

Control and conduct of debate

The proceedings between a Member moving a motion and the ascertainment by the Chair of the decision of the House constitute a debate. However, a decision may be reached without discussion. A number of matters which are part of the normal routine of the House are excluded from the definition of debate, even though speeches may take place, because there is no motion before the House. These include the asking and answering of questions, ministerial statements, matters of public importance, and personal explanations.

It is by debate that the House performs one of its more important roles, as emphasised by Redlich:

Without speech the various forms and institutions of parliamentary machinery are destitute of importance and meaning. Speech unites them into an organic whole and gives to parliamentary action self-consciousness and purpose. By speech and reply expression and reality are given to all the individualities and political forces brought by popular election into the representative assembly. Speaking alone can interpret and bring out the constitutional aims for which the activity of parliament is set in motion, whether they are those of the Government or those which are formed in the midst of the representative assembly. It is in the clash of speech upon speech that national aspirations and public opinion influence these aims, reinforce or counteract their strength. Whatever may be the constitutional and political powers of a parliament, government by means of a parliament is bound to trust to speech for its driving power, to use it as the main form of its action.¹

The effectiveness of the debating process in Parliament is very much dependent on the principle of freedom of speech. It has been said that without this privilege 'parliaments probably would degenerate into polite but ineffectual debating societies'.² The privilege of freedom of speech was only won by Parliament after a long struggle to gain freedom of action from all influence of the Crown, courts of law and Government. As Redlich said:

. . . it was never a fight for an absolute right to unbridled oratory . . . From the earliest days there was always strict domestic discipline in the House and strict rules as to speaking were always enforced . . . the principle of parliamentary freedom of speech is far from being a claim of irresponsibility for members; it asserts a responsibility exclusively to the House where a member sits, and implies that this responsibility is really brought home by the House which is charged with enforcing it.³

Therefore, it is freedom of speech, upon which the House places limits on itself through its standing orders and practice, which is the foundation for an effective Parliament.

The Speaker plays an important role in the control and conduct of debate through the power and responsibilities invested in the Chair by the House in its rules and practice. The difficulties of maintaining control of debate, and reconciling the need for order with the rights of Members, 'requires a conduct, on the part of the Speaker, full of resolution, yet of delicacy . . .'⁴

¹ Redlich, vol. III, pp. 42-3.

² Enid Campbell, *Parliamentary Privilege in Australia*, Melbourne University Press, Carlton, 1966, p. 28; and see Ch. on 'Parliamentary privilege'.

³ Redlich, vol. III, p. 49.

⁴ John Hatsell, *Precedents of Proceedings in the House of Commons*, vol. II, 4th edn, London, 1818, p. 232. (Reprinted, Irish University Press, Shannon, Ireland, 1971.)

MANNER AND RIGHT OF SPEECH**When Members may speak**

The standing orders provide that a Member may speak to any question before the Chair which is open to debate, when moving a motion which will be open to debate, when moving an amendment, when rising to order, upon a matter of privilege or upon a matter of public importance, but not otherwise.⁵ An additional opportunity was however provided under sessional orders effective from March 1988, whereby for 15 minutes each Thursday individual Members were able to address the House for up to 90 seconds on matters, with no motion before the House.

Despite the above restriction, a Member may also speak to explain matters of a personal nature (*see* p. 470), to explain himself or herself in regard to some material part of his or her speech which has been misquoted or misunderstood (*see* p. 470), when granted leave of the House to make a statement, and by indulgence of the Chair.

Matters not open to debate

The following matters are not open to debate, must be moved without argument or opinion being offered, and must be put immediately by the Chair without amendment:

- question that a Member 'be now heard' or 'do now speak' (S.O. 61);
- question that a Member be further heard (S.O. 85);
- motion for adjournment of debate (S.O. 87);
- motion for extension of time (S.O. 91);
- question put following declaration of urgency (S.O. 92);
- motion that the question be now put (S.O. 93);
- motion that a Member be not further heard (S.O. 94);
- motion that the business of the day be called on (S.O. 107);
- question that a bill be reported (S.O. 234);
- motion of dissent from a ruling of the Chairman (S.O. 281);
- motion that the Chairman report progress (S.O. 287);
- motion that the Chairman leave the Chair (S.O. 289);
- motion that a Member be suspended (S.O. 304);
- question that strangers be ordered to withdraw (S.O. 314)⁶, and
- if required by a Minister, the question for the adjournment of the House under the automatic adjournment provisions (S.O. 48A).

Mover and seconder of motions and amendments

A Member may speak when moving a motion which is open to debate⁷ but loses the right to speak to the motion, except in reply, if he or she does not speak immediately. Similarly, a Member who moves an amendment must speak to it immediately, if wishing to speak to it at all. In a committee of the whole this rule does not apply, as a Member may speak twice to each question.

A Member who seconds a motion or amendment before the House, may speak to it immediately or at a later period during the debate.⁸ It is common practice for seconds not wishing to speak immediately to state that they reserve the right to speak later.

5 S.O. 63.

6 S.O. 86.

7 S.O. 63.

8 S.O. 70.

Question on motion or amendment before the House or committee

A Member may speak only once to a question before the House, except in explanation or reply.⁹ In special circumstances, a Member may be granted leave to speak again.¹⁰ In a committee of the whole a Member may speak twice on each question before the committee, but may not take the second period immediately if another Member seeks the call.¹¹ There is no limit on the number of times that a Minister in charge of a bill or other business in committee may speak. This right is not extended by the standing orders to a private Member when taking a bill through the committee stages.¹²

When a Member speaks to a question and then sits without moving an amendment that he or she intended to propose, the Member cannot subsequently move the amendment having already spoken to the question before the House. If a Member has already spoken to a question, or has moved an amendment to it, the Member may not be called to move a further amendment or the adjournment of the debate, but may speak to any further amendment which is proposed by another Member. A Member who moves or seconds an amendment cannot speak again on the original question after the amendment has been disposed of, because he or she has already spoken while the original question was before the House and before the question on the amendment has been proposed by the Chair. When an amendment has been moved, and the question on the amendment proposed by the Chair, any Member speaking subsequently is considered to be speaking to both the original question and the amendment and cannot speak again to the original question after the amendment has been disposed of. A Member who has already spoken to the original question prior to the moving of an amendment may speak to the question on the amendment but the remarks must be confined to the amendment.¹³ A Member who has spoken to neither the motion nor the amendment may speak to the original question after the amendment has been disposed of. A Member who has spoken to the original question and the amendment may speak to the question on a further amendment, but must confine any remarks to the further amendment.¹⁴

Speaking in reply

The mover of a substantive motion or the second or third reading of a bill may speak on a second occasion in reply, but must confine any remarks to matters raised during the debate.¹⁵ The mover of an amendment has no right of reply as an amendment is not a substantive motion. The reply of the mover of the original question closes the debate. However, the mover may speak to any amendment moved without closing the debate, but his or her remarks must be confined to the amendment.¹⁶ The speech of a Minister acting on behalf of the mover of the original motion does not close the debate.¹⁷ The right of reply of the mover has been exercised even though the original question has been rendered meaningless by the omission of words and the rejection of proposed insertions.¹⁸

The Chair has ruled that a reply is permitted to the mover of a motion of dissent from a ruling of the Chair.¹⁹

9 S.O. 65.

10 VP 1974-75/874.

11 H.R. Deb. (7.7.49)2173.

12 S.O. 91. Up until 1950 private Members were not so restricted.

13 H.R. Deb. (6.5.20)1881.

14 H.R. Deb. (13.7.22)443-4.

15 S.O. 67.

16 H.R. Deb. (11.11.20)6418.

17 H.R. Deb. (3.12.47)3118.

18 VP 1908/54; H.R. Deb. (21.10.08)1402.

19 H.R. Deb. (14.3.50)685.

The mover of a motion is not entitled to the call to close the debate while any other Member is seeking the call.²⁰ When a mover received the call and stated that he was not speaking to an amendment before the House but to the motion generally and wished to close debate, he was directed by the Chair to speak to the amendment only, in order that the rights of others to be heard were not interfered with.²¹ A Member closing the debate by reply cannot propose an amendment.²²

Misrepresentation

A Member who has spoken to a question may again be heard to explain some material part of his or her speech which has been **misquoted or misunderstood** but cannot introduce any new matter, interrupt any Member who has the call nor bring forward any debatable matter, and no debate may arise following such an explanation.²³ The correct procedure to be followed by a Member is to rise after a Member speaking has concluded and to inform the Chair that he or she has been misrepresented. The Chair will then permit the Member to proceed with the explanation. It is a help in the conduct of the proceedings if Members inform the Chair in advance that they intend to rise to make an explanation.

Personal explanations

A Member, having obtained leave from the Chair, may explain matters of a personal nature, although there is no question before the House. Such matters may not be debated.²⁴ Although in practice such leave is freely given, this is at the discretion of the Chair and Members have no right to expect it to be granted automatically. It is the practice of the House that any Member wishing to make a personal explanation should inform the Speaker beforehand.²⁵ The Speaker has refused to allow a Member to make a personal explanation when prior notice has not been given.²⁶

Personal explanations may be made at any time with the indulgence of the Chair, provided that no other Member is addressing the House.²⁷ However, they are most often made at the point in the routine of business following the presentation of papers.²⁸ Personal explanations may arise from reports in the media, Senate debates, the preceding Question Time, and so on.²⁹ One of the reasons for personal explanations being sought soon after Question Time is that, when a personal explanation is made in rebuttal of a statement made in a question or answer, the question and answer are excluded from any rebroadcast of Question Time. This exclusion is subject to the discretion that the Speaker has to refer a particular case to the Joint Committee on the Broadcasting of Parliamentary Proceedings.³⁰

In making a personal explanation, a Member must not debate the matter³¹ and may not deal with matters affecting his or her party or, in the case of a Minister, the affairs of the Minister's department; the explanation must be confined to matters affecting the Member personally.³² A Member cannot make charges or attacks upon another Member under cover of making a personal explanation.³³ A personal explanation may be made in the House regarding events in committee but in making

20 H.R. Deb. (19.11.14)841.

21 H.R. Deb. (21.8.23)3133; H.R. Deb. (19.9.24)4569.

22 H.R. Deb. (28.5.14)1637.

23 S.O. 66.

24 S.O. 64.

25 H.R. Deb. (10.11.76)2521-2.

26 H.R. Deb. (3.5.78)1699.

27 H.R. Deb. (20.11.79)3176.

28 H.R. Deb. (7.3.74)150-3.

29 H.R. Deb. (10.10.47)633; H.R. Deb. (11.9.73)743.

30 VP 1948-49/346.

31 S.O. 64.

32 H.R. Deb. (18.10.83)1821; H.R. Deb. (22.9.22)2621; H.R. Deb. (19.3.74)533.

33 H.R. Deb. (30.10.13)2716-17.

an explanation the Member may not reflect on the Chairman.³⁴ The indulgence granted by the Chair for a personal explanation may be withdrawn if the Member uses that indulgence to enter into a general debate.³⁵ A Member has been permitted to make a personal explanation on behalf of a Member who was overseas.³⁶

If the Speaker refuses leave to a Member to make a personal explanation, or directs a Member to resume his or her seat during the course of an explanation, a motion 'That the Member be now heard' is not in order, nor may the Member move a motion of dissent from the Speaker's 'ruling' as there is no ruling.³⁷

Indulgence of the Chair

From time to time the Speaker permits Members to address the House on a particular matter by indulgence of the Chair. This has occurred, for example, to permit:

- a Minister to correct an answer given earlier to a question without notice³⁸;
- the Prime Minister to add to an answer given by another Minister to a question without notice³⁹;
- the Prime Minister to answer a question without notice ruled out of order⁴⁰;
- Members to put their views on a ruling by the Speaker relating to the sub judice convention⁴¹;
- Members to comment on a privilege matter⁴²;
- a Member to seek information on a matter not raised in the second reading speech on a bill⁴³;
- Members to speak to a paper tabled by the Speaker⁴⁴;
- a Minister to correct a figure given in an earlier speech⁴⁵, and
- a Member to comment on or raise a matter concerning the conduct of proceedings, or matters related thereto.⁴⁶

Statements by leave

A frequently used practice is to seek the leave of the House, that is, permission without any dissentient voice⁴⁷, to make a statement when there is no question before the House. This procedure is used, in the main, by Ministers to announce domestic and foreign policies and other decisions of the Government. It is usual for a copy of a proposed ministerial statement to be supplied to the Leader of the Opposition or the appropriate shadow minister some minimum time before the ministerial statement is made. At the conclusion of the Minister's speech, it is usual for leave to be given for an opposition spokesman to speak on the same subject. The procedure is also widely used by Members when presenting to the House a report of a committee or of a parliamentary delegation.

Members seeking leave to make statements, must indicate the subject matter in order that the House can make a judgment as to whether leave is justified or not.

34 H.R. Deb. (11.11.04)6883-4.

35 H.R. Deb. (12.9.79)996.

36 H.R. Deb. (19.10.83) 1924.

37 H.R. Deb. (1.6.77)2280-1.

38 H.R. Deb. (19.9.79)1266.

39 H.R. Deb. (20.9.79)1359.

40 H.R. Deb. (6.3.80)731.

41 H.R. Deb. (13.11.79)2883,2917,2926-32.

42 H.R. Deb. (13.9.79)1129.

43 H.R. Deb. (26.11.80)85.

44 H.R. Deb. (15.4.80)1711.

45 H.R. Deb. (12.9.79)995.

46 H.R. Deb. (10.3.81)562; H.R. Deb. (9.5.85) 1951; H.R. Deb. (20.2.86)1009; H.R. Deb. (11.4.86)2129.

47 S.O. 111.

When a Member has digressed from the subject for which leave was granted, the Chair has:

- directed the Member to resume his seat⁴⁸;
- directed the Member to confine himself to the subject for which leave was granted⁴⁹, and
- expressed the opinion that a Member should not take advantage of leave granted to make a statement (in response to another) to raise matters that had no direct relationship to that statement.⁵⁰

If a Member does not indicate the subject matter of a proposed statement when responding to a statement just made, difficulties may arise for the Chair and these are exemplified by the following case. A Member having been granted leave to respond to a statement made by a Minister and the point having been made that he should remain relevant to the Minister's statement, the Chair stated that whilst it may be argued that in spirit the leave to respond was related to the Minister's statement, that was not specifically stated. The Chair had no authority to require the Member to be any more relevant than he saw fit, it being in the hands of the House through the standing orders to take the steps necessary to bring the Member's remarks to a conclusion.⁵¹ Greater control over relevancy can be preserved if, where Members rise to seek leave to make statements following, for example, a ministerial statement, the Chair asks 'Is the honourable Member seeking leave to make a statement **on the same matter?**'

A request for leave cannot be debated, nor can leave be granted conditionally, for example, on the condition that another Member is allowed to make a statement on the same subject.

If leave is not granted, a Minister or Member, on receiving the call, may move 'That so much of the standing orders be suspended as would prevent the Minister for . . . [the honourable Member for . . .] making a statement'. This motion must be agreed to by an absolute majority of Members. Alternatively, in the case of a Minister, the statement may be tabled.

The fact that leave is granted or standing orders are suspended to enable a Member to make a statement only affords the Member an opportunity to do that which would not be ordinarily permissible under the standing orders, that is, make a statement without leave. The normal rules of debate, and the provisions of the standing orders generally, still apply so that if, for example, the automatic adjournment interrupts the Member's speech, the speech is then terminated unless the adjournment proposal is negatived.

A Member cannot be given leave to make a statement on the next day of sitting in reply to a statement just made, but must ask for such leave on the next day of sitting.⁵² It is not in order for a motion to be moved that a Member 'have leave to make a statement'⁵³ or, when leave to make a statement is refused, to move that the Member 'be now heard'⁵⁴, as the latter motion can only be moved to challenge the call of the Chair during debate.⁵⁵ When a statement is made by leave, there is no time limit on the speech, but a motion may be made at any time that the Member speaking 'be not further heard'.⁵⁶ Once granted, leave cannot be withdrawn.⁵⁷

48 VP 1970-72/514; H.R. Deb. (7.4.71)1558.

49 H.R. Deb. (21.11.34)412.

50 H.R. Deb. (20.10.49)1748-9.

51 H.R. Deb. (18.10.79)2198-9, *see also* H.R. Deb. (27.9.88)911.

52 H.R. Deb. (22.2.17)10574-5.

53 VP 1970-72/21; H.R. Deb. (5.3.70)99-100.

54 H.R. Deb. (12.10.71)2154.

55 S.O. 61.

56 S.O. 94; VP 1968-69/592.

57 H.R. Deb. (13.3.53)1044.

In the House of Commons leave is not required to make a ministerial statement. In 1902, Prime Minister Barton claimed that it was the inherent right of a leader of a Government to make a statement on any public subject without leave of the House. The Speaker ruled that no Minister had such a right under the standing orders of the House of Representatives.⁵⁸

Professional advocacy

In 1858, the House of Commons resolved:

That it is contrary to the usage and derogatory to the dignity of this House, that any of its Members should bring forward, promote or advocate, in this House, any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward.

The resolution was arrived at by the House in the context of advocacy by members of the bar. Subsequently it was held not to preclude a Member, who had been concerned in a criminal case which has been decided, from taking part in a debate relating to the case.⁵⁹ The resolution arose out of allegations then current that Members who were barristers were being retained by fee to advise upon business professedly intended to be brought before a court of law. However, the Member would, ultimately, bring the matter before the House, ostensibly as a legislator but really as a lawyer. The mover considered that resolutions of the House guarding against bribery were not sufficient to meet these cases as direct pecuniary interest could not be proved, the money being given beforehand as a fee and the Member then being asked to undertake the conduct of the case in the House.⁶⁰

The matter of professional advocacy first arose in the House of Representatives in 1950 concerning the appearance of a Member, Dr Evatt, before the High Court on behalf of certain clients.⁶¹ In 1951, the Speaker, in response to a request as to the interpretation of the 1858 resolution, ruled that the resolution was binding on all Members, excepting the Attorney-General when appearing in court on behalf of the Commonwealth.⁶² In the same year the Speaker also ruled that Dr Evatt could not speak or vote in the House on a certain bill as he had appeared in court on a case dealing with the matter. Dr Evatt maintained that the ruling was based on a misconception, the rule having applied to Members of the House of Commons who may have been engaged as professional advocates to promote bills and endeavour to have them accepted by the House. He also assured the Chair that he had received no retainer nor given any undertaking to act in any way on anybody's behalf in connection with his duties as a Member. Standing orders were suspended to enable him to speak and his vote was not challenged on any division on the bill.⁶³

The matter arose again in 1954 at the time when a notice of motion in the name of Dr Evatt to print a royal commission report was to be called on (the then method of initiating debate on a report). The Speaker expressed the view that a Member having spoken and voted on a measure before the House was precluded from taking part in any court action arising therefrom and that Dr Evatt had had no right therefore to appear before that royal commission as a counsel. It was his

58 H.R. Deb. (14.1.02)8738-9; H.R. Deb. (16.1.02) 8859-60.

59 *May*, p. 151.

60 CJ (1857-58)247-8; H.C. Deb. (22.6.1858)176-209.

61 H.R. Deb. (25.10.50)1391-405; H.R. Deb. (26.10.50) 1546-56.

62 H.R. Deb. (8.3.51)175; VP 1950-51/323; H.R. Deb. (13.3.51)329-30.

63 VP 1951-53/65-6,68-70; H.R. Deb. (10.7.51) 1211-12.

further view that, having so appeared, he should not discuss in the House any reports or matter that arose out of the proceedings at the time he was there as a barrister. Standing orders were then suspended to enable Dr Evatt to proceed with his motion, and he also voted in associated divisions.⁶⁴

Two points would appear to emerge from these cases:

- the suspensions of standing orders were in relation to standing order 1 which enables the House, when its own standing orders and practice do not cover the situation, to resort to the practice of the House of Commons, and
- the House, by agreeing to the suspensions of standing orders and by permitting Dr Evatt to vote without challenge, had a different view from the Speaker concerning the matter.

Allocation of call

The Member, upon whose motion any debate is adjourned by the House, is entitled to the first call on the resumption of the debate.⁶⁵ If the Member does not take up that entitlement on the resumption of the debate, this does not impair his or her right to speak later in the debate.⁶⁶ A Member who has already spoken in a particular debate, other than a Member who has the right of reply, may not move the adjournment of that debate⁶⁷ but otherwise there is no restriction on the number of times a Member may move the adjournment of a particular debate. When a Member is granted leave to continue his or her remarks and the debate is then adjourned, the Member must take the entitlement to pre-audience on the resumption of the debate, otherwise the Member loses the right to continue.

Although the Chair is not obliged to call any particular Member, except for a Member entitled to the first call as indicated above, it is the practice for the Chair, as a matter of courtesy, to give priority to:

- the Prime Minister or a Minister over other government Members⁶⁸ but not if the Minister proposes to speak in reply⁶⁹, and
- the leader or deputy leader of opposition parties over other opposition Members.⁷⁰

A Minister in charge of the business in a committee of the whole may rise to speak as frequently as necessary and may speak without limitation of time and without closing the debate. A Minister in this situation usually receives priority of all other Members whenever wishing to speak.⁷¹ This enables the Minister to explain or comment upon details of the legislation as they arise from time to time in the debate.

When two or more Members rise together to speak, the Speaker shall call upon the Member who, in the Speaker's opinion, first rose in his or her place.⁷² The decision of the Chair may be challenged by a motion that any Member who rose

64 VP 1954-55/133-4,246; H.R. Deb. (28.10.54) 2467-8.

65 S.O. 88.

66 H.R. Deb. (19.8.54)446.

67 S.O. 87.

68 H.R. Deb. (26.2.53)415.

69 H.R. Deb. (21.8.23)3133.

70 H.R. Deb. (8.3.32)775-6.

71 VP 1951-53/703; H.R. Deb. (6.10.53)1031; H.R. Deb. (25.11.53)500-1; H.R. Deb. (22.9.55)883.

72 S.O. 61. The Speaker calls Members by the name of their electoral Division or office, i.e. 'the honourable Member (Minister) for . . .' or 'the right honourable . . .' in the case of privy councillors. In the House of Commons it used to be the practice that the Speaker bowed his head in a Member's direction as an indication of his selection, no words being spoken. Speaker Trevor (1685-89) introduced the practice of calling out the appropriate name as he inclined his head as he was burdened with a terrible squint, which frequently meant that two Members became simultaneously convinced that they had 'caught the Speaker's eye', Marsden, p. 101.

'be now heard' or 'do now speak', and that question must be put forthwith and determined without amendment or debate.⁷³ A Member may move either of these motions in respect of himself or herself.⁷⁴ It is not in order to challenge the Chair's decision by moving that the Member who received the call 'be not further heard'.⁷⁵ A motion of dissent from the Chair's ruling should not be accepted, as the Chair is exercising a discretion, not making a ruling.

Although the allocation of the call is a matter for the discretion of the Chair, it is usual, as a principle, to call Members from each side of the House, Government and Opposition, alternately. Within this principle minor parties and any independents are given reasonable opportunities to express their views.⁷⁶

Because of coalition arrangements between the Liberal and National Parties, the Chair has allocated the call between these two parties in proportion to their numbers, for example:

- 30th Parliament: 91 government Members—68 Liberal Party, 23 National Country Party: Liberals received the call on the basis of a 3:1 ratio.
- 35th Parliament: 63 opposition Members—45 Liberal Party, 18 National Party: Liberals received the call on the basis of a 2:1 ratio.

Throughout the history of the House of Representatives a list of intending speakers has been maintained to assist the Chair in allocating the call. As early as 1901 the Speaker noted that, although it was not the practice for Members to send names to him and to be called in the order in which they supplied them, on several occasions when a group of Members had risen together and had then informed the Chair that they wished to speak in a certain order, they had been called in that order so that they might know when they were likely to be called on.⁷⁷ It was later stressed that any conversation with the Chair regarding when a Member was to be called could not be looked upon as an engagement on the part of the Chair to see any Member.⁷⁸ The practice was explained some years later as one in which the Chair noted the names of Members in the order in which they rose in the House⁷⁹, but not all occupants of the Chair maintained such lists.⁸⁰

By the 1950's the Chair was allocating the call with the assistance of a list of speakers provided by the party whips. Speaker Cameron saw this as a perfectly logical and very convenient method of conducting debates. He added that, if they were not adhered to or Members objected to the practice, the House would revert to a system under which there was no list whatsoever and the Chair would call the Member he thought had first risen in his place. He saw this procedure as awkward as some Members were more alert than others and for that reason he thought it better that the Chair be made aware of the intentions of the parties, each party having some idea of their Members best able to deal with particular subjects.⁸¹ Although he welcomed lists provided by the whips as useful guides he stressed that he was not bound by them and indicated that, if it came to his knowledge that certain Members were being precluded from speaking, he would exercise the rights he possessed as Speaker.⁸² In essence this continues to be the practice followed by the Chair.

73 S.O. 61.

74 VP 1959-60/138.

75 H.R. Deb. (25.11.53)500-1.

76 H.R. Deb. (17.6.31)2744; H.R. Deb. (19.5.33) 1598-9; H.R. Deb. (18.10.77)2103.

77 H.R. Deb. (12.9.01)4860.

78 H.R. Deb. (12.11.09)5800.

79 H.R. Deb. (31.5.45)2385; H.R. Deb. (21.11.46)486.

80 H.R. Deb. (19.5.33)1598-9.

81 H.R. Deb. (15.5.52)410.

82 H.R. Deb. (6.3.53)684,686.

Manner of speech

Remarks addressed to Chair

A Member wishing to speak rises and addresses himself or herself to the Speaker.⁸³ By the indulgence of the House a Member unable conveniently to stand by reason of sickness or infirmity may be permitted to speak sitting.⁸⁴ It is regarded as disorderly for a Member to address the House in the second person. As remarks must be addressed to the Chair, it is not in order for a Member to turn his or her back to the Chair and address party colleagues.⁸⁵ A Member should not address the listening public while the proceedings of the House are being broadcast.⁸⁶

Place of speaking

Standing order 61 provides that when two or more Members rise to speak the Speaker shall call upon the Member who, in the Speaker's opinion, first rose 'in his place', and standing order 58 requires every Member, when coming into the Chamber, to 'take his seat'. The implication is that a Member should address the House from his or her own seat. However, an opposition Member, who is not a member of the opposition shadow ministry and who is leading for the Opposition in a particular debate, is permitted to speak either from his or her allotted seat or from the Table.⁸⁷ Ministers and shadow ministers speak from the Table.

Reading of speeches

Until 1965 the standing orders provided that 'A Member shall not read his speech'. In 1964, the Standing Orders Committee recommended that:

As Parliamentary practice recognizes and accepts that, whenever there is reason for precision of statement such as on the second reading of a bill, particularly those of a complex or technical nature, or in ministerial or other statements, it is reasonable to allow the reading of speeches and, as the difficulty of applying the rule against the reading of speeches is obvious, e.g. "reference to copious notes", it is proposed to omit the standing order.⁸⁸

The recommendation of the committee was subsequently adopted by the House.⁸⁹

Language of debate

Although there is no specific rule set down by standing order, the House follows the practice of requiring all speeches to be in English. Other Members and those listening to proceedings are entitled to be able to follow the course of a debate, and it is likely that the Chair would not know whether a speech is in order unless it is delivered in English. It is in order, however, for Members to use or quote phrases or words in another language during the course of a speech.

83 S.O. 59. At the election of a Speaker at the meeting of a new Parliament or whenever that office becomes vacant, Members address themselves to the Clerk who acts as Chairman.

84 S.O. 60; e.g. VP 1912/32.

85 H.R. Deb. (5.6.56)2773-4.

86 H.R. Deb. (7.5.52)108.

87 H.R. Deb. (18.10.79)2273.

88 *Standing Orders Committee Report*, PP 129(1964-66)6.

89 VP 1964-66/266. In 1986 the Procedure Committee recommended that the prohibition on the reading of speeches be reintroduced, with certain exceptions. 'Days and hours of sitting and the effective use of the time of the House', *Standing Committee on Procedure*, PP 108(1986)34. The House did not accept the recommendation.

Incorporation of unread material into Hansard

In one form or another the House has always had procedures for the incorporation of unread material into Hansard but there were, until recent years, considerable variations in practice and the Chair from time to time expressed unease at the fact that the practice was allowed and in respect of some of the purposes for which the practice was used.

Answers to questions on notice are required to be printed in Hansard⁹⁰ and Budget tables were in the past permitted to be included unread in Hansard.⁹¹ The terms of petitions have been incorporated since 1972, and the terms of notices not given openly in the House have been included since 1978. The terms of all amendments moved are also printed in Hansard, despite the common practice being for Members moving them to refer to previously circulated texts of proposed amendments rather than to read them out in full. Of the first three Speakers of the House, Speakers Holder and McDonald required all other matter, including statistical tables, to be read into the record⁹² while Speaker Salmon did allow statistical information that could not advantageously be read to be included unread.⁹³ Later, Speaker Watt allowed tables to be incorporated but only if officially compiled.⁹⁴

Matters over which Speakers exercised their authority were for many years confined to decisions as to the practicality of incorporating material such as graphs, and so on, and on matters of a libellous, improper or irrelevant nature. However, recent Speakers have used their powers far more widely.

Underlying the attitude of the Chair and the House over the years has been the consistent aim of keeping the Hansard record as a true record of what is said in the House. Early occupants of the Chair saw the practice of including unread matter in Hansard as fraught with danger⁹⁵ and later Speakers have voiced more specific objections.⁹⁶ For example, a 'speech' may be lengthened beyond a Member's entitlement under the standing orders, or the incorporated material may contain irrelevant or defamatory matter or unparliamentary language; other Members will not be aware of the contents of the material until production of the daily Hansard next morning when a speech may be discovered to have matter not answered in debate and so appear more authoritative. Similarly, a succeeding Member's speech may appear to be less relevant and informed than it would have been if he or she had known of the unspoken material before speaking.⁹⁷

The current practice of the House on the incorporation of other material, defined by Speakers Snedden and Jenkins in statements on the practice, is based on the premise that Hansard, as an accurate as possible a record of what is said in the House, should not incorporate unspoken material other than items such as tables which need to be seen in visual form for comprehension.⁹⁸

90 S.O. 150. This has been a requirement since 1931. The question must also be included together with the reply, VP 1930-31/693.

91 H.R. Deb. (13.6.24)1292-3. The practice was discontinued in 1987 for reasons of economy.

92 H.R. Deb. (20.9.06) 5034; H.R. Deb. (9.8.10) 1238. There were exceptions in the case of Speaker McDonald, H.R. Deb. (15.11.11) 2702-3; H.R. Deb. (22.9.10) 3599-600.

93 Members who quoted figures in debate later submitted full tables to the Speaker who directed that they appear in Hansard in tabular form and so informed the House, H.R. Deb. (21.9.09)3653; H.R. Deb. (13.10.09)4474.

94 H.R. Deb. (6.6.24)1105.

95 H.R. Deb. (9.8.10)1256; H.R. Deb. (4.12.11)3638.

96 H.R. Deb. (5.8.31)4976-7. H.R. Deb. (15.9.32)556.

97 H.R. Deb. (10.5.83)341-2.

98 H.R. Deb. (21.10.82)2339-40; H.R. Deb. (10.5.83)341-2. In recent times graphs have also been incorporated, e.g. H.R. Deb. (25.5.88)2986, and in 1989 a map of the parliamentary zone; H.R. Deb. (2.3.89)329.

It is not in order for Members to hand in their speeches as is done in the Congress of the United States of America⁹⁹, even when they have been prevented from speaking on a question before the House¹⁰⁰, nor can they have the balance of an unfinished speech incorporated.¹⁰¹ Ministerial statements may not be incorporated¹⁰², nor may Ministers' second reading speeches¹⁰³ or explanatory memoranda to bills.¹⁰⁴ Matter irrelevant to the question before the House is not permitted to be incorporated.¹⁰⁵

Apart from offending against the principle that Hansard is a report of the spoken word, certain items are also excluded on technical grounds. Thus, for example, photographs, drawings, maps, tabulated material of excessive length and documents of a quality not acceptable for printing or which would present technical problems and unduly delay the production of the daily Hansard cannot be incorporated. In cases where permission has been granted for such an item to be incorporated (usually with the proviso from the Chair that the incorporation would occur only if technically possible), a note will appear in the Hansard text explaining that the proposed incorporation was omitted for technical reasons. A Minister or Member seeking leave to incorporate material should first show the matter to the Member leading for the Opposition or to the Minister at the Table, as the case may be¹⁰⁶, and leave may be refused if this courtesy is not complied with.¹⁰⁷ Members must provide a copy of the material they propose to include at the time leave is sought¹⁰⁸, and copies of non-read material intended for incorporation must be lodged with Hansard as early as possible.¹⁰⁹

The general rule is not interpreted inflexibly by the Chair. For example, a regular exception is made to enable Ministers to have incorporated in Hansard detailed responses to recommendations of parliamentary committee reports.¹¹⁰ Although other exceptions may be made from time to time, this is not a frequent occurrence and it is common practice of the Chair in such circumstances to remark on, and justify, the departure from the general rule, or to stress that the action should not be regarded as a precedent. The main category of such exceptions in recent years has been in relation to documents whose incorporation has provided information from the Government to the House.¹¹¹ Other exceptions have been

99 H.R. Deb. (1.3.17)10826. This practice has been advocated on at least one occasion, H.R. Deb. (9.9.09)3263; and leave has been granted a Minister to incorporate second reading speeches, H.R. Deb. (27.8.80)804-13.

100 H.R. Deb. (8.3.29)929. On one occasion, Hansard staff having been discharged from further attendance following a very long sitting, Members handed precis of speeches made in the House to reporters for subsequent inclusion, H.R. Deb. (6-8.12.33)5898. A tribute from an absent Member was permitted to be incorporated during a condolence debate, H.R. Deb. (8.4.86)1786.

101 H.R. Deb. (20.6.06)452. Leave has been granted the Leader of the Opposition to incorporate the remainder of a statement, H.R. Deb. (19.9.79)1294. Leave has been granted for a Minister to incorporate the balance of a lengthy answer to a question without notice, H.R. Deb. (26.8.82)959.

102 On one occasion a Minister was granted leave to incorporate a statement, VP 1951-53/405; H.R. Deb. (5.9.52)1051-2.

103 On one occasion leave was granted for a Minister to incorporate a series of second reading speeches, H.R. Deb. (27.8.80)804-13.

104 Prior to the Standing Orders Committee opposing such action, PP 114(1970) 9, leave was occasionally granted for the incorporation of explanatory memoranda, VP 1967-68/199.

105 H.R. Deb. (3.5.38)725.

106 PP 129(1964-66)3.

107 H.R. Deb. (24.8.84)368.

108 H.R. Deb. (9.5.73)1860-1.

109 VP 1974-75/157.

110 H.R. Deb. (10.5.83)341-2.

111 E.g. government guidelines for official witnesses before parliamentary committees, H.R. Deb. (23.8.84)290-6; Prime Minister's comments in response to a Royal Commission report, H.R. Deb. (6.12.83)3251-70; the terms of reference of a Royal Commission, H.R. Deb. (17.5.83)598.

made to facilitate business of the House¹¹², or to allow the incorporation of material which in other circumstances could have been incorporated as a matter of routine.¹¹³

The House has ordered that matter be incorporated.¹¹⁴ Matter has been authorised to be incorporated by a motion moved pursuant to contingent notice, after leave for incorporation had been refused.¹¹⁵ A motion to allow incorporation has also been moved and agreed to following suspension of standing orders.¹¹⁶

On two occasions in 1979, standing orders were suspended to enable certain papers to be incorporated in Hansard, after leave had been refused.¹¹⁷ This action was procedurally defective. The incorporation of unspoken matter in Hansard is, by practice, authorised by the House by its unanimous consent. The unanimous consent is obtained by asking for leave of the House. If leave is refused the authority of the House can only be obtained by moving a positive motion. In order to move a motion without leave it is necessary to suspend the standing orders. The suspension of standing orders opens the way to move a motion for incorporation; it does not of itself allow incorporation as there is no standing order relating to the incorporation of matter in Hansard.

The fact that the House authorises the incorporation of unread matter does not affect the rule that the final decision rests with the Speaker.

Display of articles to illustrate speeches

Members have been permitted to display articles to illustrate speeches.

The Chair has been of the opinion that unless the matter in question had some relation to disloyalty or was against the standing orders the Chair was not in a position to act but hoped that Members would use some judgment and responsibility in their actions.¹¹⁸ In 1980, the Chair ruled that the display of a handwritten sign containing an unparliamentary word by a seated Member was not permitted.¹¹⁹ Since then the Chair has more than once ruled that the displaying of signs was not permitted.¹²⁰ Scorecards held up following a Member's speech have also been ordered to be removed.¹²¹ In 1985 the Speaker ordered a Member to remove two petrol cans he had brought into the Chamber for the purpose of illustrating his speech.¹²² It is not in order to display a weapon¹²³ or play a tape recorder.¹²⁴

The wide range of items which have been allowed to be displayed has included a flag¹²⁵, photographs and journals¹²⁶, plants¹²⁷, a gold nugget¹²⁸, a bionic ear¹²⁹, a silicon chip¹³⁰, a flashing marker for air/sea rescue¹³¹, a synthetic quartz crystal¹³²

112 E.g. lists of names of members of parliamentary committees, H.R. Deb. (8.10.87)995-6.

113 Proposed opposition amendments to a bill which were not moved because bill was under guillotine which expired before the committee stage was reached, H.R. Deb. (11.4.86)2129; answers to questions on notice which had been withdrawn from the notice paper, H.R. Deb. (15.4.86)2319-20.

114 Record of proceedings of the presentation of a resolution of thanks of the House to representatives of the Armed Forces, VP 1920-21/184. Report of the proceedings on the occasion of the presentation of the Speaker's Chair, VP 1926-28/343.

115 H.R. Deb. (28.9.88)1011.

116 H.R. Deb. (21.9.77)1418-19. However, because of technical difficulties the matter was not in fact incorporated.

117 VP 1978-80/875-6; H.R. Deb. (6.6.79)2972-7; VP 1978-80/986-7; H.R. Deb. (13.9.79)1080-4.

118 H.R. Deb. (25.9.70)1698.

119 H.R. Deb. (21.8.80)582.

120 H.R. Deb. (6.9.83)435; H.R. Deb. (19.3.85)466.

121 H.R. Deb. (13.11.86)3036-7.

122 H.R. Deb. (16.5.85)2547.

123 *May*, p. 435.

124 H.R. Deb. (13.11.74)3503.

125 H.R. Deb. (25.9.70)1697. The flag was exhibited in support of the allegation that the staff was for use as a weapon.

126 H.R. Deb. (17.9.64)1283-5.

127 H.R. Deb. (25.11.65)3168; H.R. Deb. (16.9.81)1437; H.R. Deb. (1.5.86)2949-50.

128 H.R. Deb. (20.10.81)2250.

129 H.R. Deb. (25.5.83)934.

130 H.R. Deb. (2.11.83)2195.

131 H.R. Deb. (19.8.82)687-8.

132 H.R. Deb. (1.12.83)3166.

and a plastic boomerang.¹³³ Newspaper headlines may be displayed for the purpose of illustrating a speech, but not if they contain unparliamentary language.¹³⁴

Citation of documents not before the House

With certain exceptions, a document relating to public affairs quoted from by a Minister must, if required by any Member, be tabled.¹³⁵ This restraint has been seen by *May* as being 'similar to the rule of evidence in courts of law, which prevents counsel from citing documents which have not been produced in evidence'.¹³⁶ The rule does not apply to private Members.

A Member may quote from documents not before the House, but the quotation must be relevant to the question before the Chair.¹³⁷ It is not in order to quote from documents when asking a question without notice¹³⁸ or to quote words debarred by the rules of the House.¹³⁹ It is not necessary for a Member to vouch for the accuracy of a statement in a document quoted from or referred to¹⁴⁰, but a Member quoting certain unestablished facts concerning another Member contained in a report has been ordered not to put those findings in terms of irrefutable facts.¹⁴¹ It is not necessary for a Member to disclose the source of a quotation¹⁴² or the name of the author of a letter from which he or she has quoted.¹⁴³ The Chair has always maintained that Members themselves must accept responsibility for material they use in debate, and there is no need for them to vouch for its authenticity. Whether the material is true or false will be judged according to events and if a Member uses material, the origin of which he or she is unsure, the responsibility rests with the Member.¹⁴⁴

Subject to the rules applying to relevance and unparliamentary expressions, it is not within the province of the Chair to judge whether a document declared to be confidential should be restricted in its use in the House. As the matter is not governed by standing orders, it must be left to the good sense and discretion of a Member to determine whether to use material in his or her possession.¹⁴⁵ However, the Chair has ruled that confidential documents submitted to Cabinet in a previous Government must, in the public interest, remain entirely confidential.¹⁴⁶

RULES GOVERNING CONTENT OF SPEECHES

Relevancy in debate

General principles and exceptions

Of fundamental importance to the conduct of debate in the House is the rule that no Member may digress from the subject matter of any question under discussion.¹⁴⁷ At the same time the standing orders and practice of the House make

133 H.R. Deb. (14.11.86)3151.

134 H.R. Deb. (20.2.86)996-7,1009.

135 S.O. 321; *see also* Ch. on 'Papers and documents'.

136 *May*, 19th edn, p. 431.

137 H.R. Deb. (29.5.31)2446.

138 H.R. Deb. (28.3.72)1217.

139 H.R. Deb. (20.9.22)2488; H.R. Deb. (10.9.25)2415.

140 H.R. Deb. (17.11.20)6584.

141 H.R. Deb. (27.9.79)1635.

142 H.R. Deb. (12.5.32)671.

143 H.R. Deb. (28.5.31)2399.

144 H.R. Deb. (25.11.53)472-3; H.R. Deb. (26.9.79)1550-1.

145 H.R. Deb. (2.5.57)1000-1; VP 1964-66/597; H.R. Deb. (10.5.66)1601; H.R. Deb. (11.5.66)1673.

146 H.R. Deb. (20.5.42)1440-1; *see also* H.R. Deb. (28.3.73)767-8, H.R. Deb. (9.5.73)1854-5, NP 80(13.12.73)3480, and VP 1973-74/365-6 for other references relating to this question.

147 S.O. 81; *see also* Redlich, vol. III, p. 56.

provision for some important exceptions to this principle when debates of a general nature may take place. These exceptions are:

- on the motion for the adjournment of the House, matters irrelevant thereto may be debated¹⁴⁸;
- on the motion for the second reading of an appropriation or supply bill which deals with the ordinary annual services of the Government, matters relating to public affairs may be debated¹⁴⁹;
- on the motion that the Address in Reply be agreed to, matters in a wide field may be discussed¹⁵⁰, and
- on the question that grievances be noted, a wide debate is permitted.¹⁵¹

The scope of a debate may also be widened by means of an amendment. There is also a digression from the rule of relevancy when a particular order of the day is before the House and it suits the convenience of the House to have a concurrent debate with other orders of the day which are similar in subject matter or are related measures, that is, a cognate debate.

Cognate debate

When two or more related orders of the day¹⁵² are on the Notice Paper¹⁵³, it frequently meets the convenience of the House when debating the first of the orders to allow reference to the other related orders and one cognate debate takes place. Cognate debates are usually agreed to by the Government and the Opposition as part of the programming process and the orders of the day are then linked accordingly on the Daily Program. The Speaker formally seeks the agreement of the House to the proposal when the first of the orders so linked is called on for debate.¹⁵⁴

Upon the conclusion of the debate separate questions are then put as required on each of the orders of the day as they are called on. The House has allowed the subject matter of 16 bills to be debated on the motion for the second reading of one of those bills.¹⁵⁵

The purpose of a cognate debate is to save the time of the House, but Members may still speak to the questions proposed when the other orders of the day encompassed in the cognate debate are called on.¹⁵⁶ However, this action is contrary to the spirit of a cognate debate and it is an undesirable practice except in circumstances, for example, when the Member desires to move an amendment to one of the cognate orders. When a Member wishes to move a second reading amendment to a bill encompassed by a cognate debate other than the order of the day initially called on, the amendment may only be moved when the relevant order of the day is called on.

148 S.O. 81; *see also* Ch. on 'Routine of business and the sitting day'.

149 S.O. 81.

150 *See* Ch. on 'The parliamentary calendar'.

151 *See* Ch. on 'Private Members' business'.

152 A cognate debate has also taken place on a notice of motion and an order of the day, H.R. Deb. (10.3.81)575; and a general business notice of motion and a government business order of the day, VP 1980-83/174-5.

153 All of the matters to be debated together may not appear on the Notice Paper. A cognate debate has taken place on an order of the day and on a motion to take note of a paper which had been moved that day, H.R. Deb. (10.4.78)1306-7.

154 This procedure has not always been followed. The House has ordered that debate on certain orders of the day proceed concurrently, VP 1920-21/705; standing orders have been suspended to allow discussion of certain tariff proposals during debate on a motion to print an associated report, VP 1932-34/101; standing orders have been suspended to enable the scope of the debate on a general business notice to be extended to cover the subject matter of a government business order of the day, VP 1980-83/174.

155 H.R. Deb. (28.9.88)1009.

156 H.R. Deb. (26.11.53)576-7; H.R. Deb. (10.4.78)1314.

Persistent irrelevance or tedious repetition

The Speaker or Chairman, after having called the attention of the House or committee to the conduct of a Member who persists in irrelevance or tedious repetition of either his or her own arguments or the arguments used by other Members in debate, may direct the Member to discontinue his or her speech. The action of the Chair may be challenged by the Member concerned who has the right to require that the question that he or she be further heard be put, and thereupon that question must be put forthwith without debate.¹⁵⁷ The action of the Chair in requiring a Member to discontinue a speech cannot be challenged by a motion of dissent from a ruling, as the Chair has not given a ruling but a direction under the standing orders.¹⁵⁸ The Chair is the judge of the irrelevancy or otherwise of remarks and it is the duty of the Chair to require Members to keep their remarks relevant.¹⁵⁹ Only the Member who has been directed to discontinue a speech has the right to move that he or she be further heard and must do so before the call is given to another Member.¹⁶⁰

On only two occasions has a Member been directed to discontinue a speech on the ground of tedious repetition¹⁶¹ but on a number of occasions on the ground of persistent irrelevance. A Member has been directed to discontinue his speech following persistent irrelevance while moving a motion¹⁶², and in committee of the whole but later took his second turn to speak to the question.¹⁶³ On two occasions the direction of the Chair has been successfully challenged by a motion that the Member be further heard.¹⁶⁴

Anticipation

No Member may anticipate the discussion of any subject which appears on the Notice Paper provided that, in determining whether a discussion is out of order on the ground of anticipation, the Speaker must have regard to the probability of the matter anticipated being brought before the House within a reasonable time.¹⁶⁵ In practice this rule is taken as applying only to the business section of the Notice Paper and not to matters listed elsewhere, for example, under questions on notice or as subjects of committee inquiry. In general, the approach taken by the Chair has been that, while incidental references to other business set down on the Notice Paper have been allowed, it is not in order while debating a question before the House to go into detailed discussion of other business on the Notice Paper.¹⁶⁶ The rule has been applied to a personal explanation¹⁶⁷, a motion of censure or want of confidence¹⁶⁸, the adjournment debate¹⁶⁹ and grievance debate.¹⁷⁰

During the course of a grievance debate the Chair has prevented a Member from debating a certain matter because it related to the subject of a notice of motion appearing on the Notice Paper in the Member's name. On the basis that the notice had only been given three weeks previously, the Chair was not in a position at that stage to determine whether the matter would, or would not, be brought before the House within a reasonable time.¹⁷¹

For the application of the anticipation rule in connection with discussions of matters of public importance *see* Chapter on 'Matters of public importance'.

157 S.O. 85.

158 H.R. Deb. (9.11.04)6753; H.R. Deb. (6.10.53) 1051; H.R. Deb. (4.5.60)1382.

159 H.R. Deb. (20.11.35)1838.

160 H.R. Deb. (6.10.53)1051-2.

161 VP 1904/298; H.R. Deb. (12.10.78)1822.

162 H.R. Deb. (2.6.55)1360.

163 H.R. Deb. (9.3.51)275-7.

164 VP 1937-40/413,418.

165 S.O. 82.

166 H.R. Deb. (22.10.08)1455-6.

167 H.R. Deb. (16.10.13)2178.

168 H.R. Deb. (28.4.14)369-71; H.R. Deb. (29.4.14) 432-3.

169 H.R. Deb. (22.3.35)305.

170 H.R. Deb. (23.1.02)9159.

171 H.R. Deb. (29.4.76)1752-7.

Allusion to previous debate or proceedings

No Member may allude to any debate or proceedings of the same session unless the allusion is relevant to the matter under discussion.¹⁷² This rule is not extended to the different stages of a bill. The basis of the rule is that, when a subject has been debated and a determination made upon it, it must not be discussed by any means at a later stage.¹⁷³ The relevant standing order was far more strict in the past, the relevancy proviso being included when permanent standing orders were adopted in 1950. A previous restriction on allusions to speeches made in committee was omitted in 1963 on the recommendation of the Standing Orders Committee 'as it appeared to be out of date and unnecessarily restrictive'.¹⁷⁴

The application of this standing order most often arises when the question before the House is 'That the House do now adjourn' or 'That grievances be noted'. The scope of debate on these questions is very wide ranging and in some instances allusions to previous debates have been allowed¹⁷⁵, although the Chair has also intervened to prevent allusion to earlier debates.¹⁷⁶ Members may be able to overcome the restriction by referring to a subject or issue of concern without alluding to any debate which may have taken place on it. The problem of enforcing the standing order is accentuated by the fact that a session may extend over a three year period.

Allusion to Senate debate or proceedings and to Senators

With the exception that a Member may refer to a ministerial statement in the Senate, no allusion may be made to any debate or proceedings of the current session of the Senate, or to any measure pending in the Senate, **unless the allusion is relevant to the matter under discussion.**¹⁷⁷ The Chair has ruled that the standing order extends to the proceedings of a Senate committee¹⁷⁸, but this extension may be regarded as unnecessarily restrictive.

In its original form the rule prevented any allusion to debate of the current session or matters pending in the Senate whatsoever, the basis of the rule being to prevent fruitless arguments between members of two distinct bodies who are unable to reply to each other, and to guard against recrimination and offensive language in the absence of the party assailed.¹⁷⁹ Perhaps too it was a reflection of what Redlich refers to, in another context, as 'the right, inherent in each House, to exclusive cognizance of matters arising within it'.¹⁸⁰

Even though the Chair held the view, as early as 1916, that 'It would be suicidal for this House to rule that no reference may be made in any way to a statement made in another place'¹⁸¹, it was not until 1963, following a recommendation from the Standing Orders Committee, that the House amended the standing order to allow reference to a ministerial statement in the Senate.¹⁸²

In 1970, the Standing Orders Committee recommended that the standing order be further amended to allow an allusion to Senate debate and proceedings when it was relevant to the matter under discussion. The committee considered that the existing standing orders provided a safeguard against recrimination or offensive language. The recommendation followed a submission by a Member that the

172 S.O. 71.

173 H.R. Deb. (27.3.42)558.

174 H of R 1(1962-63)19.

175 See Chs on 'Routine of business and the sitting day' and 'Private Members' business'.

176 H.R. Deb. (26.5.87) 3365.

177 S.O. 72.

178 H.R. Deb. (7.3.51)56.

179 *May*, p. 427.

180 Redlich, vol. II, p. 154.

181 H.R. Deb. (1.12.16)9357.

182 VP 1962-63/455; H of R 1(1962-63)19.

practice of the House referring to the Senate as 'another place' and to Senators as 'Members of another place' was of little present value and should be discontinued. The committee reported:

Parliamentary history is largely silent on the origin of the reference to 'another place' but it is reasonable to assume that it came into use as a device to surmount the rules that allusions to debates of the current session in the other House are out of order as are also reflections on Members of the other House. These rules prevented fruitless arguments between members of two distinct bodies who were unable to reply to each other and guarded against recrimination and offensive language in the absence of the party assailed, but it is probable that the principal reason for their existence was the understanding that the debates of the one House were not known to the other and could therefore not be noticed.

The daily publication of debates has changed the situation; the same questions are discussed by persons belonging to the same parties in both Houses and, despite the rule, there is an increasing tendency for debate and proceedings in the Senate to be referred to, a practice to which the Chair does not offer significant objection. It has for some time been permissible for reference to be made in the House to ministerial statements (many of which bear on policy) made in the Senate.

It is therefore proposed, in recognition of the changes which have taken place, that standing order 72 be amended to allow *relevant* allusion to Senate debate and proceedings. A safeguard against recrimination or offensive language will be standing order 75 prescribing that no Member may use offensive words against either House of the Parliament or any Member thereof.

It is also recommended, as a corollary, that, subject to the prohibitions imposed by standing order 75, there be no restriction on direct reference to the Senate and Senators. This will not prevent Members from using the oblique references to the Senate and Senators if this is preferred.¹⁸³

The recommendation was adopted by the House.¹⁸⁴

The Chair has ruled that a Member is in order in questioning the validity of an appointment to fill a casual vacancy in the Senate.¹⁸⁵ Leave has been given Members to comment on procedures adopted by the Senate for consideration of the estimates. When this reference was questioned in the Senate, the Leader of the Government in that Chamber stated that it would be better if the Senate did not get into a disputation or argument.¹⁸⁶

Other occasions when one House has commented on the proceedings of the other have been when the House debated a privilege motion regarding allegations of corruption against the Prime Minister raised in the Senate and involving the President of the Senate¹⁸⁷, and when a matter of privilege was raised in the Senate regarding the proceedings of the House and a report of attacks made therein upon members of the Senate. On the latter occasion the President, having referred to the unusual proceedings in the House, stated that the Senate would best preserve its independence and dignity by refraining from making any reference to the debate in the House.¹⁸⁸ Early in 1909, a formal adjournment motion was moved regarding 'certain public attacks made upon the Postal Commission', the Member concerned having raised the matter to protect himself and the commission, of which he was chairman, against personal charges made in the Senate. The Chair allowed discussion

183 PP 114(1970)2. Initially even reference to the Senate as 'another place' was frowned upon, H.R. Deb. (22.10.01)6237.

184 VP 1970-72/252-3.

185 H.R. Deb. (28.4.32)122-3.

186 VP 1961/221; H.R. Deb. (28.9.61)1451-4; S. Deb. (12.10.61)1056.

187 VP 1914-17/575; H.R. Deb. (2.3.17)10 888-911.

188 J 1909/249. The incident referred to was comment made on a formal adjournment motion after amendments had been made to a bill before the Senate, VP 1909/221; H.R. Deb. (4.12.09)6980-1.

to proceed under cover of a point of order 'for the protection of honourable members'. Later, in a personal explanation in the Senate, the Senator concerned referred to 'quite severe attacks upon myself outside the chamber'.¹⁸⁹

Offensive words cannot be used against either the Senate or Senators.¹⁹⁰ It is important that the use of offensive words should be immediately reprovved in order to avoid complaints and dissension between the two Houses. Leave has been granted a Member to make a statement in reply to allegations made in the Senate¹⁹¹, and to make a personal explanation after having been ruled out of order in replying in debate to remarks made about him in the Senate.¹⁹²

Offensive or disorderly words

Good temper and moderation are the characteristics of parliamentary language. Parliamentary language is never more desirable than when a Member is canvassing the opinions and conduct of his opponents in debate.¹⁹³

The standing orders contain specific prohibitions against the use of words which may be judged to be offensive or disorderly.¹⁹⁴ The determination as to whether words used in the House are offensive or disorderly rests with the Chair, and the Chair's judgment depends on the nature of the word and the context in which it is used. A list of terms and expressions ruled 'unparliamentary' was maintained until 1928 but was then discontinued in the belief that the list was of limited use as a guide or precedent for the future. Speaker Aston commenting on the discontinuation stated:

I see no reason to disagree with the decision taken [to discontinue the list], as the Chair must be free to determine these questions from time to time as it is necessary or desirable. The way in which the remark is made or the tone of voice can make a tremendous difference.¹⁹⁵

A list of unparliamentary expressions, where withdrawal has been requested by the Chair, appears in the index to Hansard volumes.

A Member is not allowed to use unparliamentary words by the device of putting them in somebody else's mouth¹⁹⁶, or in the course of a quotation.¹⁹⁷

It is the duty of the Chair to intervene when offensive or disorderly words are used either by the Member addressing the House or any Member present.¹⁹⁸ When attention is drawn by a Member to words used, the Chair determines whether or not they are offensive or disorderly.¹⁹⁹

Once the Chair determines that offensive or disorderly words have been used, the Chair intervenes and asks that the words be withdrawn. It has been considered that a withdrawal implies an apology²⁰⁰ and need not be followed by an apology unless specifically demanded by the Chair.²⁰¹ The Chair may ask the Member

189 H.R. Deb. (5.11.09)5426-36; S. Deb. (11.11.09)5668.

190 S.O. 75.

191 VP 1961/184; H.R. Deb. (30.8.61)661-3. In this case further statements were made in the House, VP 1961/186,196.

192 H.R. Deb. (19.3.59)885-7; see also VP 1978-80/ 848,850, when a copy of a personal explanation was sent to the President by the Acting Speaker.

193 May, p. 432.

194 S.O.s 75, 76.

195 *Report of 3rd Conference of Presiding Officers and Clerks-at-the-Table*, Melbourne, 1970, PP 153(1970)46.

196 May, p. 433.

197 H.R. Deb. (5.5.78)1894-5.

198 S.O. 77.

199 S.O. 78. This provision was introduced on the recommendation of the Standing Orders Committee, following conflicting rulings on whether remarks regarded as offensive by any Member had to be withdrawn. H of R 1(1962-63)20; VP 1962-63/455. See also statement by Speaker Jenkins, H.R. Deb. (7.5.84)1907.

200 H.R. Deb. (22.10.13)2377.

201 H.R. Deb. (1.11.51)1498.

concerned to explain the sense in which the words were used and upon such explanation the offensive nature of the words may be removed. If there is some uncertainty as to the words complained of, for the sake of clarity, the Chair may ask exactly what words are being questioned. This action avoids confusion and puts the matter clearly before the Chair and Members involved.

The Chair has ruled that any request for the withdrawal of a remark or an allusion considered offensive must come from the Member reflected upon, if present²⁰² and that any request for a withdrawal must be made at the time the remark was made. This latter practice was endorsed by the House in 1974 when it negated a motion of dissent from a ruling that a request for the withdrawal of a remark should be made at the time the remark was made.²⁰³ However, the Speaker has later drawn attention to remarks made and called on a Member to apologise.²⁰⁴ Having been asked to withdraw a remark a Member may not do so 'in deference to the Chair', must not leave the Chamber²⁰⁵ and must withdraw the remark immediately²⁰⁶, in a respectful manner²⁰⁷, unreservedly²⁰⁸ and without conditions²⁰⁹ or qualifications.²¹⁰ Members must rise in their places to withdraw a remark.²¹¹ If a Member refuses to withdraw or prevaricates, the Chair may name the Member for disregarding the authority of the Chair (*see* p. 502). The Speaker has also directed, in special circumstances, that offensive words be omitted from the Hansard record.²¹²

References to, and reflections on, Members

In the Chamber a Member may not refer to another Member by name, but only by the name of the electoral Division he or she represents. Certain office holders are referred to by the title of their office.²¹³ The reason behind this rule is to guard against all appearances of personality in debate.²¹⁴ However, it is the practice of the House that, when appointments to committees or organisations are announced by the Speaker or a Minister, the name of a Member is used.

Offensive words may not be used against any Member and all imputations of improper motives and all personal reflections on Members are considered to be highly disorderly.²¹⁵ The practice of the House, based on that of the House of Commons, is that Members can only direct a charge against other Members or reflect upon their character or conduct upon a substantive motion which admits of a distinct vote of the House.²¹⁶ Although a charge or reflection upon the character or conduct of a Member may be made by substantive motion, in expressing that charge or reflection a Member may not use unparliamentary words. This practice does not necessarily preclude the House from discussing the activities of any of its Members.²¹⁷ It is not in order to use offensive words, and so on, against another Member by means of a quotation or by putting words in someone else's mouth.

In judging offensive words the following explanation given by Senator Wood as Acting Deputy President of the Senate in 1955 is a useful guide:

. . . in my interpretation of standing order 418 [similar to House of Representatives standing order 76 in relation to Members], offensive words must be offensive in the true meaning of that word. When a man is in political life it is **not offensive that things are**

202 H.R. Deb. (30.11.50)3427.

203 VP 1974/41-2.

204 H.R. Deb. (21.4.55)70.

205 H.R. Deb. (22.11.12)5883.

206 H.R. Deb. (3.12.18)8639.

207 H.R. Deb. (7.12.11)3996.

208 H.R. Deb. (15.8.23)2776.

209 H.R. Deb. (27.11.14)1180.

210 H.R. Deb. (30.11.50)3427.

211 H.R. Deb. (26.9.79)1569.

212 *See* Ch. on 'Papers and documents'.

213 *See* Ch. on 'Members'.

214 *May*, p. 431.

215 S.O.s 75, 76.

216 H.R. Deb. (16.10.57)1416; H.R. Deb. (2.3.72) 478.

217 H.R. Deb. (25.10.50)1395.

said about him politically. Offensive means offensive in some personal way. The same view applies to the meaning of "improper motives" and "personal reflections" as used in the standing order. Here again, when a man is in public life and a member of this Parliament, he takes upon himself the risk of being criticised in a political way. [emphasis added]²¹⁸

It has also been regarded as disorderly to refer to the lack of sobriety of a Member²¹⁹, to imitate the voice or manner of a Member²²⁰ and to make certain remarks in regard to a Member's stature²²¹ or physical attributes.²²² Although former Members are not protected by the standing orders²²³, the Chair has required a statement relating to an ex-Member to be withdrawn²²⁴ and on another occasion has regarded it as most unfair to import into debate certain actions of a Member then deceased.²²⁵ Reflections on Members of State Parliaments are not covered by the standing orders.²²⁶

May classifies examples of expressions which are unparliamentary and call for prompt interference as:

- the imputation of false or unavowed motives;
- the misrepresentation of the language of another and the accusation of misrepresentation;
- charges of uttering a deliberate falsehood, and
- abusive and insulting language of a nature likely to create disorder.²²⁷

In accordance with House of Commons practice, for many years it was ruled that remarks which would be held to be offensive, and so required to be withdrawn, when applied to an identifiable Member, did not have to be withdrawn when applied to a group where individual Members could not be identified. This rule was upheld by distinct votes of the House.²²⁸ This did not mean, however, that there were no limits to remarks which could be made reflecting on unidentified Members. For example, a statement that it would be unwise to entrust certain unnamed Members with classified information was required to be withdrawn²²⁹, and Speaker Aston stated that exception would be taken to certain charges the more obvious of which were those of sedition, treason, corruption or deliberate dishonesty.²³⁰ Speaker Snedden supported this practice when he required the withdrawal of the term 'a bunch of traitors'²³¹ and later extended it:

The consequence is that I have ruled that even though such a remark may not be about any specified person the nature of the language [the Government telling lies] is unparliamentary and should not be used at all.²³²

In the past there has been a ruling that it was not unparliamentary to make an accusation against a group as distinct from an individual. That is not a ruling which I will continue. I think that if an accusation is made against members of the House which, if made against any one of them, would be unparliamentary and offensive, it is in the interests of the comity of this House that it should not be made against all as it could not be made against one. Otherwise, it may become necessary for every member of the group against whom the words are alleged to stand up and personally withdraw himself or herself from

218 S. Deb. (2.6.55)629; *Ogders*, p. 154.

219 H.R. Deb. (2.11.77)2736.

220 H.R. Deb. (25.9.08)403. On another occasion a Member apologised after having imitated another Member's accent, although the Chair had not intervened. H.R. Deb. (11.10.85) 1907,1929.

221 H.R. Deb. (9.9.04)4508.

222 H.R. Deb. (28.8.79)669.

223 H.R. Deb. (5.11.87) 2093.

224 H.R. Deb. (1.4.30)724-5.

225 H.R. Deb. (26.5.55)1204.

226 H.R. Deb. (21.8.80)590-1.

227 *May*, pp. 432-3.

228 VP 1968-69/413,499; VP 1970-72/43-5.

229 H.R. Deb. (4.5.67)1793-7.

230 PP 153(1970)43-8.

231 H.R. Deb. (27.2.80)431.

232 H.R. Deb. (10.9.80)1076.

the accusation . . . I ask all honourable members to cease using unparliamentary expressions against a group or all members which would be unparliamentary if used against an individual.²³³

This new practice has been followed since by successive Speakers.

References to the Queen, the Governor-General and State Governors

Members may not use the name of the Queen, the Governor-General or a State Governor disrespectfully in debate, nor for the purpose of influencing the House in its deliberations.²³⁴ The reasons for the rule are:

Treasonable or seditious language or a disrespectful use of Her Majesty's name would normally give offence outside Parliament, and it is unreasonable that a member of the legislature should be permitted openly to use such language in Parliament . . . The irregular use of the Queen's name to influence a decision of the House is unconstitutional in principle and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorized mode of communicating Her Majesty's recommendation or consent, through one of her Ministers; but Her Majesty cannot be supposed to have a private opinion, apart from that of her responsible advisers; and any attempt to use her name in debate to influence the judgment of Parliament is immediately checked and censured. This rule extends also to other members of the Royal Family.²³⁵

Members have been prevented from introducing the name of the sovereign to influence debate²³⁶, canvassing what the sovereign may think of legislation introduced in the Parliament²³⁷ and referring to the sovereign in a way intended to influence the reply to a question.²³⁸ The rule does not exclude a statement of facts by a Minister concerning the sovereign.²³⁹

In 1976, Speaker Snedden prohibited in debate any reference casting a reflection upon the Governor-General, unless discussion was based upon a substantive motion drawn in proper terms. He made the following statement to the House based on an assessment of previous rulings:

Some past rulings have been very narrow. It has, for instance, been ruled that the Governor-General must not be either praised or blamed in this chamber and, indeed, that the name of the Governor-General must not be brought into debate at all. I feel such a view is too restrictive. I think honourable members should have reasonable freedom in their remarks. I believe that the forms of the House will be maintained if the Chair permits words of praise or criticism provided such remarks are free of any words which reflect personally on His Excellency or which impute improper motives to him. For instance, to say that in the member's opinion the Governor-General was right or wrong and give reasons in a dispassionate way for so thinking would in my view be in order. To attribute motive to the Governor-General's actions would not be in order.²⁴⁰

Some previous rulings have been:

- it is acceptable for a Minister to be questioned, regarding matters relating to the public duties for which the Governor-General is responsible, without being critical or reflecting on his conduct²⁴¹;
- restrictions applying to statements disrespectful to or critical of the Governor-General's conduct apply equally to the Governor-General designate²⁴²;

233 H.R. Deb. (12.3.81)709.

234 S.O. 74.

235 *May*, p. 428.

236 H.R. Deb. (24.4.18)4120.

237 H.R. Deb. (20.6.51)142.

238 H.R. Deb. (24.11.36)2170.

239 E.g. VP 1934-37/805-6.

240 H.R. Deb. (19.2.76)131.

241 H.R. Deb. (25.2.69)5-6,12-13.

242 H.R. Deb. (26.2.69)207.

- reflections must not be cast on past occupants of the position or the office as such²⁴³;
- the Governor-General's name should not be introduced in debate in a manner implying threats²⁴⁴;
- statements critical of and reflecting on the Governor-General's role in the selection of a Ministry are out of order²⁴⁵, and
- it is considered as undesirable to introduce into debate the names of the Governor-General's household.²⁴⁶

Petitions have been presented praying for the House to call on the Governor-General to resign.²⁴⁷

Reflections on members of the judiciary

Both standing orders and the practice of the House place certain constraints upon references in debate to members of the judiciary. Under the standing orders no Member may use **offensive words** against any member of the judiciary.²⁴⁸ This provision was not included in the standing orders until 1950 but prior to then the practice, based on that of the House of Commons, was that, unless discussion was based upon a substantive motion, **reflections** could not be cast in debate upon the conduct, including a charge of a personal character, of a member of the judiciary. This practice still continues. Decisions as to whether words are offensive or cast a reflection rest with the Chair.²⁴⁹

Rulings of the Chair have been wide ranging on the matter, perhaps the most representative being one given in 1937 that 'From time immemorial, the practice has been not to allow criticism of the judiciary; the honourable member may discuss the judgments of the court, but not the judges'.²⁵⁰ In defining members of the judiciary, the Chair has included the following:

- a Public Service Arbitrator²⁵¹;
- an Australian judge who had been appointed to the international judiciary²⁵²;
- judges of the Arbitration Court²⁵³;
- a Conciliation and Arbitration Commissioner²⁵⁴, and
- magistrates.

The Chair has also ruled that a distribution commission is not a judicial body and that a judge acting as a commissioner is not acting in a judicial capacity.²⁵⁵ When judges lead royal commissions or special commissions, they are exercising executive power, not judicial power and, therefore, do not attract the protection of standing order 75.

Judges are expected, by convention, to refrain from politically partisan activities and to be careful not to take sides in matters of political controversy. If a judge breaks this convention, a Member may feel under no obligation to remain mute on the matter in the House.

243 H.R. Deb. (14.30)705-6.

244 H.R. Deb. (10.6.14)1982.

245 H.R. Deb. (15.1.18)2971, 2992; H.R. Deb. (18.1.18)3218; H.R. Deb. (9.7.19)10517.

246 H.R. Deb. (14.8.07)1870.

247 E.g. VP 1976-77/577; and see Ch. on 'Parliament and the citizen'.

248 S.O.s 75,77,78.

249 S.O.s 77, 78.

250 H.R. Deb. (28-9.6.37)577; see also H.R. Deb. (18.3.80)836.

251 H.R. Deb. (7.12.21)13924.

252 H.R. Deb. (2.10.57)1005.

253 H.R. Deb. (16.11.33)4677.

254 H.R. Deb. (4.6.52)1399.

255 H.R. Deb. (24.5.65)2076.

Reflections on the House, statutes and votes of the House

The standing orders provide that offensive words may not be used against the House of Representatives.²⁵⁶ It is considered unbecoming to permit offensive expressions against the character and conduct of the House to be used by a Member without rebuke, as such expressions may serve to degrade the legislature in the eyes of the people. Thus, the use of offensive words against the institution by one of its Members should not be overlooked by the Chair.

No Member may reflect upon any vote of the House except upon a motion that the vote be rescinded.²⁵⁷ Such reflections not only revive discussion upon questions already decided but are irregular inasmuch as every Member can be considered to be included in, and bound by, a vote agreed to by a majority.²⁵⁸ Under this rule a proposed motion of privilege, in relation to the suspension of two Members from the House in one motion, was ruled out of order as the vote could not be reflected upon except for the purpose of moving a rescission motion.²⁵⁹ A Member, speaking to the question that a bill be read a third time, has been ordered not to reflect on votes already taken during consideration of the bill²⁶⁰, and a Member has been ordered not to canvass decisions of the House of the same session.²⁶¹ This rule is not interpreted in such a way as to prevent a reasonable expression of views on matters of public concern.

Although standing order 75 provides that the use of offensive words against a statute is prohibited, for the theoretical reason that it imputes discredit to the legislature that passed that statute, modern practice would not call for its application. The rule is no longer applied in the House of Commons and any Act of Parliament can be criticised as strongly as Members desire.²⁶²

References to other governments and their representatives

Although there is no provision in the standing orders prohibiting opprobrious references to countries with which Australia is in a state of amity or to their leaders, governments or their representatives in Australia, the Chair on numerous occasions has intervened to prevent such references being made, on the basis that the House was guided by House of Commons usage²⁶³ on the matter.²⁶⁴ However, from time to time, much latitude has been shown by the Chair and on the one occasion when the House has voted on the matter it rejected the proposed inclusion of this rule into the standing orders. In 1962, the Standing Orders Committee recommended certain amendments to standing order 144, one of which was to give effect to the House of Commons practice that questions should not contain discourteous references to a friendly country or its representative.²⁶⁵ The House rejected the recommendation.²⁶⁶

In more recent years the Chair has declined to interfere with the terms of a notice of motion asking the House to censure an ambassador to Australia 'for his arrogant and contemptuous attitude towards Australia and . . . his provocative public statements'.²⁶⁷ A notice of motion asking the House to condemn a diplomatic representative for 'lying to the Australian public' has also been allowed to appear on the Notice Paper.²⁶⁸

256 S.O. 75; H.R. Deb. (21.8.73)23.

257 S.O. 73.

258 *May*, pp. 426-7.

259 VP 1946-48/43.

260 H.R. Deb. (13.12.34)1217.

261 H.R. Deb. (24.2.72)235.

262 *May*, p. 429.

263 *May*, pp. 430-1.

264 E.g. VP 1951-53/117, 327.

265 H of R 1(1962-63)32.

266 VP 1962-63/455; H.R. Deb. (1.5.63)896. For later comment see H.R. Deb. (19.8.76)368.

267 NP 148(28.2.80)8700; H.R. Deb. (4.3.80)580.

268 NP 168(30.4.80)10257.

In 1986 the Procedure Committee recommended that restrictions relating to reflections in debate on governments or heads of governments, other than the Queen or her representatives in Australia, be discontinued.²⁶⁹ The standing orders and practice of the House do not prevent a Member from reflecting on a State Government or Member of a State Parliament, no matter how much such a reference may be deprecated by the Chair.²⁷⁰

Sub judice convention

Notwithstanding its fundamental right and duty to consider any matter if it is thought to be in the public interest, the House imposes a restriction on itself in the case of matters awaiting or under adjudication in a court of law. This is known as the sub judice convention. The convention is that, subject to the right of the House to legislate on any matter, matters awaiting adjudication in a court of law should not be brought forward in debate, motions or questions. Having no standing order of its own relating specifically to sub judice matters the House has been guided by its own practice and that of the House of Commons as declared by resolutions of that House in 1963 and 1972.²⁷¹

The origin of the convention appears to have been the desire of Parliament to prevent comment and debate from exerting an influence on juries and from prejudicing the position of parties and witnesses in court proceedings.²⁷² The essential difference between the sub judice convention and contempt of court is seen as that:

. . . the former is imposed voluntarily by Parliament upon itself and exercised subject to the discretion of the Chair, with the object of forestalling prejudice of proceedings in the courts. The courts of law on the other hand protect themselves from prejudicial comment outside Parliament by the exercise post hoc of their powers to punish contempts.²⁷³

It is by this self-imposed restriction that the House not only prevents its own deliberations from prejudicing the course of justice but prevents reports of its proceedings from being used to do so.

The practice of the House of Representatives is as follows:

- Application of the sub judice rule is subject always to the discretion of the Chair and the right of the House to debate and legislate on matters.
- Matters awaiting or under adjudication in all courts exercising criminal jurisdiction shall not be referred to in motions, debate or questions from the moment a charge is made until the matter, including any appeal²⁷⁴, is resolved and sentence announced.²⁷⁵
- Matters of a civil nature shall not be referred to from the time the case is set down for trial or otherwise brought before the court, not from the time a writ is issued.
- Proceedings before a royal commission or judicial inquiry shall not be referred to in motions, debate or questions where the matter inquired into concerns issues of fact or findings relating to the propriety of the actions of specific persons.

269 *Standing Committee on Procedure*, 3rd report, PP 354(1986)32.

270 H.R. Deb. (21.8.80)591; H.R. Deb. (30.6.31) 3169; H.R. Deb. (25.9.18)6368.

271 *May*, pp. 429-30.

272 *House of Commons Select Committee on Procedure*, 4th Report, HC 298(1971-72)vii-viii.

273 HC 298(1971-72)vii-viii.

274 H.R. Deb. (5.9.84)642, 644.

275 H.R. Deb. (26.5.86)3922.

- Proceedings before a royal commission, where the matter inquired into is intended to produce advice as to future policy or legislation, **may be referred to** unless such references would constitute a real and substantial danger of prejudice to the proceedings.
- Issues of national importance, such as the national economy, public order or the essentials of life, before, for example, the Conciliation and Arbitration Commission, **may be referred to** unless such references would constitute a real and substantial danger of prejudice to the proceedings.

An explanation of these points is set out below.

Right to legislate and discuss matters

The right of the House to debate and legislate on matters without outside interference or hindrance is self-evident. Circumstances could be such, for example, that the Parliament decides to consider a change to the law to remedy a situation which is before a court or subject to court action.

Discretion of the Chair

The discretion exercised by the Chair must be considered against the background of the inherent right and duty of the House under the Westminster system to debate any matter considered to be in the public interest. Freedom of speech is a fundamental right without which Members would not be able to carry out their duties. Members must be able to speak without hope of favour or fear of retribution. Imposed on this freedom is the voluntary restraint of the sub judice convention, which recognises that the courts are the proper place to judge alleged breaches of the law. It is a restraint born out of respect by Parliament for the judicial arm of government, a democratic respect for the rule of law and the proper upholding of the law by fair trial proceedings. Speaker Snedden stated in 1977:

The question of the *sub judice* rule is difficult. Essentially it remains in the discretion of the presiding officer. Last year [see below] I made a statement in which I expanded on the interpretation of the *sub judice* rule which I would adopt. I was determined that this national Parliament would not silence itself on issues which would be quite competent for people to speak about outside the Parliament. On the other hand, I was anxious that there should be no prejudice whatever to persons faced with criminal action. Prejudice can also occur in cases of civil action. But I was not prepared to allow the mere issue of a writ to stop discussion by the national Parliament of any issues. Therefore I adopted a practice that it would not be until a matter was set down for trial that I would regard the *sub judice* rule as having arisen and necessarily stifle speeches in this Parliament. There is a stricter application in the matter of criminal proceedings.²⁷⁶

The major area for the exercise of the Chair's discretion lies in the Chair's assessment of the likelihood of prejudice to proceedings.

The Select Committee on Procedure of the House of Commons put the following view as to what is implied by the word 'prejudice':

In using the word "prejudice" Your Committee intend the word to cover possible effect on the members of the Court, the jury, the witnesses and the parties to any action. The minds of magistrates, assessors, members of a jury and of witnesses might be influenced by reading in the newspapers comment made in the House, prejudicial to the accused in a criminal case or to any of the parties involved in a civil action.²⁷⁷

²⁷⁶ H.R. Deb. (24.3.77)558.

²⁷⁷ *House of Commons Select Committee on Procedure*, 1st Report, HC 156(1962-63)v.

It is significant that this view did not include judges but referred only to magistrates, as it could be considered unlikely that a judge would be influenced by anything said in the House. In 1976, Speaker Snedden commented:

... I am concerned to see that the parties to the court proceedings are not prejudiced in the hearing before the court. That is the whole essence of the *sub judice* rule; that we not permit anything to occur in this House which will be to the prejudice of litigants before a court. For that reason my attitude towards the *sub judice* rule is not to interpret the *sub judice* rule in such a way as to stifle discussion in the national Parliament on issues of national importance. I have so ruled on earlier occasions. That is only the opposite side of the coin to what is involved here. If I believed that in any way the discussion of this motion or the passage of the motion would prejudice the parties before the court, then I would rule the matter *sub judice* and refuse to allow the motion to go on; but there is a long line of authority from the courts which indicates that the courts and judges of the courts do not regard themselves as such delicate flowers that they are likely to be prejudiced in their decisions by a debate that goes on in this House. I am quite sure that is true, especially in the case of a court of appeal or, if the matter were to go beyond that, the High Court. I do not think those justices would regard themselves as having been influenced by the debate that may occur here.²⁷⁸

The Chair has permitted comments to be made pertaining to a matter subject to an appeal to the High Court, a decision perhaps reflecting the view that High Court judges would be unlikely to be influenced by references in the House.²⁷⁹ Debate relating to the subject matter of a royal commission has been permitted on the grounds that the commissioner would not be in the least influenced by such remarks.²⁸⁰

Civil or criminal matter

A factor which the Chair must take into account in making a judgment on the application of the *sub judice* rule is whether the matter is of a criminal or a civil nature. The House of Commons rule, followed by Australia, provides for greater caution in the case of criminal matters. First, there is an earlier time for exercising restraint in debate in the House, namely, 'from the moment a charge is made' as against 'from the time the case is set down for trial or otherwise brought before the court' in the case of a civil matter. In the case of a civil matter it is a sensible provision that the rule should not apply 'from the time a writ is issued' as many months can intervene between the issue of a writ and the actual court proceedings. The House should not allow its willingness to curtail debate so as to avoid prejudice to be convoluted into a curtailment of debate by the issue of a 'stop writ', namely, a writ the purpose of which is not to bring the matter to trial but to limit discussion of the issue, a step sometimes taken in defamation cases. Secondly, there is the greater weight which should be given to criminal rather than civil proceedings. The tendency to use a jury in criminal cases and not in civil matters and the possibility of members of the jury being influenced by House debate is also relevant to the differing attitudes taken as between civil and criminal matters.

Chair's knowledge of the case

An important practical difficulty which sometimes faces the Chair when application of the *sub judice* convention is suggested is a lack of knowledge of the particular court proceeding or at least details of its state of progress. If present in

278 H.R. Deb. (4.6.76)3048; see also Sir Billy Mackie Snedden, 'Sub judice rule', *Report of 6th Conference of Commonwealth Speakers and Presiding Officers*, 1981, Ottawa.

279 H.R. Deb. (25.11.86)3618.

280 H.R. Deb. (22.9.87)501-2.

the Chamber, the Attorney-General can sometimes help, but often it is a matter of the Chair using its judgment on the reliability of the information given; for example, the Chair has accepted a Minister's assurance that a matter was not before a court.²⁸¹

Matters before a royal commission

In 1954, Speaker Cameron took the view that he would be failing in his duty if he allowed any discussion of matters which had been deliberately handed to a royal commission for investigation.²⁸² The contemporary view is that a general prohibition of discussion of the proceedings of a royal commission is too broad and restricts the House unduly. It is necessary for the Chair to consider the nature of the inquiry. Where the proceedings are concerned with issues of fact or findings relating to the propriety of the actions of **specific persons** the House should be restrained in its references.²⁸³ Where, however, the proceedings before a royal commission are intended to produce advice as to future policy or legislation they assume a national interest and importance, and restraint of comment in the House cannot be justified. In 1978, Speaker Snedden drew a Member's attention to the need for restraint in his remarks about the evidence before a royal commission. Debate was centred on a royal commission appointed by the Government to inquire into a sensitive matter relating to an electoral re-distribution in Queensland involving questions of fact and the propriety of actions of Cabinet Ministers and others.²⁸⁴ The Speaker said:

I interrupt the honourable gentleman to say that a Royal Commission is in course. The sub judice rules adopted by the Parliament and by myself are such that I do not believe that the national Parliament should be deprived of the opportunity of debating any major national matter. However, before the honourable gentleman proceeds further with what he proposes to say I indicate to him that in my view if he wishes to say that evidence ABC has been given he is free to do so. The Royal Commissioner would listen to the evidence and make his judgment on the evidence and not on what the honourable gentleman says the evidence was. But I regard it as going beyond the bounds of our sub judice rules if the honourable gentleman puts any construction on the matter for the simple reason that if the Royal Commissioner in fact concluded in a way which was consistent with the honourable gentleman's construction it may appear that the Commissioner was influenced, whereas in fact he would not have been. So I ask the honourable gentleman not to put constructions on the matter.²⁸⁵

The question as to whether the proceedings before a royal commission are sub judice are therefore treated with some flexibility to allow for variations in the subject matter, the varying degree of national interest and the degree to which proceedings might be or appear to be prejudiced.

Issues of national importance

The Australian Conciliation and Arbitration Commission has jurisdiction in respect of the prevention and settlement of industrial disputes extending beyond the limits of any one State, and also determines matters such as national wage cases, the minimum wage, various pay principles, and so on. The guiding rule in the matter, therefore, amounts to a stressing of the normal right of the House to discuss matters of national interest even though the matters are before the judicial

281 E.g. H.R. Deb. (19.9.85)1320.

282 H.R. Deb. (12.8.54)222.

283 The same rule has been held to apply to judicial inquiries into the actions of specific persons, H.R. Deb. (5.3.84)511. See also H.R. Deb.

(1.12.88)3649-50 where the question arose in connection with a State commission of inquiry.

284 See Ch. on 'Elections and the electoral system'.

285 H.R. Deb. (30.5.78)2780.

arbitration and wage fixing bodies. To disallow debate on issues before the Commission would negate one of the most important functions of the House, and the view is held that anything said in the House would be unlikely to influence the judges who make their determinations on the facts as placed before them.

The principles applied to references to matters before the Conciliation and Arbitration Commission are relevant in the consideration of references to matters before other bodies or inquiries such as may be established from time to time. The discretion of the Chair, and the need to recognise the competing considerations, is always at the core of these matters.

Unreported committee evidence

Members may not disclose in debate evidence taken by any committee of the House or the proceedings and reports of those committees which have not been reported to the House, unless disclosure or publication has been authorised by the House²⁸⁶ or, pursuant to the Parliamentary Papers Act, by the committee.²⁸⁷ Members have thus been prevented from referring to evidence not disclosed to the House or basing statements on matters disclosed to the committee.²⁸⁸ However, Members have, from time to time, made statements on the activities of a committee by leave of the House.²⁸⁹

INTERRUPTIONS TO MEMBERS SPEAKING

No Member may interrupt another Member whilst speaking unless:

- to call attention to a point of order;
- to raise a matter of privilege suddenly arising;
- to call attention to the want of a quorum;
- to call attention to the presence of strangers;
- to move a closure motion under standing order 93 or 94, or
- to move 'That the business of the day be called on' in order to end or preclude discussion of a matter of public importance.²⁹⁰

Also whenever the Speaker rises during a debate, any Member then speaking, or offering to speak, must sit down so that the Speaker may be heard without interruption.²⁹¹ Members may also be interrupted by the Chair at the expiration of time allotted to debate or on matters of order. It is not in order to interrupt another Member in order to move a motion, except as outlined above.²⁹²

It is not the practice of the House for Members to 'give way' in debate to allow another Member to interpose to make an explanation, although this practice occurs in some other Parliaments.²⁹³

When a Member is speaking, no Member may converse aloud or make any noise or disturbance to interrupt the Member.²⁹⁴ Should Members wish to refute statements made in debate they have the opportunity to do so when they themselves address the House on the question or, in certain circumstances, by informing the Chair that they have been misrepresented (*see* p. 470).

286 S.O. 340.

287 *Parliamentary Papers Act 1908*, s.2.

288 H.R. Deb. (10.6.55)1656.

289 E.g. VP 1977/112, 358.

290 S.O. 84.

291 S.O. 53.

292 VP 1974-75/338.

293 H.R. Deb. (7.10.08)861.

294 S.O. 55.

In order to facilitate debate the Chair may regard it as wise not to take note of interjections.²⁹⁵ Deputy Speaker Chanter commented in 1920:

I call attention to a rule which is one of the most stringent that we have for the guidance of business [now S.O. 84]. I may say that an ordinary interjection here and there is not usually taken notice of by the Chair, but a constant stream of interjections is decidedly disorderly.²⁹⁶

The Chair, although recognising all interjections as disorderly, has also been of the opinion that it should not interfere as long as they were short and did not interrupt the thread of the speech being delivered.²⁹⁷ The fact that an interjection has been directly invited by the remarks of the Member speaking in no way justifies the interruption of a speech²⁹⁸, and the Chair has suggested that Members refrain from adopting an interrogatory method of speaking which provokes interjections.²⁹⁹ It is not uncommon for the Chair, when ordering interjectors to desist, to urge the Member speaking to address his or her remarks through the Chair and not to invite or respond to interjections.³⁰⁰ Interjections which are not replied to by the Member with the call or which do not lead to any action or warning by the Chair are not recorded in Hansard.

Modern thinking is that, as the House is a place of thrust and parry, the Chair should not necessarily intervene in the ordinary course of debate when an interjection is made. There should only be intervention if interjections are, in the opinion of the Chair, too frequent or are such as to interrupt the flow of a Member's speech or are obviously upsetting the Member who has the call. The Chair has a duty to rebuke the person who interjects rather than chastise the Member speaking for replying to an interjection.

CURTAILMENT OF SPEECHES AND DEBATE

Curtailment of speeches

A speech is terminated when a Member resumes his or her seat at the conclusion of his or her remarks, when the time allowed for a speech under the standing orders expires, or when the House agrees to the question 'That the Member be not further heard'. Speeches may also be terminated when the time allotted to a particular debate expires, when the House agrees to the question 'That the question be now put', or when the House agrees to a motion 'That the business of the day be called on' during discussion of a matter of public importance.

Time limits for speeches

Time limits for speeches in the House were first adopted in 1912.³⁰¹ Following a recommendation from the Standing Orders Committee that the House adopt a specific standing order limiting the time of speeches³⁰², the House agreed to a motion that 'in order to secure the despatch of business and the good government of the

295 H.R. Deb. (14.8.03)3664; H.R. Deb. (16.6.15) 4014; H.R. Deb. (18.6.15)4229-30.

296 H.R. Deb. (14.7.20)2707.

297 H.R. Deb. (12.9.01)4810.

298 H.R. Deb. (28.9.05)2986.

299 H.R. Deb. (1.5.14)539.

300 H.R. Deb. (5.5.83) 250; H.R. Deb. (10.11.83) 2630-1.

301 The provisional standing orders adopted on 6 June 1901 only contained time limits for speeches on what is now known as a matter of public importance. The limitations were 30 minutes for the mover and 15 minutes for any other Member speaking.

302 H of R 1(1912).

Commonwealth' the standing orders be immediately amended in the direction of placing a time limit on the speeches delivered in the House and in committee.³⁰³ The standing order, as amended, is now standing order 91 and, unless the House otherwise orders, time limits now apply to all speeches with the following exceptions:

- main Appropriation Bill for the year—no time limit for the mover of the second reading and for the Leader of the Opposition or one Member deputed by the Leader of the Opposition when speaking to the second reading, and
- in committee—no time limit on the Minister in charge of the matter. There is no special provision in the standing orders for the committee stages of a bill when a private Member is in charge.³⁰⁴

Time limits do not apply when statements are made by leave of the House.³⁰⁵ It is the practice of the House that time limits are not enforced during debate on motions of condolence or on valedictory speeches made at the end of a period of sittings.

The period of time allotted for a Member's speech is calculated from the moment the Member is given the call³⁰⁶ and includes time taken up by interruptions such as divisions³⁰⁷, quorum calls³⁰⁸, points of order³⁰⁹, motions of dissent from rulings of the Chair³¹⁰, and proceedings on the naming and suspension of a Member.³¹¹ The time allotted is not affected by a suspension of the sitting.

It is not unusual before or during important debates for the standing orders to be suspended to grant extended or unlimited time to Ministers and leading Members of the Opposition.³¹² Sometimes in these circumstances a simple motion for extension of time may be more suitable.

After the maximum period allowed for a Member's speech has expired the standing order provides that, on motion, the Member may be granted an extension of time for one period not exceeding 10 minutes, provided that no extension shall exceed half of the original period allotted.³¹³ The motion, which may be moved without notice by the Member concerned or by another Member, must be determined without amendment or debate.³¹⁴ An extension of time, for a period less than the period specified in the standing order, has been granted on a motion moved by leave.³¹⁵ The granting of a second extension requires the suspension of the standing order³¹⁶, but the House has granted leave for a Member to continue his speech in this circumstance.³¹⁷ The committee of the whole cannot suspend standing orders but the committee may grant leave for the time of a speech to be extended.³¹⁸ A Member cannot be granted an extension after his or her first speech in committee of the whole or on the question for the adjournment of the House.³¹⁹ If there is a division on the question that a Member's time be extended, the extension of time is calculated from the time the Member is called by the Chair.³²⁰

303 VP 1912/38, 42-5. The motion was originally moved by a private Member from the Opposition and it was agreed to by the House with amendments.

304 Special provision was made when time limits were introduced in 1912 and retained when the relevant standing order was varied in 1931, but excluded when permanent standing orders were adopted in 1950, VP 1912/45; VP 1929-31/587-90.

305 H.R. Deb. (28.11.47)2918.

306 H.R. Deb. (14.11.79)2970.

307 H.R. Deb. (17.11.20)6587.

308 VP 1912/226.

309 H.R. Deb. (10.5.45)1571.

310 H.R. Deb. (1.10.53)885. In this case the Member who received the call did not get to address the committee.

311 H.R. Deb. (8.7.31)3561.

312 VP 1978-80/1602, 1690.

313 S.O. 91.

314 S.O. 86.

315 VP 1976-77/26.

316 VP 1970-72/242.

317 VP 1970-72/634.

318 S.O. 111.

319 S.O. 91.

320 H.R. Deb. (9.11.33)4356.

As an example of a variation in time limits for speeches on a bill see Appropriation Bill (No. 1) 1978-79.³²¹

Closure of Member

With the exceptions stated below, any Member may move at any time that a Member who is speaking 'be not further heard' and such question must be put forthwith and decided without amendment or debate.³²² The standing order was introduced at a time when there were no time limits on speeches and, in moving for its adoption, Prime Minister Deakin said:

The . . . new standing order need rarely, if ever, be used for party purposes, and never, I trust, will its application be dictated by partisan motives.³²³

The motion cannot be moved when a Member is giving a notice of motion or is formally moving the terms of a motion allowed under the standing orders³²⁴, or if, when the same question has been negatived, the Chair is of the opinion that the further motion is an abuse of the orders or forms of the House, or is moved for the purpose of obstructing business.³²⁵

The motion is not necessarily accepted by the Chair when a Member is taking or speaking to a point of order, or making a personal explanation, as both those matters are within the control of the Chair. In respect of a point of order the matter awaits the Chair's adjudication, and in respect of a personal explanation the Member is speaking with the Chair's indulgence under standing order 64. Thus, in both cases the discretion of the Chair may be exercised.³²⁶ The Speaker has declined to accept the motion while a Member who had moved a motion of dissent from the Chair's ruling was speaking, as he desired to hear the basis of the motion of dissent.³²⁷ The Chair is not bound to put the question on the motion if the Member speaking resumes his or her seat having completed the speech, the question having been effectively resolved by that action.³²⁸ When the motion has been agreed to, the closed Member has again spoken, by leave.³²⁹

Adjournment and curtailment of debate

Motion for adjournment of debate

A Member who has not spoken to a question before the House or who has the right of reply may move 'That the debate be now adjourned' and that question must be put without amendment or debate.³³⁰ The motion cannot be moved while another Member is speaking. It can only be moved by a Member who is called by the Speaker in the course of the debate. The standing orders provide that, if the question for the adjournment of a debate is agreed to, the Chair must then propose a further question to fix a time for the resumption of the debate.³³¹ A motion for the adjournment of the debate on the question 'That the House do now adjourn' is not in order.

321 VP 1978-80/370.

322 S.O. 94. The standing order was first adopted in 1905, VP 1905/181-3.

323 H.R. Deb. (24.11.05)5762.

324 This provision was included in S.O. 94 in 1963 following the recommendation of the Standing Orders Committee, H of R 1(1962-63)25; VP 1962-63/201, 455.

325 S.O. 86; H.R. Deb. (19.10.77)2171.

326 Private ruling by Speaker Snedden (17.2.78).

327 VP 1978-80/572.

328 VP 1929-31/484, 492; VP 1970-72/1060-1.

329 H.R. Deb. (4.12.47)3213-14, 3264.

330 S.O. 87. When the question that a bill be now read a second time is initially proposed, debate must be adjourned; see Ch. on 'Legislation'.

331 S.O. 87.

In practice, when a Member moves the motion 'That the debate be now adjourned' the Chair puts the question in the form 'That the debate be now adjourned and the resumption of the debate be made an order of the day for . . .'. The time fixed for the resumption of debate is either 'the next day of sitting', 'a later hour this day', or a specific day and date. It is only when there is opposition to the adjournment of the debate or to the time for its resumption that the two questions are put separately. When the question to fix a time for the resumption of the debate is put separately, the question is open to amendment and debate. Both debate and any amendment are restricted, by the rule of relevancy, to the question of the time or date when the debate will be resumed. For example, an amendment must be in the form to omit 'the next sitting' in order to substitute a specific day and date.³³²

If the motion for the adjournment of debate is agreed to, the mover is entitled to the first call when the debate is resumed³³³ (*see* p. 474). If negatived, the mover may address the House at a later period during that debate³³⁴ and no similar proposal may be received by the Chair if the Chair is of the opinion that it is an abuse of the orders or forms of the House or is moved for the purpose of obstructing business.³³⁵

If a Member speaking to a question asks leave of the House to continue his or her remarks when the debate is resumed, this request is taken to be an indication that the Member wishes the debate to be adjourned. If leave is granted, the Chair proposes the question that the debate be adjourned and the resumption of the debate be made an order of the day for an indicated time.³³⁶ If leave is refused, the Member may continue speaking until the expiration of the time allowed.³³⁷

It is mandatory, pursuant to standing order 218, for debate on the second reading of a bill to be adjourned immediately after a Minister's second reading speech. Although the standing order does not specify how the debate is to be adjourned, it is normal practice for a member of the opposition executive to move the formal motion 'That the debate be now adjourned'. There can be no division on the motion in these circumstances.³³⁸

Closure of question

After any question has been proposed from the Chair any Member may rise in his or her place and move 'That the question be now put' and the motion must be put forthwith and decided without amendment or debate. No notice is required of the motion and it may be moved irrespective of whether or not another Member is addressing the Chair.³³⁹ During debate on the election of Speaker or Chairman of Committees the closure may only be moved by a Minister.³⁴⁰ When the closure is moved, it applies only to the immediate question before the House or committee.

The provision for the closure of a question, commonly known as 'the gag', was incorporated in the standing orders in 1905³⁴¹ but was not used until 7 September 1909.³⁴² Since then it has been utilised more frequently, particularly in recent

332 VP 1978-80/1473.

333 S.O. 88.

334 S.O. 89.

335 S.O. 86. When an opposition Member was prevented from moving the adjournment of the debate a second time, the Chair immediately accepted a motion moved by a Minister which the House agreed to, H.R. Deb. (30.6.49)1892-3.

336 VP 1978-80/1663.

337 VP 1976-77/173.

338 VP 1968-69/117.

339 S.O. 93.

340 S.O.s 12(f), 13(f).

341 The debate lasted over a week and amendments proposing to give the Chair a discretion not to accept the motion were defeated, VP 1905/167-78.

342 VP 1909/105.

years.³⁴³ The closure has been moved as many as 41 times in one sitting³⁴⁴ and 29 times on one bill.³⁴⁵

If a motion for the closure is negatived, the Chair shall not receive the same proposal if it is of the opinion that it is an abuse of the orders or forms of the House or is moved for the purpose of obstructing business.³⁴⁶ The closure of a question cannot be moved in respect of any proceedings for which time has been allotted under the guillotine procedure.³⁴⁷ This restriction has been held not to apply to a motion, moved after the second reading of a bill, to refer the bill to a select committee when that proposal had not been included in the allotment of time for the various stages of the bill.³⁴⁸

If a division on the closure motion is in progress or just completed when the time for the automatic adjournment arrives, and the motion is agreed to, a decision is then taken on the main question(s) before the House or committee before the automatic adjournment procedure is invoked.³⁴⁹

When the closure is agreed to, the question is then put on the immediate question by the Chair. If the immediate question is an amendment to the original question, debate may then continue on the original question, or the original question, as amended.³⁵⁰ From time to time interruptions have occurred between the agreement to the closure and the putting of the question to which the closure related.³⁵¹

If the closure is moved and agreed to while a Member is moving or seconding (where necessary) an amendment, that is, before the question on the amendment is proposed from the Chair, the amendment is superseded, and the question on the original question is put immediately.³⁵² However, the Chair has declined to accept the closure at the point when a Member was formally seconding an amendment, and then proceeded to propose the question on the amendment.³⁵³

The Chair has declined to accept the closure on a motion of dissent from the Chair's ruling.³⁵⁴

Any Member may move the closure, including a Member who has already spoken to the question.³⁵⁵ It may be moved by a Member during, or at the conclusion of, his or her speech, but no reasons may be given for so moving³⁵⁶, nor may a Member take advantage of the rules for personal explanations to give reasons.³⁵⁷ If the seconder of a motion has reserved the right to speak, the closure overrides this right.³⁵⁸

Guillotine

From time to time the Government may limit debate on a bill, motion, or a proposed resolution for customs or excise tariff by use of the guillotine.³⁵⁹ This procedure is described in detail in the Chapter on 'Legislation'.

343 See Appendix 20.

344 VP 1934-37/211-38.

345 VP 1923-24/25-48.

346 S.O. 86; e.g. H.R. Deb. (13.5.80)2657.

347 S.O. 92(g). See Chs on 'Legislation' and 'Motions'.

348 VP 1934-37/483.

349 H.R. Deb. (4.4.73)1102-3.

350 E.g. VP 1956-57/42.

351 A Member has been named and suspended, VP 1954-55/123-4; a request has been made for leave to make a statement, VP 1932-34/114; the

sitting has been suspended for a meal break and on resumption the Speaker has made a statement, VP 1951-53/609.

352 VP 1920-21/260; VP 1956-57/74.

353 H.R. Deb. (15.5.80)2814.

354 H.R. Deb. (16.11.78)2893.

355 VP 1943-44/57; H.R. Deb. (17.2.44)279,284.

356 H.R. Deb. (20.3.47)926-8; H.R. Deb. (27.3.47)1229.

357 H.R. Deb. (21.2.47)123.

358 H.R. Deb. (26.7.46)3203.

359 S.O. 92.

Other provisions for the interruption and conclusion of debates

The standing orders provide for the period of certain debates to be limited in time or to be concluded by procedures not yet dealt with in this chapter. Time limits apply to debates on:

- the question 'That the House do now adjourn' (S.O. 48A);
- the question 'That grievances be noted' (S.O. 106);
- a motion for the suspension of standing orders when moved without notice under standing order 399 (S.O. 91);
- a motion for allotment of time under the guillotine procedures (S.O. 91);
- private Member's business (S.O. 104, as amended by sessional order);
- proceedings on committee and delegation reports on Thursday mornings (sessional order 102C);
- general business notices and orders of the day (S.O.s 104, 109) (under the former procedures), and
- matters of public importance (S.O. 91).

A debate may also be concluded:

- at the expiration of the time allotted under the guillotine procedure (S.O. 92(e)), and
- on withdrawal of a motion relating to a matter of special interest (S.O. 108).

A debate may be interrupted:

- by the automatic adjournment (S.O. 48A);
- when the time fixed for the commencement of proceedings under the guillotine procedure has been reached (S.O. 92(f)), and
- by a motion 'That the business of the day be called on' in respect of a matter of public importance (S.O. 107).

In all these cases the standing orders make provision as to how the question before the House is to be disposed of (where necessary), with the exception of when precedence to general business notices and orders of the day expired. When, under the arrangements pertaining before the adoption of new sessional orders effective from March 1988, debate was interrupted at 2 p.m. on a general business Thursday, precedence to general business having expired, the Chair announced that the Member speaking would have leave to continue his or her remarks when the debate was resumed, and that the debate was adjourned to the next sitting.³⁶⁰

POWERS OF CHAIR TO ENFORCE ORDER

The Speaker and the Chairman of Committees are responsible for the maintenance of order in the House and in committee respectively. This responsibility is derived specifically from standing order 52 but also from other standing orders and the practice and traditions of the House.

Naming of Members

Standing order 303 provides that a Member may be named by the Chair if the Member has:

- persistently and wilfully obstructed the business of the House;
- been guilty of disorderly conduct;

- used objectionable words, and has refused to withdraw them;
- persistently and wilfully refused to conform to any standing order, or
- persistently and wilfully disregarded the authority of the Chair.

The naming of a Member is, in effect, an appeal to the House to support the Chair in maintaining order. Its first recorded use in the House of Commons was in 1641.³⁶¹ The first recorded naming in the House of Representatives was on 21 November 1901 (Mr Conroy). Mr Conroy apologised to the Chair and the naming was withdrawn.³⁶² The first recorded suspension was in respect of Mr Catts on 18 August 1910.³⁶³ A Member is usually named by the name of his or her electoral Division, the Chair stating 'I name the honourable Member for . . .'. Office holders have been named by their title.³⁶⁴ In 1927, when it was put to the Speaker that he should have named a Member by his actual name the Speaker replied:

It is a matter of identification, and the identity of the individual affected is not questioned. I named him as member for the constituency which he represents, and by which he is known in this Parliament.³⁶⁵

Before taking the final step of naming a Member, the Chair will, frequently, first call a Member to order and sometimes warn the Member.³⁶⁶

While the offences for which a Member may be named are set out in standing order 303, it is not uncommon for a Member to be named for an offence which is not specifically stated in the terms of the standing order but which is considered to be encompassed within its purview. For example, in regard to conduct towards the Chair, Members have been named for imputing motives to, disobedience to, defying, disregarding the authority of, reflecting upon, insolence to, and using expressions insulting or offensive to, the Chair. Since 1905, an unnecessary quorum call has been dealt with as a wilful obstruction of the business of the House³⁶⁷ and it is now an accepted procedure that a Member who calls attention to the want of a quorum when a quorum is in fact present is immediately named by the Chair and a motion moved for the Member's suspension.³⁶⁸

Office holders have been named, including Ministers³⁶⁹, Leaders of the Opposition³⁷⁰ and party leaders.³⁷¹ Members have been named together, but, except in the one instance, separate motions have been moved and questions put for the suspension of each Member.³⁷² No Member has been named twice on the one occasion, but the Chair has threatened to take this action.³⁷³

The naming of a Member usually occurs immediately an offence has been committed but this is not always possible. For example, Members have been named at the next sitting as a result of incidents that occurred at the adjournment of the

361 Hatsell, vol.II, p.238; Redlich, vol.III, p.72 n 1.

362 H.R. Deb. (21.11.01)7654.

363 VP 1910/78.

364 E.g. H.R. Deb. (27.2.75)824, but the identity of the Minister named is shown in the Votes and Proceedings as 'the honourable Member for . . .', VP 1974-75/502.

365 H.R. Deb. (1.12.27)2397.

366 See H.R. Deb. (5.6.75)3404, where a Member was named for disorderly conduct without being called to order or warned. When an unnecessary quorum call is made, the usual procedure is that this results in an 'automatic' naming.

367 H.R. Deb. (24.8.05)1478.

368 VP 1978-80/1277-8.

369 VP 1929-31/593,828; VP 1937-40/135 (and suspended); VP 1961/36 (and suspended); VP 1974-75/502-3.

370 VP 1914-17/148-9; VP 1948-49/295-6; VP 1985-87/1151. On each occasion suspensions followed.

371 E.g. VP 1973-74/404-5; VP 1985-87/1081-2 (and suspended).

372 VP 1932-34/608-10; VP 1973-74/93-5; VP 1974-75/1068-9. On the occasion when two Members were suspended on one motion an attempt to raise the matter as one of privilege the next day was ruled out of order as the vote could not be reflected upon except on a rescission motion, VP 1946-48/40,43.

373 H.R. Deb. (9.10.75)1927; while bells were ringing for division on question for suspension, the Member reflected on the Chair.

previous sitting of the House.³⁷⁴ A Member has been named for refusing to withdraw words which the Chair initially ruled were not unparliamentary. When that ruling was reversed by a successful dissent motion and the Chair then demanded the withdrawal of the words, the Member refused to do so.³⁷⁵

Proceedings following the naming of a Member

Standing order 304 stipulates that, if the offence for which a Member has been named has been committed in the House, the Speaker must forthwith put the question, on a motion being made, 'That the honourable Member for . . . be suspended from the service of the House'. If the offence is committed in committee, the Chairman must forthwith suspend the proceedings of the committee and report the circumstances to the House. The Speaker must then, on a motion being made, put the same question as if the offence had been committed in the House itself. No amendment, adjournment, or debate is allowed on the question in either case.

It is not uncommon for the Chair to withdraw the naming of a Member after other Members have addressed the Chair on the matter and the offending Member has apologised.³⁷⁶ Such interventions are usually made by a Minister or a member of the opposition executive before the motion for suspension is moved, as it was put on one occasion 'to give him a further opportunity to set himself right with the House'.³⁷⁷ The motion for suspension has not been proceeded with at the request of the Speaker³⁷⁸, when the Speaker stated that no further action would be taken if the Member (who had left the Chamber) apologised immediately on his return³⁷⁹, when a Member's explanation was accepted by the Chair³⁸⁰, when the Chair thought it better if the action proposed in naming a Member were forgotten³⁸¹, when the Chair accepted an assurance by the Leader of the Opposition that the Member named had not interjected³⁸², when the Chair acceded to a request by the Leader of the Opposition not to proceed with the matter³⁸³, when the Member withdrew the remark which led to his naming and apologised to the Chair³⁸⁴ and when the Member apologised to the Chair.³⁸⁵

A motion for suspension of a Member has been moved at the commencement of a sitting following his naming during a count out of the previous sitting.³⁸⁶ Although the Chair has ruled that there is nothing in the standing orders which would prevent the House from proceeding with business between the naming of a Member and the subsequent submission of a motion for his suspension³⁸⁷, the intention of the standing order, as borne out by practice, is presumably that the matter be proceeded with forthwith without extraneous interruption. For example,

374 VP 1934-37/361; VP 1974-75/154. On the latter occasion the Member was named for refusing to apologise for his conduct on the adjournment of the House at the preceding sitting.

375 VP 1937/106-7.

376 H.R. Deb. (29.11.01)8056-7; VP 1970-72/1268; H.R. Deb. (19.10.72)2955; VP 1983-84/916; H.R. Deb. (4.10.84)1631.

377 H.R. Deb. (4.7.19)10464. On occasions the Chair has, initially at least, declined to allow Members to apologise, H.R. Deb. (1.10.12)3622-3, H.R. Deb. (12.12.12)6941. On other occasions Members named have been given no opportunity to apologise, H.R. Deb. (27.4.55)218-21,222-3; H.R. Deb. (5.6.75)3404; H.R. Deb. (11.9.80)1225-6.

378 VP 1937-40/233.

379 VP 1973-74/166.

380 VP 1974-75/109,256. On the latter occasion the motion for the suspension had been moved but the question had not been put, H.R. Deb. (23.10.74)2727. On an earlier occasion, a Member having apologised for his conduct after the suspension motion had been moved, the motion was withdrawn, by leave, VP 1970-72/324.

381 H.R. Deb. (30.8.62)943-4.

382 VP 1964-66/153; H.R. Deb. (15.9.64)1093.

383 VP 1964-66/626; H.R. Deb. (23.8.66)307.

384 VP 1978-80/342.

385 VP 1983-84/216; H.R. Deb. (14.9.83)750.

386 VP 1914-17/567.

387 H.R. Deb. (16.3.44)1473-4.

the Chair has refused to accept a dissent motion on the quite correct ground that, in naming a Member, the Chair has not made a ruling.³⁸⁸

Following the naming of a Member it is usually the Leader of the House or the Minister leading for the Government at the particular time who moves the motion for the suspension of the Member³⁸⁹ and the Chair has seen it as within its right at any time to call on the Minister leading the House to give effect to its rules and orders.³⁹⁰ The motion for the suspension of a Member has been negatived on two occasions, the first when the Government did not have sufficient Members present to ensure that the motion was agreed to³⁹¹, and the second when the Government, for the only time, did not support the Speaker and the motion for the suspension of the Member was moved by the Opposition and negatived. The Speaker resigned on the same day because of this unprecedented lack of support.³⁹²

A suspension on the first occasion is for 24 hours; on the second occasion in the same year, for 7 consecutive days; and on the third and any subsequent occasion in the same year, for 28 consecutive days. Suspensions for 7 and 28 days are exclusive of the day of suspension and are for calendar, not sitting, days. Any suspension in a previous session is disregarded and a 'year' means a year commencing on 1 January and ending on 31 December.³⁹³ There is only one instance of a Member having been suspended on a third occasion.³⁹⁴

A Member has been suspended from the service of the House 'Until he returns, with the Speaker's consent, and apologises to the Speaker'³⁹⁵, and because of words spoken outside the House ' . . . for the remainder of the Session unless he sooner unreservedly retracts the words uttered by him at Ballarat . . . and reflecting on the Speaker, and apologises to the House'.³⁹⁶ It should be noted in respect of the first example above that the relevant standing order at that time had a proviso that 'nothing herein shall be taken to deprive the House of power of proceeding against any Member according to ancient usages'.

Once the House has ordered that a Member be suspended he or she must immediately withdraw from the Chamber. When a Member has refused to withdraw, the Chair has directed the Serjeant-at-Arms to remove him.³⁹⁷ On one occasion, the Speaker having ordered the Serjeant-at-Arms to direct a suspended Member to withdraw, the Member still refused to leave and grave disorder arose which caused the Speaker to suspend the sitting. When the sitting was resumed, the Member again refused to leave the Chamber. Grave disorder again arose and the sitting was suspended until the next day when the Member then expressed regret and withdrew from the Chamber.³⁹⁸

A Member suspended from the service of the House is excluded from the Chamber and all its galleries³⁹⁹, and may not participate in Chamber related

388 H.R. Deb. (24.9.86)1316-18.

389 The motion has been moved by a Member other than a Minister, VP 1974-75/502, and has not been moved when it appeared that the Chair did not wish the Minister to do so, H.R. Deb. (27.4.55)223.

390 H.R. Deb. (14.7.20)2710; H.R. Deb. (28.7.20)3015.

391 VP 1937-40/223.

392 VP 1974-75/502-3; and see Ch. on 'The Speaker, the Chairman of Committees and Officers'.

393 S.O. 305.

394 VP 1917-19/506.

395 VP 1914-17/148,153. A letter of apology was submitted and accepted at the next sitting later that day.

396 The suspension did not follow a naming or an incident in the House and was later expunged from the record 'as being subversive of the right of an honourable Member to freely address his constituents', VP 1913/151-3; VP 1914-17/181.

397 VP 1914-17/567; VP 1920-21/213-14,258-9,386; VP 1923-24/159.

398 VP 1970-72/76.

399 E.g. H.R. Deb. (1.12.88)3667. S.O. 307. This standing order was adopted in the 1963 revision of the standing orders and followed a 1955 resolution to that effect, VP 1962-63/455; H of R 1(1962-63)55. Prior to this, Members under suspension had on occasions been instructed to leave Parliament House.

activities. Thus petitions, notices of motion and matters of public importance are not accepted from a Member under suspension. A suspended Member is not otherwise affected in the performance of his or her duties. Notices of questions have been accepted from a Member after his suspension⁴⁰⁰ and notices of motions standing in the name of a suspended Member have been called on, and, not being moved or postponed, have been lost, as have matters of public importance.⁴⁰¹ Suspension from the service of the House does not exempt a Member from serving upon a committee of the House.⁴⁰² The payment of a Member's salary and allowances is not affected by a suspension.

Members have been prevented from subsequently raising the subject of a suspension as a matter of privilege as the matter has been seen as one of order, not privilege⁴⁰³, and because a vote of the House could not be reflected upon except for the purpose of moving that it be rescinded.⁴⁰⁴ Members have also been prevented from subsequently referring to the naming of a Member once the particular incident was closed.⁴⁰⁵

A Member, by indulgence of the Speaker, has returned to the Chamber, withdrawn a remark unreservedly and expressed regret. The Speaker then stated that he had no objection to a motion being moved to allow the Member to resume his part in the proceedings, and standing orders were suspended to allow the Member to do so.⁴⁰⁶ On other occasions Members have returned and apologised following suspension of the standing orders⁴⁰⁷ and following the House's agreement to a motion, moved by leave, that 'he be permitted to resume his seat upon tendering an apology to the Speaker and the House'.⁴⁰⁸

Gross disorder by a Member

When the conduct of a Member is of such a grossly disorderly nature that the procedure provided in standing order 304 would be inadequate to ensure the urgent protection of the dignity of the House, the Chair shall order the Member to withdraw immediately from the Chamber and the Serjeant-at-Arms shall act on such orders as are received from the Chair. When the Member has withdrawn he or she must be named by the Speaker or the Chairman, as the case may be, and the proceedings shall then be as provided for in standing orders 304 and 305, except that the question for the suspension of the Member shall be put by the Speaker without a motion being necessary. If the question for the suspension of the Member is negatived, the Member may return to the Chamber forthwith.⁴⁰⁹ This standing order has never been invoked but its predecessor was used on a number of occasions. The standing order was amended in 1963 to make it quite clear that its provisions would apply only in cases which are so grossly offensive that immediate action was

400 NP 38(6.9.60)366-7; VP 1960-61/159.

401 VP 1974-75/788-90; NP 82(5.6.75)8523-4; VP 1987-89/527; 1987-89/1273.

402 *May*, pp.449-50. Redlich, vol.I, p.182, comments on the adoption by the House of Commons of a resolution on this matter (later to constitute a standing order) 'The chief question which was raised upon this rule, and which led to some debate, was whether a suspended member was to be excused from serving upon committees, more particularly upon select committees on private bills. It was correctly argued by several speakers that, if he were so excused, suspension might in some cases afford a refractory member a very pleasant holiday from parlia-

mentary work; it was therefore decided to retain the former practice, *i.e.*, that suspension should not release a member from the duty of attending committees upon which he had been placed'.

403 VP 1917-19/509.

404 VP 1946-48/43.

405 H.R. Deb. (13.12.12)7032-3.

406 VP 1970-72/327.

407 VP 1962-63/461; VP 1964-66/98.

408 VP 1959-60/15. In this case standing orders should have been suspended to enable the motion to be moved.

409 S.O. 306.

imperative and that it could not be used for ordinary offences. In addition provision was made for the House to judge the matter by requiring the Chair to name the Member immediately after his or her withdrawal.⁴¹⁰

Grave disorder in the House or committee

In the case of grave disorder arising in the House the Speaker may adjourn the House without putting a question or suspend any sitting for a time to be named by the Speaker.⁴¹¹ On four occasions when grave disorder has arisen the Chair has adjourned the House until the next sitting.⁴¹² The Chair has also suspended the sitting in such circumstances on six occasions.⁴¹³

In committee the Chairman is invested with the same authority as the Speaker for preserving order but is not given the power of the Speaker to adjourn or suspend the sitting pursuant to standing order 308. Disorder in committee may be censured by the House only on receiving a report⁴¹⁴ but, if any sudden disorder arises in committee, the Speaker may resume the Chair.⁴¹⁵ On only one occasion has the Chairman suspended proceedings in committee and reported the circumstances to the Speaker.⁴¹⁶

Other matters of order relating to Members

Standing order 79 provides that the House will interfere to prevent the prosecution of any quarrel between Members arising out of debates or proceedings of the House or of any committee thereof. The standing order has only once been invoked to prevent the prosecution of a quarrel⁴¹⁷ but the Chair has cited the standing order in admonishing Members for constantly interjecting in order to irritate or annoy others.⁴¹⁸

If a Member wilfully disobeys any order of the House, he or she may be ordered to attend to answer for such conduct. If the Member fails to attend, or the explanation is deemed to be unsatisfactory, the House may direct the Serjeant-at-Arms to take the Member into custody.⁴¹⁹

When a Member (or other person) has been taken into custody by the Serjeant-at-Arms, the arrest must be reported to the House by the Speaker without delay and the House shall then fix the time for the Member (or other person) to be brought to the Bar of the House to be dealt with by the House.⁴²⁰

410 VP 1962-63/455; H of R 1(1962-63)55; see also *Report of 2nd Conference of Presiding Officers and Clerks-at-the-Table*, Brisbane, 1969, PP 106(1969)120.

411 S.O. 308.

412 VP 1954-55/351; VP 1956-57/169; VP 1973-74/405; VP 1985-87/1273.

413 VP 1917-19/453 (15 minutes); VP 1954-55/184 (until 2.30 p.m. the next day); VP 1970-72/76 (on two occasions, until the ringing of the bells and until 10.30 a.m. this day); VP 1970-72/

209,691 (until the ringing of the bells). The last two occasions followed grave disorder arising in the galleries.

414 S.O.s 52, 280.

415 S.O. 282.

416 VP 1926-28/421-2.

417 VP 1980-83/1118; H.R. Deb. (20.10.82)2318.

418 H.R. Deb. (27.6.06)751.

419 S.O. 309.

420 S.O. 311.