

Commonwealth Parliamentary Association



**PARLIAMENT
OF KENYA
LIBRARY**

**Background Papers on Parliamentary Practice and Procedure
provided by the Parliaments and Legislatures of the Commonwealth
and the Commonwealth Parliamentary Association Secretariat**

Questions

▪ **Commonwealth of Australia
Senate Brief Guide to Questions**



NO. 17 QUESTIONS

Questions seeking information

One of the ways in which senators may seek to hold the executive government accountable for its actions is by questioning ministers. Numerous opportunities exist for senators to ask questions of ministers, most notably:

- in the Senate chamber, during question time;
- through written questions placed on the *Senate Notice Paper*;
- during committee hearings, especially during the consideration of estimates (see Senate Brief No. 5—Consideration of estimates by the Senate's legislation committees); and
- during the *committee of the whole* stage of the legislative process (see Brief Guide No. 9—Consideration of Legislation).

This guide deals with questions asked during question time and questions placed on notice.

Questions may be addressed to a minister relating to public affairs or matters of administration for which the minister is responsible, or in respect of which the minister represents another minister. A list of ministers and the portfolios they represent is published in the *Notice Paper*. Questions may not be addressed to parliamentary secretaries.

Questions may also be addressed:

- to other senators in relation to business on the *Notice Paper* of which such senators have charge, and
- with notice or with the leave of the Senate, to chairs of committees in relation to the activities of those committees.

Most questions, however, are put to ministers.

The provisions relating to questions are contained in standing orders 72 to 74. Also see Chapter 19 of *Oggers' Australian Senate Practice, Relations with the Executive Government*.

Rules for questions

The rules for questions are contained in standing order 73.

These rules are interpreted by the chair so as not to restrict unduly the ability of senators to ask questions on a wide variety of subjects. For instance, although questions may not ask for a statement of government policy, it is in order for a question to seek an explanation of government policy or the clarification of a statement made by a minister. A question inviting a minister to comment on opposition policies is strictly out of order, although questions seeking the minister's knowledge of how other policy proposals would affect matters within that minister's responsibility have been ruled in order.

The prohibition on questions containing statements of fact, arguments, inferences, imputations etc. recognises that the purpose of a question is to seek information and not to provide a senator the opportunity to make a statement. This reasoning also underlies a long-standing prohibition on the use of quotations in questions.

In practice, the chair has a discretion to allow the inclusion in a question of so much material as is necessary to make the question clear.

Question time

The operation of question time is governed more by agreement and established practice than by the standing orders. The current practice is for questions to be asked and answered each sitting day from 2pm (standing order 57—Routine of business) for a period of approximately an hour.

The opportunity to ask questions is provided for in standing order 72(1), but there is no procedural rule requiring that ministers answer questions. It has long been established that there is no obligation upon a minister to answer a question – indeed the answering of questions has sometimes been referred to as a 'courtesy'. In practice, however, there is a political cost borne by a government or a minister in not answering questions – and a political benefit in answering them deftly.

Question time is drawn to a close each day by the Leader of the Government in the Senate asking that further questions be placed on notice. The various party leaders and independent senators have contingent notices which may be moved, seeking the Senate's agreement to move that question time be extended on any day until 28 questions, including supplementary questions, have been asked and answered. These contingent notices are rarely used, however, the last occasion being 31 August 1995.

Motions to extend question time have occasionally been proposed as punitive remedies when ministers have failed to comply with orders of the Senate. On 19 October 1999, for example, question time was extended on several days in response to a refusal by a minister to produce a document in accordance with an order of the Senate (see Brief Guide No. 11—Orders for production of documents).

—Answers to questions

In answering a question a minister may not debate it. Rather, an answer must be confined to providing the information sought. In all cases the answer must be relevant to the question. The President may require that ministers' answers be relevant, but cannot tell ministers how they should respond to questions.

—Time limits for questions and answers

Time limits apply to the asking and answering of questions (standing order 72(3)):

- the asking of a question or a supplementary question may not exceed one minute;
- the answering of a question may not exceed four minutes;
- the answering of a supplementary question may not exceed one minute.

Time limits were first imposed in 1992 following concerns about the length of ministers' answers and a general discontent with the conduct of question time. The adoption of time limits has not significantly affected the average number of questions and supplementary questions asked each sitting day.

—Allocation of questions

The standing orders provide that a senator seeks the call (for instance, to ask a question) by rising in his or her place to address the President. In practice, however, the allocation of questions is determined by agreement. Current practice adopts the *principle of proportionality* endorsed by the Procedure Committee in its second report of 1995: that is, the chair seeks to allocate questions between parties and independent senators as nearly as practicable in proportion to their numbers in the Senate.

—Supplementary questions

Following a minister's reply, a senator may, at the chair's discretion, be called on to ask a supplementary question. Supplementary questions must relate to or arise from the answer to the original question. Once a rarity, supplementary questions now account for about 40 per cent of all questions asked.

—Taking questions on notice and providing further answers

Ministers may, in responding to questions during question time, elect to take a question (or part of a question) on notice. This indicates that the minister will seek further information and provide it to the Senate at a later time. It is established practice for ministers at the end of question time to make additional responses to questions without notice. These responses, unless brief, are typically incorporated in *Hansard*, with the leave of the Senate, rather than being given orally.

—Motions to take note of answers

At the end of question time motions may be moved, without notice or leave, to take note of answers given during question time, including further answers provided by ministers. A senator speaking to such a motion may speak for 5 minutes, with the total time on any given day not exceeding 30 minutes (standing order 72(4)). The call to speak during this time is normally allocated on a similar basis to the allocation of questions at question time.

Questions on notice

Questions asked in the Senate at question time are asked *without notice*, although a senator may informally advise a minister of the subject of a proposed question. Where a senator seeks a detailed answer to a question, particularly where statistical information is sought, that question is more appropriately submitted in written form and placed *on notice*.

A senator places a question on notice by signing the written question and delivering it to the Questions Officer in the Senate Table Office. A senator may submit questions on behalf of another. There is no limit on the number of questions a senator may submit.

Table Office staff examine questions for conformity with the standing orders before placing them on the *Notice Paper*. Any problems with questions are discussed with the senator's office. If they cannot be resolved they are referred to the President for determination. The process of editing questions for publication is greatly assisted if the signed copy is accompanied by an electronic version, sent by e-mail to the Senate Questions Officer (**Senate Questions (SEN)**, in the Outlook parliamentary address list).

Each question is allocated a number and published in the next issue of the *Notice Paper*. The printed version of each *Notice Paper* indicates the numbers of all questions that remain unanswered. The full text of all unanswered questions is published in the online version of the *Notice Paper*, available at www.aph.gov.au/senate/work.

Ministers' offices and government departments are responsible for examining the *Notice Paper* to identify questions asked. Questions placed on notice when the Senate is not sitting are forwarded to ministers' offices prior to their publication in the *Notice Paper*, allowing relevant action to commence. This assists ministers in providing timely responses to questions.

Answers that have been approved by the responsible minister are lodged with the Table Office, which supplies the senator who asked a question with a copy of the reply and arranges for the question and reply to be published in *Hansard*.

—The 30-day rule

A senator who places a question on notice and does not receive a reply within 30 days may after question time seek from the relevant minister in the Senate an explanation of why an answer has not been provided (standing order 74(5)).

If the minister provides an explanation, the senator may move without notice *that the Senate take note of the explanation*.

If the minister fails to provide a satisfactory explanation, the senator may move, without notice, *a motion with regard to the minister's failure to provide either an answer or an explanation*. The motion moved at this stage may be for any relevant purpose – for instance, a motion to order that the answer be tabled by a specific date, or a motion to censure the minister for the delay in answering.

It is common for a senator to advise a minister informally of his or her intention to seek an explanation under the 30-day rule, to improve the chances of receiving an answer or a satisfactory explanation. This is especially the case where the minister represents a minister in the House of Representatives and may need to seek an explanation from that minister's office.

This process is not available once an answer to the question is provided.

An annotation appears in the *Notice Paper* each day indicating which questions have remained unanswered for more than 30 days. The 30-day period is counted from the day the question is placed on notice, not the date of publication in the *Notice Paper*.

—The effects of prorogation on questions

One of the effects of prorogation of the Parliament during an election period is that all business on the *Notice Paper* remains current until the day before the next sitting, at which time it lapses. This has the following consequences:

- any outstanding questions on notice should be answered and sent to the Table Office for publication in *Hansard*. Advice to this effect is routinely forwarded to government departments at the start of the election period
- any questions remaining unanswered when business lapses need to be resubmitted in order to again appear on the *Notice Paper*. Table Office staff write to senators during the election period, inquiring whether they wish to renew such questions when sittings resume.

Questions submitted after a prorogation and before the new sittings appear on the first *Notice Paper* of the new session, and the count for the 30-day rule is taken to begin on the first sitting day.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table) on extension 3020; and non-government senators or their staff should contact the Clerk Assistant (Procedure) on extension 3380.

Questions on notice can be lodged with the Senate Table Office (SG 25). Inquiries relating to questions on notice should be directed to the Questions Officer on extension 3014.

Procedure Office
November 2001

Commonwealth Parliamentary Association



Background Papers on Parliamentary Practice and Procedure
provided by the Parliaments and Legislatures of the Commonwealth
and the Commonwealth Parliamentary Association Secretariat

Parliamentary Privilege

- Canadian House of Commons Fact Sheet
- Australian House of Representatives Infosheet

FACT SHEET

PARLIAMENTARY PRIVILEGE

PARLIAMENTARY PRIVILEGE IN A GENERAL CONTEXT

Members of the House of Commons individually and the House of Commons as a whole enjoy certain rights and privileges which are necessary in order for them to properly discharge their parliamentary functions without interference or any other legal process or authority.

MEMBERS of House of Commons enjoy the following rights and privileges:

- *freedom of speech*: a Member is immune from civil or criminal liability for the words spoken in the House or in committee;
- *exemption from jury duty*: Members need not comply with a notice to attend court for the purpose of jury duty;
- *exemption from appearing as a witness*: Members need not comply with a subpoena to attend a court as a witness. This privilege is often waived when the House is not in session; it is regularly waived for criminal cases, even when the House is in session.

The **HOUSE OF COMMONS** enjoys the following rights and privileges:

- *the power of discipline*: the House may discipline a Member who is guilty of a breach of privilege or an offence against the authority or dignity of the House. The punishment can range from a reprimand to a suspension or to expulsion;
- *the right to regulate its own internal affairs*: no order of a court or other authority may be applied to direct the affairs or proceedings of the House. In addition, the permission of the Speaker is required before police may enter onto the precincts to investigate an offence, to serve a subpoena or to execute a search warrant;
- *the right to institute inquiries and to require the attendance of witnesses and the production of documents*: a committee of the House may inquire into any subject within the legislative competence of Parliament and in doing so may require witnesses to attend before it, to answer questions and to produce documents;
- *the right to administer oaths to witnesses*: the House and its committees may examine witnesses under oath. Any person who knowingly gives false evidence under oath may be charged with perjury under the *Criminal Code*.

This fact sheet represents a general summary of the law on parliamentary privilege.



PARLIAMENTARY PRIVILEGE

No. 5
April 2002

What is parliamentary privilege?

The term parliamentary privilege refers to special legal rights which apply to each House of the Parliament, its committees and Members. These provisions are part of the law of the Commonwealth. This Infosheet deals with the subject from the perspective of the House of Representatives, but the major details also apply to the Senate.

Why is it necessary?

The Houses of the Commonwealth Parliament, in common with other Parliaments, are given a special legal status because it is recognised that the tasks they have to perform require additional powers and protections. Special rights and immunities are necessary because of the functions of the House, for example, the need to be able to debate matters of importance freely, to discuss grievances and to conduct investigations effectively without interference.

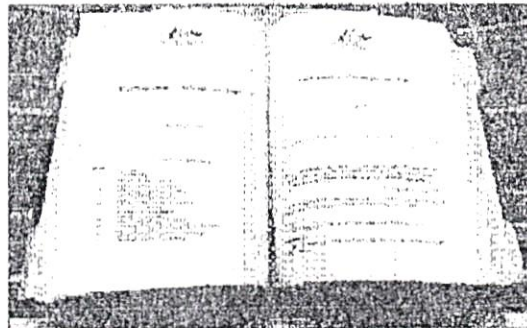
Main features of the law and practice

Section 49 of the Commonwealth Constitution provides that, until declared by the Parliament, the powers, privileges and immunities of the Senate and the House of Representatives and the Members and committees of each

House shall be those of the British House of Commons at the time of Federation (1901). It was not until 1987, and following a thorough review of the whole subject by a joint select committee, that the Commonwealth Parliament passed comprehensive legislation in this area.

The main features of the arrangements in the Commonwealth Parliament are as follows:

- each House, its committees and Members enjoy certain rights and immunities (exemptions from the ordinary law), such as the ability to speak freely in Parliament without fear of prosecution (known as the privilege of freedom of speech);



Parliamentary Privileges Act.

- each House has the power to deal with offences – contempts – which interfere with its functioning;
- each House has the power to reprimand, imprison or impose fines for offences;
- complaints are dealt with internally (within Parliament) – they may be considered by the Committee of Privileges which will report to the

House which may then act on the matter in light of the committee's report;

- there is a limited ability for decisions of the House to imprison people to be reviewed in court; and
- the *Parliamentary Privileges Act 1987* creates a special category of criminal offence in order to strengthen the protection available to witnesses who give evidence to parliamentary committees.

The privilege of freedom of speech

The privilege of freedom of speech is often described as the most important of all privileges. Its origins date from the British Bill of Rights of 1689. Article 9 of the Bill of Rights provides:

'That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.'

As this was one of the privileges of the House of Commons in 1901, it was inherited by the House and the Senate under the terms of the Commonwealth Constitution. Section 16 of the Parliamentary Privileges Act preserves the application of the traditional expression of this privilege, but spells out in some detail just what may be covered by the term 'proceedings in Parliament'.

The practical effect of this is that those taking part in proceedings in Parliament enjoy absolute privilege. It is well known that Members may not be sued if they make defamatory statements when taking part in debates in the House, but the privilege is wider than that and, for instance, protects Members from being prosecuted if in a debate they make a statement that would otherwise be a criminal offence, for example, a Member who felt it necessary to reveal a matter which was covered by a secrecy provision in a law such as personal tax information.

The privilege of freedom of speech has been described as a 'privilege of necessity'. It enables Members to raise in the House matters they would not otherwise be able to bring forward (at least not without fear of the legal consequences). The privilege is thus a very great one, and it is recognised that it carries with it a corresponding obligation that it should always be used responsibly. Pressure from other Members, the public and the media would be brought to bear on Members who made accusations unfairly in the Parliament. There is also a procedure for individuals who have been offended by remarks made about them in the House to seek to have a response published. Infosheet No. 17 'Citizens' right of reply' provides details on this process.

The privilege of freedom of speech is not limited to Members of Parliament; it also applies to others taking part in 'proceedings in Parliament'. The most obvious example of others who may enjoy absolute privilege are witnesses who give evidence to committees. It is important to note that the privilege only applies to evidence given to properly constituted parliamentary committees, and does not, for instance, apply to party committees.

There is a difference between absolute and qualified privilege. Qualified privilege exists where a person is not liable for an action for defamation if certain conditions are fulfilled, for example, if a statement is not made with malice. Newspapers which report debates in Parliament rely on qualified privilege. Absolute privilege, on the other hand, exists where no action may be taken at all, even if, for example, a statement is made with malice.

As well as proceedings in Parliament being absolutely privileged, the House, and properly constituted committees, may confer absolute privilege on various papers. Resolutions may be moved to authorise the publication of papers. Parliamentary committees often use this power to authorise the publication of submissions and transcripts of evidence given to inquiries. The Parliamentary Papers Act also extends absolute privilege to the Hansard record of proceedings. The Parliamentary Proceedings Broadcasting Act does the same in relation to the official broadcast, but absolute privilege does not apply to the broadcast of excerpts of proceedings.

Other privileges

Members may not be required to attend courts or tribunals as witnesses or be arrested or detained in civil matters on sitting days and for five days before and after sitting days. Such immunities also apply when a Member is a member of a committee that is meeting. People required to attend as witnesses before committees may not be required to appear as witnesses before a court or tribunal or be arrested or detained for a civil matter on days they are required to give evidence to the committee. Members and some parliamentary staff are also exempt from jury service. These immunities are justified on the ground that the first duty of Members, and others involved, is to Parliament and that this overrides other obligations. The immunity from civil arrest and detention does not exempt Members from the action of the law - Members still must fulfil their legal obligations at a time when the Parliament is not meeting, and no immunity applies at all in criminal matters.

The ability to deal with offences (contempts)

As well as dealing with people or organisations breaching particular rights or immunities, the House may also take action over matters which, while they do not breach any particular legal power or immunity, obstruct or impede the House in the performance of its functions or Members or officers in the discharge of their duties, or which have a

(continued next page)

tendency to do this. This is known as the ability to punish for contempt and is similar to the courts' power to punish for contempt of court.

This power gives the House a flexibility to protect itself and its Members against new or unusual threats. Matters can be dealt with under this authority even if there is no precedent for them. A safeguard against misuse of this considerable power is given by section 4 of the Parliamentary Privileges Act which states that conduct does not constitute an offence unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or a committee of its authority or functions, or with the free performance by a Member of his or her duties as a Member. Speakers have also referred to the importance of restraint in the use of the House's powers to deal with contempts. In addition, the Act prevents action being taken in cases

where the only offence was that words or actions were defamatory or critical of the House or a committee or a Member. This removed a category under which many complaints had been raised over the years, for example, newspaper reports criticising the behaviour of Members.

One of the most important effects of the power to punish contempts is that the House may protect its committees and their witnesses. Committees usually have substantial powers to help them to obtain evidence and information, but they do not themselves have power to take action against any person or organisation who is obstructing or hindering them. If it is misled or obstructed, or if its witnesses are punished or intimidated, a committee may bring the matter to the attention of the House which ultimately may punish for contempt.

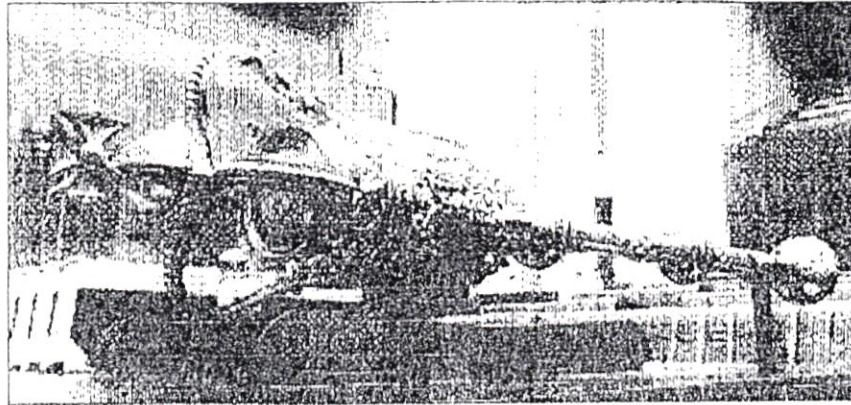
The raising of complaints

Complaints of breach of privilege or contempt may only be raised formally by Members - a person who believes that there has been an offence must ask a Member to raise it in the House. The normal course is for a Member to seek the call 'on a matter of privilege' and to immediately

outline the complaint briefly. The Speaker then considers the matter privately. If satisfied that it has been raised at the first available opportunity, and that there is some substance in it (the technical term being that a prima facie case exists), the Speaker may allow priority to a motion on the matter. Usually such a motion would be that the issue be referred to the Committee of Privileges, although other motions could be proposed, or a Member might advise the House that he or she did not wish to pursue the matter further. Whether or not a matter is sent to the Committee of Privileges for investigation is thus for the House itself to decide.

Committee of Privileges

The House has had a Committee of Privileges since 1944. Currently the committee consists of 11 Members and, like other committees, government Members form a majority, although it is traditional that matters of privilege are not considered on a



The Mace - symbol of the House's authority

party basis. The committee has the power to send for persons, papers and records, that is, it can compel the production of material and the attendance of witnesses. Witnesses, including Members, may be asked to make an oath or affirmation before giving evidence.

Traditionally, the committee has met in private. Major changes in procedure were made during an inquiry in 1986-87 relating to the unauthorised disclosure of material relating to a joint select committee. During that inquiry, for the first time, evidence was taken in public and witnesses were permitted to be assisted by legal counsel or advisers. More recently, in December 2000 the House agreed to a motion authorising the publication of all evidence or documents taken in camera or submitted on a confidential basis and which have been in the custody of the Committee of Privileges for at least 30 years. These records are now made available through the National Archives of Australia.

The committee itself cannot impose penalties. Its role is to investigate and advise. In its report to the House the committee usually makes a finding as to whether or not a

(continued next page)

breach of privilege or contempt has been committed, and it usually recommends to the House what action, if any, should be taken.

As well as investigating specific complaints of breach of privilege the committee is also able to consider any general privilege issues referred to it by the House, for example, it recently completed an inquiry into whether Members' office records attracted privileged status. It also considers applications for a 'right of reply' from people who have been criticised in the House. Infosheet No. 17 'Citizens' right of reply' gives details of this procedure.

Consideration by the House

Normally when a report from the Committee of Privileges is presented, and especially if there is the possibility of further action, the practice is for the House to consider the report at a future time so that Members may study the report and the issues before making decisions on it. The House is not bound to follow the committee's recommendations, and any motion moved is able to be amended.

Penalty options

It has long been recognised that the House has the power to imprison people, but there has been considerable uncertainty as to whether it had the power to impose fines because of doubt as to whether the House of Commons itself had this power in 1901. These doubts were removed by the Parliamentary Privileges Act. Under the Act the House may impose a penalty of imprisonment not

exceeding six months on a person, or a fine not exceeding \$5,000, or not exceeding \$25,000 in the case of a corporation. Neither the House of Representatives nor the Senate has ever imposed a fine under this provision.

Under section 9 of the Act, if the House imposes a penalty of imprisonment, the resolution imposing the penalty and the warrant must set out particulars of the offence. The effect of this is that a court could be asked to determine whether the ground for the imprisonment was sufficient in law to amount to a contempt.

On only one occasion has the House imposed penalties of imprisonment. This was in 1955 when Mr R. E. Fitzpatrick and Mr F. C. Browne were found guilty of a serious breach of privilege by publishing articles intended to influence and intimidate a Member in his conduct in the House. They were each imprisoned for three months.

For more information

Parliamentary Privileges Act 1987 (Act No. 21 of 1987).

House of Representatives Practice, 4th edn, Department of the House of Representatives, Canberra, 2001, pp 687-733 and appendix 25 for a full list of matters of privilege raised in the House.

Final Report, Joint Select Committee on Parliamentary Privilege (October 1984), Parliamentary Paper 219 of 1984.

House of Representatives Committee of Privileges Internet site: www.aph.gov.au/house/committee/priv

Photos: *Aspic*

Also available in the Infosheet range:

- | | | |
|---|---|--|
| 1. Questions | 9. A new Parliament | 16. The Main Committee |
| 2. A typical sitting day | 10. The budget and financial legislation | 17. Citizens' right of reply |
| 3. The Speaker | 11. Petitions | 18. Double dissolution |
| 4. Committees | 12. Finding out about the House | 19. The House, Government and Opposition |
| 5. Parliamentary privilege | 13. The Constitution | 20. The Australian system of government |
| 6. Opportunities for private Members | 14. Making decisions -- debate and division | 21. The Clerk and other officials |
| 7. Making laws | 15. The work of a Member of Parliament | |
| 8. Elections for the House of Representatives | | |

Commonwealth Parliamentary Association



Background Papers on Parliamentary Practice and Procedure
provided by the Parliaments and Legislatures of the Commonwealth
and the Commonwealth Parliamentary Association Secretariat

Women in Parliament

- **Gender-Sensitizing Commonwealth Parliaments**
Conclusions from the Report of a 2001 CPA Study Group

Gender-Sensitizing Commonwealth Parliaments

The Report of a Commonwealth Parliamentary Association Study Group

Kuala Lumpur, Malaysia,
27 February – 1 March 2001

Published by the
Commonwealth Parliamentary Association Secretariat
Suite 700, Westminster House, 7 Millbank
London SW1P 3JA, United Kingdom

This publication is also available online at www.cpahq.org

Members of the Study Group

	<u>Region</u>
Hon. Margaret Alva, MP (India)	Asia
Mrs Susan Barnes, MP (Canada)	Canada
Hon. Irene Chisala, MP (Zambia)	Africa
Miss Jennifer Edwards, MP (Jamaica)	Caribbean, Americas and the Atlantic
Hon. Hazel Hannan, MHK (Isle of Man)	British Isles and the Mediterranean
Datuk Napsiah binti Omar, MP (Malaysia)	South-East Asia
Hon. Caroline Schaefer, MLC (South Australia)	Australia
Mrs Dianne Yates, MP (New Zealand)	The Pacific

Advisers

Sen. Dato' Ghazi H. Ramli (Malaysia)
Mrs Paula Kokkonen, MP (Finland)

In attendance

Ms Tuula Sivonen, Senior Clerk of Parliament, (Finland)

Rapporteur

Mrs Jacqui Sampson-Jacent, Clerk of the House of Representatives
(Trinidad and Tobago)

CPA Secretariat

Mr Raja Gomez (Director of Development and Planning)
Mr Anthony Staddon (Assistant Director of Development and Planning)

- legislation and committee reports, in order to assess their impact on the lives of women and men and to ensure that government policies, programmes and legislation are equitable for both women and men;
- b. Commonwealth Parliaments should be encouraged to consider introducing maternity and paternity benefits for Parliamentarians;
 - c. Proper facilities for the care of infants and young children should be established in Parliament buildings;
 - d. In those countries where, due to size and distance, it is necessary for MPs to utilize temporary accommodation nearer to Parliament, the parliamentary week should be narrowed with Parliament, if needed, sitting longer hours;
 - e. Where applicable, Constituency Weeks should be free of committee work, removing the requirement for MPs to travel away from their home territories and constituencies during such weeks. Where possible they should coincide with school holidays.
 - f. Commonwealth Parliaments should be urged to be more flexible in the amount of time off allowed for family purposes and where possible, the good convention of pairing should be introduced for dealing with necessary absences by MPs;
 - g. Training and orientation programmes, sponsored by Parliaments and involving both men and women, should be held on a regular basis throughout each parliamentary session, to assist MPs in a wide range of areas related to their functioning as Members of Parliament;
 - h. Concerted efforts must be made to ensure that women are appointed to prominent government offices and to serve on, as well as chair, important committees;
 - i. The Standing Orders should be regularly reviewed and, whenever necessary, amended, to ensure that the presence of women and issues pertaining to women are taken into account by Parliaments, in order to encourage greater participation by women in the parliamentary process;
 - j. Female Parliamentarians should get together to discuss issues common to women. Toward this end, formal and informal women's networks should be set up within Parliaments and women should identify policy issues where cross-party co-operation can exist;
 - k. As an inter-party grouping, female Parliamentarians should work with the various groups in society, for example non-governmental women's organizations and [community] radio and television, to promote awareness by the population of gender-sensitizing issues and create the environment for wider public support;
 - l. The CPA should encourage all Branches to be mindful of the fact that women should represent at least 30 per cent of its Executive Committee;
 - m. The CPA should re-introduce funding for meetings of the CWP Steering Committee;
 - n. The CPA should monitor the extent to which Member Branches fulfill their international obligations pertaining to the rights of women.

Conclusion

84. The Study Group concluded by recognizing that, although there are exceptions, generally the sole voices speaking out for women's rights and concerns are women. Women's rights are human rights. Therefore, it held that the active participation of women in Parliament is the only way to ensure that equality for women everywhere is achieved. However, it was universally agreed that co-operation between women and men is essential in any attempt at gender-sensitizing Parliaments and removing the barriers which inhibit fullest participation by women. Many participants acknowledged that support from influential men has proven to be useful in the political struggle that women face on a daily basis.

85. In order to increase the effectiveness of female Parliamentarians, it was suggested that:

- Political parties must be encouraged to nominate women for winnable seats in the Legislature, to train and initiate them to the workings of the Legislature and to appoint them to prominent legislative and governmental positions.
 - Cultural barriers can only be removed through efforts geared towards gender-awareness and, wherever necessary, by positive action by way of legislation.
 - Parliamentary institutions must sponsor regular training and orientation sessions for their Members, amend their Standing Orders so that male-oriented terms are replaced by inclusive language and make women-friendly changes to their seating and other physical arrangements.
 - Female Parliamentarians should promote the appointment of women to key positions within the Legislature and the government; work at cross-party levels for the benefit of women as well as the wider society, and provide guidance and support to newer entrants; and
 - Good working relationships with the media should be fostered.
86. The Study Group recommended the following areas for priority action:
- a. Commonwealth Parliaments should be urged to commit to gender-based analyses of all parliamentary documents, including policy proposals,

Commonwealth Parliamentary Association



**Background Papers on Parliamentary Practice and Procedure
provided by the Parliaments and Legislatures of the Commonwealth
and the Commonwealth Parliamentary Association Secretariat**

Committee Systems

- **National Assembly of Zambia Background Paper**
 - **Lok Sabha of India Abstract**
- **Conclusions of a 1999 CPA Study Group**

PARLIAMENTARY COMMITTEES

*National Assembly
Research Department
LUSAKA*

October 1996

INTRODUCTION

The work done by any Parliament in modern time is not only varied in nature, but considerable in volume. The time at its disposal is limited. It cannot, therefore, give close and detailed consideration to all the legislative and other matters that come up before it. As a result, it became necessary to establish Parliamentary Committees to transact a good deal of the business in Committees of the House, known as "miniature Parliaments" or Parliamentary Committees" with the same powers, immunities and privileges as the House itself.

Most, if not all, Parliaments in Commonwealth are based procedurally on the Westminster model. As such, procedures that are followed in Committees have basically been derived from the Westminster style. Thus, this paper is going to discuss the Committee system in the Zambian Parliament.

DEFINITION

S C Hawtrey and H M Barclay, in their book Parliamentary Dictionary, define a Parliamentary Committee as:

"Any Committee composed of a certain number of Members especially named, as distinguished from one which consists of all the Members of the House. The Committees appointments are provided for under the Standing Orders of each House. Their functions are set forth in the order appointing it, termed the order of reference. These Committees have power to send for persons, papers and records as a way of summoning witnesses to attend to give evidence or produce documents."

The above definition of Parliamentary Committees is similar to the one used to define a Committee in the Zambian Parliament.

DEVELOPMENTS OF COMMITTEES IN ZAMBIA

The origin of the Committee System in Zambia can be traced back to the Legislative Council's Standing Rules and Orders of 1956 which made provision for the creation of five (5) Sessional Committees. The Committees created included among others, the Standing Orders Committee, the House Committee and the Public Accounts Committee. However, there are currently fifteen (15) Sessional Committees in Zambia.

At independence in 1964, with the insertion of a new provision in the Republican Constitution, Article 91(1) empowered Parliament to determine its own procedure for Sessional Committees. These Committees were:

- i) the Standing Orders Committee;
- ii) the House Committee;
- iii) the Library Committee; and
- iv) the Public Accounts Committee.

The introduction of the One-Party Democracy in 1973, and the increased membership of the House from 110 to 135, prompted the establishment of three (3) more Committees on 19th February 1974. These were:

- i) the Committee on Parliamentary Procedure, Customs and Traditions;
- ii) the Committee on Absence of Members from the Sitzings of the House and Sessional Committees; and
- iii) the Committee on Delegated Legislation.

By the end of 1983, four more Committees had been set up in the Zambian Parliament. These were:

- i) the Committee on Parastatal Bodies;
- ii) the Committee on Government Assurances;
- iii) the Committee on Foreign Affairs; and
- iv) the Committee on Local Administration.

There were two more Committees created in early 1985. These were:

- i) the Committee on Agriculture, Land and Co-operatives; and
- ii) the Committee on Social Services.

During the late part of 1992, there was yet one more Committee formed. This was 'Committee on Women, Youth and Child Development'.

On 22nd January 1996, another Committee was formed known 'Committee on Education, Science and Technology'.

POWERS OF ZAMBIAN COMMITTEES

Committees in the Zambian Parliament, like in any other Commonwealth Parliament, are organs of the House with the same powers and privileges as the House itself. In the Zambian Parliament, these powers of the Committee have been enhanced by Chapter 17 of the Laws of Zambia, the National Assembly (Powers and Privileges) Act. In particular, Cap 17, part (iii) dealing with evidence, has given powers to the Assembly and any of its Committees to order the attendance of witnesses. Sections 13, 14 and 20 of Cap 17 and the Standing Orders 140(3) empowers the Committees to send for persons, papers and records whereas section 14(3) of Cap 17 deals specifically with exemption from attending or producing evidence before a Committee or the whole House and Section 19 of Cap 17 enumerates offences against the House or any of its Committees.

FUNCTIONS OF THE COMMITTEES

The major function of the Committees is to scrutinize the activities of the Executive (Government), Parastatal Bodies and Local Councils, and any matters referred to them by the House and within their terms of reference.

Parliamentary Committees are of two types: Sessional Committees and Select Committees.

Select Committees are Committees appointed to deal with specific issues as need arises. Upon completion of the Committees' assignments, the

Committees are dissolved. In other words, these are temporary Committees.

Under the Sessional Committees there are two Sub-groups namely; "House-Keeping Committees" and "Watchdog Committees".

1. House-Keeping Committees

This group consists of Committees concerned with the welfare of the Members - (matters of the House itself). Such Committees are chaired by the Hon Mr Speaker. These are:

- a) Standing Orders Committee - a Committee on privileges of the House. It considers proposals for the amendment of Standing Orders and recommendations regarding emoluments of Members of Parliament and staff. It is the most important Committee of the House.
- b) Library Committee - assists Mr Speaker with its advice on matters connected with the administration of the Library.
- c) House Committee - empowered to consider all matters relating to the comfort and convenience of Members, in terms of accommodation and the provision of amenities.
- d) Committee on Absence of Members from Sittings of the House - whose responsibility is to examine cases of absence by Members from sittings of the House and any Committee and to assist in ensuring that a quorum is always present in the House.
- e) Parliamentary Procedure, Customs and Traditions Committee - assists Mr Speaker with matters pertaining to the variations to parliamentary procedure, customs and traditions and to consider any matters connected therewith.

2. Watchdog Committees

This group consists of Committees whose membership is composed of back-benchers and have the mandate to elect their own Chairperson.

The Committees perform the role of 'watchdog' over the affairs of the Government and are empowered by the House to carry out investigations and report its findings to the House within its own terms of reference. These are:

- a) Committee on Delegated Legislation - scrutinizes and reports to the House whether the powers to make regulations, sub-rules, rules (Statutory Instruments) etc conferred by the Constitution or delegated by Parliament are being properly exercised by the Executive within the scope of such delegation.
- b) Public Accounts Committee - examines the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure. It considers mainly those matters drawn to it by the Auditor-General's Annual Reports.
- c) Committee on Government Assurances - scrutinizes the assurances, promises, undertakings, given by Ministers from time to time and to report on the extent to which such assurances, have been implemented and to see whether such implementation has taken place within the minimum time necessary for the purpose.
- d) Committee on Foreign Affairs - this Committee is charged with the specific responsibility of examining in detail all aspects of Zambia's foreign policy.
- e) Committee on Local Administration - monitors the activities of District Councils following the decentralization of Local Government under the Local Administration Act of 1980 which placed the responsibility of managing the affairs of the

District Council entirely into the hands of District Councils.

- f) Committee on Parastatal Bodies - examines reports and general performance of all parastatal bodies and ensures that they are run on prudent commercial practices. The Committee considers Annual Reports of the Auditor-General on accounts of Parastatal Bodies and account for those issues raised in the Auditor-General's report.
- g) Committee on Agriculture, Land and Co-operatives - monitors the implementation of Government policies on agriculture, fisheries, land use, co-operatives, marketing and the administration of parastatal bodies which are involved in the agricultural industry.
- h) Committee on Social Services - scrutinizes Government policies on the provision of social services in the country.
- i) Committee on Women, Youth and Child Development - scrutinizes Government policy on Women, Youth and Child Development.
- j) Committee on Education, Science and Technology - scrutinizes government policy on education, science and technology in relation to the development of education, science and technology, funding to enhance research and commercialization of appropriate education, scientific and technological innovations, and also examines the activities and administration of Ministries, statutory bodies and other institutions involved in the promotion and development of education, science and technology.

TERMS OF OFFICE

Parliamentary Committees hold office of a period of one year or as specified by the Speaker by a motion or until a new Committee is nominated.

QUORUM

A quorum for all Select Committees and Sessional Committees is four (4) with the exception of the Committee on Absence of Members from the Sittings of the House with five (5) Members.

GENERAL

The sittings of a Committee are held on such days and at such hour as fixed by the Chairperson of the Committee. If the Chairperson is not readily available, the Secretary may fix the date and time of a Sitting. The Committee Office, a Department under the Office of the Clerk of the National Assembly, provides secretarial services to Parliamentary Committees.

The sittings of Parliamentary Committees are held in private or camera. It is not allowed or permissible for a Member of the Committee or anyone who has access to proceedings of the Committee to communicate, directly or indirectly, to the press any information regarding its proceedings etc., before the report has been presented to the House.

All questions at any sitting of a Committee should be determined by a majority of votes of the Members present and voting. In the case of an equality of votes on any matter, the Chairperson or anyone acting as such, shall have a second or casting vote.

The Report of the Committee is presented to the House by the Chairperson or in their absence any Member of the Committee.

The Parliamentary Committee may appoint Sub-Committees to take evidence or call for documents, send for persons, papers and records, and make special Reports to the House.

The Members of the Committee enjoy the same rights and powers in regard to freedom of speech, arrest etc., as are enjoyed by Members of the House.

When a Member of the Committee has special, pecuniary or direct interest in any matter which is to be considered by the Committee, he or she is required to state (disclose) his/her other interest therein to the Speaker through the Chairperson of that particular Committee.

Membership to the Committee is open to all back-benchers regardless of their political parties. However, representation on the Committees is done proportionally to political parties represented in the House.

The Chairpersons of these Committees represents the Hon Mr Speaker.

Parliamentary Committees cease to exist on the dissolution of the National Assembly (Parliament).

i) **Committee Reports and Action-Taken Report (ATRs)**

After deliberations, Committees compile individual reports in which they make their views and recommendations known on matters discussed. The reports also include tours undertaken by Committees during the year to make on-the-spot examination of the operations of selected public institutions within and outside Zambia. Except for House-Keeping Committees, Committees' reports usually recommend Government action. Such action therefore become the responsibility of the Executive.

Once the reports have been adopted by the House, the various Permanent Secretaries and Chief Executives of parastatal bodies

and local Councils submit comments in response to the observations and recommendations of the Committees in consolidated "Action-Taken-Reports" or "Treasury Minutes" (ie. in the case of the Public Accounts Committee).

In accordance with the established Parliamentary Practice and Procedure, the Action-Taken-Report or Treasury Minutes must be laid on the Table of the House by the Executive sixty (60) days after the adoption of the Committee's Reports by the House.

It is also an established procedure that the Executive is under no obligation to accept the recommendations of the Committees but are required to state the reasons for any difference of opinion which the Executive may hold.

ii) **Unanimity**

Throughout their deliberations, Committees in the Zambian Legislature work as a team and have been unanimous in their decisions. The views of the majority have prevailed. This has been achieved partly due to the fact that the Standing Orders of the House do not provide for minority views and partly because the membership of the Committees is small and this has enabled Members develop a spirit of a common purpose that crosses political party lines.

iii) **Debating of Committee Reports in the House**

The Zambian Legislature has developed a tradition of debating Committee reports at length. The last sitting of the House in a session is usually dedicated to the adoption of Committee Reports.

CONCLUSION

The role of the Parliamentary Committee system in the Legislature and the legislative process cannot be over emphasized.

Their strengths and weaknesses are almost the same in most Commonwealth countries, especially in the Africa region. Since African Commonwealth countries have similar Parliamentary Committee systems it can be said that they face similar experiences such as lack of adequate resources or legal backing for their recommendations, hence, the importance of such gatherings where parliamentarians from the region can meet to share ideas and compare experiences which can help enable them eliminate their weaknesses and double their strength.

The Zambian experience indicates that if Committees have the power and resources to review the work of the Executive, they can have an impact. Even if they do not necessarily change government policies, Committee work can help the management of the Government institutions, and make them aware of their public responsibilities.

For this to succeed, however, the political party in power must be prepared to accept the idea of accountability and give Committees the resources they need.

It is, however, apparent that the current Committee system is beset with numerous constraints which inhibit its effectiveness and calls for reforms and change of attitude by all those concerned. The reforms include the media. It is pointless for Parliament to call the Executive to account unless the media is free to comment.

Hence as mentioned before, since the problems facing African countries are same, these countries should consider the following as focal points in improving their Committee systems.

These are:

- increase of funding to Parliament in order to match the increasing scope of activities of the Executive;
- review of present legal arrangements to compel the Executive to act on Committee recommendations once the House approves;
- review of current procedures of Committees to allow for public hearing and submissions; and
- to consider the introduction of certain Committees to examine bills in detail.

It must be understood that the impact of any Committee system lies in the fact that they can and do provide other modes of public debate, thus permitting a continuous surveillance of Government activities.

APPENDIX

NAME OF COMMITTEES	YEAR OF ESTABLISHMENT	APPOINTED BY	CHAIRPERSON	NO OF MEMBERS	SUBJECT	QUORUM
Standing Orders	1956	Mr Speaker	Mr Speaker	8	Standing Orders and staff matters	4
House	1956	Mr Speaker	Mr Deputy Speaker	8	comfort of Members and connected matters	4
Public Accounts	1956	House	Opposition	10	Examine Public Accounts	4
Parliamentary Library (prior to 1964, part of the House Committee)	1964	Mr Speaker	Mr Deputy Speaker	8	Welfare of the Library	4
Parliamentary Procedure, Customs and Traditions	1974	Mr Speaker	Mr Speaker	8	Parliamentary Procedure Customs and Traditions and any matters connected therewith.	4
Absence of Members from Sitzings of the House	1974	Mr Speaker	Mr Deputy Speaker	9	absence of Members and ensures quorum is always present in the House.	5
Delegated Legislation	1974	Mr Speaker	elected	8	scrutinizes if rules are made in accordance with the Constitution	4
Parastatal Bodies	1983	Mr Speaker	elected	8	examines performance of parastatal bodies and Accounts presented by the Auditor-General	4
Government assurances	1983	Mr Speaker	elected	8	scrutinizes promises made by Ministers	4

Foreign Affairs	1983	Mr Speaker	elected	11	deals with foreign policy	4
Local Administration	1983	Mr Speaker	elected	10	scrutinizes activities of District Councils	4
Agriculture, Lands Co-operatives	1985	Mr Speaker	elected	10	monitors Government policy on Agriculture	4
Social Services	1985	Mr Speaker	elected	10	scrutinizes Government policies on social services in the country	4
Women, Youth and Child Development	1992	Mr Speaker	elected	10	scrutinizes Government policies on Women, Youth and Child Development	4
Education, Science and Technology	1996	Mr Speaker	elected	10	scrutinizes Government policies on education, science and technological development.	4

22.10.96
/m

DEPARTMENTALLY RELATED STANDING COMMITTEES



सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

DEPARTMENTALLY RELATED STANDING COMMITTEES

During the closing months of the life of the Eighth Lok Sabha, the Rules Committee considered and approved a proposal that three Subject Committees, on (i) Agriculture (ii) Environment & Forests and (iii) Science & Technology might be set up for ensuring effective parliamentary surveillance over the working of the concerned Ministries/Departments and allied Governmental organisations. The rules relating to these Committees were finally approved by the House and the Committees were formally constituted with effect from 18 August, 1989.

After observing the functioning of these Committees for some time there was general consensus among all concerned that the Parliament should go in for a full fledged Departmentally related Standing Committee System. The Reports of Rules Committees of the Tenth Lok Sabha and Rajya Sabha adopted by the two Houses on 29 March, 1993 paved the way for the setting up of the Departmentally related Standing Committees covering under their jurisdiction all the Ministries/Departments of the Union Government. With the setting up of these Committees, the 3 Subject Committees constituted in August, 1989 ceased to exist. The 17 Departmentally related

Standing Committees formally constituted with effect from April, 1993 and the Ministries/Depts. under their jurisdiction are as follows :—

Sl. No.	Name of the Committee	Ministries/Departments
1	2	3

Part I

1.	Committee on Commerce	(1) Commerce (2) Textiles
2.	Committee on Home Affairs	(1) Home Affairs (2) Law & Justice and Company Affairs (3) Personnel, Public Grievances & Pensions
3.	Committee on Human Resource Development	(1) Human Resource Development (2) Health and Family Welfare
4.	Committee on Industry	(1) Industry (2) Steel (3) Mines
5.	Committee on Science & Technology, Environment & Forests	(1) Science & Technology (2) Electronics (3) Space (4) Ocean Development (5) Biotechnology (6) Environment & Forests

1	2	3
6.	Committee on Transport and Tourism	(1) Civil Aviation (2) Surface Transport (3) Tourism

Part II

7.	Committee on Agriculture	(1) Agriculture (2) Water Resources (3) Food Processing
8.	Committee on Communications	(1) Information and Broadcasting (2) Communications
9.	Committee on Defence	Defence
10.	Committee on Energy	(1) Coal (2) Non-conventional Energy Sources (3) Power (4) Atomic Energy
11.	Committee on External Affairs	External Affairs
12.	Committee on Finance	(1) Finance (2) Planning (3) Programme Implementation
13.	Committee on Food, Civil Supplies and Public Distribution	(1) Food (2) Civil Supplies, Consumer Affairs and Public Distribution

1	2	3
14. Committee on Labour and Welfare	(1) Labour (2) Welfare	
15. Committee on Petroleum and Chemicals	(1) Petroleum & Natural Gas (2) Chemicals & Petro-chemicals (3) Fertilizers	
16. Committee on Railways	Railways	
17. Committee on Urban and Rural Development	(1) Urban Development (2) Rural Development	

The Committee specified under Parts I & II above work under the directions of the Chairman, Rajya Sabha and the Speaker, Lok Sabha, respectively.

Composition

Each of these Committees consists of 45 members—30 from Lok Sabha nominated by the Speaker and 15 from Rajya Sabha nominated by the Chairman, Rajya Sabha. Seats on each Committee are allocated to different parties and groups in the House, as far as practicable in proportion to their respective strength in the House. Suitable number of seats on these Committees are also allocated to independents and unattached members. Members of Rajya Sabha are nominated to each of the Standing Committees by the Chairman, Rajya Sabha in a like manner.

Appointment of Chairman

The Chairman of each of the Standing Committees specified in Part-I is appointed by the Chairman, Rajya Sabha and in respect of Committees specified in Part-II by the Speaker, Lok Sabha from amongst the members of the Committee.

Minister not to be a Member of the Committee

A Minister is not eligible to be nominated as a member of any of the Standing Committees and if a member, after his nomination to any of the Standing Committees, is appointed a Minister, he ceases to be a member of the Committee from the date of such appointment.

Term of Office

The term of office of each Standing Committee is one year from the date of its constitution.

Functions

The functions of each of the Standing Committees are :—

(a) To consider the Demands for Grants of the concerned Ministries/Departments and make a report on the same to the Houses. The report shall not suggest anything of the nature of cut motions;

(b) to examine such Bills pertaining to the concerned Ministries/Deptts. as are referred to the Committee by the Chairman, Rajya Sabha or the Speaker, Lok Sabha as the case may be, and make report thereon;

(c) to consider annual reports of Ministries/Deptts. and make reports thereon; and

(d) to consider national basic long term policy documents presented to the Houses, if referred to the Committee by the Chairman, Rajya Sabha or the Speaker, Lok Sabha as the case may be, and make reports thereon.

The Standing Committees do not consider the matters of day-to-day administration of the concerned Ministries/Departments.

The Standing Committees also do not generally consider the matters which are under consideration by other Parliamentary Committees.

Procedure relating to consideration of Demands for Grants

After the general discussion on the Budget in the House is over, the Houses are adjourned for a fixed period. The Committees consider the Demands for Grants of the concerned Ministries during the aforesaid period and submit their report within the period without

seeking any extension of time for the same. There is a separate report on the Demands for Grants of each Ministry. The Demands for Grants are considered by the House in the light of the reports of the Committees.

Procedure relating to consideration of Bills

The Committee consider only such Bills introduced in either of the Houses as are referred to them by the Chairman, Rajya Sabha or the Speaker, Lok Sabha as the case may be. The Committees consider the general principles and clauses of the Bills referred to them and make report thereon within the given time.

Examination of Annual Reports

Besides consideration of Demands for Grants and the Bills referred to them, the Committees may select other subjects for examination on the basis of Annual Reports of the Ministries/Departments within the jurisdiction of the respective Committees.

Appointment of Sub-Committees/Study Groups

The Chairman may appoint Study Groups/Sub-Committees from amongst the members of the respective Committee with a view to making detailed study/examination of the subject selected by them, scrutinising the action taken by the Government on the recommendations contained in their previous reports and for considering procedural and general matters.

Procedure for Examination of Subjects

Calling for information

The Standing Committees call for in the first instance, preliminary material/background notes from the Ministries/Departments/Organisations concerned, in regard to the subjects selected by them for examination. Subsequently, detailed information covering various aspects of the subjects under examination is called for from the concerned Ministries/Organisations for indepth study.

Memoranda/Evidence of Non-Officials

The Standing Committees may call for Memoranda on the subjects under examination from leading non-official organisations, individuals etc. who are knowledgeable in the field/subject under examination by the Committees. They may also call upon individual experts/representatives of non-official organisations who have submitted memoranda on the subjects under examination, to appear before them to give oral evidence.

Evidence of Officials

The Standing Committees later take oral evidence of the representatives of the Ministries/Departments/Organisations concerned with the subjects under examination.

Association of Specialists/Technical Experts/Consultants etc.

The Standing Committees may associate specialists/technical experts/consultants etc. at various stages of examination of a subject, if necessary.

On the Spot Visits/Study Tours

The Committees/Study Groups of the Committees may with prior permission of the Speaker, undertake, if necessary, on the spot study/visits of various Institutions and Establishment connected with the subject matter under consideration.

Reports and Minutes

The conclusions of each of the Standing Committees on a subject examined are contained in its report, which after its adoption by the respective Committee and factual verification by the Ministry concerned, is presented by the concerned Chairman to the respective Houses. The reports are adopted by broad consensus among the members. However, a member of the Standing Committee may give a note of dissent on the report of the Committee and it is presented to the Houses alongwith the report.

The minutes of the sittings of Committees are laid on the Table of the House alongwith the relevant reports.

Action Taken Reports

The Reports of the Standing Committees have persuasive value and are treated as considered advice given by the Committees. The Bills, which are reported upon by the Committees, are considered by the Houses in the light of the reports of the Committees. In respect of reports on Demands for Grants and other subjects the Ministry or the Department concerned is required to take action on the recommendations and observations contained in the report and furnish action taken replies thereon, within three months.

Action taken notes received from the Ministries/ Departments are examined by the Committees and Action Taken Reports thereon are presented to the House.

[Standing Committees of Lok Sabha are governed by rules 331C to 331N of the Rules of Procedure and Conduct of Business in Lok Sabha.]

PARLIAMENTARY COMMITTEES: ENHANCING DEMOCRATIC GOVERNANCE

A Report of the Commonwealth Parliamentary Association
Study Group on Parliamentary Committees
and Committee Systems

Written and compiled by
Dr Gordon Barnhart



Cavendish
Publishing
Limited

London • Sydney

Members of the Study Group

Mr Jim Anderton, MP, New Zealand

Mr Heng Chiang Meng, MP, Singapore

Dr the Hon CT Kuruneri, MP, Zimbabwe

Mr Desmond Leakey, MP, Jamaica

Senator David MacGibbon, Australia

Mr Peter Milliken, MP, Canada

Mr Giles Radice, MP, United Kingdom

Shri Jaswant Singh, MP, India

Rapporteur: Dr Gordon Barnhart, Canada

Assisted by: Ms Laura Cavendish, CPA Acting Assistant Editor

THE FUTURE OF THE COMMITTEE SYSTEM

Committees have changed over the years and are ever adapting to the new expectations placed on them and on Parliament. To remain relevant, committees will have to continue to change and evolve. The main purpose of a committee, and in fact, of the Parliament is to hold the government accountable. As government continues to play an important role in the development of society and the provision of public services such as health care and education, Parliament through its committees will have to bolster its efforts to review government policy and expenditure estimates and report to the people.

Members of the study group compiled a list of possible ways that committees could strengthen themselves and improve the overall operation of Parliament. These points are not recommendations but 'positive options'. Each Parliament cannot take this complete list and adopt it as the recipe for a model Parliament. The circumstances, the needs and problems in each Parliament are very different. What will work in one political culture will not necessarily work in another. It should also be noted that the following positive options were not all agreed upon unanimously but are the reflection of a variety of points of view. The study group is of the hope that Parliaments throughout the Commonwealth will find some of the options useful to them in their situation as they review procedures and consider ways of strengthening their committee structures.

The study group offers 21 positive options for consideration:

- (1) Membership on the committees should be based on the member's experience and professional training. Members of Parliament with specific expertise should be invited to apply this experience to the tasks facing a committee. Members of the study group were aware of the counter argument that members could be viewed as having vested professional interests and thus should not be on committees specializing in that particular field. On balance, the group believed that the issues of the world are becoming so specialized that members trained in specific fields could be helpful to the committee without necessarily having a conflict of interest.
- (2) In order to build a greater degree of experience on a committee, all committees should be established for the life of the Parliament (likely four years on average). When members have longer to work together and to share their collective expertise, the committee will be considerably stronger.

Parliamentary Committees

- (3) In the same light, substitutions of members on committees should be reduced and made more difficult to achieve. New members put on a committee at a moment's notice and without the background of the subject under investigation will be there only as a replacement and following orders from the whip. This is hardly a way to build either expertise or independence on the committee.
- (4) Have committees smaller, thus making it easier for members to plan committee hearings when everyone can attend and thus avoiding the necessity for substitutions.
- (5) The size of the committees should be a reflection of the size and resources of the particular House. No one formula can be outlined as to the ideal size of a committee.
- (6) The study group clearly saw the need for more independently minded members who would be willing to work together for the betterment of the Parliament and would resist the undue influence of the party whip.
- (7) The success of any committee will be determined by the amount of research resources that are made available to the committee. Members cannot be expected to be knowledgeable about every topic. Committee members are expected to be prepared on many topics within a short period of time and be able to match wits with experienced public servants. No member has the time to do all of this and keep in touch with their constituents. Research resources in the form of either personal or caucus researchers, resources through a parliamentary library and access to the world wide web should and could be provided to members. Decisions on the provisions of these services ideally should be made by Parliament itself through a board or committee on parliamentary administration. This means that members would decide on services to members. With the information explosion, members need assistance in collecting, sorting and assessing this information and applying it to the proceedings in the House and committee.
- (8) Committees should be organized along the lines of government itself. Committees should be established to match key governmental departments. More emphasis could be placed on the review of estimates to ensure prudent spending by government. In order to motivate members to devote time to the review of estimates, members could be empowered to shift the priorities of the estimates by raising some votes and lowering others as long as the totals were not increased. Cabinet's responsibility for the collection of taxes and control of the public purse must be respected but members have to be given some incentive to review estimates other than to just watch for government mismanagement.
- (9) All-party committees could be utilized in place of public commissions and would likely report in a shorter period of time at less cost.

Commissions and judicial inquiries tend to be batteries of lawyers battling it out to protect their own group of interests. Parliamentary committees, especially if they were politically neutral, could provide political insight into the problem and could offer recommendations that might be more acceptable to government. Committee reports would perhaps not sit on book shelves quite as much as commission reports and would cost considerably less.

- (10) For bicameral Houses, prestudy is an option. Usually, government Bills are introduced by a minister in the lower House. In order to save some time and to review the Bill more thoroughly, the upper House could also review the clauses of the Bill before it passes the lower House. Amendments suggested by the upper House could then be incorporated by the lower House in its committee review. Once the lower House has finished its review, the upper House could pass the Bill expeditiously knowing that its amendments have already been incorporated into the Bill.

There are two disadvantages to prestudy for the upper House. With prestudy, the amendments sent by the upper House to the lower House are often credited to the lower House while the upper House gets none of the credit for the improvements to the Bill. Critics of upper Chambers also claim that legislation passes through the upper House without a word and that this demonstrates there is no point in having an upper House. This argument fails to acknowledge that the upper House has been working on the Bill for some time before its formal review of the Bill. In both cases, the upper House is usually not given credit for the hard work it has done. However, prestudy does improve the efficiency of the handling of the legislation through Parliament.

- (11) Some Houses have experimented with reference of a Bill to committee before second reading. A Bill that has not yet been approved in principle is much more open to amendment than after second reading. Once the Bill has passed committee, it would be sent to third reading and approval. The criticism of this option is that there would be little or no debate in the Chamber on the Bill thus reducing the chance for the opposition to publicly debate the Bill. Approval in principle could still be done in the Chamber after committee review but this would take as much time as the present procedure. At least there would be more opportunity for amendment before approval in principle.
- (12) Some Houses have experimented with the drafting of Bills in principle before the government introduces them into the chamber. This option gives Private Members a greater opportunity to design and draft legislation before it is introduced and the sides are drawn in the debate. But opposition members may ask why they should work hard to improve legislation, consequently, making the government look better. This option

Parliamentary Committees

does offer a more constructive role for Private Members, but it does co-opt opposition members and could prevent them from speaking critically of the Bill during consideration by the Parliament. There are advantages and disadvantages to this option.

- (13) Steps should be taken to enhance the role of the Private Member in Parliament and reduce the partisan party control over members. In many Houses, Private Members are reduced to being voting machines. Reinvigorated committees with more independent members would revitalize the Parliament and give members a useful role to fill. This in turn could improve Parliament's public image. Members being able to truly represent their constituents rather than being pawns in the hands of the party whips would improve the public perception of politics and elected members.
- (14) Some countries, such as New Zealand, have implemented a form of proportional representation in order to make Parliament more representative of the various shades of opinion which constitute the public will. Although there was no consensus on this point in the study group, it was conceded that a government which has a small majority or which relies on a coalition of parties to remain in power is more responsive to members and their views. The New Zealand model of MMP by its very nature virtually ensures that government will not likely achieve a majority in Parliament and this, it is argued, enhances the role of Private Members.
- (15) As a positive option, international treaties should be examined and ratified by Parliament before being signed by the Prime Minister. Frequently, the Parliament is in the situation of having to pass an Act to ratify a treaty well after it has been signed thus leaving the Parliament facing a 'fait accompli'.
- (16) It was strongly agreed that Parliaments should be spending more time in committee reviewing proposed estimates and holding ministers to account for where the money has been spent and where it will be dedicated for the coming year. In order to make the estimate review worthwhile, it was suggested that members be given the power to move motions to reduce certain items and increase others as long as the overall budgetary amounts were not changed. Respect for the principle of the government's control over the raising of taxes and expenditure have to be maintained within the Westminster model, but Private Members could have some leeway without infringing on the government prerogative. Giving Private Members some scope for change and not just review would make the estimate process much more attractive to members and would enhance their role in the parliamentary process.
- (17) Wider powers of inquiry should be given to committees without having to go back to the House for approval. True investigation by Private

Members without the permission of the executive could enhance the role of Parliament and, particularly, the Private Member.

- (18) Chairs of the various committees should be divided up amongst the various parties represented in the House. If committees are to be more non-partisan and an area where Private Members can contribute to the parliamentary process, less control by government of the committee chairs would be advantageous.
- (19) Parliament should set its own budget as well as that for committees. Governments, if given the option of granting money for the operation of Parliament will choose to starve it in the hopes of weakening the source of criticism and delay. In the long run, healthy committees can create stronger and more accountable governments but it is rare for a government to see this long term advantage.
- (20) Modern technological inventions such as teleconferencing, video conferencing, electronic mail and the world wide web are all tools that a modern Parliament can use to its advantage. Where possible, these new technological inventions should be used to improve Parliament's research methods and communication between Parliaments and between the members and their constituents.
- (21) In order to strengthen Parliament and its committees, a less partisan approach should be used in the formation of the committees and in their proceedings. If Private Members continue to be ignored by the executive or are thought of as foot soldiers there only to protect the government and the party regardless of the issue, the existing cynicism amongst the public and the sense of discouragement amongst the members will only increase. A more relaxed party stance in committee and the enhancement of the role of Private Members will do much to improve the way people accept Parliament and politics.

If even a few of the above positive options are adopted by a Parliament, a marked improvement in the performance of that House and its committees will be noticed. No government will willingly reduce its own powers. It is up to the Private Members to assert themselves as useful members of the Parliament and to assume an important role in the review of legislation, estimates and in holding government accountable.

KC Wheare has observed that there are six basic roles of Parliamentary Committees: '... to advise; to inquire; to administer; to legislate; to negotiate; and to scrutinize and control'.¹ These six basic roles can only be fulfilled if Private Members take some initiative in asserting their independence.

¹ Wheare, KC, *Government by Committee: An Essay on the British Constitution*, 1965, Oxford: Clarendon.

Parliamentary Committees

In the ideal, more independent members working in effective committees will provide a better review of government activities, greater government accountability and a more thorough surveillance of the ever increasing role government plays in society. In the Westminster model, committees will never play the role that the American congressional committees do. The American committees, and in fact Congress, can exercise greater independence because they are subject to presidential veto. The American system is one of checks and balances that often give the appearance of stalemate.

The congressional model, as practised in the United States, has a further drawback in that the committee review of Presidential appointments causes some good candidates either to decline the nomination to avoid the intrusive investigation or to be dropped due to political deal making.

On the other hand, the Westminster model provides for the check and balance within the Parliament. Governments, to survive, must maintain a majority within the House and for this reason usually have stronger party discipline in order to keep members in line. The government, with a majority, is assured of getting its legislative and budgetary program through Parliament at the expense of limiting the powers of the Private Members and the committees. The study group has concluded that even though parliamentary-style committees will never be as powerful as those seen in the American congressional system, improvements could be made within Parliamentary Committees if the Private Members are given more independence to investigate and question.

If the committees were to be given more power, would this be at the expense of the power of the executive? Not necessarily. Power is not necessarily finite. Committees, and, thus, Private Members could be given a larger role in the parliamentary process with the result that the executive would have better advice and clearer communication with the people, thus enhancing its own power.

The study group concluded that the future is bright for the Parliamentary Committees and has offered 21 positive options for consideration. Committees will continue to evolve and adapt to the changing needs of the people. The common theme throughout the positive options is that the role of the Private Member must be enhanced and this can be done through the committees. This will be a complementary relationship. As the committees are strengthened, so too will the role of the Private Member. As Private Members assume new roles and responsibilities, they will enhance the role of the committees and ultimately restore some of the public confidence in Parliament and politics. It is up to Private Members throughout the Commonwealth to seize the moment and to use their talents to strengthen their roles within the parliamentary system as the Westminster model of democratic governance moves into the new millennium.

