

# The New Zealand legislative machine

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*In this article, the former Professor Palmer fills one of the gaps in the available descriptions of our system of government by providing a detailed account of how laws are made. As Deputy Prime Minister and Minister of Justice (and earlier Leader of the House) Geoffrey Palmer also indicates how the process has been altered in recent years, in part in the direction of making more deliberate what he referred to as the fastest law maker in the west. He evaluates that and indicates the next major step to be considered — the plain drafting of legislation.*

## I. INTRODUCTION

There are two famous quotations about legislation with which I would like to start. One is attributed to Lord Thring who in 1869 became the first parliamentary counsel ever appointed in England. It reads “Bills are made to pass as razors are made to sell”. It is a somewhat puzzling quotation the origin of which has been traced by Sir George Engle (himself currently first parliamentary counsel in the United Kingdom) to a popular poem of the day.<sup>1</sup> The saying has lasted because it encapsulates a truth: the first requirement of a bill is to pass through Parliament, and during its passage constraints and pressures are applied which have a powerful influence on its final shape. The second quotation comes from Woodrow Wilson, “[o]nce begin the dance of legislation, and you must struggle through its mazes as best you can to its breathless end — if any end there be.”<sup>2</sup> It makes a similar point, albeit more pessimistically. This latter quotation inspired the title of a brilliant American book about the progress of one bill through the United States Congress.<sup>3</sup>

The dance of legislation is indeed intricate. Each bill is a different dance and each dance has many different steps. The dance requires perserverance, stamina and a large

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I am delighted to take part in a tribute to Sir Guy Powles. His contribution to New Zealand and in particular to its public law has been enormous. The contribution runs well beyond our shores, not least in the amazing spread of the Office of the Ombudsman over the last 20 or 30 years.

1 G. Engle “‘Bills are made to pass as razors are made to sell’: practical constraints in the preparation of legislation” [1983] *Statute Law Review* 7.

A humorous eighteenth century poem ends as follows —

‘Friend’, quoth the razor-man, ‘I am no knave:

As for the razors you have bought,

Upon my soul, I never thought

That they would shave.’

‘Not think they’d shave!’ quoth Hodge with wondering eyes,

And voice not much unlike an Indian yell;

‘What were they made for then, you dog?’ he cries —

‘Made!’ quoth the fellow with a smile — ‘to sell’.

2 W. Wilson, *Congressional Government A Study in American Politics* (1885) 15th ed. 1973, 397.

3 E. Redman *The Dance of Legislation* (Simon & Schuster, New York, 1973). An interesting British book is H. S. Kent, *In on the Act* (MacMillan, London, 1979).

degree of esoteric knowledge. The purpose of the process is not to provide an obstacle course for good ideas but to provide checks and balances and quality controls on the content of new legislation. In this essay I want to look at the mechanics of the New Zealand legislative process and briefly consider what improvements could be made. In the single chamber Parliament of New Zealand, making law is no doubt simpler than in other countries. Nonetheless, it is extraordinarily complicated and consists of a complex interaction of each stage between a variety of institutions and personalities.

The standing orders of the New Zealand Parliament recognise four types of bills:

- \* Local Bills
- \* Private Members' Bills
- \* Government Bills
- \* Private Bills<sup>4</sup>

The first three types are public bills. They all deal with general public matters but government bills are introduced by a minister of the Crown and private members' bills are introduced by members who do not hold ministerial office. Local bills may be introduced by either a minister or private member but the content relates only to a particular locality.<sup>5</sup> Private bills are set apart in being for the benefit of individuals. There are rare occasions when it is necessary to change the general law as it applies to particular individuals or organisations.<sup>6</sup> It is with public bills promoted by the government that I am concerned in this essay. Government bills form by far the most numerous and important category of legislation.

The people who have the main input into the legislative process are public servants, ministers, members of Parliament and parliamentary counsel. The institutions in New

4 Standing Orders of the House of Representatives 1986, S. O. 198.

198. *Classification of bills* — If, during the passage of any bill through the House, any question arises as to the character of the bill, the Speaker shall decide whether the bill is a public bill or a private bill and whether, if a public bill, it is a Government bill, a private member's bill or a local bill.

5 "Local bills, as public bills, intrinsically involve the public interest although they are confined in their effects to a particular locality. This public interest factor is reinforced by the fact that only a local authority or public body may take the preliminary steps essential under the Standing Orders for the introduction of a local bill. While a bill may, in substance, be a local bill, if there is no local authority promoter outside the House the Standing Orders in respect of local bills cannot be complied with. All local authorities have statutory authority to promote local bills and in the case of harbour boards the promotion of special legislation in the form of a local bill is essential before reclamation and certain other construction work can proceed. However, the fact that a local authority is promoting a bill does not automatically make it a local bill; the bill must in substance be a local bill."

David McGee *Parliamentary Practice in New Zealand* (Government Printer, Wellington, 1985), 224.

6 "A private bill is defined as a bill which, not being a local bill, is designed for the particular interest or benefit of a person or body of persons whether incorporated or not. These commonly involve matters relating to private trusts — lands held on trust for community use, burial grounds, or deeds of family arrangement. Some, as in the example above, relate to marriage within the degrees of relationship prohibited by the Marriage Act. One of the most important uses to which private bills have been put is to facilitate reconstructions and amalgamations of individual banking corporations, such as those involving the ANZ Banking Group in 1979, and the Bank of New South Wales and the Commercial Bank of Australia in 1982. These latter examples show that private bills need not be intrinsically unimportant or trivial. They will never appear to be so to the parties promoting them in any case, but they need not be devoid of wider public significance to retain their private bill status." *Ibid.* 226.

Zealand which at the moment play the primary role in the legislative process are:

Government departments  
 Cabinet  
 The Legislation Committee of Cabinet  
 The Parliamentary Counsel Office  
 The Government caucus and caucus committees  
 The Legislation Advisory Committee  
 Select committees of Parliament  
 Parliament.

Until a bill is introduced into Parliament, the legislative process is driven by the executive branch of government. After that point the executive retains a high measure of control but this control is not absolute. It is modified by the actions of parliamentary select committees and caucus in particular. The origins of bills are many and the passage followed by each bill is never the same. While certain formal procedures have to be followed for all bills, the variety of paths through which a bill can twist and turn is quite remarkable. The starting place of any public bill is with ministers. A department may propose legislation but it will get nowhere unless the relevant minister agrees. Select committees can now hold hearings on the need for legislation and even make recommendations to the government about it. But for a government bill to be introduced it must be agreed to by Cabinet.

## II. THE CABINET LEGISLATION COMMITTEE

Every bill is unique and the people dealing with it are different. Although the institutions are the same, the major actors are different for most bills. The principal constant factor is the Cabinet Legislation Committee and in particular its chairman who must take particular interest in all legislation. In most governments that minister is also the minister of justice. The Department of Justice administers more statutes than any other department and promotes more bills. The Justice Department is also permanently represented at all proceedings of the Cabinet Legislation Committee as is the chief parliamentary counsel responsible for the drafting of legislation. The senior government whip responsible for the progress of a bill through the house is also a member of the Cabinet Legislation Committee in Labour governments, although not a member of Cabinet itself.

The purpose of the Cabinet Legislation Committee is to look at the draft, approve the drafting, ask questions about the need for certain features and deal with technical matters such as the width of the regulation-making powers in a bill, constitutional questions and also sort out features which may give rise to political difficulty in the latter legislative stages. Its terms of reference are:<sup>7</sup>

- (i) To determine the drafting priority to be accorded to proposals for legislation.

<sup>7</sup> *The Cabinet Manual*, Annex 7. The powers of the Cabinet Legislation Committee have been enhanced by the recent adoption by Cabinet of the proposals of the Legislation Advisory Committee in its report on *Legislative Change: Guidelines on Process and Content* (Government Printer, Wellington, 1987) and see p.292 below.

- (ii) To examine draft Bills included in the legislation programme, to ensure that their policy content has been approved by the appropriate Cabinet Committee or by Cabinet, and to report thereon to Cabinet.
- (iii) To consider the recommendations of the House of Representatives on parliamentary petitions referred to the Government.

Often there will be controversy in the executive branch of government about the features of a measure. Officials will have different views about the merits of legislation, depending on the departments from which the officials come. It is necessary to sort this out at the policy stage. It should not be done by the Cabinet Legislation Committee which is not a policy committee. Usually policy is settled prior to the bill being drafted but sometimes the controversy flows into the drafting process and the work of the Legislation Committee of Cabinet. However no bill can be drafted until the policy is settled and that is done by other cabinet committees or the full Cabinet itself, often assisted by caucus committees. Sometimes the generation of the policy can be a very long and confused process.

### III. THE LEGISLATIVE PROGRAMME

The primary vehicle for organising legislation in New Zealand is the legislative programme. This is designed and supervised by the Cabinet Legislation Committee. The legislative programme is settled by asking ministers to send in their requests for bills, including a brief description of the bills, why they are needed, what their features will be and how urgent they are. An example of the form used for this procedure in 1986 is attached as Appendix 1. It is the actual return made by the Department of Justice for the Constitution Bill, which later became the Constitution Act 1986. The form to be used following the very recent report of the Legislation Advisory Committee on *Legislative Guidelines* is more detailed.

When all the bids are in, the Cabinet Legislation Committee in conjunction with the chief parliamentary counsel evaluates the bids, discusses them and sets them in an order of priority. The grading system used by the current government is quite specific. It consists of categories of priority organised by date of introduction. The longer period each year which Parliament now sits means that it is possible to plan more precisely when legislation will be introduced.

In settling the legislative programme the Cabinet Legislation Committee will hear from officials in various departments as to why certain legislation is wanted and it will attempt to winnow out as many items as possible. There are a number of legislative perennials on the legislative programme. They are items which departments wheel up year after year because, lacking sufficient priority, they have never been reached. Once the Cabinet Legislation Committee has considered its programme and established its priorities, these are agreed or modified by the full cabinet. The programme is then settled. An example of a recent legislative programme is attached as Appendix 2. It was settled in June 1985 and a number of items had still not reached Parliament by the middle of 1987, although a number of items not on the programme had also been introduced and passed.

No legislative programme can exist for very long without amendment. Priorities change constantly. The Cabinet Legislation Committee has to deal with these changes in a somewhat flexible way and make changes to the programme as it goes along. I would doubt that any legislative programme has ever been fulfilled. Quite a number of items on the legislative programme are never actually drafted into bills and introduced in the life of the programme. Slippage is an inevitable quality of legislative programmes. Instructions must first be delivered to parliamentary counsel. Sometimes this does not happen either because policies change or because the department concerned is unable to complete the necessary work. A further problem is a shortage of parliamentary counsel. Often those available cannot draft all the Bills on the programme. But since Parliament cannot handle much more legislation than it deals with now, perhaps this problem is not as serious as it might seem.

Politics is about priorities. Bills are the legislative vehicles for political programmes. The management of the legislative programme of the government is, therefore, a matter which requires continuous and careful attention. There are often hitches and anomalies in it. And new items may appear on the legislative programme due to unforeseen difficulties which turn up in the law and which require urgent repair. For example, the New Zealand Court of Appeal ruled in 1986 that undercover police officers giving evidence in court could be asked their true names and addresses.<sup>8</sup> The police approached the government with detailed submissions claiming that their undercover programme against drug dealers and others could be placed in serious jeopardy by this decision. The names of the undercover officers would become known and their safety could be endangered. Accordingly, legislation was prepared to overcome that problem while at the same time protecting the right of the accused to a fair trial.<sup>9</sup> The decision came down from the Court of Appeal on 19 June and the legislation was introduced on 8 July 1986 and was assented to on 30 September 1986. This is an example of the legislative process acting very rapidly.

It can be contrasted with the Dependent Persons' Welfare Bill and the companion measure, the Dependent Persons' Property Bill which were under discussion by the previous government prior to July 1984. The policy was settled by me as minister shortly after I came into office but the bill was not introduced until December 1986 and was still being considered by a select committee when Parliament was dissolved before the 1987 elections. For groups interested in that legislation it must look as though we had the slowest not the fastest law in the west. But because the legislative programme can only accommodate a certain amount in any given parliamentary year, the government has to decide on those matters to which it gives highest priority.

There are also a number of pieces of legislation each year which are absolutely essential and must be passed, offering no discretion to the government in the matter. Each year the budget is introduced by means of the Appropriation Bill, and in each

8 *R v. Hughes* (1986) unreported CA 10/86 19 June 1986.

9 Protection of Undercover Police Officers Bill which became the Evidence Amendment Act 1986, Crimes Amendment Act (No 3) 1986 and Summary Proceedings Amendment Act (No 2) 1986.

session two to three Imprest Supply Bills are necessary whereby the government obtains interim finance. Legislation is also necessary each session to confirm various orders made by regulation.<sup>10</sup> It is the case that important social legislation frequently waits because of the need to pass legislation which is legally necessary. These bills can take a large amount of parliamentary time. The parliamentary processes relating to the budget are particularly time consuming and they do detract from the ability to do other legislative work.

#### IV. THE PARLIAMENTARY COUNSEL OFFICE

No drafting commences until a bill is entered on the legislative programme and until full instructions are sent to the Parliamentary Counsel Office by the department whose minister is sponsoring the bill. The settling of instructions is a very important stage in the legislative programme and can sometimes take a long time. Often it is done by means of departments preparing what they consider to be an appropriate draft bill. But this is not the best method of preparing instructions and it seems far preferable for the departments to state in considerable detail in ordinary english what it is they want to have in the bill, rather than try and do the job of parliamentary counsel themselves. Chief Parliamentary Counsel has discussed this in a valuable way in a paper appended to the Report by the Legislation Advisory Committee, *Legislative Change: Guidelines on Process and Content* (1987).

When the instructions are received, the bill is allocated to one counsel who becomes responsible for it at all stages until it becomes an Act. This counsel works closely with the department's officers, not of course deciding policy but often raising the issues of policy which have to be settled. Form and substance are inextricably linked and questions constantly arise for settlement. If a bill affects another department, counsel will send a copy of the draft to that department for its comments. A completed bill may have as many as half a dozen or more revisions. The duties of parliamentary counsel are set out in the Statutes Drafting and Compilation Act 1920.<sup>11</sup>

10 For example the Customs Orders Confirmation Act (No 2) 1985, Primary Products Marketing (Regulations Confirmation) Act 1985, Social Security (Rates of Benefits) Orders Confirmation Act (No 2) 1985. These statutes replace former statutes with the same name.

11 Statutes Drafting and Compilation Act 1920.

*Duties of officers of Bill Drafting Department —*

(1) The duties of the officers of the Bill Drafting Department shall be —

- (a) To draft such Government Bills as the Ministers of the Crown may direct to be prepared for the consideration of Parliament, and such amendments of such drafts as may from time to time be required by Ministers of the Crown during the passage of such Bills in Parliament.
- (b) To supervise the printing of such Bills and amendments.
- (c) To examine all local Bills and to report to the Prime Minister or the Attorney-General whether and to what extent the provisions of any local Bill affect the rights of the Crown or of the public, or repeal, extend, or amend the provisions of any public statute, and generally as to the form and effect of each local Bill.
- (d) If and when so directed by the Prime Minister or the Attorney-General, to report as to the form and effect of any Bills other than local Bills introduced by private members into [the House of Representatives].
- (e) Such other duties relating to the drafting and preparation of statutes and regulations to be made

When a final version is settled, the bill is approved for introduction by the Cabinet Legislation Committee, the full Cabinet and caucus. Changes continue to be made however. Parliamentary counsel must attend select committees when the bill is discussed and sit in the "officials seat" to advise the minister when the bill is discussed by the full House in Committee. The Parliamentary Counsel Office works under continuous pressure.

## V. THE LEGISLATION ADVISORY COMMITTEE

The time available to the Cabinet Legislation Committee to consider intricate and difficult legal questions arising out of bills is limited. So recently an innovation has been introduced. This is the Legislation Advisory Committee chaired by the former Chief Ombudsman, Sir George Laking, and comprising the Chief Parliamentary Counsel, representatives from the Department of Justice and the Crown Law Office, a Planning Tribunal Judge, a professor of law, private practitioners with expertise in public law and a member of the Law Commission. This committee advises me, as Minister of Justice, on aspects of bills with public law implications. In particular it concentrates on ensuring that adequate protection is given to an individual dealing with government agencies or personally affected by the operation of a statute. Some common examples are licensing procedures, adequate rights of appeal, avoiding the creation of wide subjective powers exercisable by officials, and checking that powers of entry are justified and appropriately cast.

This is a convenient place in which to give just one specific example of the great contribution which Sir Guy Powles has made to public law in New Zealand. In his 1975 and 1976 annual reports as Chief Ombudsman he pointed to the need for a comprehensive review of the more than 150 statutes which with considerable lack of uniformity conferred powers of entry into private property on officials. This resulted in a substantial report by the Public and Administrative Law Reform Committee (the predecessor to the Legislation Advisory Committee) and the subsequent recasting by Parliament of many powers of entry.<sup>12</sup>

The Legislation Advisory Committee's terms of reference are:<sup>13</sup>

- (a) to scrutinise and make submissions to the appropriate body or person upon aspects of bills introduced into Parliament affecting public law or raising public law issues;
- (b) to report to the Minister of Justice or Legislation Committee of Cabinet on the foregoing aspects of legislative proposals which the Minister or that committee refers to it;

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under the authority of statutes as the Prime Minister or the Attorney-General may from time to time assign to be performed by the Bill Drafting Department.

(2) In addition to the duties hereinbefore referred to the [Chief Parliamentary Counsel] shall, if and when so directed by the Prime Minister or the Attorney-General upon the request of a local authority, revise any local Bill proposed to be promoted by such local authority.

12 *Report of the Ombudsman 1975, 48-49; Report of the Chief Ombudsman 1976, 10-13; Statutory Powers of Entry* 17th Report of the Public Administrative Law Reform Committee 1983.

13 Letter formally appointing Sir George Laking as Chairman of the Legislation Advisory Committee from Minister of Justice dated 24 March 1986.

- (c) to advise the Minister of Justice on such other topics and matters in the field of public law as the Minister from time to time refers to it.

As can be seen the committee performs three functions. Firstly, it acts as a watchdog because new legislation will be scrutinised by it at some stage. Secondly, legislative proposals which clearly raise difficult civil liberties issues can be directly referred to the committee prior to the final drafting of the bill. Thirdly, the committee deals with more general issues. It has for example just published its report, *Legislative Change: Guidelines on Process and Content*. As that title indicates the report in part takes the form of a checklist of questions relating to both the process and content of legislation. For example, the committee considers that the questions of who should be consulted and when and in what way consultations should take place should be considered carefully at an early stage of policy formulation. Such basic questions as whether the legislation is actually necessary and does achieve its objectives should be asked, in addition to checking that it fits appropriately into the general body of the law, complies with basic principles and is accessible and understandable.

The type of scrutiny that this committee can undertake is important because our Parliament has no second chamber. If the committee is able to give advice on a proposed bill prior to its introduction, any recommendations, if accepted, can be reflected in the introduction version. Where this is not done, the committee is able to make submissions to a parliamentary select committee considering the bill. Probably its most valuable work is done where difficult questions arise in the course of the proceedings of the Cabinet Legislation Committee and as a result, those questions are referred to the Legislation Advisory Committee.

The committee has a separate existence from the Law Commission but it also has a close association with it.<sup>14</sup> Professor K. J. Keith is a member of the committee and the Law Commission. The Law Commission is the focus for long-term law reform in New Zealand while the Legislation Advisory Committee is concerned mostly with specified and immediate legislative issues. The Legislation Advisory Committee has done extremely useful work in the time that it has been established and it has made material contributions on a great variety of bills, such as the International Terrorism (Emergency Powers) Bill, Reserve Bank Amendment Bill, Social Security Amendment Bill, and State-Owned Enterprises Bill. As an example of its contribution, a discussion of the committee's submission on the Immigration Act 1986 is attached as Appendix 3.

The broader purposes and functions of the Law Commission are indicated by sections 3 and 5 of the Law Commission Act 1985.

**3. Purpose** — The purpose of this Act is to promote the systematic review, reform, and development of the law of New Zealand.

**5. Functions** — (1) The principal functions of the Commission are —

- (a) To take and keep under review in a systematic way the law of New Zealand.

<sup>14</sup> Law Commission Act 1985.



- (b) To make recommendations for the reform and development of the law of New Zealand.
  - (c) To advise on the review of any aspect of the law of New Zealand conducted by any Government department or organisation . . . and on proposals made as a result of the review.
  - (d) To advise the Minister of Justice on ways in which the law of New Zealand can be made as understandable and accessible as is practicable.
- (2) In making its recommendations, the Commission —
- (a) Shall take into account te ao Maori (the Maori dimension) and shall also give consideration to the multicultural character of New Zealand society; and
  - (b) Shall have regard to the desirability of simplifying the expression and content of the law, as far as that is practicable.

## VI. CAUCUS

The caucus committees of government reflect, although they do not replicate, the organisation of Cabinet. There are more than twenty committees loosely based on sector interests and usually chaired by a backbencher. Ministers are always members of the relevant committee although they are not always able to attend regularly. Committees meet about every fortnight and a major part of their work is considering new legislation and policy initiatives. Submissions are made to the minister concerned, particularly when new policy is being introduced. Although caucus input is liable to be foreshortened if the legislation is urgent, bills with complex or new policy tend to have a long preparation time and do receive in depth consideration by the caucus committees.

Each committee is assisted by a research officer from the Government Research Unit and it is fairly common for informed members of the public or officials to be asked to attend. Lobbyists may ask for time to put their point of view about prospective legislation to caucus committees. For example, delegations from the conservation groups lobbied the Environment Committee in connection with the Conservation Bill 1986. Often the members of a particular caucus committee are also members of the parliamentary select committee which considers the bill after it is introduced, providing a useful continuity.

All new legislation goes to the full caucus meeting before it is introduced. At this stage the chairperson of the relevant committee may speak as well as the minister in charge of the bill. However there is not usually time for a lengthy discussion of new bills at this meeting and only a few members of the caucus will have read the bills fully. There are occasions when caucus holds legislation up and very rarely when it will not agree to a bill at all.

## VII. THE BILL IN PARLIAMENT

Once legislation is introduced to the House, another phase in the process begins. The function of government is to govern and of Parliament to scrutinise. It has been said that three principal purposes are achieved by the scrutiny of bills by Parliament. The first is the examination of the bill, the second is the examination of the minister and his departmental officers, and the third is the examination of government policy both as

reflected in the bill and in general terms.<sup>15</sup> An issue which is crucial to this scrutiny is the balance of power between executive and Parliament, whether too much control over Parliament is exerted by the executive? The balance between the two is complex and subject to strong pressures and fluctuations. It is important to keep this question in mind when considering the various stages in the passage of a bill through Parliament.

The introductory debate is limited to two hours. The opposition is usually given a copy of the bill on the day it is introduced or sometimes a day or two before. The day that a bill is to be introduced in the House it appears on the table of the House when the House meets. The number of copies supplied is generally sufficient to ensure that members of Parliament who wish to speak on the bill have the opportunity to read it before it is debated. Bills cannot be introduced until after question time.<sup>16</sup>

The introductory debate can either be a political attack on the bill if it is politically controversial, or it may be confined to asking questions of a technical nature on the features of the bill. There is no particular pattern to introductory debates, although members apart from the first speakers on each side, are limited to ten minutes for their first contributions and five minutes their second.<sup>17</sup>

The bill is then referred to a select committee and under the Standing Orders of the New Zealand Parliament, all bills except a narrow range of money bills have to be referred to select committees.<sup>18</sup> The only exception to this is where a bill is introduced

15 J. A. G. Griffith *Parliamentary Scrutiny of Government Bills* (Allen & Unwin, London, 1974), 232.

16 S.O. 205.

205. *Copies of bill to be laid on Table —*

- (1) On receiving advice that a Government bill is to be introduced, the Clerk shall cause copies thereof to be laid upon the Table.
- (2) Copies of a bill laid upon the Table under paragraph (1) above shall be for the information of members only, until the Minister moves to introduce the bill.
- (3) This Standing Order shall not apply to an Appropriation Bill or an Imprest Supply Bill.

17 S.O. 206.

206. *Time limits on debate on introduction —*

The debate on the question that a bill be introduced shall not exceed two hours. This time shall be divided equally between the Government and the Opposition and no member shall be restricted as to the number of speeches. The Minister when moving the motion and the Opposition member when first speaking thereto may speak without limit. Other members may speak for 10 minutes, but any member's second or subsequent speech shall not exceed five minutes.

18 S.O. 208.

208. *Reference of Government bills to select committees —*

- (1) Every Government bill shall, subject to paragraphs (3) and (5) below, stand referred for consideration by a select committee after its first reading.
- (2) The Minister in charge of a bill shall, immediately after its first reading, or immediately after the Speaker's decision is given under paragraph (3) below, move a motion nominating a select committee to consider the bill. Such a motion may limit or extend the committee's order of reference in respect of the bill, and shall be put forthwith without amendment or debate.
- (3) This Standing Order shall not apply to any bill certified by the Speaker to be of a financial or budgetary nature by reason of it dealing substantially with:
  - (a) The rates of taxation, levies or charges;
  - (b) The appropriation of moneys to the Public Account; or
  - (c) The imposition or alteration of any charge on the Public Account,

under urgency. If urgency in the public interest is claimed by the government on any bill and accorded by the House, proceedings can be completed in one sitting. However urgency does not entitle the House to sit after midnight or on Sunday.<sup>19</sup> Extraordinary urgency can also be taken which allows the House to sit after midnight.<sup>20</sup> The select committee which recommended this change to Standing Orders in 1985, contemplated that the provision for extraordinary urgency would primarily be used for budget legislation.<sup>21</sup>

The purpose of the select committee is to provide an opportunity for well informed and detailed scrutiny of government bills and policy by both Parliament and public. In

and the Speaker may certify any bill accordingly immediately after its first reading or defer a decision on the matter:

Provided that if the Minister in charge of a bill certified to be of a financial or budgetary nature indicates to the House that the Minister wishes the bill to be considered by a select committee the provisions of this Standing Order shall apply accordingly.

- (4) When any bill dealing with taxation, levies or charges has been referred to a select committee for consideration pursuant to this Standing Order, the select committee shall not consider any clause or clauses or parts of any clause or clauses contained in the bill which fix the rates of such taxation, levy or charges. The Speaker shall determine which provisions of a bill may not be considered by a select committee pursuant to this paragraph.
- (5) This Standing Order shall not apply to any bill for the passing of which the House has, on an appropriate resolution, accorded urgency.

19 S.O. 50 (1)-(4).

*Urgency —*

- (1) When urgency in the public interest is claimed by the Government for any bill, matter, or other proceeding, a motion that urgency be accorded thereto may be moved by a Minister, without notice, but not so as to interrupt any debate on any such bill, matter, or other proceeding, and the question shall be decided without debate other than the speech of the mover, who shall inform the House with some particularity of the reasons why such urgency is being claimed.
- (2) If urgency be so accorded, any such bill, matter, or other proceeding may be proceeded with, and proceedings thereon completed at the same sitting of the House, notwithstanding any Standing Order or rule of the House to the contrary; and any time fixed by the Standing Orders or by any other order of the House for the conclusion of the sitting them in progress shall (where necessary) be deemed to have been extended accordingly.
- (3) No such extension of a sitting shall entitle the House or a committee of the whole House to extend its sitting beyond the hour of 12 midnight on a Saturday, and in the event of the House or committee continuing to sit until that hour the provisions of Standing Order 49 shall apply.
- (4) Subject to paragraph (6) below and unless the leave of the House or the committee is obtained to the contrary, any sitting which has been extended by urgency beyond the time fixed for its conclusion shall be suspended between the hours of midnight and 9am, 1pm and 2pm, and 6pm and 7pm.

20 S.O. 50 (5) and (6).

- (5) A motion for urgency may be moved by the Minister as a motion for extraordinary urgency or, after the House has entered upon urgency, a motion for extraordinary urgency may be moved by a Minister. In moving a motion for extraordinary urgency the Minister shall inform the House of the nature of the business or the circumstances which warrant the claim for extraordinary urgency. In all other respects extraordinary urgency shall be subject to the same rules as apply to urgency.
- (6) Where the House has accorded a bill, matter or other proceeding extraordinary urgency, a sitting which has been extended shall, unless the leave of the House or the committee is obtained to the contrary be suspended between the hours of 8am and 9am, 1pm and 2pm, and 6pm and 7pm only.

21 Standing Orders Committee 1st Report July, 1985.

recent years the reference of bills to select committees has increased markedly. At the select committee the bill may be the subject of submissions by the public. It is not obligatory on select committees to advertise bills but this is the usual course adopted for bills of any significance at all. Usually people who request to be heard are heard by the select committee. But unless people ask to be heard the select committee will usually not call them on its own motion.

It has become the practice in recent years for select committees to conduct major surgery on bills in light of the submissions received. I have sat on select committees which have totally rewritten bills almost from scratch. That was certainly the case with the Statutes Revision Committee in 1980 when the legislation concerning the Liable Parents' Contribution Scheme was first introduced.<sup>22</sup> Parliamentary counsel attend select committee hearings and the select committees give instructions as to the amendments they want to see in the bill. These amendments are included in the bill as it is reported back and they are printed so that it is possible to see how the measure was before the select committee dealt with it and how it was afterwards. This is an extremely useful process in determining the course of legislation. It could be used more frequently by people tracing the development of a bill.

Sometimes bills will spend many months before select committees but when they are reported back to the House the debate is limited to an hour. The bill is then set down for second reading. The second reading debate is confined to the general principles of the bill and is the main debate in the House on the bill. Speakers time is limited to twenty minutes each but this may be altered by agreement of the whips.<sup>23</sup> Erskine May describes this as the most important stage through which the bill passes because "its whole principle is then at issue and is affirmed or denied by a vote of the House."<sup>24</sup>

The nuts and bolts of a bill are dealt with after the second reading by the Committee of the whole House.<sup>25</sup> Where a bill is hotly contested this stage is usually used to delay its passage which can take a very long time indeed. But it is also a stage where serious students of the bill can make a contribution to particular details and where amendments can be made both by the government and the opposition. This is the stage where improvements of a technical nature can be made before it is too late. A dramatic example occurred in 1986 in the debate on the Residential Tenancies Bill. The Bill was modelled on South Australian legislation. It contained a novel provision which had not been commented on at the select committee or at any previous stage in the parliamentary debate on the bill. Clause 130 of the Bill as introduced was as follows:

22 Social Security Amendment Act (No 2) 1980.

23 S.O. 214.

214. *Time limit of speech on second reading* — Subject to Standing Order 304, in the debate on the motion of the second reading of a bill no member shall be entitled to speak for more than 20 minutes.

Provided that the time limit may be waived if the total duration of the debate on the second reading of any bill has been agreed upon by the Whips.

24 Erskine May, *Parliamentary Practice* (20th ed., Butterworths, London, 1983), 528-529.

25 S.O. 216-229. The provisions are reproduced in Appendix 4.

**Tribunal may modify application of Act** — the Tribunal may, upon application by any person, if the Tribunal considers it necessary or desirable in the circumstances, order that a provision of this Act shall not apply to, or in relation to, any tenancy agreement or any residential premises or shall apply in such modified form as is specified by the Tribunal in the order; and every such order shall have effect accordingly.

The member of Parliament for Marlborough, Mr D. L. Kidd, made a speech attacking the clause. When he had heard all the arguments the minister in charge of the bill, the Honourable P. B. Goff, said the government would agree to the removal of the clause. This was done. It is not often a debate in the parliamentary chamber produces changes in bills but it can do so in appropriate cases.

When the committee of the whole House has completed its consideration the bill has only the third reading to pass. This is usually set down for the next sitting day and there is not always a debate. When it is debated members must confine themselves to the general principles of the bill as it emerged from the committee and speaking time for members is limited to ten minutes.<sup>26</sup> The opportunity is often taken to record arguments previously advanced at the committee stage, which is not reported in Hansard. The third reading debate is in the nature of a summing up.

The stages through which bills must pass in New Zealand are quite significant hurdles. It would be surprising if a great deal of ill-considered legislation was able to filter through the various checks and balances which exist. But because there is a great quantity of legislation in every Parliament, and because the people looking at it are not all as interested in it as some others, the quality varies. There are some members of Parliament who are very interested in legislation. There are others who develop quite a facility at it after some time in Parliament and there are still other members who are not remotely interested in it and have hardly ever read a bill. They are interested in policy, they may be interested in financial matters but they are not particularly interested in legislative matters. Yet in order for a measure to become law it must be passed by Parliament and it is important, therefore, to have parliamentary procedures which are effective in scrutinising government bills. Much of the quality control must depend on parliamentary counsel and departmental officials. On the whole the New Zealand Parliament has done a fairly thorough job of scrutinising bills, but it is done primarily through the select committee process. It is idle to think that the proceedings in the chamber play a very important role in the process of scrutiny, although they do play an important role in making new legislation known to the wider public.

## VIII. CONCLUSION

There is now an increased opportunity within the New Zealand legislative machine to produce law which is properly scrutinised and likely to function effectively. The monopoly in initiating and formulating legislation has been balanced by the 1979 and 1985 changes to the Standing Orders of Parliament which make it obligatory to refer

26 S.O. 234.

*234. Time limit of speech on third reading —*

On a motion for the third reading of a bill no member may speak for more than 10 minutes:

Provided that the time limit may be waived if the total duration of the debate on the third reading of any bill has been agreed upon by the Whips.

almost all bills to select committees for scrutiny. There is substantial opportunity for public input by way of submissions to select committees of Parliament. Select committees do make big changes to bills in light of the submissions. Select committees are far more potent engines of scrutiny than the procedures of the debating chamber and their powers have recently been enhanced. So they now have independent professional staff available to them and have access to much more information relevant to a bill. The principal obstacle to the most thorough scrutiny of bills is the time and inclination of the members of Parliament. Perhaps it would be a good thing if select committees were bigger — they have only five members — but that will have to await enlargement of the House itself.

Greater numbers of parliamentary counsel would certainly help. They work under great pressure. More familiarity with the legislative process at departmental level would certainly help. Many departments have few officers who know much about the process and some departments handle it badly and get little legislative result as a consequence. The guidelines prepared by the Legislation Advisory Committee should help a great deal, and not just departmental officers but also those who make submissions on bills.

The drafting and form of publication of legislation have yet to be comprehensively addressed in New Zealand. The Law Commission Act requires the Commission to advise on making the law as understandable and as accessible as practicable and making its expression and content as simple as practicable. Its first report on *Imperial Legislation in force in New Zealand* (March 1987), provides a specific example by proposing a one page Bill in place of a 20 page one. The Victorian Law Reform Commission has just provided a more general indication of what is possible in its most interesting report on *Plain English and the Law*.<sup>27</sup> Such work not only helps the user of legislation to understand and act in accordance with the law. Clarity of drafting means as well that those — Ministers and parliamentarians — who propose and adopt the law are more likely to make a fully informed decision about it; and those who make submissions on Bills will be able to direct their opinions more accurately. A great deal remains to be done in this area.

But in the end the legislative machine is driven by a force outside it — the force of political priorities. There is, and never will be enough legislative time. So hard decisions have to be made about which legislation will progress through the machine and when. In fact it would not necessarily be advantageous if all the legislation which is proposed could be passed. In many respects we need less legislation not more of it. As Woodrow Wilson said in another memorable quotation, “Having got his foot into it, the legislator finds it difficult, if not impossible to get it out again.”<sup>28</sup> The pressures on Parliament may mean that perfection cannot be obtained but they may also filter our bills which do not serve a significant or necessary purpose. I leave the last word to Lord Thring: “. . . it

27 The report (submitted on 30 June 1987) has eight appendices — a drafting manual, a plain english redraft of the Victorian take-overs code and, in a single volume, magistrates courts forms and other documents.

28 Supra n.2, 295.

is far easier to conceive justly what would be useful law, than so to construct that same law that it may accomplish the design of the law given."<sup>29</sup>

**APPENDIX 1**  
**DEPARTMENT: JUSTICE**

**TITLE OF BILL:** Constitution

1. Its purpose is  
To clarify the legal rules relating to the handover of power after a General election; to enact one New Zealand Act bringing together our most important constitutional provisions.
2. It is needed because  
Of the legal deficiencies revealed in the handover of power in July 1984; and because the opportunity to rationalise and update major constitutional provisions should not be lost.
3. This Bill, which comprises approximately 50 clauses, is of average complexity.
4. It affects or interests the following Government Departments:  
Crown Law Office, Ministry of Foreign Affairs, Prime Minister's Department, Department of Internal Affairs, Legislative Department.
5. Bodies other than Government Departments with which consultations have taken place or will be required are:  
Nil.
6. The result of these consultations to date is that  
Interdepartment working party has reported to Minister of Justice.
7. These consultations are expected to be completed by  
Complete.
8. Outstanding policy issues are expected to be completed by  
Early February 1986.
9. Complete drafting instructions will be available to Parliamentary Counsel on  
15 February 1986.
10. The Bill should be introduced not later than  
March 1986.
11. The Bill should be passed not later than  
1986.

**APPENDIX 2**  
**BILLS TO BE INCLUDED IN THE 1985 LEGISLATIVE PROGRAMME**

The attached list\* of Bills was approved by Cabinet on 24 June 1985 as the provisional drafting priorities for the 1985 Legislative Programme. The Bills have been ranked in nine categories namely:

- PRIORITY 1 (a)** for introduction in the first working period (beginning on 28 May and ending on 14 June)
- PRIORITY 1 (b)** for introduction in the second working period (beginning on 25 June and ending on 26 July)
- PRIORITY 1 (c)** for introduction in the third working period (beginning on 6 August and ending on 23 August)
- PRIORITY 1 (d)** for introduction in the fourth working period (beginning on 10 September and ending on 27 September)
- PRIORITY 1 (e)** for introduction in the fifth working period (beginning on 8 October and ending on 25 October)
- PRIORITY 1 (f)** for introduction in the sixth working period (beginning on 5 November and ending on 20 December)

\* The original was a ten page document. Pages 1-4 only are reproduced here for illustrative purposes.

29 H. Thring, 1st Baron *Practical Legislation* (Murray, London, 1902) Introduction, quoting J. Austin *The Province of Jurisprudence Determined* (Weidenfeld & Nicolson, London, 1954).

**PRIORITY 1 (g)** (for introduction in the period beginning on 1 January 1986 and ending on 31 May 1986)

**LONG TERM** — Bills which it is not necessary to enact in the year ending on 31 May 1986 including Bills, principally consolidations, the drafting of which is to be spread over more than one year. (This will enable departments and Parliamentary Counsel to maintain progress between one year's Legislative Programme and the next)

**UNRESOLVED ITEMS** — Bills that cannot proceed until issues or policies are approved by the Government.

**NOTE:** A Bill listed for introduction in a specified period may be introduced in an earlier period.

All the offers of Ministers to withdraw proposed items from the Programme have been accepted by Cabinet.

Unless specifically directed otherwise by either the Cabinet Legislation Committee or Cabinet itself, no drafting instructions are to be accepted by Parliamentary Counsel for any Bill which is not included in the Legislative Programme.

Where any Bill is of special importance to the Government and that Bill has not been designated by the Minister concerned as a matter of necessity, the Minister may seek from the Cabinet Legislation Committee a firm drafting priority.

Cabinet has also decided that the Cabinet Legislation Committee should examine, immediately before the start of each Parliamentary working period, the list of Bills allocated for introduction in that working period so that full consideration can be given to problem items.

Permanent heads are reminded that incomplete drafting instructions are not to be sent to Parliamentary Counsel as a token gesture towards meeting a forecasted deadline. Such action is counter-productive; it can cause delays in the drafting of other Bills in related areas.

P. G. Millen

Secretary of the Cabinet

**MODIFIED PROVISIONAL DRAFTING PRIORITIES FOR BILLS  
PROPOSED FOR INCLUSION IN THE 1985/86 LEGISLATIVE  
PROGRAMME**

**Minister of Foreign Affairs**

Nuclear Free		To be allocated
Tokelau Amendment		1 (d)
Territorial Sea and Exclusive Economic Zone Amendment		1 (f)

**Minister of Justice**

Births and Deaths Registration	1	1 (f)
Commissions of Inquiry	2	1 (f)
Coroners	3	1 (f)
Companies (Nominees Shareholding)	4	1 (f)
Crimes Amendment (Existing priority a necessity)	5	1 (b)
Defamation	6	1 (f)

The date proposed for the giving of instructions is 15 October 1985.

Introduction is to be not later than 20 December. This is too short a period for the drafting of a Bill of 50 clauses (which is described by the



Department as being of considerable complexity).		
Electoral Amendment (Existing priority a necessity)	7	1 (b)
Extradition	8	Long term
Guardianship	9	Long term
Imperial Laws Application	10	1 (f)
Judicial Salaries	11	1 (a)
(Existing priority a necessity) This Bill should be ready for the Legislation Committee on 27 June 1985		
Law Commission (Existing priority a necessity)	12	1 (c)
Law Reform	13	1 (f)
Legal Services	14	1 (f)
New Zealand Constitution	15	1 (e)
Official Information	16	1 (c)
Powers of Entry	17	1 (d)
Protection of Personal and Property Rights	18	1 (d)
Public Safety Conservation Act Repeal	19	1 (f)
Status of Children Amendment	20	1 (f)
Summary Proceedings Amendment	21	1 (f)
Both this item and item 48 relate to the infringement offence system.		
Tribunals Procedure	22	1 (f)
Statutes Amendment		1 (e)
<b>Minister of Overseas Trade and Marketing</b>		
New Zealand Export-Import Corporation Amendment	23	1 (a)
Tourist Hotel Corporation Amendment	24	S.A.
<b>Minister of Finance</b>		
Imprest Supply (Introduced)	25	1 (a)
Imprest Supply (No. 2)	25	1 (d)
Appropriation (Introduced)	26	1 (a)
Appropriation (No. 2)	27	1 (e)
Finance	28	1 (f)
Public Finance Amendment	29	1 (f)
Government Superannuation Fund Amendment	30	1 (d)
This Bill could possibly be split in two with priorities 1 (c) and 1 (e).		
National Provident Fund Amendment	31	1 (d)
Local Authorities Loans	32	1 (f)
Building Societies Amendment	33	1 (g)
Friendly Societies and Credit Unions Amendment	34	S.A.
New Zealand Society of Accountants Amendment	35	1 (g)
Reserve Bank of New Zealand Amendment	36	1 (d)
<b>Minister in Charge of Inland Revenue Department</b>		
Goods and Services Tax	37	1 (b)
Land Tax (Annual)	38	1 (c)
Income Tax (Annual)	39	1 (c)
Income Tax Amendment (No. 3)	40	Budget possibly
Income Tax Amendment	41	Budget possibly
Estate and Gift Duties Amendment	42	Budget possibly
Stamp and Cheque Duties Amendment	43	Budget possibly
Income Tax Amendment (No. 4)	44	Long term
<b>Minister of Transport</b>		
Civil Aviation Amendment	45	1 (d)
Shipping	46	1 (a)
Shipping Registration	47	1 (d)

Transport Amendment	48	1 (e)
See the note on item 21.		
Shipping and Seamen Amendment	49	1 (f)
New Zealand Railways Corporation Amendment	49A	1 (e)
<b>Minister of Lands</b>		
Land	50	1 (f)
The impact of the environmental package on this Bill will need to be considered. The Minister states that he will be submitting a separate paper to the Legislation Committee seeking a firm priority for this Bill.		
Native Plants Protection	51	1 (g)
(Existing priority a necessity)		
Reserves and Other Lands Disposal	52	1 (e)
Instructions should be supplied by 1 August 1985		
<b>Minister of Forests</b>		
Forests Amendment	53	1 (f)
This Bill is to be co-ordinated with policy changes. It could possibly be delayed until 1986.		
Wild Animal Control Amendment	54	1 (d)
(Existing priority a necessity)		
Forest and Rural Fires	55	1 (g)
Must come into force before the start of the fire season beginning October 1986.		
Repeal of Timber Floating Act 1954	56	Include in Finance Bill
<b>Minister in Charge of the Valuation Department</b>		
Valuation of Land	57	1 (g)
Valuers	58	1 (d)
<b>Minister of Maori Affairs</b>		
Maori Affairs	59	1 (f)
Policy issues to be determined by a Cabinet Committee. (Existing priority a necessity)		
Maori Language	60	1 (d)
Maori Trust Boards	61	1 (d)
Maori Purposes	62	1 (f)
Maori Reserved Land Amendment	63	Long term
This is a complex topic.		
<b>Minister of Trade and Industry</b>		
Commerce (Introduced)	64	1 (a)
Wheat Board Amendment	65	1 (d)
Trade and Industry Amendment	66	1 (d)
Development Finance Corporation	67	1 (e)
Standards Amendment	68	1 (f)
<b>Minister for the Environment</b>		
Environment	69	1 (d)
<b>Minister of Education</b>		
Education Amendment (No. 2)	70	1 (d)
Private Schools Conditional Integration	70A	1 (d)
<b>Minister of Defence</b>		
Defence Amendment	71	1 (c)
Armed Forces Discipline Amendment	72	1 (c)
<b>Minister in Charge of War Pensions</b>		
War Pensions Amendment		1 (d)

War Pensions (Rates of Pensions and Allowances) Orders Confirmation (No. 2)	73	1 (f)
<b>Minister of Local Government</b>		
Local Government Amendment (Existing priority a necessity)	74	1 (c)
Local Government Amendment (No. 2) (Existing priority a necessity)	75	1 (g)
Local Government Official Information and Meetings (Existing priority a necessity)	76	1 (f)
Rating Powers	77	1 (g)

APPENDIX 3

LEGISLATION ADVISORY COMMITTEE: IMMIGRATION BILL

The following brief account of some of the Legislation Advisory Committee's submissions on the Immigration Bill has been prepared to illustrate the character of the committee's work and to give some indication of its impact.

The submission began with a statement of the Committee's role — "[The Committee] is not on the whole concerned with the policy of the legislation. Rather it gives its attention to public power as it appears in the legislation, for instance

1. Who should exercise the power?
2. What procedure should that person follow?
3. What limits or criteria should control the exercise of the power?
4. What rights of appeal against, and review of, the exercise of the power, if any, should there be?

Sometimes the committee will also consider the question of whether the particular power is needed".

Amongst other issues, the committee's submissions on the Immigration Bill dealt with these classic questions of public law, as the following examples show.

1 Who should exercise the power?

Several provisions of the original bill would have empowered the Minister of Immigration to give general directions which were, in fact, powers to make law. For example, the powers to exempt any classes of persons from the requirement to hold a permit (clause (8)(1)), to make an exemption from the visa requirement (clause 21(1)), to determine the maximum length of temporary permits (clause 22(1)), to vary the requirement of presenting a departure card and passport on departure (clause 121(2)), and to grant general exemptions from fee requirements (clause 143(2)).

Some of these powers would have been very important; clause 8(1) would in effect have allowed the Minister to amend the Act while clause 143(2) would have empowered the Minister to amend regulations. However the power to give general directions would have been subject to far less control than the regulation-making power. Whereas regulations are prepared or settled by Parliamentary Counsel, submitted to Cabinet and approved by the Governor-General in Council, published in the Statutory Regulations series, tabled in the House and subject to the scrutiny of the Regulations Review Committee, the only proposed formal control on general directions was that they were to be published in the Gazette.

The committee recommended that because of the importance of the powers

"subject perhaps to the further definition of some of the powers, the powers to give general directions should either become regulation-making powers or be treated as such."

The Select Committee acted on that recommendation and substituted regulation-making powers for

general direction powers in the provisions referred to.

2 What procedure should that person follow?

Under clause 29 of the original bill, the Minister or the Minister's delegates had a summary, unfettered power to revoke a temporary permit at any time. There was no express limit on the power by way of procedure, criteria or appeal. This meant, for example, that a person working on a contract in New Zealand and holding a temporary permit for the contract period could have that permit summarily revoked without any right of appeal, yet at the same time the bill expressly gave a right of appeal to persons unlawfully in the country and subject to a removal order. Under the bill the protections were greater as the interest and the legal position of that person becomes lesser. That made no sense and the committee recommended that,

“a temporary permit be subject to revocation only following a fair procedure”.

This recommendation was incorporated in the bill as reported back. A notice of revocation of a temporary permit must state reasons and allow the permit holder an opportunity to show good reason why the permit should not be revoked.

3 What limits or criteria should control the exercise of the power?

There was provision in the original bill for a resident (i.e. a person who had been admitted as a member of the New Zealand community but was not a citizen) to apply for a returning residents visa before temporarily leaving the country. This simplified the process of returning, but since there was no right that a visa would be issued, the practical effect was that long term residents could put their right to be in New Zealand at risk by leaving the country for a short holiday or to deal with urgent family affairs. On the other hand the committee understood that it might not be appropriate for people to hold such a visa if they come to New Zealand only occasionally. Accordingly the committee recommended

“that consideration be given to (1) leaving the residence permit unaffected by departure from New Zealand and (2) providing for its revocation by the Minister if the holder has been out of New Zealand, say, for a continuous period of 5 years”.

The first recommendation was incorporated in the bill as reported back. The second was not.

4 What rights of appeal against, and review of the exercise of power, if any, should there be?

The committee made a number of particular recommendations relating to the powers of the Minister to revoke residence permits and the right of appeal from such a decision. One recommendation concerned the provision which empowered the Minister to revoke residence permits on the grounds that they were issued by mistake or procured by fraud. Clause 16 specified that the grounds must be established “in the opinion of the Minister held on reasonable grounds”.

The committee recommended that the Minister's grounds for revoking permits should be stated purely objectively and that the grounds for allowing an appeal should be simply that there was no such administrative error or fraud. When reported back the bill made it clear that the correctness of the Minister's opinion is subject to full challenge in the Courts on the facts.

In another instance, clause 5 of the original bill purported to be a complex privative measure preventing court review of decisions taken under the Act. Upon close examination by the committee it was however found to have no teeth, except for subclause 5 which read:

“No review proceedings may be instituted in any Court in respect of any refusal to issue a visa, except a refusal to issue a returning resident's visa on an application made under section 14(1) of this Act”.

The committee questioned whether any applicant would want to review a decision relating to refusal of a visa; it was much more likely that any legal challenge would relate to a refusal to issue a permit. Moreover the provision did not disallow review of a decision to grant a visa. The committee recommended that the whole clause be deleted and this was done when the bill was reported back.

## APPENDIX 4

*216. Order of business observed on a bill in committee*

— Subject to Standing Order 217, the following order shall be observed in considering a bill in committee:

1. Clauses as printed and new clauséd in their numerical sequence;
2. Postponed clauses;
3. Schedules and new schedules in their numerical sequence;
4. Preamble;
5. Amendment to title (where necessary),

and in reconsidering the bill upon recommittal of the whole bill the same order shall be followed:

Provided that in considering an Appropriation Bill the schedules expressing the services and purposes shall be considered before the clauses, and, unless the committee otherwise orders, the Votes in the schedules shall be taken in such order as may be determined by the Leader of the House.

*217. Consideration Part by Part —*

- (1) Immediately before the committee enters upon consideration of the first clause contained in a Part of a bill, any member may move that that Part, or that Part and all or any of the remaining Parts of the bill, be considered Part by Part.
- (2) In respect of any Part of a bill which the committee resolves to consider Part by Part, Standing Order 216 shall apply in respect of the order of business to be observed by the committee as if items 1 and 2 of that Standing Order referred to “Parts” instead of to “clauses”.
- (3) After a resolution has been passed under this Standing Order, the Minister in charge of the bill in the case of a Government bill and any member in the case of any other bill may, immediately before the committee enters upon any subsequent Part which is subject to the resolution, move that that Part be considered clause by clause. Such a motion shall be put forthwith and decided without amendment or debate. Except in accordance with this paragraph a resolution to consider a bill Part by Part may be varied only with the leave of the committee.

*218. Preamble postponed —* In committee on a bill the preamble shall stand postponed without question put until after the clauses and schedules have been considered seriatim.

*219. Numbers and introductory notes only read —* In reading the clauses of a bill it shall be sufficient to read the numbers and introductory notes only, unless otherwise directed by the committee.

*220. Amendments in committee —*

- (1) Any amendment may be made to a bill, provided it is relevant to the subject matter of the bill, or pursuant to any instruction, and is otherwise in conformity with the rules and orders of the House; but if any amendment is not within the Title of the bill the committee shall amend the Title accordingly, and report this specially to the House.
- (2) During consideration of a bill no question on any amendment shall be proposed by the Chairman but any proposed amendment which is properly notified on a Supplementary Order Paper or is handed in to the Table may (subject to the right of the Chairman to control relevancy in the debate) be referred to in the course of the debate as if a question on it had been proposed, and all such amendments which are in order shall be put and decided before the main question is determined.

*221. Amendments may be placed on Supplementary Order Paper —*

It shall be competent for any member desiring to propose amendments to a bill while going through the committee of the whole House on such bill, to lodge a written copy of such proposed amendments with the Clerk, and such proposed amendments shall thereupon be placed forthwith upon a Supplementary Order Paper, and on such Supplementary Order Paper being circulated each amendment shown thereon shall take precedence over other amendments at the same place, except those with respect to which a written copy has been so lodged earlier with the Clerk and those of the member in charge of the bill.

*222. Questions to be put in committee —* A question shall be put that each clause (or, as the case may be, each Part) stand part of the bill or as amended stand part of the bill.

223. *Clauses postponed* — any clause may be postponed unless it has already been considered and amended.

224. *New clauses (or Parts) offered in committee* — On a new clause (or, as the case may be, a new Part) being moved in committee it shall be read a first time without question put.

225. *Preamble considered* — When the committee comes to the consideration of the preamble, a question shall be put, “That this be the preamble of the bill”, or, if the preamble be amended, “That the preamble as amended be the preamble of the bill”.

226. *Committee may divide a bill* —

- (1) A committee of the whole House may divide into two or more separate bills any bill which —
  - (a) Is drafted in Parts; or
  - (b) Lends itself to division because it comprises more than one subject matter, and in respect of which a Supplementary Order Paper notifying the intention to move for division of the bill into separate bills has been circulated.
- (2) The Supplementary Order Paper shall show how it is proposed to divide up the bill, setting out the Title, enacting words, and the Short Title clause for each new bill.
- (3) A motion to divide a bill into separate bills, as set out on the Supplementary Order Paper, shall be moved after the bill has been fully considered by the committee.

227. *Proceedings in committee not to be noticed until reported* — Except where otherwise provided by the Standing Orders, no notice shall be taken of any proceedings in the committee on a bill until such bill has been reported.

228. *Report of progress* — When a bill has not been fully considered at the time for the interruption of the proceedings of the committee the Chairman shall report progress and ask for leave to sit again.

229. *Bill reported* — A bill having been fully considered, the Chairman shall report it without amendment, or report it with amendment, to the House.