

**Parliamentary law, practice
and procedure : sources and
materials from Hatsell to the
electronic age**

**Neil Laurie, Clerk of the Queensland
Parliament**

The inexperienced Clerk



Standing Rules and Orders of the Legislative Assembly 1860

Greater or Lesser Sum, Longer or Shorter Time

169. When a blank is to be filled up, and there comes a Question between a greater and lesser sum, or between a longer and shorter time, the least sum and the shorter time shall first be put to the Question.



The learning process



1. An understanding of the basic sources of parliamentary law and practice.
2. An understanding of the hierarchy of the sources of parliamentary law and practice, especially given the potential for conflict between sources, and methods for solving conflict.
3. An understanding of the materials available for research in parliamentary law and practice.
4. An understanding of the theoretical, historical and practical context in which parliamentary law and practice operates.



Sources of Parliamentary Law and Practice



- (1) Statute
- (2) Standing Orders
- (3) Sessional Orders and other orders of the House
- (4) Rulings of the Chair
- (5) Custom and Practice.



Sources of Parliamentary Law and Practice



Statute

- Increasing number of Acts relevant to parliamentary procedure. Mirroring trend in growth of statute/regulation.
- Now available online



Sources of Parliamentary Law and Practice



Standing Orders

- In Queensland once very reticent to amend – cultural reluctance
- Result was that Standing Orders supplemented heavily by Sessional Orders. Main source of procedure was Sessional Orders, not Standing Orders
- From 2004 structural and cultural change – now Standing Orders regularly amended – reflect current procedure



Sources of Parliamentary Law and Practice



Sessional Orders

- Rules of procedure that last for the “Session” – that is until prorogued or dissolved
- In 1980s and 1990s, main source of procedure for day to day matters was Sessional Orders, not Standing Orders
- Since 2004 really limited to programming and timing of business



Sources of Parliamentary Law and Practice



Rulings of the Chair

- Essentially the equivalent of the “common law” of Parliament
- Presiding Officer’s interpretation of Standing and Sessional Orders
- Presiding officer’s interpretation of precedent
- Presiding Officer’s rulings on procedure to be followed when no Standing Order or precedent, sometimes relying on precedent in other Houses
- Some of higher standard than others



Sources of Parliamentary Law and Practice



Custom and Practice

The custom and practice of the House is the way the House applies the rules by which the House conducts its business and, in addition, determines the way the House will govern its procedures when there are no such rules set down.



Hierarchy



- (1) Statute
- (2) Sessional Orders and other orders of the House
- (3) Standing Orders
- (4) Rulings of the Chair
- (5) Custom and Practice.



Conflict?



1. Follow hierarchy

(1) Statute

(2) Sessional Orders and other orders of the House

(3) Standing Orders

(4) Rulings of the Chair

(5) Custom and Practice.

2. Appreciate the principle in *Stockdale v. Hansard*



Conflict?



Stockdale v Hansard, (1839) G Ad. & E. 11

It was held that the privileges of Parliament could not be extended by a mere resolution or order of the House. To extend the limits of parliamentary privilege legislation was required.

It follows as a matter of logic that a resolution of a House of the Parliament cannot override the general law.



Materials



Materials available for
research in parliamentary law
and practice



Published manuals of Parliamentary Procedure



Early authors:

(See Harry Evans, *The Pedigree of the Practices: Parliamentary Manuals and Australian Government*, paper presented at the 33rd Conference of Australian and Pacific Presiding Officers and Clerks, Brisbane, July 2002)

Sir Thomas Smith, *Common-wealth of England and the Manner of Gouvernement Thereof*, 1612.

J. Sadler, *Rights of the Kingdom; or Customs of Our Ancestours: Touching the Duty, Power, Election or Succession of Our Kings and Parliaments ...*, 1649.

H. Scobell, *Memorials of the Method and Maner of Proceedings in Parliament ...*, 1656.

H. Elsynge, *The Ancient and Present Manner of Holding Parliaments in England ...*, 1660, and subsequent editions.

W. Hakewill, *Modus tenendi Parliamentum: or, The Manner of Holding Parliaments in England*, 1671.

W. Petyt, *Miscellanea Parliamentaria ...*, 1680 and *Lex Parliamentaria* , 1690.



Published manuals of Parliamentary Procedure



Published manuals of Parliamentary Procedure (con't)

J. Selden, *Of the Judicature in Parliaments ...*, 1681.

Sir Robert Atkyns, *The Power, Jurisdiction, and Priviledge of Parliament*, 1689.

Sir Matthew Hale, *The Original Institution, Power, and Jurisdiction of Parliaments*, 1707.

J. Rushworth, *Historical Collections of Private Passages of State ...*, 1721.

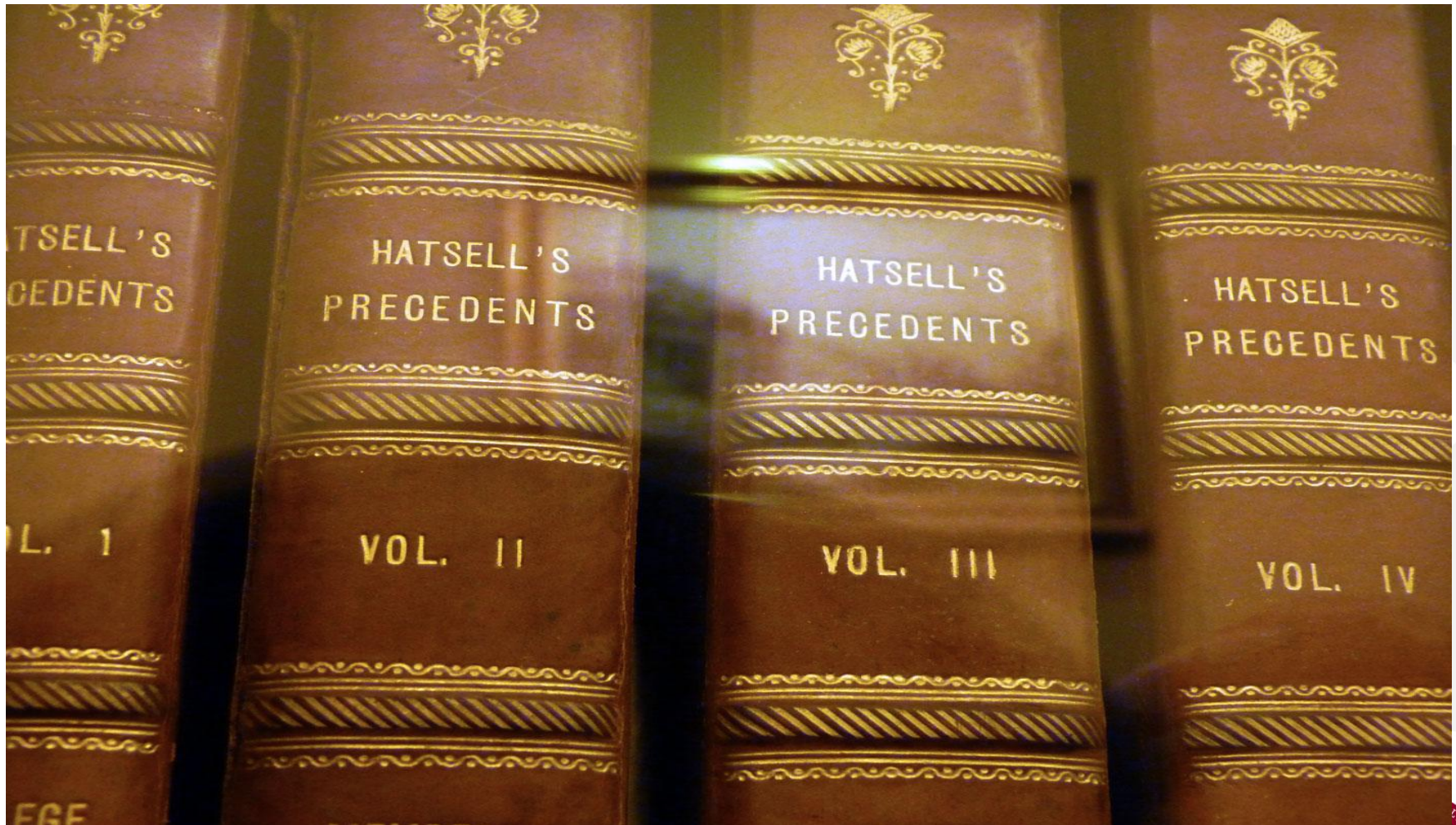
Richard Chandler, *The History and Proceedings of the House of Commons From the Restoration to the Present Time*, 1742.

Sir William Blackstone, *Commentaries on the Laws of England*, 1765, and subsequent editions.

J. Hatsell, *Precedents of Proceedings in the House of Commons; with observations*, 1781, and subsequent editions



Published manuals of Parliamentary Procedure



Published manuals of Parliamentary Procedure



More “Comprehensive” early authors

T. Jefferson, *A Manual of Parliamentary Practice: for the Use of the Senate of the United States*, 1801

T. Erskine May, *A Treatise Upon the Law, Privileges, Proceedings and Usage of Parliament*. London, C. Knight and Co., 1844



Published manuals of Parliamentary Procedure



The more modern widely referred to manuals:

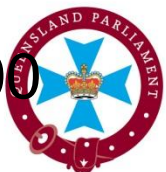
Odgers' Australian Senate Practice (From 1953 now in 13th edition)

House of Representatives Practice (From 1981 now in 4th edition)

T. Erskine May, *A Treatise Upon the Law, Privileges, Proceedings and Usage of Parliament*. London, C. Knight and Co., (From 1844, now in 24th edition)

D. McGee, *Parliamentary Practice in New Zealand*. Wellington, NZ, GP Publications (From 1985, now in 3rd edition)

R. Marleau and C. Montpetit (eds), *House of Commons Procedure and Practice*. Ottawa, House of Commons 2000



Published manuals of Parliamentary Procedure



An ever increasing number of State or territory manuals:

- New South Wales
- ACT



Published manuals of Parliamentary Procedure



Other extra parliamentary texts



- Texts from academics, not practitioners
- Examples:
 - Gerard Carney – Members of Parliament: law and ethics
 - Enid Campbell – Parliamentary privilege in Australia

Aid with understanding of the theoretical, historical and practical context in which parliamentary law and practice operates.



Journals



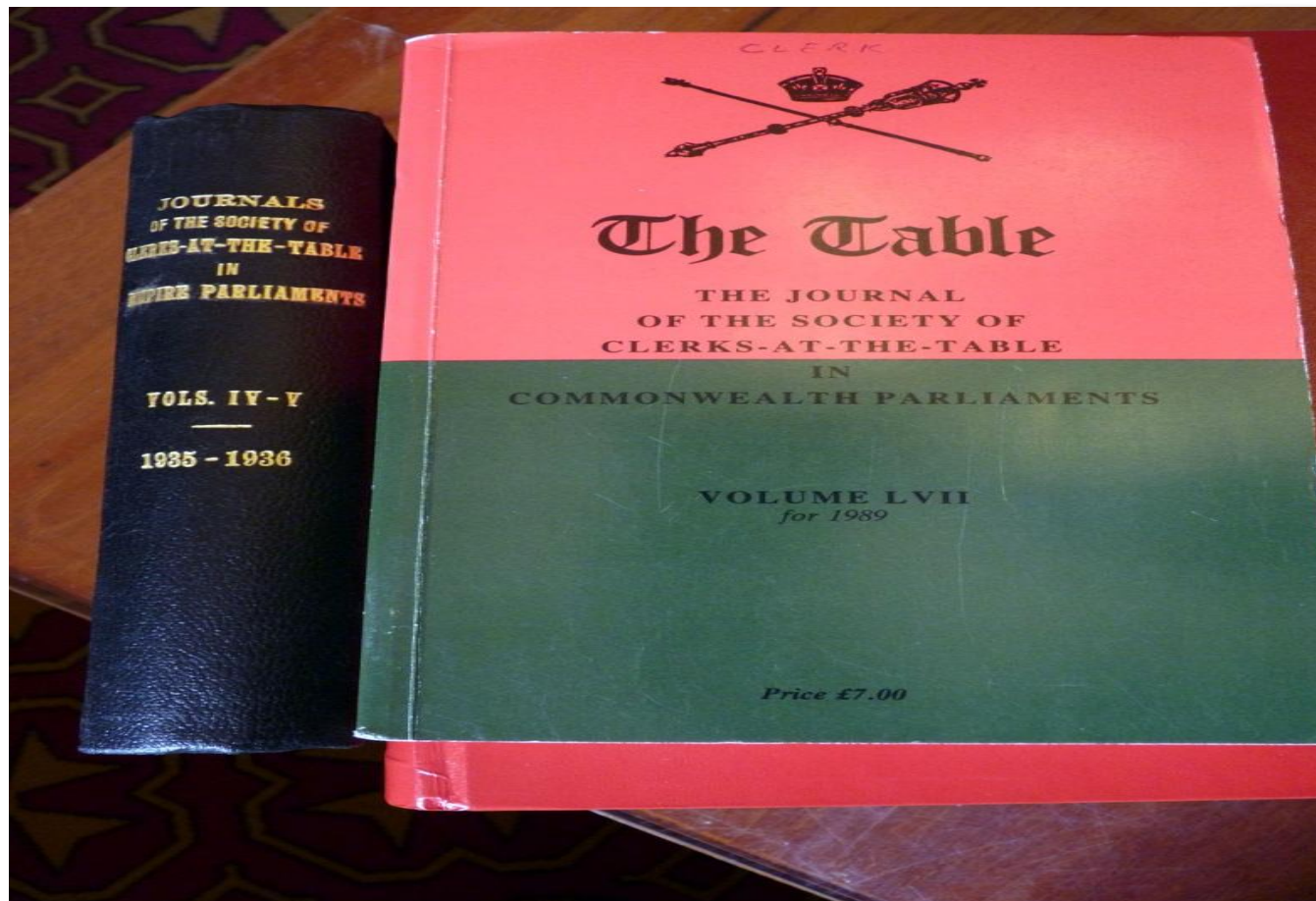
Examples:

The Table – The journal of the Clerks at the table in Commonwealth Countries

Australasian Parliamentary Review (formally “Legislative Studies”) – Australian Study of Parliament Group



Journals



Papers, etc.



- Conference and seminar papers
- Bulletins from Parliaments





In Issue 28 - August

AUSTRALIAN CAPITAL TERRITORY – LEGISLATIVE ASSEMBLY

Investigation into staffing arrangements – Leader of the Opposition

Rostered Ministers Questions trial concludes

Legislative Assembly (Office of the Legislative Assembly) Act 20

Motion of No Confidence in Assistant Speaker

Temporary Orders adopted as Standing Orders

Order to table emails by Opposition MLAs in Question Time



MATTERS OF PROC

No. 2 — Janua

Prepared by Chamber and

WORK OF THE HOUSE

Further information about the work of
the parliament's internet website.

LY



Australian New Zealand Clerks at the Table

ANZACATT E-catt Info-share



e-CATT Info-share


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View Question in Detail + Responses

| Results | Click on the Question below to review Responses. |
|---|---|
| 6/06/2012 11:06:48 AM By Ms Leanne Clare Queensland | <p data-bbox="656 671 1236 714">Subject: Contempt-deliberately misleading</p> <hr/> <p data-bbox="627 756 1932 1400"> In Queensland, Standing Orders (SO 266(2)) identifies deliberately misleading the House or a committee (by way of a submission, statement, evidence or position) as an example of conduct that may be treated as a contempt. In practice, successive Ethics and Privileges Committees in Queensland have applied the test in David McGee's Parliamentary Practice in New Zealand (2005 pp 653-4) which states that there are three elements to be established where it is alleged that a member has committed contempt of deliberately misleading the House-- (1) the statement must, in fact, have been deliberately misleading; (2) it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and (3) in making the statement, the member must have intended to mislead the House. McGee (pg 654) also notes that the standard of proof demanded in cases of deliberately misleading parliament is a civil standard of proof on the balance of probabilities, but, given the serious nature of the allegations, proof of a very high order. Recklessness in the use of words in debate, though reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House. We would appreciate advice on the following: 1. Does your jurisdiction recognise deliberately misleading the House or a committee as a contempt? 2.If yes, what test has the Ethics/Privileges Committees in your jurisdiction applied in examining allegations of deliberately misleading the House or a committee? 3.Has your jurisdiction ever questioned the difficulty in satisfying the third element of intent? 4.If yes, has your jurisdiction considered/implemented any changes to legislation or standing orders to set the test at a level that would find recklessly misleading statements/submissions sufficient to make a finding of contempt? 5.Have any other related issues been raised and/or dealt with in your jurisdiction? Thanks in advance, Leanne </p> |



Tuesday, 11 September 2012 4:30 pm

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Welcome to the ANZACATT web site

The Australia and New Zealand Association of Clerks-at-the-Table (ANZACATT) was formed in 2001 and New Zealand. The Association was incorporated in 2010.

The objects of the Association are to advance the professional development of its members and to enable the foundations and principles of parliamentary systems and parliamentary procedure in Australia and New Zealand.

The sharing of professional experiences and knowledge about the institution of Parliament and the development of Parliament in Australia and New Zealand who is employed in the capacity of Clerk-at-the-Table is eligible for the Association. The Association is administered by an Executive which meets four times a year to determine its policies and objectives.

A two day professional development seminar is held at the end of January each year which is open to both Australia and New Zealand. The seminar is held concurrently with the professional development seminar. An annual course in parliamentary procedure is offered to ANZACATT members. The course is initially by the Queensland University of Technology and subsequently by the University of New Zealand. The course is administered by the Executive, the Professional Development Committee and the Education Committee, respectively. The Association publishes a digest of parliamentary proceedings in both countries on subjects of parliamentary significance. The digest covers issues such as parliamentary privilege and the role of the Clerk-at-the-Table. ANZACATT members through the website.

The principal publication of the Association is a half yearly bulletin which contains reports from each House of Parliament.

Theoretical, historical and practical context



- Good grasp of history and constitutional theory, UK and local
- Good understanding of system, functions and roles
- Practical application (“real politik”) – what works what will not



Nuttall Matter– Back to Hatsell



Despite all – Back to Hatsell



Questions



What precedent in Queensland?

How is a prisoner called to the Bar?

Can they be questioned by Members?

What is general procedure?



Answers



A combination of:

- Standing Orders
- Statute (including the Corrective Services Act)
- UK Precedent via texts/manuals
- Eventually a Speaker's Ruling based on the above



Queensland Precedents



- Two similar occasions in Queensland's 150 years of Parliamentary tradition where persons had made an address before the Bar of the House.
- 1989, former Supreme Court Justice Angelo Vasta and 1956, the Commissioner for Lands, Vivian Rogers Crieghton appeared to address the House in relation to recommendation for them to be removed from office.



UK Precedent - Prisoners



Erkine May Parliamentary Practice sets out the procedure whereby a prisoner is brought to the Bar of the House of Commons:

When a witness is in the custody of the Sergeant-at-Arms or is brought from any prison in custody, it is usual, but not constant, practice for the Sergeant to stand with the Mace at the Bar. When the Mace is on the Sergeant's shoulder, the Speaker has the sole management; and no Member may speak, or even suggest questions to the Chair...

Twentieth Edition, p 745



UK Precedent - Manual – Hatsell



Hatsell, describes four placements of the Mace and consequence for the House of Commons, as follows:

1. When the Mace lies upon the Table, it is a House;
2. When under, it is a Committee;
3. When the Mace is out of the House, no business can be done;
4. When from the Table and upon the Sergeant's shoulder, the Speaker alone manages.

Hatsell, Precedents of Proceedings in the House of Commons



Speaker's Ruling



Mr Speaker ruled that a person, such as Mr Nuttall, appearing at the Bar of the House on a charge of contempt is not a witness *per se*, but rather a person being heard in their defence. A person being heard in their defence is not able to be cross-examined by members.

