

# **“BILLS ARE MADE TO PASS AS RAZORS ARE MADE TO SELL”**

## **THE LEGISLATIVE PROCESS IN THE HOUSE OF REPRESENTATIVES**

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### **THE ROLE OF PARLIAMENTARY COUNSEL**

**GEORGE TANNER QC<sup>1</sup>**

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#### **“Bills are made to pass as razors are made to sell”**

1 These words appeared in an article entitled “*Simplification of the Law*” written in 1875 by Lord Thring, the first head of the United Kingdom Parliamentary Counsel Office. They were part of the title of the article “*Bills are made to pass as razors are made to sell: practical constraints on the preparation of legislation*”<sup>2</sup> written over a century later by Sir George Engle QC, a successor to Lord Thring in that office. The words derive from a poem written by an English satirist and published in the 1780’s. The poem in which the words appear concerns a street trader in a market town who offers twelve razors for eighteen pence. He sells them to a trusting country soul, who finds them useless and complains to the seller. The poem ends with the words:

“Friend, quoth the razor man, ‘I am no knave:  
As for the razors you have bought,  
Upon my soul, I never thought  
That they would shave’.  
‘Not think they’d shave’ quoth Hodge with wondering eyes,  
And voice not much unlike an Indian yell;  
‘What were they made for then, you dog?’ he cries.—  
‘Made! quoth the fellow with a smile, —‘to sell.’

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<sup>1</sup>Chief Parliamentary Counsel. I am grateful to Bill Moore, Parliamentary Counsel, for his thoughts on and contribution to this presentation.

<sup>2</sup>[1983] Statute Law Review 7

- 2 Neither Lord Thring nor Sir George Engle used the words to suggest that it doesn't matter what is in an Act of Parliament so long as it passes. Their point is that a Bill faces many challenges before it becomes an Act and that passing legislation is a pragmatic enterprise. That is also the theme of this paper. Not much has changed in that regard since Thring's day.

### **Role of Parliamentary Counsel in the legislative process in the House**

- 3 The role of the Parliamentary Counsel in the legislative process generally was described by Geoff Lawn at the 2 seminars held in the Chamber last year. Geoff's presentation touched on the select committee and committee stages of Bills. A good deal of his presentation focussed on the drafting of Bills for introduction. It is also the function of Parliamentary Counsel to draft amendments to Bills after they have been introduced. This session focusses on what Parliamentary Counsel do during the select committee and the committee stages of Bills in the House. Before going into that, I want to make a few general observations about the legislative environment from the perspective of a legislative counsel because it is relevant to what occurs in the House as regards legislation.
- 4 It is worth remembering that the only function Parliament has is to enact legislation. In contrast, the House has several functions: it provides the government, it is the institution that holds government accountable, it has a representative function, and it plays a major role in the law-making process. The position is best expressed by the Clerk of the House, D G McGee QC in the most recent edition of his magisterial text on parliamentary law and practice:

The imprimatur of Parliament on a document, converting it from a piece of paper with no effect into a statement of rules of binding effect which will be enforced by the full might of the state, is important in a fundamental sense as providing a means by which binding rules (laws) can be recognised. Contributing to such a document is a primary function of the House and its committees.<sup>3</sup>

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<sup>3</sup>David McGee *Parliamentary Practice in New Zealand* 3rd ed, 3

## **Features of the New Zealand legislative process**

- 5      There are features of the New Zealand legislative process that make New Zealand's legislative environment unique. First, New Zealand has a unicameral system. There is no upper House to provide for scrutiny of proposed legislation as there is in many overseas countries at both national and state or provincial level. In New Zealand this is the role performed by select committees. In some respects, the select committee system provides more effective scrutiny than do some upper Houses. Select committees often work across party lines to try to make a legislative proposal work better even if they do not agree with the proposal. My predecessor, Walter Iles QC, presented a paper at a conference in Queensland in which he described the select committee process in the New Zealand Parliament. The audience included members of the Queensland House of Representatives. Walter described the largely bipartisan approach of select committees in New Zealand. At the end of his address one of the Queensland members asked if he had understood Walter correctly. He said, "are you saying that in New Zealand you put members of Parliament from different parties in the same room and they work together co-operatively in improving government Bills? That could never happen in Queensland."
  
- 6      Second, New Zealand legislators are "hands on". Bills can be extensively amended during the course of their passage through Parliament. This is not new and is not the result of MMP. A 250 clause Children and Young Persons Bill was introduced in 1988. It was completely rewritten in the select committee and emerged as the Children, Young Persons, and their Families Act 1989, an Act containing 469 sections. It was a feature under the first past the post electoral system. It has not changed significantly.
  
- 7      Third, there is considerable opportunity for public participation in the legislative process. Individuals, companies, and organisations can influence the final content of legislation through an open process that enables them to make submissions both in writing and orally to select committees without having to engage in lobbying. There is no parallel in Australia, Canada, or the United Kingdom.

- 8 Fourth, the fact that under MMP the Government does not necessarily have a majority of the members of a select committee and the fact that the chair of a select committee may not always be a Government member makes it more difficult for the Government to get its legislation enacted in the form in which it may want it. Astute political management is required of today's governments. The informal understandings between the 2 major political parties that characterised the previous system have been replaced by trade-off and compromise.
- 9 Fifth, under MMP time constraints can operate against the Government in a way that did not occur under the previous electoral system. Urgency allows more House time for legislation. It is less likely under MMP that the House will sit under urgency to pass legislation. Urgency has to be negotiated with coalition and other parties on a case by case basis. This means that the time available will be used to progress Bills that have the highest political priority and where the numbers are certain. If there is doubt about whether the Government "has the numbers" for a Bill, the Bill may sit on the Order Paper for long periods. This means it is important to get a Bill right while it is before a select committee. It is not wise to assume that problems can be fixed up in the committee stage when the Bill is back in the House because this uses up valuable House time. A former Minister of Finance adopted a policy that was well known within government of not wanting to have government amendments to his Bills during the committee stages. He insisted that the Bill was got right while it was before the select committee.
- 10 Sixth, the need to pass legislation quickly can put pressure on departments and counsel to produce amendments to Bills within timeframes that are not ideal. The time it takes for some Bills to become Acts might suggest that legislating is a leisurely and orderly activity. Generally, it is not. The pressures on officials and counsel can be intense. There are examples of select committees commencing meetings to consider drafts of amendments to Bills and waiting patiently (or not) for counsel and officials to appear with the drafts. There are examples of occasions when the House has been debating amendments in the committee stage at the same time as counsel is drafting the rest of them. The order in which legislation is taken on the Order Paper can be

unpredictable. Bills can get moved up or down depending on a range of factors including decisions about new policy and whether the government “has the numbers”. Officials and counsel need to be ready to go at any time at least as regards the committee stage.

11 Seventh, error correction is not so straightforward under MMP. The Government does not like to have to use up valuable House time passing legislation to correct errors in legislation. It may once have been the case that the Government could expect a reasonable degree of support from the Opposition to fix a policy, administrative, or technical defect in an Act. That is not the case now. This means that every effort has to be made to get the legislation absolutely right before enactment, that is, in the Bill as introduced and during the select committee and committee stages.

12 Lastly, the point may have already been made by the Clerk of the House that the Executive no longer dominates Parliament and the legislative process to the extent it did under the previous electoral system. There is a far greater degree of separation of powers between legislature and executive. New Zealand is moving closer to the American system. When departmental officials appear before select committees they come before the legislature on behalf of the executive to support legislation proposed by the executive and, when they do, they are not met by a critical mass of friendly faces on the government side. The separation between legislature and executive is no longer theoretical; it is a practical reality. Officials are less likely to be supported because the executive is no longer in a position to do so. The relationship is more arms-length.

### **Select committees**

13 Counsel draft amendments to Bills required by select committees. Counsel attend select committee meetings when a committee considers a departmental report on a Bill and attend the meetings when the committee considers and deliberates on the amendments to a Bill. Counsel will often attend meetings if there is evidence they think might be particularly helpful, eg, the New Zealand Law Society or an organisation or sector that is particularly affected by a Bill. Sometimes counsel will

not attend any meetings when evidence is being given. It is a matter for judgment in each case. However, counsel get and will usually read the submissions made to select committees so they will be up with the play as regards the issues being raised. If they don't attend all the meetings, they will usually keep in touch with the officials so that they know what is going on.

14 It is not the role of counsel at a select committee to act as an advocate for the policy in a Bill. A counsel's job is to ensure that the amendments required by the committee are effectively and clearly drafted. In this respect, it is no different from the job of drafting the Bill. Counsel must explain the effect of the amendments and give advice about them, how they affect the Bill, and how they may affect other legislation or the common law. Counsel may also be required to give advice about policy issues. It is not uncommon for a select committee faced with conflicting advice from submitters on the one hand and the department on the other to seek for counsel's view. Counsel will express a view if able to even though it may conflict with the position taken by the department.

15 It is the responsibility of the officials to prepare a departmental report on a Bill after submissions have been heard. This is in addition to papers and advice that may have been requested during the hearing of evidence. The departmental report forms the basis for Parliamentary Counsel to draft the amendments to the Bill. The report should—

- summarise the issues raised in submissions
- recommend whether the Bill should be amended to address those issues
- give reasons for those recommendations
- indicate any changes the department considers should be made to the Bill and why

- if changes of a purely drafting nature have been raised in submissions or are proposed by the department, refer to these and recommend that they be referred to Parliamentary Counsel.

- 16 The report should not recommend particular wording for a proposed amendment or how a proposed amendment might be made or where it might be located in the Bill unless it has first been discussed and agreed with counsel. What is proposed by a department and accepted by a select committee may be inappropriate or ineffective in drafting terms. That places counsel in the position of having to justify departing from it. An example of what can happen is if a departmental report supports a submission that clause 5 of the Bill should be amended by inserting “express” before “agreement” to ensure that an agreement cannot be inferred from conduct. The report fails to recognise that the word “agreement” is used in 14 other places in the Bill and it is not clear whether those references have to be changed as well for consistency, left alone, or whether some other amendment is needed. A proposal to amend the title to the New Zealand Superannuation Act 2001 to add “and Retirement Income” looks simple enough, but needed several pages of consequential amendments. These situations are not always obvious. Early discussion with counsel is important.
- 17 Some recommendations in reports can be so general as to delegate the policy to counsel to decide, eg, the report may identify a policy issue and then recommend, without further elaboration, that the matter be referred to Parliamentary Counsel for consideration. Some departments have made this technique into an art form. It is usually interpreted as a sign that the officials are out of their depth. Such recommendations can result in a Bill of poor quality. Counsel get brought into the policy process at the expense of drafting. A single line recommendation in a departmental report that a matter be referred to counsel for consideration resulted in weeks of work and the addition of several new Parts to the Bill. If this occurs, some counsel might be prepared to assist, usually through gritted teeth, but others may complain and throw the matter straight back at the committee and the officials and insist on detailed instructions which they would be entitled to do. The message is “don’t subcontract your anxieties to the drafter”.

18 It is good practice to refer a draft of the departmental report to counsel before sending it to the select committee. This —

- enables counsel to comment on the report generally and identify any possible drafting, legal, or scope issues with what is proposed. It can also avoid the possibility of disagreement between counsel and the department in front of the committee over something in the report. Regrettably, it is sometimes necessary for counsel to interrupt officials during the presentation of a departmental report. A senior counsel tells me he does this quite frequently. This is not good because, if counsel is right, it may undermine the confidence of the committee members in officials. Discussing proposed recommendations with counsel can assist you in answering questions from the committee members. It can also be helpful to transfer an issue to counsel if you are being pressured or the committee is aggressive and you want time to think about a response.
- allows counsel to start thinking about how changes to the Bill might be drafted or even begin drafting the amendments. If there is likely to be pressure to get the amendments drafted and back in front of the committee, the earlier counsel can get to work on drafting the amendments the better.

19 If the department is under pressure to produce a report and there is no time to send it to counsel for comment, departments should at least alert counsel to the changes they are proposing and any potential problems officials see. Dialogue between the department and counsel is very important. How this is done, whether by email or phone, is up to the individuals concerned: so long as it is done.

20 It is unwise to introduce new topics for consideration shortly before the committee's deliberation (unless required by the Minister). Committees can be suspicious of "late" amendments.

21 Try to "negotiate" with the select committee adequate time to prepare the departmental report. Don't put yourselves under unnecessary pressure by either



promising to deliver within an unrealistic timeframe or by accepting an unrealistic timeframe. Sometimes the political pressure will be such that the timeframes will be tight and that has to be accepted. But in light of the importance of getting the Bill right and the limited opportunities for subsequent correction, it is better to take the time necessary to do the job properly and get the Bill right at the select committee.

22 When the committee has considered the departmental report and decided what amendments it wants to make, counsel will produce a draft of the amendments in the form of a revision-tracked version of the Bill. An extract from a revision-tracked Bill is annexed to this paper by way of example.

23 The revision tracked version enables the committee members to see exactly what the amendments to the Bill will look like on the face of the Bill itself. Until the revision-tracking procedure was adopted about 6 years ago, amendments were drafted on a “slip” which was a separate printed document that set out the amendments and had to be read alongside the Bill. It was difficult for the committee and officials to see where the amendments fitted in, particularly if the Bill was large and there were lots of amendments. Printed slips could be up to 100 pages long. Now select committees (and departments) have everything in one document.

24 Counsel will provide drafts of the proposed amendments to the instructing department before they are sent to the committee. It is important to deal with them in the same way as you would with drafts of the Bill. Consider the amendments carefully. “Crash-test” them as Graeme Buchanan recommended in the seminars last year. Respond promptly so that momentum is maintained.

25 There is no BORA vetting process for amendments to Bills, but that does not mean that the New Zealand Bill of Rights Act 1990 is not relevant. Ensure that the amendments are consistent with —

- the New Zealand Bill of Rights Act 1990

- other relevant statutes such as the Official Information Act 1982, the Privacy Act 1993, and the Human Rights Act 1993
- any relevant international law, basic legal principles, and the common law.

26 Significant or extensive amendments to a Bill can give rise to difficult design issues. The amendments may not fit well with the existing structure of the Bill and the way the material in the Bill is organised. Sir George Engle has described this as the “impracticality of continuous redesign”.<sup>4</sup> Changes in policy can materialise late in the process and leave insufficient time to revisit the original structure and recast the Bill to better accommodate what is now wanted. It may be necessary to insert new Parts or make other significant changes to provisions throughout the Bill that are not easy to achieve with the existing structure and organisation of material.

27 The Intellectual Disability (Compulsory Care) Bill was introduced in 1999. It provided for the compulsory care of intellectually disabled persons who posed a threat to themselves or to others. There was awareness of the human rights implications of this policy. The Bill focussed on ensuring that compulsory care was a measure of last resort requiring an order of the Family Court after extensive enquiry. A majority of the select committee considered that compulsory care should apply only to persons charged with or convicted of a criminal offence. The focus thus changed from the civil jurisdiction of the Family Court to the criminal justice system. Extensive redrafting was necessary to reflect the different policy. Whenever possible, adequate time should be negotiated with the committee for this.

28 When the committee meets to consider the amendments it may ask either the departmental officials or counsel to go through the amendments and explain them. Our preference is for counsel to do this. Sometimes a committee will want an explanation about every proposed amendment. At other times, it may want an

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<sup>4</sup>Sir George Engle CB, QC *Bills are made to pass as razors are made to sell* “practical constraints in the preparation of legislation” 1983 Statute Law Review 7,14

explanation of just the significant ones. Officials and counsel have to be prepared for either.

- 29 When the committee has deliberated on the Bill, that is, decided what changes to recommend to the House, the committee clerk will mark up the Bill showing whether the amendments are unanimous or by majority. Amendments recommended unanimously are automatically adopted as part of the Bill when it has its Second Reading. Amendments recommended by majority become part of the Bill when the Speaker puts the question at the end of the Second Reading that the amendments be agreed to and the House agrees.
- 30 Select committees do not make amendments to Bills; they recommend the amendments to Bills to the House. It is for the House to decide whether to accept them. An extract from a reported-back version of a Bill showing whether the amendments were unanimous or by majority is annexed to this paper by way of example.
- 31 Bills are reported back to the House with a commentary. The purpose of the commentary is to show how the committee carried out its consideration and what its conclusions are about passing the Bill and the recommended amendments. Commentaries are a narrative describing the committee's work and a discussion of the substantive policy issues and drafting issues addressed.<sup>5</sup> Commentaries provide a valuable insight into the select committee scrutiny process both for members and the public. They also enable members to consider issues in advance of the Second Reading debate.
- 32 The committee clerks will send a draft of the commentary to counsel for comment. Counsel will invariably check the draft to ensure, so far as he or she can, that the commentary is correct particularly as regards the amendments to the Bill and their effect. Counsel may not have been present throughout the select committee process

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<sup>5</sup>David McGee CNZM, QC, *Parliamentary Practice in New Zealand* 3rd ed p 360

and so may not be in a position to comment on all matters covered in the commentary. The committee, not counsel, is responsible for commentary. All counsel can do is comment or suggest changes. It is important that commentaries are accurate because they are sometimes referred to by the courts as an extrinsic aid where questions of statutory interpretation arise.

### **Committee stage**

33 After a Bill has had its Second Reading, it is set down for what is called the committee stage. The House goes into committee to consider the details of the Bill and make any amendments before it is passed. The committee stage provides —

- a further opportunity to make changes to the Bill which may be significant policy changes or minor technical adjustments or purely drafting changes
- a final opportunity to get the Bill right before it becomes an Act of Parliament.

34 Amendments to a Bill in the committee stage are made in a document called a Supplementary Order Paper (**SOP**). An SOP is annexed to this paper by way of example.

35 Counsel draft SOPs containing amendments proposed by the Government. Instructions will usually come from the department, sometimes they will come directly from a Minister. Much of what Geoff Lawn said in his presentation to the seminars last year about giving instructions and the role of counsel apply equally to SOPs. Counsel will produce a draft and refer it to the department and to other departments that have an interest in the matters covered. It is important to respond promptly with comments. Sometimes Bills can sit on the Order Paper for long periods and there is plenty of time to consider what changes may be required to a Bill at the committee stage. Often, however, particularly if there is political pressure to get a Bill passed, the gap between the Second Reading and the committee stage can be quite short allowing only limited time to prepare amendments. You should deal with a draft

SOP in exactly the same way as a revision-tracked version of a Bill or a draft Bill itself. Consistency with the Bill of Rights and other statutes, international law, legal principle, and the common law apply equally.

- 36 If a Bill has a fixed commencement date, that is, it comes into force on a particular date, and there has been a long period between the Second Reading and the committee stage of the Bill, it may be necessary to change the commencement date. Commencement dates are frequently changed at the committee stage for this reason. It is better to do it then, than have to recommit the Bill, especially with the associated political embarrassment for the Government.
- 37 It is counsel's job to advise the Minister in charge of the Bill and the Minister's officials in the House about any of the amendments in the SOP so that the Minister can reply to questions during the debate.
- 38 Under MMP, the Government may be under pressure to accept amendments moved by other political parties in the House. Counsel and officials will be present in the House during the committee stages and will have to advise the Minister on amendments proposed by members of other parties. If the Government wants to accept an amendment proposed by a member of another party, it may be necessary to redraft the proposed amendment. Counsel can do that if there is time. If it is complex and will require detailed consideration, it may be necessary for the Government to defer the committee stage for this to be done. That may be the price of obtaining the necessary political support.
- 39 If there are numerous amendments from the Government and other parties during the committee stages, it may be necessary to recommit a Bill. This procedure, which is rarely used, can provide an opportunity to draft further changes to ensure that the Bill is internally consistent and that there are no unintended consequences. This practice was adopted at the suggestion of an experienced Opposition member at the end of the

committee stages of the New Zealand Public Health and Disability Bill. Counsel and officials had the chance to draft changes to the Bill which the House was then able to adopt before the Third Reading.

40 As Geoff Lawn said in his presentations, the committee stage is not a good time to make major changes to a Bill; although it happens. Experience with the Financial Reporting Bill illustrates this point. The Bill as introduced required issuers of securities to the public to prepare financial statements, ensure they were audited, and register them with the Registrar of Companies. The Bill also set up the Accounting Standards Review Board. The Bill was considered by the Justice and Law Reform Committee and was extensively amended but not so as to affect its application. After the select committee had reported the Bill back to the House and before the committee stage, the policy decision was made to extend the Bill to all companies but with a special reporting regime for exempt companies, that is, companies with assets not exceeding \$250,000 and turnover not exceeding \$1,000,000. This change also required amendments to the Companies Bill to remove the substantive reporting requirements from that Bill. Because of pressure to get the legislation passed before the House rose for the general election, the amendments were drafted overnight. There was no time to reflect on options for the best design.

41 If the Government wants to make significant changes to a Bill after it has been introduced, the proposed changes should, if possible, be included in an SOP and referred to the select committee considering the Bill so that the SOP can be advertised and submissions called for and the changes can be considered along with the Bill. This practice is more common today than it once was. If adopted, counsel will draft the SOP just like an SOP at the committee stage.

### **Scope issues**

42 One of the most troublesome issues that can arise in the legislative process in the House concerns the extent to which a Bill can be amended during the course of its passage by the addition of new material. Standing Orders provide that a Bill must

relate to one subject area only.<sup>6</sup> The Speaker, advised by the Clerk of the House, scrutinises Bills on introduction to ensure they comply with this rule.<sup>7</sup> Apart from some limited exceptions, Bills that deal with more than one defined subject area are thus not permitted.

43 Exceptions permitted by Standing Orders are —

- Finance Bills
- Confirmation and validation Bills
- Local Legislation Bills
- Maori Purposes Bills
- Reserves and Other Lands Disposal Bills
- Statutes Amendment Bills consisting entirely of amendments to other Acts.<sup>8</sup>

44 A further and more general exception relates to the introduction of law reform or other omnibus Bills that amend more than 1 Act if —

- the amendments deal with a single interrelated topic that can be regarded as implementing a single broad policy; or
- the amendments to different Acts are of the same general nature; or

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<sup>6</sup>S.O. 261 (1)

<sup>7</sup>S.O. 262

<sup>8</sup>S.O. 263

- the Business Committee agrees to the Bill being introduced as a law reform or omnibus Bill.<sup>9</sup>

45 Two other considerations are relevant. The first is that select committees may only recommend amendments that are relevant to the subject matter of a Bill and are consistent with the principles and objects of the Bill.<sup>10</sup> The second is that a law reform or other omnibus Bill (a permitted omnibus Bill) cannot be amended by the addition of a substantive amendment to another Act not amended by the Bill without leave of the committee. Even if the committee gives leave, the amendment must still be within the scope of the Bill.<sup>11</sup>

46 In the case of a Bill that is not an omnibus Bill, the test is whether the proposed amendment is properly associated with the clauses in the Bill as introduced. Is the amendment relevant to the Bill's subject-matter even though it may be new policy?<sup>12</sup> In the case of omnibus Bills, the only amendments that are permissible are those that relate to the interrelated topic implemented by the Bill or which are similar in nature and which amend Acts already amended by the Bill as introduced. Thus, an amendment to an Act not included among the Acts the Bill amends is not permitted.

47 The Clerk of the House faces some really difficult questions in deciding whether amendments the Government wants to make to a Bill are within scope. Sometimes there appears to be inconsistency in the way in which the Standing Orders are applied. It is not helpful to criticise the Clerk and his advisers in this regard. The problems arise not so much from the way the Standing Orders are applied as from the Standing Orders themselves. The Clerk will assess the Bill as a whole and also take account of

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<sup>9</sup>S.O. 264

<sup>10</sup>S.O 288 (1)

<sup>11</sup>S.O. 304. See also David McGee *Parliamentary Practice in New Zealand* 3rd ed, 377.

<sup>12</sup>David McGee *Parliamentary Practice in New Zealand* 3rd ed, 376



any purpose clause. The wider the purpose clause, the more likely that an amendment will be within scope, although purpose clauses are not in themselves decisive.

48 If you are considering amendments that you think may raise scope issues, discuss the matter with counsel. They have extensive experience with scope matters and can advise on which side of the line the proposed amendment is likely to fall. If you are concerned whether amendments deal with an interrelated topic and implement a single broad policy, discuss the matter with counsel. There may be ways in which the issue can be addressed or the case made out.

49 In a recent case, the Clerk has taken the view that extensive amendments to an Act cannot be made in a Bill because the Bill is an omnibus Bill and does not amend the Act in question even though the Bill contains regulation making powers intended to deal with a particular matter that the amendments to the Act would replace with a more comprehensive regime. Similar issues have arisen in connection with another Bill also before a select committee. That Bill is an omnibus Bill that amends a number of Acts. The amendments deal with an interrelated topic and implement a single broad policy. It will not be possible, however, to amend another Act even though the amendments would deal with the same interrelated topic and would be part of implementing the same single broad policy and it would have been permissible to have included the amendments to the Act in the Bill as introduced.

50 Possible options for the Government in this situation are —

- if the Bill cannot be amended because of scope issues, the Government must consider bringing in another Bill and try to ensure that the new Bill and the original Bill move through the House at the same time so that they can be enacted at the same time. This creates House management issues and will inevitably take up House time.
- introducing an SOP and referring it to the select committee considering the original Bill. This is a debatable motion and takes up House time.

- trying to seek agreement of the Business Committee. The committee’s decision making operates on the basis of unanimity or near-unanimity.<sup>13</sup> This makes getting agreement problematic if there is anything contentious or controversial about the Bill or the proposed amendment.

51 A Parliamentary Counsel was recently inspired, if that is the right word, to put her thoughts about scope into verse. This is the result:

### **Ode to Scope**

Here is a story, that you’ll learn from “I hope”  
of the perils and horrors of matters of scope.

If your Bill is to amend more than one Act  
be sure that you know, as a matter of fact.....

That all Acts for amendment are included before  
the Bill “as introduced” hits the House floor.

If you don’t, you may find the Clerk will not waiver  
and allow your amendment to go to select committee (by  
Supplementary Order Paper).

The moral is simple — if your Bill’s omnibus.....  
don’t let officials and Ministers introduce in a rush.

For the end result may not be as they dream  
and the Leader of the House will be letting off steam.

The approach I suggest that is smart  
is for all substantive amendments to be there from the start.

By A. Drafter

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<sup>13</sup>S.O. 75

## **Conclusions**

52 Good legislation is the result of a team effort on the part of officials and Parliamentary Counsel. We need to work together as far as possible as a team. Openness and dialogue and a “no surprises” approach are necessary. Officials and counsel have a responsibility to ensure as far as they can that legislation is legally effective, principled, and accessible.

The select committee and committee stage processes are extremely challenging for officials and counsel. The Government may be driven to accepting compromises to policy and to making concessions that dilute the purity of policy concepts and the coherence of a Bill. Officials and counsel should do the best job possible in the circumstances without compromising their integrity and professional standards. Officials and counsel are uniquely placed to contribute to the rule of law in a free and democratic society through the work they do in the legislative process.

