

RECEIVED  
01 NOV 2013  
Finance and  
Administration Committee

UQ Business School  
JD Story Professor of Public Administration  
Professor Kenneth Wiltshire AO  
CRICOS PROVIDER NUMBER 00025B

October 22<sup>nd</sup> 2013

The Secretary, Finance and Administration Committee

Parliament of Queensland

George St. Brisbane 4000

Dear Sirs,

*Inquiry into Independence of QAO*

In response to your call for sub missions regarding the Committee's review of the independence of the Auditor-General I have attached a chapter which I wrote some time ago for a book on parliament. This was the result of research in the UK Canada New Zealand and Australia. I also recall that I conducted the first Strategic Review of the Queensland Ombudsman's Office and have served as the outside member of the selection panel for the Queensland Auditor-General.

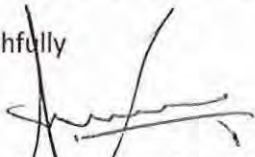
You will see that I like to think of the parliamentary family of which the Auditor-general is a member being an officer of parliament.

Parliament itself should, under the democratic principles of the separation of powers , be independent of government in all resourcing and appointment matters. Therefore the parliament, not the government, should determine the budget of the Auditor-General, as well as the staffing complement of the Audit Office. The Auditor-General should be appointed and dismissed only by the parliament which should also determine his or her contract, which I believe should be permanent, though with 5 yearly reviews, and not the current fixed term once-only contract.

The parliaments with the best arrangements in these respects are in Canada especially Ontario and Ottawa, but the UK model is close.I encourage you to examine these.

I would be happy to appear before the Committee to elaborate on these views.

Yours faithfully



Professor Kenneth Wiltshire AO

J.D.Story Professor of Public Administration

University of Queensland Business School

# Parliament & Bureaucracy

Parliamentary scrutiny  
of administration:  
prospects and problems  
in the 1980s



*Edited by*

J. R. Nethercote



Hale & Iremonger

in association with the

AUSTRALIAN INSTITUTE OF PUBLIC ADMINISTRATION

The Commonwealth Parliamentary Association  
The Law Foundation of New South Wales

## 20 Staffing and appropriations of parliament

Kenneth Wiltshire

---

There is no more important power for a parliament to possess than the control over its own resources. That power is fundamental to all other legislative actions. Yet there is no parliament in Australia which has complete control over its fiscal, human and physical resources; indeed most of them have very limited powers. The explanation for this situation lies in the reality of executive dominance of the legislature, so common to Westminster systems of government in the 20th century.

A distinguishing feature of the Westminster model is that the executive (cabinet) is formed from the very same parliamentarians whose party commands the House. This causes a blurring of the division of powers because the legislative branch is joined to the executive branch in the persons of ministers who are, at one and the same time, members of the executive (representing the Crown), but also members of the parliament (because they are elected to represent a constituency).

This problem is compounded in smaller polities typical of the sub-national level of federations like Australia and Canada. Consider a parliament with eighty members and assume that, on average, some fifty of those members belong to the governing party. The usual ministry size is about twenty — so twenty out of the fifty government members are formally part of the executive. It can safely be assumed, given the exigencies of politics, that at least another twenty government

members aspire to one of those cabinet positions, and so the total of forty out of fifty government MPs are oriented to the executive in the legislative/executive dichotomy. Such a situation is hardly conducive to encouragement of a backbench with bite. The effect is scalar and we can conclude reasonably that larger parliaments are more likely to be aggressive than smaller parliaments — aggressive in relation to the executive in general, but especially in relation to their own support system.

In Australia, the question of control of parliament's resources has been overlooked until very recently. Most polemics and analyses have focused upon parliament's control (or lack of it) on such executive action as public expenditure, delegated legislation, executive appointments, and the public service. This shortcoming has been rectified to some extent, however, by the report in 1981 of the Senate Select Committee on Parliament's Appropriations and Staffing<sup>1</sup> (hereafter called the Jessop Report), analysis of which is a key element of this chapter. It will be argued that the report points to reforms in the right direction but is far too conservative to bring about the urgent and necessary changes required. It is proposed, in particular, to challenge one of the central propositions of the report:

The Select Committee is mindful of the need for an experimental approach to be adopted as it can understand a reluctance on the part of the Government to agree to an immediate total reform.<sup>2</sup>

### *British history*

British constitutional law and convention have never resolved the question of control over parliamentary staffing and appropriations. Although the parliament won important controls over the resources of the Crown in the 16th century and later, it failed to distinguish its own resources from those of the Crown and allowed its own limited formal requirements to be met by the Treasury. Such appropriations were theoretically open to debate along with the rest of the official estimates, but debate never occurred. So the flow of funding, as with all other public expenditure, was from taxpayers, after redress of grievances, to the Crown, to the Treasury and then appropriated from paymaster to parliament. This became formalised into a rule that the Crown alone had the right to propose a tax; the House was able to reduce it but not increase it. Standing Order Number 8 of 1706 was clear:

This House will receive no petition for any sum relating to public service or proceed upon any motion for a grant or charge upon the public revenue . . . unless recommended by the Crown.

That standing order has never been repealed although the House of Commons could do so at any time. There seems to be general agreement amongst historians that the purpose of the provision was to prevent corruption. As Hollis explained:

It was thought that if members could vote additional sums of money they would vote them to themselves and their friends . . . To put such a temptation into the hands of a private member who would have no responsibility for the general finances of the nation would, it was thought, be too dangerous. A Chancellor of the Exchequer, having to answer for the general effect of his policies, will be more responsible.<sup>3</sup>

Bagehot expressed the same sentiment in a slightly different way:

If there were not some check, 'the people's house' would soon outrun the people's money. That check is the responsibility of the Cabinet for the national finance . . . In truth, when a Cabinet is made the sole executive, it follows that it must have the sole financial charge, for all action costs money, all policy depends on money, and it is in adjusting the relative goodness of action and policies that the executive is employed.<sup>4</sup>

The position in relation to the staffing of the British houses of parliament is considerably more complex especially as it was different for the two houses. Some complicating factors were that the monarch appointed some of the parliamentary officials directly, others were appointed on the advice of the Speaker or the Lord Chancellor (as Speaker of the House of Lords), and yet others were appointed without direct reference to the Crown at all. There was also a situation where a great deal of parliamentary revenue came from fees charged of parliamentarians by the House officials for various services such as the drafting of bills. Some other important characteristics include the fact that many of the early parliamentary offices were sinecures, the Clerks were appointed by the Crown for life, and the staff numbers were small. Staffing of some departments of the Commons came directly under the Speaker's control, others were under the Clerk, while the Serjeant-at-Arms was actually an officer of the royal household. It is extremely important to realise that the greater formalisation of estimates procedures in the latter part of the 19th century resulted in the House of Commons gaining some control over the House of Lords amidst three decades of constant complaints from the Commons that the staff of the Lords were better off than they.

Like so many other aspects of British constitutional practice, it was a mess but it worked, and no substantial changes were made until the 1970s. By that time it was established that the financial appropriation procedure of the parliament was regarded very much like that of a normal government department, the employees of parliament were, to

all intents and purposes, civil servants (i.e., employees of the Crown rather than parliament), and the management of the fiscal and human resources of the two houses involved the heavy hand of the central government agencies, the Treasury and the Civil Service Department (until its abolition in 1981) although they did negotiate more delicately in this area than was their custom with the departments and ministries of state.

On 2 October 1973 the Speaker of the House of Commons made a statement in which he expressed disquiet about the staffing arrangements for the house which had grown up over a very long period and which, he believed, were 'ill fitted for providing the house with a thoroughly efficient and effective service'. Two specific concerns were the lack of co-ordination between the five largely independent departments of the house, and the system of making appointments with consequent problems for career structure and personnel management. He invited Sir Edmund Compton (a former Auditor-General and Ombudsman) to undertake a review of the administrative services of the house, supported by a team drawn from the Management Services Divisions of the Civil Service Department. Compton's report (hereafter called the Compton Report) was tabled on 11 July 1974.<sup>5</sup> On 3 February 1975, the Speaker appointed an all-party committee of the house to report to him on the Compton Report. This committee was chaired by Mr Arthur Bottomley MP and presented its report (hereafter called the Bottomley Report) on 7 August 1975.<sup>6</sup> Considerable changes have been made in the light of these reviews. Perhaps the most significant has been the creation of the House of Commons Commission (described below), following the passing of the House of Commons (Administration) Act 1978.

Thus we now have the benefit of British and Australian reviews, together with reformed British and Canadian practices affecting parliamentary appropriations and staffing, to guide us in a consideration of what seem to be the main principles in this area, most of which, have not, as yet, been satisfactorily resolved in any country.

### *The presiding officer*

There can be no doubt that a basic cause of the inability of parliaments to confront the executive over questions such as their own staffing and appropriation is the absence of any individual who will accept responsibility for such matters. The obvious choice for such a role is the presiding officer of each house who should, in theory, be responsible for all matters related to the running of the house. The analogy with the

executive is quite clear — the presiding officer should represent the equivalent of the minister responsible for the house, and the Clerk is the equivalent of permanent head. But presiding officers in all Westminster systems have, until recently, been most ambivalent about accepting such a role.

It has been extremely rare in Australia, Canada, or the United Kingdom for presiding officers of parliaments to answer for the parliament as a body, let alone defend it or justify its actions. Speakers of the British House of Commons and Lord Chancellors in the House of Lords have very rarely appeared before parliamentary committees to answer questions about the fiscal and personnel administration of their houses, and in Canada recently much was made of the decision of the Speaker of the House of Commons to appear before a parliamentary committee for the first time, especially as she asserted that she was not going to make a habit of it. The problem is even more acute in the provincial parliaments of Canada and state parliaments of Australia, where most presiding officers are lame-duck MPs who have fallen foul of the parliamentary leaders of their party, or are regarded as impossible cabinet material, or are viewed simply as loyal servants of the government who can be relied on to keep the house tepid by ensuring limited opportunities to criticise the executive. Such individuals are hardly likely to be prepared to consider themselves as equivalents of ministers because they are either actually former ministers fallen from grace, or else it has been made clear to them that they will never have a cabinet post and should consider themselves lucky to be given a job which they will lose if they do not toe the line. One outcome of this situation has been the unhealthy practice of leaders of the house (i.e. a government minister), becoming the spokesman for the parliament's administration. Some presiding officers have attempted to defend their stance on the historical cum constitutional grounds that they are there to represent the sovereign in parliament and therefore cannot side with the parliament to the extent of defending it, but that concept is a far cry from modern-day reality.

Compton expressed the view that, whilst the British Speaker definitely had control over the accommodation and services of the part of Westminster Palace occupied by the Commons, there was doubt about the Speaker's authority over the Clerk of the House, although his control over other officials was clear.<sup>7</sup> Compton's solution was to create a unified parliamentary service reporting through the Clerk as Accounting Officer to the Speaker, but strangely he saw no need to change the then-existing practice whereby the Clerk would still be appointed by the Crown on the advice of the prime minister with the Speaker

merely being consulted. The Bottomley Report, on the other hand, rejected such an hierarchical structure for the parliamentary service because they saw a need for the Speaker to have direct contacts with other staff especially the heads of parliamentary departments.<sup>8</sup> The main contribution of the Bottomley Committee was to recommend the establishment of a House of Commons commission which would have a special relationship to the Speaker:

We propose that, insofar as authority for directing and controlling the services of the House is vested in the Speaker, this ultimate authority should remain . . . but that the Speaker should be advised and assisted in its exercise by a reconstituted House of Commons Commission under his Chairmanship.<sup>9</sup>

Under this arrangement the Speaker and the Leader of the House would be the only two ex-officio members of the House of Commons Commission. Bottomley had a curious view of the role of the Leader of the House who would speak for the government in the commission, for the commission in cabinet, and for the commission on the floor of the House. Successful assumption of such conflicting roles presupposes a conjurer's skill at changing hats. Bottomley does make the sensible observation that the Chancellor of the Exchequer should not be a member of the commission, although the reasoning is astounding: 'he would find it difficult to combine that function with his responsibilities for examining *and approving* [sic] the House of Commons Vote'.<sup>10</sup> Such a statement is, of course, a sellout of parliament's independence at first base, and the playing up of the role of the Leader of the House can only serve to diminish the role of Speaker as House spokesman. Nonetheless the new House of Commons Commission, with the Speaker as its chairman, reflects the composition recommended by Bottomley.

In the Canadian provinces the modern trend has been to place financial management of the parliament in the hands of boards or committees of the house with the Speaker as chairman. Six provinces now have this arrangement although the powers of the boards *vis-à-vis* the executive vary considerably. Another province, Alberta, designates the Speaker alone as responsible for financial management.<sup>11</sup> In Ottawa the Speaker and four commissioners of internal economy oversee the financial administration and control of the house but those four members are ministers appointed by the Governor-General in Council, so that although the Speaker is chairman and it is she who signs the estimates, there is a dominant executive influence upon her.

The Jessop Report recognises an extremely limited role for presiding officers in parliamentary fiscal and personnel control. As shall be noted,

in the final analysis, the minister of finance can easily trump the presiding officer on the house's estimates, and in staffing it is the Governor-General-in-Council who must approve all recommendations from presiding officers. Perhaps the most enlightening and damning element of the Jessop Report is Appendix J which lists examples where presiding officers have bent to government demands/requests for reductions in parliamentary appropriations in various years.<sup>12</sup>

### *Problems of bicameralism*

The process of detaching the legislature from the executive and giving it more control over its own resources creates particular complications in a bicameral parliament. The problem has been in evidence in Britain since the early 19th century when the growing ascendancy of parliament over the executive in fiscal matters was accompanied by the increasing power of the House of Commons over the resources of the House of Lords to which the Lords and their staff objected. Today in Britain the Commons has substantially more control of its resources than does the Lords which, formally at least, is still regarded as part of the executive's domain in terms of finance and staffing.<sup>13</sup> Since the Lord's estimates form part of the government's main estimates this, *ipso facto*, gives the Commons some notional power over the upper house (i.e. in addition to its other superior powers on legislation).

Since all the Canadian provincial parliaments are unicameral the situation does not arise but in Ottawa each House's estimates could be debated by the other. The fact that each House, by convention, does not alter the other's estimates is more a reflection of the tame nature of the Canadian Senate than any altruistic restraint on the part of the House of Commons.

The Jessop Committee seems to have largely ignored this important question. It is, in fact, misleading in that it suggests by implication<sup>14</sup> that the House of Representatives would simply give the Senate's estimates a smooth and uninterrupted passage as their proposed Parliamentary Appropriation Bill passed through the lower house. It seems remarkably naive, given the antipathy of so many factions towards the Australian Senate, to believe that lower house MPs (especially ALP members) would not be tempted to debate and cut the estimates of the upper house. It is also somewhat misleading for Jessop to claim that, if the government of the day is opposed to the parliamentary estimates of the Senate, it could move to amend them in the committee of the whole stage on the floor of the Senate,<sup>15</sup> because this directly confronts the Senate's powers over money matters which

have never been satisfactorily resolved since November 1975.<sup>16</sup> It also presupposes government control of the Senate. Moreover, it makes no allowance for the Senate being a state's house, and the political repercussions of the states objecting to the resources of 'their' house being whittled away by the lower house. Quite apart from these aspects fundamental questions arise as to whether the lower house could forever block supply to the upper house, whether the upper house could go on increasing its allocation at whim, and how to overcome the difficulty presented by the fact that so many facilities of the Australian parliament are joint facilities.

There is simply no room for equivocation on this issue. Either one believes that the sovereignty of parliament is vested in the lower house and therefore the lower house can control the resources of the upper house, or one views sovereignty as devolving upon both houses which may create a deadlock situation with which section 57 of the Australian Constitution has dealt so ineffectively. In the latter situation conflict between houses over each other's appropriations would, in the final analysis, have to be resolved by a double dissolution and then, if necessary, a joint sitting. That is one heck of a way to administer a parliament.

### *The financial appropriation process*

There would be only one kind of parliamentary financial appropriation process which would fully satisfy requirements of parliamentary sovereignty. Parliament would have to compile, debate, vote, and finally oversee expenditure of, its own finances. There are four recognised steps in public budgeting — formulation, authorisation, execution, and appraisal.<sup>17</sup> For parliament's own finances, all of these stages would have to be under parliamentary control, with absolutely no executive involvement. However, British constitutional practice would seemingly require taxation, and expenditure, and the flow of funds between, to be under the auspices of the Crown. The Crown obtains approval from parliament to levy taxes and spend public funds after redress of grievances. Therefore the ideal type of parliamentary financial cycle would have to be modified but only to the extent that parliament's funds flowed, nominally at least, through the coffers of the Crown.

No Australian parliament enjoys anything remotely resembling this degree of independence. In Canberra and all the states the executive is, *de facto*, in total control of parliament's appropriation, the only concession being some devolution of expenditure authority to designated accountable officers after the votes have been passed.

Canada (at the national level and in some provinces) and Britain have now made reasonable progress towards parliamentary independence from the executive in financial matters. Much enthusiasm is currently being shown in Britain over the new House of Commons Commission. That commission compiles the estimates for the House of Commons and the Speaker presents the estimates to the house on behalf of the commission. In other words, the estimates are not negotiated with the Treasury or the Chancellor of the Exchequer. The scheme looks fine in theory but there are some shortcomings. The composition of the commission is defined by the House of Commons (Administration) Act 1978, and comprises the Speaker (as Chairman) and the Leader of the House of Commons as ex-officio members, a member of the House of Commons nominated by the Leader of the Opposition, and three other members of the House of Commons appointed by the house (none of whom can be a minister of the Crown). Contrary to the Jessop committee's impressions,<sup>18</sup> this can result in a government majority on the commission. At any event the Act is silent on the voting process within the commission and it seems unlikely that the Speaker would restrict himself to merely a casting vote in this situation. The presence of the Leader of the House (the only minister on the commission), leaves the commission open to informal intimidation by the government. Apart from these aspects, the House of Commons Commission still does not control all parliamentary expenditure. Members' salaries, expenses, pensions, perquisites and facilities are still controlled by the Treasury. Many MPs regard these aspects as the most important indication of lack of parliamentary control; if the Treasury can control the resources of individual MPs, what use is the rest of the paraphernalia?

Another problem is that the commission's estimates, when approved by the commission, are published *in* the government's supply estimates for presentation to the house. This does little to signify parliamentary independence, nor does the fact that the house has not, in practice, debated its own estimates. To some extent this is an inevitable outcome of the woolly thinking of the Bottomley Report which, despite its advocacy of the creation of the House of Commons Commission, still saw a role (not defined) for the Chancellor of the Exchequer in 'examining and approving the House of Commons vote'.<sup>19</sup> Finally, it must be noted that the House of Lords has a quite different arrangement for its finances and is much more closely tied to the Treasury's apron strings, a fact surprisingly overlooked by the Jessop Committee.

Jessop also displayed a great deal of misplaced enthusiasm over the Ottawa arrangements for the Speaker and four commissioners of in-

ternal economy to control the estimates of the house. The four commissioners are all cabinet ministers and are appointed by order-in-council — a method anathema to parliamentary control. The estimates are prepared by house officials with a careful eye on executive guidelines issued for government expenditure. The estimates are included in government estimates, though it is true that there is a special procedure for debating them which gives great power to the Canadian House of Commons itself if it chooses to avail itself of such an opportunity (which it rarely does).

So Ottawa and Britain are not ideal examples. The best model available is that of the province of Ontario in Canada which has a Board of Internal Economy within its parliament, which comprises the Speaker as chairman, three cabinet ministers, and one representative of each of the three party caucuses, and which draws up parliament's estimates.<sup>20</sup> Then a special committee of the legislature is charged specifically with analysis of the estimates of the house and the estimates really are debated. Moreover, the response to the debate comes from one of the members of the Board of Internal Economy from each of the three party caucuses, as well as the Speaker. Perhaps the best feature of the Ontario solution is that the Board of Internal Economy monitors members' personal expenses and sets standards in this area, with no executive involvement. Ontario has also gone a long way in centralising the internal financial procedures of the house under a Director of Administration, and Ottawa has developed something similar following severe criticisms of the legislature's financial system in a report prepared by the Auditor General in 1979 at the invitation of the Speaker.

The Jessop Report correctly deplores the current degree of control exerted by the Australian cabinet over the parliament. Jessop argues for a Senate standing committee to be known as the Senate Appropriations and Staffing Committee with the President as chairman, the Leader of the Government in the Senate 'to represent the executive'(!), two other government senators, the Leader of the Opposition in the Senate and two other senators not being members of the government. This might seem harmless if one could accept the neutrality of Senate Presidents, but Jessop then wants the estimates of the Senate to go to the Minister of Finance for inclusion in a separate parliamentary appropriation bill. Then it would be the minister (not the Speaker or President) who would introduce the bill in the house. The government can then, according to Jessop, reduce the estimates by amending the bill if it so desires. But in reality the exact reverse is likely to occur — the minister of finance would trim the estimates and expect the house to augment

them if it could. At least Jessop wants all of the parliament's requirements in the one bill, and also wants the internal finances of parliament more co-ordinated within the parliament rather than being scattered as at present. It would appear, however, from the draft bill included in the Jessop Report that they see the parliament's funding having to be a charge on the Consolidated Revenue Fund. They do not, remarkably, recommend a single line appropriation for either house — and yet a single line appropriation is a fundamental element of financial flexibility already enjoyed by numerous executive agencies.

### *The staffing process*

A truly satisfactory parliamentary staffing process would see all the staff of parliament designated as employees of the parliament and not of the executive. They would be hired, promoted, disciplined, paid, and dismissed by the parliament as the employing body, and there would be an appeals system for them established by the parliament. The Clerk would be the permanent head and the presiding officer would be the minister-equivalent. Ideally all parliamentary staff should be paid salaries which are superior to those enjoyed in the public service, if only to attract the best calibre staff and establish parliamentary supremacy. Such an arrangement would require a careful classification system to ensure value for money but, once again, parliament should classify the positions, not the executive. Ideally parliamentary staff should be exempt from unionisation in return for a negotiated package of conditions of employment which took account of the uniqueness of their employment and its demands.

There is, of course, no parliament in the Westminster system which fits this model, but there have been marked changes in this area in the past decade. In Britain the situation has always been complicated by the fact that a few key parliamentary officials have, by tradition, always been appointed by royal prerogative, together with the fact that the staffing of the houses of parliament at Westminster evolved gradually in fragmented fields across various departments. The Compton Report proposed changes to the House of Commons which would have produced a much more uniform and co-ordinated staffing pattern resembling a government department, (not surprising when it is remembered that Compton was aided by a team from the Civil Service Department).

One of the biggest obstacles to overcome in Britain was a 1970 Statement of Principles which said that the complementing, grading and pay of the staff employed in the House of Commons offices should be kept broadly in line with those of the staff in the Home Civil Service,

together with the Linkage Agreement of 1954 which applied civil service salary changes to linked House of Commons posts. Compton did little to clarify the employment status of staff and seemed content to have them remain civil servants, although he did advocate appointment of most of the staff by the Speaker.

Bottomley found considerable disquiet amongst all staff of the House of Commons about Compton's proposals. Bottomley noted:

Sir Edmund had underestimated the difference between the requirements of the House and those of the Civil Service. As one body of witnesses said, 'the function of the House of Commons staff is to provide a service to the House and its members, not to administer a policy' . . . Unlike a government department operating within the unifying framework of ministerial responsibility the services of the House relate not to one focal point but to several.<sup>21</sup>

The Bottomley Report made a most valuable contribution when it formulated broad criteria for any successful restructuring of the departments of parliament. They were:

- (a) It must above all ensure the maintenance and, where necessary, the improvement of the services — advisory and practical — provided for Members in carrying out their Parliamentary duties.
- (b) Overall control over the services of the House must remain with the House and its Members.
- (c) The staff of the House of Commons must continue to be recognised as a wholly distinct body, with a quite separate function, from the Civil Service whose duty is to serve the Executive.
- (d) Any changes made in the present structure of the Departments need to have, if they are to succeed, a very broad measure of goodwill amongst the staff affected.
- (e) The distinct qualities, special expertise, and unit loyalties within the present Departments should be recognised and used as a source of strength within any new organisation.
- (f) No obstacle must be placed in the way of the Speaker having the immediate advice, when required, of those senior officials whom he now consults in problems arising in the day-to-day business of the House.
- (g) Any organisational changes made should foster the development of:
  - i. co-ordination of the services provided by the several Departments of the House; and
  - ii. a unified staffing policy;
 and these would require the centralisation of authority, individual or corporate, as regards both the services of the House and the employment of its staff.
- (h) Progress towards unification must be gradual, and patterns of future development should be as flexible as possible; sudden change could be disruptive to the services of the House.



- (i) There must be some means whereby a clear responsibility can be allocated for dealing with emergencies and for the consideration of the longer-term development of the services of the House, both as regards the application of new technical developments and the changing requirements of Members.<sup>22</sup>

Bottomley proposed that all staff should be formally employed by the House of Commons Commission in a unified House of Commons service. The day-to-day operation of the House would be in the hands of a Board of Management comprising the Clerk of the House as Chairman and Accounting Officer, and the heads of the four parliamentary departments. The commission would be the appeal body for any aggrieved departmental head who disagreed with the Board of Management. On the grading of posts, Bottomley argued that there was no need to depart from the 1970 Statement of Principles, linking posts in parliament to civil service positions. Recruitment of senior officials would be by the commission and, for other staff, the Board of Management. Senior positions, they believed, should be filled by appointment from within the service of the House to preserve morale. Compton had proposed lowering the retirement age of House of Commons staff to sixty to improve career prospects but Bottomley found no desire for this amongst the staff, did not believe it would improve career prospects, and did not recommend any change.

The net result of all these suggested reforms is the provision in the House of Commons (Administration) Act 1978, for the Commission to appoint all staff of the House departments and determine their numbers, remuneration, and other conditions of service; (exceptions to the above are the Clerk of the House of Commons, any clerk assistant, the Serjeant-at-Arms, and the Speaker's personal staff). However, the Act places an obligation to keep the classification, pay and pensions of staff 'broadly in line with those of the Civil Service'.<sup>23</sup> There is no such statutory obligation in relation to establishment, numbers or recruitment, but the presence of the executive on the House of Commons Commission will always raise the possibility of executive influence in this respect. For industrial matters, and especially redundancy, the commission is deemed to be the 'employer' of staff it appoints, and the Speaker is the employer of the staff he appoints.<sup>24</sup>

Space does not permit a full analysis of the position of the House of Lords. Staff of the House of Lords are not nearly as independent as those of the Commons. At the time of writing, management reviews were being conducted of the staffing structure of both houses, (i.e. independent reviews), and these will produce some changes. It is interesting to note that professional recruitment to both houses has been

accomplished in the past using the civil service entrance tests. Such entrants are asked to nominate in order of choice where they would prefer to work if successful. A small number have opted for the House of Commons. The Lords, on the other hand, has been placed in an invidious position in each of the past few years because none of the successful candidates opted for the Lords, and the very few candidates who did nominate the Lords failed to pass the test. The Lords has been forced to fill such vacancies by the use of what are impolitely called 'retreads' i.e. former Lords' staff who have retired but who are brought back on a short-term contract basis.

In Canada, the houses of parliament at Ottawa have a considerable degree of independence in staffing matters. The only public service legislation affecting employees of the houses relates to pensions and other fringe entitlements. Financial and budgetary limitations are used to control staff members but even they can be broken by the authority of the legislature itself. From the mid 1970s, reforms occurred in Canadian provinces which saw control of parliamentary staffing taken away from the executive.<sup>25</sup> It is worth recalling that public service commissions in Canada have never enjoyed the breadth of powers exercised by Australian public service boards even in relation to control within the executive departments. For this and other reasons the staffing of Canadian parliaments has never been as prominent an issue in Canada. Staff of the Canadian parliaments are not unionised, (with only minor exceptions viz. some staff in Quebec, and Saskatchewan). Staff of the House of Commons in Ottawa are employees of the house and therefore are not public servants, a situation which also applies in six of the provinces. In the other provinces, and territories, they are public servants.

In Australia the parliamentary staffing situation is woeful. There is heavy government interference, almost all the staff are public servants, and the public service personnel practices are enforced on the parliament often to the extent that the relevant public service board virtually acts as the staffing agency of the parliament, although there is provision in the Commonwealth for determination of special conditions of employment to take account of the working circumstances in parliament (e.g. parliamentary staff enjoy more generous leave entitlements than is normal in the public service). The Jessop Committee, fortunately, tackled this problem head on and it forms the strongest part of their report. Jessop abhorred the degree of interference and control by the Public Service Board over staffing matters in the Commonwealth parliament, especially the fact that the Board had, at the behest of the government, begun to apply staff ceilings to the parliament, combined

with Board control of the classification of positions. The fact of the matter is that the staff of Australian parliaments, national and state, are public servants and therefore officers of the Crown. It is also the case that all significant elements of personnel practice e.g. appointments, promotion, establishment, cannot be altered by the Speaker or the President of the Senate without executive approval. Jessop was unequivocal in stating that the Public Service Board simply did not have the expertise to oversee the parliament in this way, nor should it in a proper system of the separation of powers. The Public Service Board in response to Jessop's concern seems to be prepared to accept a greater degree of independence for the parliament for appointments, promotions, and transfers, but for pay and conditions the Board wanted the Speaker and President to be obliged to obtain and consider its advice. Jessop comments, quite correctly, that the Public Service Board needs a good lesson in the doctrine of separation of powers. The most significant aspect is that a shift toward more parliamentary control of staffing at the Commonwealth level would require only minor amendments to the Public Service Act 1922. Regrettably, Jessop makes no firm pronouncement on the shift for parliamentary staff from being public servants to employees of the parliament itself, which is fundamental to the whole exercise. What they do say, however, has a sweet ring to it:

5. The Select Committee recommends that section 9 of the *Public Service Act 1922* be amended to vest in the presiding officers, separately or jointly as the case may be, the power of appointment, promotion, creation, abolition and reclassification of offices, and the determination of rates of pay and conditions of service.<sup>26</sup>

#### *Related matters*

The above discussion has centred on the specific issues of staffing and financing parliament. There are a number of related matters which should also be considered in relation to this topic. They can only be mentioned here. One is the question of other so called officers of the parliament such as the Auditor-General and Ombudsman and the relationship which they should have to both the executive and legislature. An examination of their financial and staffing processes reveals a heavy degree of executive interference in Britain, Australia and, to a much lesser degree, Canada. Similarly the matter of control over the physical property of parliament reveals considerable executive control in the three countries.<sup>27</sup> It should be remembered that the grand issues of principle which have been canvassed here assume somewhat different perspectives in very small parliaments which often meet very

infrequently, spend little, and have to employ only a few staff, most of them on a part time basis. Consider, for example, Prince Edward Island, where during the short sitting session, the clerk to the cabinet doubles up and serves as the clerk of the parliament. There is also the question of how to handle irregular fiscal and administrative behaviour of the politicians themselves. Should the executive be held accountable for any such misbehaviour and therefore police politicians' expenditures, as is the case in many sub-national parliaments, or should they proceed on the British assumption that a parliamentarian must be trusted in the dispensing of his expenses and allowances? After all, as was indicated at the beginning of this chapter, executive interference in the running of parliament was originally perpetrated on the theory that a member of parliament could not be trusted with money.

Finally there is the counter to many of the arguments above, and revealed in my own interviews with staff of parliaments in Britain, Canada and Australia, that many of the employees of the parliament feel more secure as public servants than they feel they would as servants of the house. This is to some extent caused by the manner in which they are treated by politicians, the fact that a shift to employment by parliament could necessarily mean a loss of permanent tenure, and the belief that it would close off options for transfers into the public service. Whilst many of these fears are unfounded they are nevertheless real and would need to be allayed.

This discussion has proceeded within the parameters of the Westminster model. Most of what has been advocated is already operating successfully in the United States and other republican systems. Perhaps the explanation lies in the observation made by others that in Westminster systems we speak of 'parliaments', the derivation of the word meaning 'talking shops', whereas in other systems they are 'legislatures' i.e. law-making bodies. Whatever the cause, the tragic fact is that, in Australia, we not only need to make the parliament impinge more on the executive, we also have a chronic need to get the executive out of parliament.

---

Since this chapter was written Mr Ian Sinclair, then Leader of the House, has announced the Government's response to the Jessop Report. Speaking in the House of Representatives on Thursday 25 March 1982, Mr Sinclair agreed that 'the independence of Parliament from Executive control is a central principle of our Constitution which must be upheld'. He was, however, equally firm about the constitutional obligations of the Government, namely, 'the control of the expenditure of public money', especially as

'it is the Government which has the odium of raising the revenue which funds that expenditure'.

In seeking a balance between these fundamental principles the Government agreed to a new method for funding the Parliament. As from the financial year 1982-83, there will be a 'separate parliamentary appropriation bill which . . . will cover all recurrent and capital expenditure items currently administered by the parliamentary departments'. Detailed control over individual items of expenditure will not be required. Instead, the Government will 'simply approve overall figures . . . for each of the Senate, the House of Representatives and, as a group, the three joint departments'.

The Government also stated a willingness to 'give control over staff numbers to the Presiding Officers'. It did so on condition that the Presiding Officers agreed to consult the Public Service Board before determining staff ceilings for the individual parliamentary departments, and that the projected ceilings were published in advance. The Government also sought an undertaking from the Presiding Officers that they would consult with the Board in determining the terms and conditions of employment of parliamentary staff. Such determinations are to be published annually when the Presiding Officers report to the Parliament. In these matters the Government was concerned that the policies of restraint in the public sector should apply to parliamentary staff and that 'any undesirable "leap-frogging" between the parliamentary and executive departments should be avoided'.

In order that the management of parliamentary staff is subject to proper scrutiny and accountability, the Government proposed that the Presiding Officers should 'report annually to the Parliament on the numbers, classification and disposition of staff, as well as any variation in terms and conditions of employment'. Providing these arrangements are set in place the Government undertook to amend the Public Service Act to vest in the Presiding Officers the power to create, classify and abolish offices, and make appointments below the level of permanent head.

*J.R. Nethercote*

## 21 Can pa cope? Peter Wile

---

One strand of political com-  
democracy for many years ex-  
stability and strength of its ex-  
member constituencies usuall  
majority in parliament. The c  
the people had voted for,  
executive decisions struck  
parliamentarians outside the  
ministerial responsibility coml  
the bureaucracy meant that  
requiring legislation and thus  
could be carried out virtually b  
They were put into effect, the  
bureaucracy which exercised n  
the government of the day. Th  
the people having elected a  
cabinet with the means to carry  
next election, unlike the situat  
government could be held to a  
clearly responsible.

Birch, in his lengthy essay or  
language of this approach (as  
Westminster system) as employi