



***BERMUDA***  
***HOUSE OF ASSEMBLY***

***How Bermuda's***  
***Parliament Works***

***Mr. James E. Smith***  
***Former Clerk to the Legislature***

**HOW  
BERMUDA ' S  
PARLIAMENT  
WORKS**

James E. Smith, BA., MA.

Former Clerk to the Legislature

January, 2008.

## **1- Composition of the Senate and the House of Assembly**

When Bermuda's Constitution came into effect in 1968, the Upper House (Legislative Council) was revised to provide for eleven members, all of whom were to be appointed by the Governor - four on the advice of the Government Leader (whose title changed to Premier in 1973), two on the advice of the Opposition Leader and five appointed by the Governor acting in his own discretion. Later, following on from a decision reached at the Warwick Camp Constitutional Conference in 1979, the Legislative Council was renamed the Senate and its composition was revised as follows - five Government appointees, three from the Opposition and three Independents - the changes coming into place the next year.

According to Bermuda's Constitution, the Governor, acting in accordance with the advice of the Premier, "may by instrument under the public seal" appoint Junior Ministers from amongst the Senators and Members of the House of Assembly to assist Ministers in the performance of their duties. The Constitution also establishes the minimum numbers of Cabinet Ministers at seven. The maximum number permitted is fourteen in total - not more than two and less than one from the Senate and a maximum of twelve from the House of Assembly (providing, of course, that no Members of the House are appointed as Junior Ministers).

For most of Bermuda's history until 1968, the full complement of Members of the House of Assembly remained at thirty-six. In that year, the number rose to forty as a result of constitutional changes, and in 2003 the number reverted again to thirty-six as a result of further constitutional changes which reconfigured Bermuda's electoral districts into thirty-six single-seat constituencies.

The Government's contingent of Members of Parliament in the House of Assembly sit to the right of the Speaker and consists of the Premier, the Deputy Premier, other Cabinet Ministers and the remaining Members of the Government side, who are referred to as Backbenchers. The Opposition Party members, who are made up of the Opposition Leader, Shadow Ministers and Backbenchers, sit to the left of the Speaker.

## **2 - Election of Presiding Officers following a General Election**

### **President and Vice-President of the Senate**

In the House of Lords (the Upper House) in the United Kingdom, the Lord Chancellor, a Member of the governing party, serves as the Presiding Officer. In Bermuda, on the other hand, on the day when Parliament is convened following a general election, an election will take place for the installation of Presiding Officers, a President and a Vice-President, both of whom, since and including the first meeting of the Senate in December 1980, have been chosen from amongst the three Independent Senators appointed by the Governor acting in his own discretion.

The standard procedure is for the Clerk to the Senate to ask the Members to elect a President. If only one Member is proposed, the Clerk will declare him/her to be elected. On the other hand, if more than one Member's name is proposed, a vote will be taken on the person first proposed, and if he/she fails to gain a majority vote, a decision will be made on the other nominees in turn until one of them receives the support of the majority. Once elected, the newly-elected President will be required to take an Oath or Affirmation of Allegiance in the form set out in Bermuda's Constitution before presiding over the proceedings of the Senate. The election of a Vice-President will be conducted along the same lines as the election of the President. The same procedure outlined above will apply if, for any reason, the seat of a Presiding Officer becomes vacant.

Following the election process for Presiding Officers before the official convening of Parliament, the other Senators cannot take part in the proceedings of the Upper House until they have also taken an Oath or Affirmation of Allegiance - a requirement which also applies to all Members of the House of Assembly. The two oaths are set out in the First Schedule of Bermuda's Constitution as follows -

### **Oath of Allegiance**

I .....do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

### **Affirmation of Allegiance**

I .....do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

### **Speaker and Deputy Speaker**

In the House of Assembly, following a general election, the procedure for the election of the Presiding Officers is similar to that which takes place in the Senate. The Clerk to the Legislature, in the absence of an elected Speaker, chairs the meeting until an individual is chosen to fill the office, at which time the incumbent assumes the role of Presiding Officer and conducts the proceedings with respect to the election of a Deputy Speaker and the constitutional requirement that all Members of the House take an Oath or Affirmation of Allegiance to Her Majesty the Queen before being allowed to take part in the proceedings. A time-honoured tradition in the Lower House is that the Speaker, upon being elected, is dragged to the Speaker's chair by his/her proposer and seconder, a practice which traditionally serves as a symbolic enactment of the incumbent's reluctance to serve as the Presiding Officer.

### **3 - Convening of Parliament**

Section 49 of Bermuda's Constitution states that the Governor, acting in accordance with the advice of the Premier, may at any time, by way of a proclamation published in the Official Gazette, prorogue or dissolve the Legislature. The recall of Parliament usually takes place after the summer recess, but if the dissolution occurs in anticipation of a general election the election will take place within three months of the dissolution date and the convening of the newly-elected Parliament normally occurs shortly afterwards.

On the day when Parliament is convened, both Houses assemble in their respective Chambers, and, if the ceremony takes place following a general election, the Presiding Officers of both Chambers, as outlined earlier, are voted in by their peers, and all Parliamentarians take the Oath or Affirmation of Allegiance. The arrival of the Governor at the Cabinet Office triggers a sequence of events which lead to the official opening ceremony. The first stage is that Black Road, acting under instructions from the Governor, marches to the House of Assembly to invite Members to attend the convening ceremony. He then leads the procession (made up of the Sergeant-at-Arms, the Clerk to the Legislature, the Speaker and Deputy Speaker, the Government and Opposition Leaders and the remaining Members of both parties) to the Cabinet grounds. Upon arrival, the Government Leader (Premier) presents the Governor with a copy of the Throne Speech, which outlines Government's programme for the forthcoming year. After the Governor delivers the Throne Speech, the elected Members of Parliament adjourn to the House of Assembly and the Senators to the Senate Chamber.

Prior to 1999, the convening ceremony took place in the Senate Chamber. Since then, the proceedings, weather permitting, were held on the grounds of Cabinet Building, a sensible alternative, which allows the public to witness the event.

Following a general election, the Speaker of the House and the President of the Senate are sworn in by the Governor before the delivery of the Throne Speech.

Debate on the Throne Speech takes place during the next meeting of the House of Assembly, after which it is dealt with at the Senate level. At both levels, the Leader of the Opposition responds to the Government's Throne Speech, which triggers a lengthy debate by their Parliamentary colleagues, at the end of which the Premier and the Government Leader in the Senate end the proceedings by responding to the issues and comments raised during the debate and moving that a message be sent to the Governor thanking him for delivering the Speech on behalf of the Government.

### **4 – Procedures at the Beginning and the Ending of a Regular Meeting of the House of Assembly and Senate**

At the beginning of a regular meeting of the House of Assembly, the door to the Speaker's Chamber opens, and the Sergeant-at-Arms, carrying the Mace on his right shoulder, announces "Mr. Speaker", which is the signal for all Members to rise from their seats. He then moves to the "Bar" to the House (a cord located in front of the public

gallery) and attaches it across the entrance to the section of the Chamber reserved for Members when the House is in session. After the Mace is placed on the brackets located on the top of the Clerk's table, the Speaker then starts the proceedings with a prayer and transacts the Order of Business and the Orders of the Day in the sequence outlined in the Rules of the House of Assembly.

After the Order of Business and Orders of the Day have been dealt with, a substantive motion is made by a Minister that the House be adjourned, which entitles any member of the House to speak for no more than twenty minutes. At the conclusion of Members' speeches, the Speaker, after adjourning the House, is led into the Speaker's Chamber by the Sergeant-at-Arms.

In 1920, as part of the agenda for commemorating the Bermuda Parliament's three hundredth anniversary, a silver gilt Mace was crafted by Garrard and Company in Great Britain, and after its introduction into Bermuda, served as a symbol of the Speaker's authority and the authority of Parliament, a convention which paralleled a similar practice in the House of Commons in Great Britain and in those jurisdiction which have adopted the Westminster system of government. The Mace is a necessary accompaniment to the proceedings of the Lower House.

The "Bar" to the House separates the Parliamentarians from those individuals sitting in the public gallery, and when a Member enters or leaves the Chamber by lifting and replacing the "Bar" he/she shall do so "with decorum" and is required, as a sign of respect for the Presiding Officer, to bow to the Speaker.

Procedures in the Upper House for the beginning and ending of regular meetings are similar in many respects to those of the Lower House. The Senators take their seats before the arrival of the President, who is led into the Chamber by the Clerk to the Senate. Upon entry into the Chamber, the Clerk announces "Senators, Mr. President", at which point all Senators rise from their seats. The Presiding Officer goes to his place at the table and bows to his/her colleagues on his/her right and then to those on the left. The Senators then bow to the President. After prayers have been said, the Minutes of the previous meeting are read and confirmed before the Senate proceeds with the Order of Business. On the motion to adjourn the House, each Member's speech is limited to ten minutes, and the procedure for Senators entering or leaving the Chamber is identical to what takes place in the House of Assembly.

## **5 - Budget Debate in the House of Assembly and the Senate**

Rule 55 of the House of Assembly outlines the procedures relevant to the Budget debate. When the Budget Estimates are laid before the House by the Minister of Finance (or in his/her absence, some other Minister), the Minister-in-charge can, without notice, move a motion for debating the Estimates of Expenditure. After moving the motion, the Minister delivers the annual financial statement (Budget Speech), after which no other Member is allowed to speak on that motion during the same sitting. The debate on the

Budget takes place on a day to be determined by the Minister-in-charge and should not occur earlier than five days after the motion has been moved.

The debate, when resumed, is confined to the financial and economic state of Bermuda and the general principles of Government policy and administration, as indicated in the Budget Speech and Estimates. After Members have spoken and the Minister-in-charge has replied, the debate on the motion is concluded, but the question on the motion is not put at this stage. The next step in the process is for the House to resolve itself into Committee of Supply, "without question put", to consider the Estimates, at the end of which the Chairman of the Committee of Supply reports to the House. Following the approval of the Estimates, an Appropriation Bill is introduced by the Minister-in-charge and taken through all the stages of the approval process without notice being given and without debate or amendment (i).

Unlike the House of Assembly, the Senate Rules provide no specific guidelines or procedures which have direct reference to the debate on the Estimates of Expenditure. That being the case, the procedural guidelines are based on established practice, which enables the Government Senator responsible for Finance to table the Appropriation Act and the Estimates of Expenditure following their approval by the House of Assembly and to move a motion for the approval of the Estimates of Expenditure, which triggers a general debate on the Budget, and, at a later stage, leads to the approval of the Estimates and the passage of the Appropriation Act through its three Readings. Despite the fact that the Senators can debate the Budget, the Senate does not have the authority to amend or reject it.

(i) Rule 56(5) allows the Opposition the right to determine the order in which the Heads of Expenditure are considered by notifying the Speaker and the Government in writing not less than two clear days before the day named by the Minister-in-charge for the resumption of debate. If the Opposition fails to exercise this right, the Government can determine the order in which the Heads of Expenditure are debated.

## **6 - The Senate**

### **Background History**

The framework of government introduced under the Somers Islands Company's regime in 1620 and extended under British control from 1684 onwards remained virtually intact until 1968 following a Constitutional Conference held in London two years earlier, the only major structural change before that date being the replacement of the Governor's Council in 1888 with two newly- created bodies - an Executive Council and a Legislative Council. The Executive Council was renamed the Cabinet in 1973 and the title of the Legislative Council was changed to the Senate in 1980.

As a result of these changes in 1888, the executive branch of Government consisted of the Governor and the Executive Council, which included senior civil servants and five or six representatives from the House of Assembly, all of whom were appointed by the

Governor. The Legislature, bicameral since 1888, consisted of an elected Lower House (the House of Assembly) and an Upper House (the Legislative Council). The Legislative Council was comprised of civil servants and other members, all of whom were also appointed by the Governor.

The Executive Council was renamed the Cabinet after the passage of relevant legislation in 1973, and, following Bermuda's second Constitutional Conference held at Warwick Camp in 1979, the Legislative Council was retitled the Senate. In December 1980, the Upper House met for the first time under its new title. The Hon. J. M. Smith (now Dame the Hon. Jennifer Smith), who served as Bermuda's first Progressive Labour Party Premier from November 1998 to July 2003, was the first female to be appointed as a Senator to this body. Before the name change occurred, Dr. the Hon. M. L. Bean, M.B.E. (later, Dame the Hon. Marjorie Bean) had the distinction of being the first and only female to serve on the Legislative Council.

### **Roles of Presiding Officers in the Senate**

The President, or in his/her absence, the Vice-President, presides at every sitting, and included in his/her mandate is the responsibility for preserving order and proper behaviour in the Senate, of regulating debates, of arbitrating on procedural problems and of ensuring that the proceedings in the Chamber are conducted in compliance with Senate Rules. If both Presiding Officers are not in attendance during the sitting, a Member (not a Minister or a Junior Minister) will be elected to serve as the Presiding Officer.

The role of the President is similar in many respects to that of the Speaker in the House of Assembly, but there are some striking differences. For instance, there is a subtle difference in their voting rights and the contributions they can make during debates in their respective Houses. The President can make comments and present arguments on any issue being discussed, and he is entitled to a vote (termed an "original vote") alongside his peers. The Speaker, on the other hand, cannot take part in House of Assembly discussions and can only cast a vote in the event of a tie.

### **Senate's Legislative Role**

Both Houses of the Legislature can introduce legislation (Bills and Statutory Instruments), but precedent and practice have firmly established the tabling and passage of legislation in the House of Assembly as being the first stage in the legislative process at the parliamentary level. The Senate, in reviewing the legislation sent down from the House of Assembly, will, on occasion, introduce and approve amendments of its own and send the amended version of the Bill back to the Lower House for its concurrence. following a merger during the voting process between the three Opposition and three Independent Senators. Under Bermuda's Constitution, the Senate can hold up any Bill not dealing with money. The Senate has, on occasion, matters for a period of one year, providing that the legislation is tabled and passed by the Lower House. Legislation thrown out in the past House during the next Session of the Legislature and that a period of at least

twelve months has elapsed between the first and second passage of the Bill in that House.

## **7- House of Assembly**

### **Background History**

Bermuda's Parliament, now the oldest in the Commonwealth outside the British Isles, dates back to 1st August 1620, when the Governor at the time, Nathaniel Butler, summoned a General Assembly to convene at the church (later called St. Peter's Church) in the Town of St. George. The Assembly, the forerunner of Bermuda's present House of Assembly, included two male representatives ("chosen by voice") from each of the Tribes (now designated Parishes) into which the colony was then divided. These elected representatives met jointly with the Governor and his Council to discuss local problems, administer justice and to formulate legislation, which, when finally agreed to, was to be forwarded to England for approval.

In opening the first meeting of Bermuda's Parliament, Governor Butler expounded on the ideals which he felt should serve as guidelines in future debates - "We come not hither for ourselves only and to serve our own turns or any man's in particular, but to serve and regard the public We are therefore to riddle ourselves from all base desire of gain: We are to despise all private interests, thus farre at least, as to cause them to give place to the general."

Since 1684, when direct administrative control of Bermuda's affairs was transferred to England, Bermuda's Governors, representing the authority of the Crown and acting on instructions from the mother country, have played a major executive role in Bermuda's affairs until the 1960's when, following the Constitutional Conference of 1966, Bermuda moved from a representative to a responsible form of government, a change which became effective after the 1968 general election.

In 1815, Hamilton replaced the Town of St. George as the capital of Bermuda. In the same year, the Parliament, the courts and all public offices were transferred to the new capital. The first gathering of the Assembly took place in the Town Hall on Front Street on the 13th January 1815. In 1826, the Assembly moved to the Sessions House on Parliament Hill, its meeting place ever since.

The most significant watershed development in the evolution of Bermuda's parliamentary institutions was the implementation of a Constitution in 1968, one of the major changes stripping the Governor of most of his former executive functions, which were transferred to the Executive Council.

The Council (renamed the Cabinet in 1973) was headed by the leader of the majority party in the House of Assembly. The other Members of the Executive, who were chosen by the Government Leader (now referred to as the Premier), were given executive responsibility for the various branches (Ministries) of government. The Governor, on the other hand, retained control of external affairs, defence, internal security and the Police,

areas on which he was constitutionally obliged to consult with the Government of the day.

In 1979, Bermuda's second Constitutional Conference resulted (inter alia) in an agreement on provisions for the appointment of an elected Attorney General as an acceptable alternative to the appointment of a non-elected individual to that office. Other changes provided for the statutory reduction of the minimum voting age to eighteen years (the relevant law was enacted in 1989) and the requirement that candidates in general elections make declarations to avoid conflicts of interest during debates in the House, the relevant amendment being incorporated in Section 30 (6) of the Constitution. A prospective member of the Upper House holding an interest in a Government contract was also required to make a similar disclosure in a local newspaper at least seven days before the date of his/her appointment.

### **Role of Presiding Officers in the House of Assembly**

Unlike the President of the Senate, who is recruited from amongst the ranks of the Independent Senators in the Upper House, the Speaker, ever since Bermuda's Constitution came into effect in 1968, has been an elected Member of the Government Party. Despite this political connection, he is expected to adopt an unbiased approach while chairing the proceedings in the House, his main function being to ensure that the rules are adhered to and that order and proper decorum are maintained during meetings. In addition, the Speaker arbitrates on matters relating to procedure, makes decisions on points of order and gives rulings when and where necessary.

As noted earlier, unlike the President of the Senate, who can participate in debates and has the right to an "original vote" on all occasions, the Speaker, on the other hand, probably because of his connection with a political party, is not entitled to take part in debates in the House of Assembly and can only cast a vote in the event of a tie. Although not spelled out definitively in the Rules of the Lower House, the underlying principle behind the Speaker's casting vote is that it should be used in such a way as to permit further discussion on the issue on which a vote has to be taken.

Some years ago, the casting vote option was brought into play when a particularly contentious issue was being hotly debated in the Committee of the Whole House. On that occasion, the then Speaker invoked Rules 31 (2) and 31(4), which entitled him to a casting vote and the latitude to serve as the Chairman of the Committee. The combined effect of these two Rules was to free up the Member serving as Committee Chairman in order to enable him to vote alongside his peers. Because, as anticipated, the Committee vote ended in a tie (which would have meant that the motion had been defeated), the Speaker, in his capacity as Chairman, was allowed a casting vote under Rule 31 (2), which, when exercised, guaranteed an affirmative outcome to the vote and allowed the debate on the legislation to continue.

## **The House of Assembly's Legislative Role**

Mention has already been made of the fact that, although both Houses of the Legislature can introduce legislation in their respective Chambers, the time-honoured precedent and practice is that the first stages in the legislative process (the tabling and passage of legislation) take place in the House of Assembly. The details relating to the tabling and passage of legislation (Primary and Secondary) are encapsulated in Section 10 of this document.

### **8 - Evolution of Bermuda's Franchise**

The election of representatives of the General Assembly of 1620 was based on a property franchise and a simplistic electoral system which mandated the election of two males from each Tribe (later called Parishes). In 1691, legislation was formally enacted to make provision for the election to office of four candidates from each of Bermuda's nine Parish constituencies.

In 1789, the property assessments for voters and candidates in general elections were set at twenty-four and one hundred and twenty pounds respectively. Later, in 1834, shortly before Emancipation became a reality in Bermuda and throughout the remainder of Great Britain's colonies, the property values for voting and for candidates running for seats in Parliament and other important public offices were virtually doubled to ensure the perpetuation of the elitist status quo in matters of government.

In 1874, legislation was enacted which introduced the secret ballot in Bermuda, and nine years later, Mr. W.H.T. Joell, running as a candidate for Pembroke Parish, was elected as Bermuda's first black representative in the House of Assembly.

In two successive years (1895/1896), Bills formulated with the intent of extending the property-based vote to women passed the House of Assembly, but were rejected by the Legislative Council on both occasions. Later, in 1923, the Women's Suffrage Society, encouraged by the earlier successes of the suffragette movements in Great Britain and the United States, was launched in Bermuda. After unstinting efforts and a number of setbacks, the Society finally achieved its key objective of equal gender representation in 1944, when the franchise and the right to run as candidates in general elections and for public offices was extended to property-owning women of twenty-one years and over. Resulting from this change was the election of Mrs. Hilda Aitken and Mrs. Edna Watson to the House of Assembly in 1948.

The Committee for Adult Suffrage (CUAS), spearheaded by Roosevelt Brown and others, was formed in 1960 with the prime objectives of extending the franchise to all adults twenty-one years and over, instituting single-seat constituencies and abolishing the property vote, which entitled landowners to run as candidates in general elections and to cast ballots in every parish constituency in which they possessed real estate assessed at or above the required statutory levels.

The Parliamentary Election Act of 1963 gave every adult twenty-five years and above the right to vote, but also allowed landowners who possessed acceptable rateable property anywhere in Bermuda to cast a second or "plus" vote in the constituencies in which they lived. The legislation also retained the Parishes as electoral districts, which were divided into two constituencies (a total of eighteen for the nine parishes), each returning two elected candidates to Bermuda's House of Assembly. The "plus" vote was abolished via legislation passed in 1966 and the voting age was also dropped to twenty-one (lowered again in 1989 to eighteen). In addition, Pembroke Parish, in view of its large population, was divided into four electoral districts, each returning two elected candidates, a change which effectively increased the number of seats in the House of Assembly from thirty-six to forty.

In July 2003, following changes to Bermuda's Constitution, the general election took place under a revised format of thirty-six single-seat constituencies, configured in accordance with the natural, as opposed to the Parish, boundaries of Bermuda. The number of potential voters in all constituencies varied somewhat, but came very close to achieving the ideal democratic formula of an equal number of voters for each constituency.

## **9 - The Westminster System of Government**

The existence of a Parliament provides the foundation for a democratic form of government, which addresses the needs of the people. Some of the key functions of the Legislature are to pass laws regulating the life of the country, to make finances available for the needs of Government and to serve as a forum for the public debate of issues of importance to the community.

Structurally, Bermuda has borrowed a great deal from the system of government, as indeed have all Commonwealth Parliamentary Association jurisdictions. Bermuda's two Chambers of the Legislature exercise, for the most part, parallel United Kingdom's Westminster functions to the House of Lords and the House of Commons in Great Britain and incorporate many of their parliamentary practices and procedures, with practical modifications and variations to adjust to local conditions and needs.

Under Bermuda's Constitution, the Legislature consists of Her Majesty the Queen (represented by the Governor), the Upper House (the Senate) and the Lower House (the House of Assembly). By custom, all proceedings of either House are open to the public, and since 1991 debates in the House of Assembly and the Senate have been broadcast over the radio.

The Commonwealth Parliamentary Association is a global family of former and current British colonies bonded by a common heritage of parliamentary practice and procedure based on the British Westminster tradition.

## 10 - Primary and Secondary Legislation

Legislation can be divided into two broad categories - Bills (Primary Legislation) and Statutory instruments (Subordinate or Supplementary Legislation), the latter consisting of Orders, Notices, Rules, Regulations, etc., which are made by the responsible Minister under the authority of existing or "parent" legislation. The process by means of which Statutory Instruments are approved by the Legislature are different to the procedures which apply to the passage of Bills.

As noted earlier, under the Constitution both Houses can introduce legislation, but the traditional and time-honoured practice is for the House of Assembly to table and pass legislative initiatives before they are dealt with at the Senate level. Most of these initiatives are promoted by Government through its Ministers, who are vested with the responsibility for piloting legislation directly relating to their respective Ministries through Parliament.

Bills tabled in Parliament have to go through three readings, the first being the actual tabling of the legislation without debate and followed sometime later by the Second Reading when the substance of the Bill is discussed in detail. The brunt of the discussion occurs during this phase of the proceedings, and the Third Reading, in the normal course of events, is a functional formality usually taking place during the same meeting and resulting in the passage of the Bill through the House of Assembly. The Speaker then signs the Bill and sends it to the Senate, where it is also taken through three readings before being signed by the President. Following the approval of both Houses, the legislation becomes an official statute (an Act) after the Governor attaches his signature to the document on behalf of Her Majesty the Queen.

A Bill which is introducing a policy or initiative for the first time is known as "free-standing legislation", which, as the term implies, stands on its own without any direct connection with other statutes. Once enacted, a "free-standing" Act is assigned a title and item number in the Attorney General's Chambers and is included in the printed volumes and data base maintained in Chambers.

Legislation, which proposes changes to existing statutes by adding, changing or removing provisions, is referred to as amending legislation. There are different ways of amending or changing existing legislation. In some instances, a current piece of legislation is rescinded and replaced by a new law. In others, an amendment Bill is passed by the Legislature altering provisions in an existing law. Basically, what happens is that the change is incorporated into the original statute, which, the amendment notwithstanding, retains its original title and date. Thus, the Bermuda Immigration and Protection Act, which has been amended on numerous occasions, retains the same designation and date as the original.

## **Public Bills, Private Members' Bills**

Public Bills are invariably tabled in the House by the Government Minister responsible for the Ministry to which the Bill relates. There is also provision in the Rules of the House of Assembly which permits the Opposition Party and individual members to table Legislation. In the latter case, the Legislation would be classified as a Private Member's Bill and the fate of the initiative is usually determined by a "conscience vote" - i.e. a vote which is not tied to party lines.

When a Public or Private Member's Bill is tabled, the motion is worded as follows -

"I move for leave to introduce and read the first time by its title a Bill entitled  
....."

When the motion is moved, there is no ensuing discussion of its contents, which, of course, is understandable, since most of the members of the House have not yet seen the Bill and will need the chance to study it before a debate is launched. If the motion for the First Reading is agreed to, as is invariably the case, the Bill is placed on the Order Paper for future debate, which can, according to the Rules of the House, occur within a period of four days. In keeping with established precedent, however, the Second Reading would normally take place two weeks later. In some cases (e.g. during the Budget Debate), expediency and the urgency of meeting legislative deadlines dictate that the debate takes place earlier.

That discussion at the Second Reading stage is usually initiated by the person responsible for tabling the legislation - i.e. in the majority of cases, and as already indicated, a Government Minister from whose Ministry the legislation originates. This debate takes place on two levels.

The first stage, which is conducted at the House level with the Speaker chairing the proceedings, is confined to a discussion of the principles and general merits of the Bill - in other words, the specific clauses and details of the legislation must not be debated at this point. During this phase of the proceedings with a Government Bill under discussion, the Minister-in-charge leads off the debate and is followed by the Shadow Minister, speaking on behalf of the Opposition. All members of the House are entitled to speak on the general principles of the Bill, but they can only speak once at this level. After everyone else has had his/her say, the Minister-in-charge, or the Member responsible for piloting a Private Members' Bill through the Legislature, has the right to speak a second time (the right of reply) in order to respond to comments and questions.

Following the general debate, the House moves into what is termed as "the Committee of the Whole House", at which time the specific details (arranged as Clauses) of the Bill are debated, and any amendments to the text, if found necessary, are agreed to. When the House is "in Committee", the Speaker, who normally presides during the first stage of the debate, appoints a Chairman to manage the proceedings and leaves the Assembly Chamber. In addition, the Speaker's Mace, the symbol of his authority and of

the authority of the House, is moved from its customary position on top of the Clerk's table and placed on the brackets positioned underneath. There are no limits to the number of times a member can speak while the House is at the Committee stage – a convention which facilitates and encourages the free exchange and interplay of ideas and viewpoints and a more concentrated focus on the specifics of the Bill.

Once the draft legislation passes the Committee stage, the Mace is returned to the brackets on top of the Clerk's table and the Chairman reports to the Speaker upon the latter's return to the Chamber. The final phase of the Second Reading then occurs at the House level, with the Bill either being agreed to or voted down (negatived) with the Speaker in the Chair.

Although the brunt of the debate occurs during the Second Reading, there is a further step in the process before the House of Assembly officially passes the Bill. This is the Third Reading, which in the normal course of events is a functional formality taking place on the same day as the Second Reading - usually after all the items on the Order Paper have been discharged. There are, however, those rare occasions when further debate is triggered for a specific purpose. If and when this happens, it is usually because a decision has been made to introduce and pass an amendment to the Bill. That amendment would normally be discussed "in Committee", unless members agree to waive that requirement and deal with the proposed change at the House level.

After the legislation has been passed by the House of Assembly, the Bill is signed by the Speaker and sent to the Senate, where it is taken through its three readings, using (with a slight degree of variation) somewhat similar proceedings to those adopted by the House of Assembly. Following the Bill's passage through the Senate, it is signed by the Senate President and then sent via the Premier to the Attorney General's Chambers for final vetting prior to its submission to the Governor, who is authorised under the Constitution to assent to the Bill on behalf of Her Majesty the Queen. After the Governor has given his assent by affixing his signature to the legislation, it is deemed to have been officially enacted from the start of the same day of signing. Notice of the enactment (indicating the short title of the legislation and the date of its enactment) is then published in the Official Gazette, following which the Bill is reprinted as an Act, with the Bermuda crest at the top of the title page and minus the explanatory memorandum attached at the back of the original draft passed by the Legislature.

## **Private Bills**

Private Bills are presented on behalf of an association or group of individuals (e.g. a business entity, church or school), and, in most instances, contain legislative provisions for the incorporation of a company and/or related matters. Their passage through the Legislature is governed by a set of procedures which differ in several respects from those relating to the other two categories of Bills. Private Bills are tabled in the Legislature by a Backbencher (i.e. a Member of the majority party who is not a Government Minister) or, as is sometimes the case, by a Member of the Opposition. In tandem with, and

immediately consequential to its tabling, the Private Bill is automatically referred to a Joint Select Committee on Private Bills (consisting of Members of the Lower House and Senators appointed by the Speaker of the House and the President of the Senate respectively) for consideration and report. What this entails is that the Joint Select Committee will carefully scrutinise the Bill to determine whether or not it conforms to existing legal and other criteria and then will inform their Parliamentary colleagues of their verdict by way of an official report, which is read and tabled in the House by the Joint Select Committee Chairperson.

If the Committee's report is supportive, the Bill will then have to be piloted through three readings in the House of Assembly (usually done in succession during the same sitting) and in turn, three readings in the Senate. In most cases, when the Joint Select Committee has given the green light to the Private Bill in its report, the passage of the draft legislation through both Houses is a mere formality, prompting debate only on rare occasions. Following the passage of a Private Bill through the Legislature, as outlined above, the remaining procedures to be adhered to are identical to those relating to Public and Private Members' Bills.

Private Bills cannot be presented between the 1st June and the day on which the Legislature is prorogued for the summer recess.

### **Statutory Instruments (Supplementary Legislation)**

A time-honoured method of implementing legislative change is by enacting supplementary legislation - also referred to as Statutory Instruments; This is a legislative expedient which is often resorted to, especially with respect to provisions in existing laws which are subject to amendment on a recurring basis. Statutory Instruments can only be passed under the authority of an enabling Act, sometimes referred to as the "Parent Act", i.e. an Act which delegates to a particular Minister the power or authority to "make" a Statutory Instrument. Statutory Instruments can be "made" by implementing either the Affirmative Resolution Procedure or the Negative Resolution Procedure.

### **The Affirmative Resolution Procedure**

Where the Affirmative Resolution Procedure applies, no Statutory Instrument can be "made" unless a draft of the Instrument has been laid before both Houses of the Legislature and a resolution approving the draft has been agreed to by each House, such approval to be officially communicated to the Governor in writing. Once this has been done, the Minister-in-Charge signs the Instrument into law (i.e. "makes" the Instrument) and arranges for it to be published in its entirety in the Official Gazette.

The parliamentary procedure with Affirmative Resolution items varies from the procedure for the passage of a Bill, one of the chief differences being that there is no communication between the Senate and the House of Assembly once the measure has passed either House and therefore no possibility of interaction between the two Houses to

amend the legislation. Both branches of Parliament deal with the Instrument independently of each other, and if one House rejects the item it does not become law. By way of example, some years ago a set of regulations relating to the National Library was agreed to by the House of Assembly and rejected by the Senate because of a problem with one of the provisions. Later, a revised version of the draft regulations, which addressed and solved that problem, were drafted and agreed to independently by both Houses with a minimum of fuss.

### **The Negative Resolution Procedure**

Under this procedure, the Statutory Instrument does not have to be debated in either House, but it can be if the appropriate action is taken. The responsible Minister, with the concurrence of his Cabinet colleagues, has the authority to make the Instrument without consulting Parliament and to appoint the date on which it comes into operation. However, draft copies have to be "laid" (introduced) in both Houses of the Legislature as soon as is practicable after the Instrument is "made" and published in the Official Gazette. When the draft legislation is "laid", copies of the Instrument are distributed to Members of the Legislature, which gives them the opportunity to study its contents and to decide whether it should remain in operation or be annulled in part or in its entirety. The Statutory Instruments Act 1977 allows either House a period of twenty-one days or three sitting or meeting days (whichever is later) after the Instrument has been tabled for the information of its members to decide whether the legislation (in part or in its entirety) should remain in effect. If, before the expiration of that period, a Member of either House moves the appropriate motion and a resolution to annul (or partially annul) the legislation is carried, the relevant message is sent to the Governor, and the Instrument (or part thereof) ceases to be operative. In the majority of cases, Negative Resolution items have not proven to be contentious and, as a result, are seldom debated. The procedure, however, has a great deal of practical value in that it gives the Minister the opportunity to deal with several matters expeditiously while preserving the Legislature's right, if deemed necessary, to scrutinise the Instrument and to decide whether it should remain in operation or not.

## **11 - House of Assembly and Senate Rules**

The Rules and procedures in both Houses of Parliament are similar in most cases, but there are differences, some of which will be pointed out in this section, where the main focus will be on a number of the key elements of parliamentary debate in the House of Assembly and the Senate. It should be noted as well that there is a provision in both Houses for the temporary suspension of any one or more of the Rules if thought necessary, providing that Parliamentarians agree by majority decision to the suspension.

Mention has already been made of some of the procedures and Rules relating to both Houses - e.g. the election and roles of Presiding Officers, the tabling and passage of legislation, the convening of Parliament, the procedures to be followed at the beginning and ending of regular meetings, Budget debates, the importance of the Mace during meetings and the requirement to bow to the Presiding Officer when entering or leaving

the Chamber through the "Bar" to the House.

### **Parliamentary Etiquette**

The observance of parliamentary etiquette is of extreme importance during debates. A Member in the Lower House who rises to speak must always address his/her remarks to the Speaker, and while this occurs no other Member must cross the line between the Member who is speaking and the Presiding Officer. This breach of etiquette cannot occur in the Senate, where all Senators, including the President, are seated at the round table where the debates take place, but, in keeping with the similar requirement in the Lower House, every Member has to address all his comments to the Presiding Officer.

The reading of newspapers, books, letters or other documents, except written material directly connected with the business under debate, is not permitted under Rule 24 of the House of Assembly, and, under the same Rule, "while a Member is speaking, all other Members shall be silent or confer in undertones and shall not make unseemly interruptions". Although not stipulated in the Rules (revised and reprinted as far back as 1977), the use of cell phones in the Chamber when the House is in session constitutes a breach of etiquette and should be disallowed.

Rule 21 of the House of Assembly states that it shall be out of order to use offensive and insulting language about Members of Parliament or language which is in bad taste and brings the House into disrepute (i). The Rule also stipulates that improper motives shall not be attributed to any Member during debate and that no Member shall be referred to by name only. In the latter case, the standard practice is to refer to the Member as the Honourable Member from (name of constituency).

Rule 21, inter alia, also states that reference shall not be made to any matter which is "sub judice", that Her Majesty's or the Governor's name shall not be used to influence the House and that no Member shall allude to any debate of the Senate or "any debate of the same Session upon a question or Bill not then being under discussion, except by indulgence of the House, for personal explanation". In the Upper House, Senators cannot allude to House of Assembly debates and they are subject to the other restrictions relating to the use of Her Majesty's or the Governor's name and to references to debates on questions or Bills not being then discussed.

(i) Rule 48 of the Senate disallows Members from imputing improper motives to other Members and using "offensive or insulting words against the character or proceedings of either House or against particular parties or Members of either House".

### **Other Rules**

There are several other Rules pertaining to parliamentary procedure which have to be observed in both Houses, but at this point the emphasis will be placed on a selective collection of those Rules.

## **Quorum**

In the Lower House, a quorum consists of "the Speaker, or, in Committee, the Chairman, and fourteen other Members". If at any time a Member draws attention to the absence of a quorum, the Speaker or the Chairman causes the bell to be rung and the proceedings are suspended until the required numbers are present at their seats in the Chamber. If the numbers required to form a quorum are not present within five minutes after the ringing of the bell, the House stands adjourned until the next meeting. Four Senators and the President or other Member presiding constitute a quorum in the Upper House, which is adjourned if the required number is not present within fifteen minutes after the beginning of the meeting.

## **Voting Procedures**

In the House of Assembly, at the conclusion of a debate on a motion to be voted on, invariably a collective "voice vote" ("Ayes" and "Noes") takes place, with the Presiding Officer, after hearing the response, deciding whether the motion has been approved or rejected. However, three Members of the House can challenge the decision by standing in their places and claiming a division, in which case the Speaker, or, if the House is at the Committee stage, the Chairman, orders a warning bell to be sounded and the division takes place after an interval of two minutes. Those Members in favour of the motion then move to the right of the Presiding Officer's chair and those opposing to the left. If three Members of the House make the appropriate request, the names of those voting in favour and against the motion are entered in the Minutes.

Mention has been made earlier of the "casting vote" to which the Speaker is entitled in the event of a tie and of the "original vote" vote of the President of the Upper House. In the Senate, if no Member objects to a motion, the Minutes record the motion as being agreed to. On the other hand, if one Senator objects, the motion is recorded as "Agreed to, Senator objecting". More than one objection to the motion leads to a division, at which point each Member (beginning with the Opposition Senators, followed by the Government Members and the Independent Senators) votes on the motion.

## **Questions**

Questions in the Lower House, which may be put to Ministers relating to public affairs for which they are responsible, have to be in writing, signed by a Member of Parliament and delivered to the Clerk by noon not less than nine days before the day on which the answer is required. In order to elicit an oral response, the question must be marked with an asterisk. If the questions have not received an oral response within one hour of the start of the meeting, the answer will be in writing and submitted to the Clerk for inclusion in the Minutes. The number of questions from a Member on any one sitting day is limited to three, but supplementary questions may be asked by any Member for the purpose of clarifying an oral answer. Subsection 5 of Rule 11 sets out the restrictions

which apply to Parliamentary questions, and subsections 6 and 7 state that a question shall not be made the pretext for a debate and give the Speaker the latitude to decide whether the question is out of order or not.

In the Senate, most of the same regulations apply to Parliamentary questions, but there are some differences. Rule 59 (2) states that questions must be addressed to a Minister or Parliamentary Secretary (now referred to as a Junior Minister) and subsection 3 stipulates that notice of a question must be in writing, signed by a Member and received by the Clerk by noon not less than six days before the day on which the answer is required. The Rule relating to questions makes no reference to the need to mark a question with an asterisk in order to elicit an oral answer; nor does it draw attention to the need for an oral answer to be given within one hour of the start of the meeting, as is the case in the House of Assembly.

### **Interruptions**

No Member of the Lower House is permitted to interrupt the Member speaking, except by "rising to a point of order" or to elucidate some matter referred to in his/her speech. When "a point of order" is raised, the Member speaking sits down and the Member interrupting draws the Speaker's or Chairman's attention to the "point of order" for decision. When a Member requests elucidation on the contents of a speech, the Member speaking has the option of either continuing his/her speech or taking his seat, following which the Speaker or the Chairman then decides whether there should be a response to the matter raised. Rule 18 of the Senate also allows a Senator to raise a point of order, but does not include the option which enables the Member speaking to refuse to give way to a request for elucidation of a topic mentioned in his/her speech.

### **Notices of Motion**

There are a number of instances when a Member of the House of Assembly is required to give notice of a motion, which must be signed and submitted to the Clerk to the Legislature during a sitting of the House or, when the House is not sitting, during office hours. With the exception of the Rules relating to the procedures for electing a Speaker and Deputy Speaker, notices of motion do not require a seconder. If no further action has been taken on the motion over a period of three months, the motion is "deemed to have been withdrawn unless the House otherwise orders". Senate Rules relating to notices of motion are basically the same, but they contain no reference to the motion being "deemed to have been withdrawn" in the event of no further action being taken after a period of three months.

### **Order in the House**

The Speaker or the Chairman (when the House is in Committee) has the authority to order a Member whose conduct is grossly disorderly to withdraw immediately from the Chamber during the remainder of the day's sitting. If, on the other hand, the Presiding

Officer feels that his powers under the relevant Rule (Rule 30) are inadequate, he has the option of "naming" the offending Member, which is tantamount to putting the question that the offending Member be suspended from the service of the House. The suspension, if agreed to, lasts for three sitting days on the first occasion, for six sitting days on the second and subsequent occasions until the House decides to terminate the suspension of the Member. If there is grave disorder of a general nature in the Chamber, the Speaker, if he thinks it necessary to do so, can adjourn the meeting "without question put" or suspend the sitting until a time to be determined by him. In the Upper House, Rule 47 outlines the procedure with respect to order in the House, but there is no provision for the suspension of a Member who is "called to order"

James E. Smith, B.A., M.A.  
Former Clerk to the Legislature

January, 2008