.