

When the proposed amendment is to omit certain words in order to insert (add) other words and the question 'That the words proposed to be omitted stand' is agreed to, the amendment is disposed of. The only further amendment that can then be proposed is by the addition of words. An amendment can be moved to the further amendment.

### Putting question on amendment

When a proposed amendment is to omit certain words, the Chair puts the question 'That the words proposed to be omitted stand part of the question'.<sup>346</sup>

When a proposed amendment is to omit words in order to insert or add others, the Chair first puts the question 'That the words proposed to be omitted stand part of the question' and if this is resolved in the affirmative, the amendment is disposed of. If the question is resolved in the negative, the Chair must then put the question 'That the words proposed to be inserted (added) be so inserted (added)'.<sup>347</sup>

When the proposed amendment is to insert or add certain words the Chair puts the question 'That the words proposed to be inserted (added) be so inserted (added)'.<sup>348</sup>

If no Member objects the Chair may put the question 'That the amendment be agreed to' in place of the question or questions stated above.<sup>349</sup> This alternative form of putting the question is occasionally used to avoid the necessity of Members changing sides to vote in a division on a question<sup>350</sup> or to allow further amendments to be moved to a question.<sup>351</sup> In order to avoid confusion as to which amendment is before the House, the Chair may include the name of the mover when putting the question.<sup>352</sup>

When an amendment has been made, the main question is put, as amended.<sup>353</sup> The fact that an amendment has been made does not necessarily preclude the moving of a further amendment, providing it is in accord with the standing orders, nor does it preclude debate on the main question, as amended, taking place.<sup>354</sup> With the concurrence of the House the Chair has declined to put the question on a motion, as amended, when it had been so amended so that what remained of the motion was meaningless.<sup>355</sup> On another occasion, the effect of an amendment was seen as having negatived a motion, as only the word 'That' remained.<sup>356</sup>

When amendments have been moved but not made, the question is put as originally proposed.<sup>357</sup> Debate may then continue on the original question or a further amendment moved, providing it is in accord with the standing orders.<sup>358</sup>

<sup>346</sup> S.O. 175.

of S.O. 181; and see H.R. Deb. (15.5.75)2347, H.R. Deb. (19.5.75)2415, H.R. Deb. (20.3.79)1919-20 and H.R. Deb. (21.3.79)961 for discussion on the use of this alternative.

<sup>347</sup> S.O. 176.

<sup>352</sup> VP 1962-63/279-80; VP 1974-75/646-8.

<sup>348</sup> S.O. 177.

<sup>353</sup> S.O. 186.

<sup>349</sup> S.O. 178.

<sup>354</sup> H.R. Deb. (8.10.08)961; H.R. Deb. (21.11.05)5515.

<sup>350</sup> VP 1978-80/1290.

<sup>355</sup> VP 1908/54.

<sup>351</sup> VP 1962-63/276. In such cases if the question 'That the words proposed to be omitted stand part of the question' was agreed to, not only would the amendment be disposed of, but Members would be precluded from moving any further amendment (apart from the addition of words) by the provisions

<sup>356</sup> VP 1908/79; H.R. Deb. (10.11.08)2140.

<sup>357</sup> S.O. 187.

<sup>358</sup> H.R. Deb. (15.8.68)252.

## *Control and conduct of debate*

The proceedings between the rising of a Member to move a motion and the ascertainment by the Chair of the decision of the House constitute a debate.<sup>1</sup> 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.<sup>2</sup>

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'.<sup>3</sup> 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.<sup>4</sup>

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 him 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 ...'.<sup>5</sup>

<sup>1</sup> May, p. 364; Wilding & Laundry, pp. 520-1.

<sup>2</sup> Redlich, vol. III, pp. 42-3.

<sup>3</sup> Enid Campbell, *Parliamentary Privilege in Australia*, Melbourne University Press, Carlton, 1966, p. 28; and see Ch. on 'Parliamentary privilege'.

<sup>4</sup> Redlich, vol. III, p. 49.

<sup>5</sup> 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 he rises to order, upon a matter of privilege or upon a matter of public importance, but not otherwise.<sup>6</sup>

Despite the above restriction, a Member may also speak to explain matters of a personal nature (see p. 445), to explain himself in regard to some material part of his speech which has been misquoted or misunderstood (see p. 444), 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), and
- question that strangers be ordered to withdraw (S.O. 314).<sup>7</sup>

### *Mover and seconder of motions and amendments*

A Member may speak when moving a motion which is open to debate<sup>8</sup> but he loses the right to speak to the motion, except in reply, if he does not speak immediately. Similarly, a Member who moves an amendment must speak to it immediately, if he wishes to speak to it at all.

A Member who seconds a motion or amendment before the House, may speak to it immediately or at a later period during the debate.<sup>9</sup>

### *Question on motion or amendment before the House or committee*

A Member may address himself only once to a question before the House, except in explanation or reply.<sup>10</sup> In special circumstances, a Member may be granted leave to speak again.<sup>11</sup> In a committee of the whole a Member may speak twice on each question before the committee, but may not take his second period immediately if another Member seeks the call.<sup>12</sup> There is no limit on the number of times that a Minister in

6 S.O. 63.

10 S.O. 65.

7 S.O. 86.

11 VP 1974-75/874.

8 S.O. 63.

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

9 S.O. 70.

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.<sup>13</sup>

When a Member speaks to a question and resumes his seat without moving an amendment that he intended to propose, he cannot subsequently move the amendment as he has already spoken to the question before the House. If a Member has already spoken to a question, or has moved an amendment to it, he may not be called to move a further amendment or the adjournment of the debate, but he 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 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. Accordingly, the Member 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 must confine his remarks to the amendment.<sup>14</sup> A Member who has spoken to the original question and the amendment may speak to the question on any further amendment, but must confine his remarks to the further amendment.<sup>15</sup>

#### *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 his remarks to matters raised during the debate.<sup>16</sup> 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 remarks must be confined to the amendment.<sup>17</sup> The speech of a Minister acting on behalf of the mover of the original motion does not close the debate.<sup>18</sup> 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.<sup>19</sup>

The Chair has ruled that a reply is permitted to the mover of a motion of dissent from a ruling of the Chair.<sup>20</sup>

The mover of the motion is not entitled to the call to close the debate while any other Member is seeking the call.<sup>21</sup> When the 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.<sup>22</sup> A Member closing the debate by reply cannot propose an amendment.<sup>23</sup>

#### *Misrepresentation*

A Member who has spoken to a question may again be heard to explain himself in regard to some material part of his speech which has been **misquoted or misunderstood**

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

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

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

16 S.O. 67.

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

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

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

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

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

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

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

but he 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.<sup>24</sup> The correct procedure to be followed by a Member is to rise after a Member has concluded his speech and to inform the Chair that he has been misrepresented. The Chair will then permit him to proceed with his explanation. It is a help in the conduct of the proceedings of the House if the Member informs the Chair in advance that he intends 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.<sup>25</sup> It is the practice of the House that any Member wishing to make a personal explanation should approach the Speaker beforehand and inform him.<sup>26</sup> The Speaker has refused to allow a Member to make a personal explanation when prior notice has not been given.<sup>27</sup>

Personal explanations may be made at any time with the indulgence of the Chair, provided that no other Member is addressing the House.<sup>28</sup> However, they are most often made at the point in the routine of business following the presentation of papers.<sup>29</sup> Personal explanations may arise from reports in the media, Senate debates, the preceding Question Time, and so on.<sup>30</sup> One of the reasons for personal explanations being permitted soon after Question Time is that, when a personal explanation is made in rebuttal of a misrepresentation 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.<sup>31</sup>

In making a personal explanation, a Member may not deal with matters affecting his party; his explanation must be confined to matters affecting himself personally.<sup>32</sup> A Member cannot make charges or attacks upon another Member under cover of making a personal explanation.<sup>33</sup> A personal explanation may be made in the House regarding events in committee but in making an explanation the Member may not reflect on the Chairman.<sup>34</sup> 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.<sup>35</sup>

If the Speaker refuses leave to a Member to make a personal explanation, or directs a Member to resume his 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.<sup>36</sup>

#### *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 to permit:

- a Minister to correct an answer given earlier to a question without notice<sup>37</sup>;
- the Prime Minister to add to an answer given by another Minister to a question without notice<sup>38</sup>;

24 S.O. 66.

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

25 S.O. 64.

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

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

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

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

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

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

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

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

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

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

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

31 VP 1948-49/346.

- the Prime Minister to answer a question without notice ruled out of order<sup>39</sup>;
- Members to put their views on a ruling by the Speaker relating to the sub judice convention<sup>40</sup>;
- Members to comment on a privilege matter<sup>41</sup>;
- a Member to seek information on a matter not raised in the second reading speech on a bill<sup>42</sup>;
- Members to speak to a paper tabled by the Speaker<sup>43</sup>, and
- a Minister to correct a figure given in an earlier speech.<sup>44</sup>

*Statements by leave*

A frequently used practice is to seek the leave of the House, that is, permission of the House without any dissentient voice<sup>45</sup>, to make a statement when there is no question before the House. This procedure is used, in the main, by Ministers in order to announce domestic and foreign policies and other decisions of the Government. It is usual for an agreement to be reached between Government and Opposition that a copy of the proposed statement 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.

When a Member asks for leave to make a statement, he must indicate the subject matter in order that the House can make a judgment as to whether leave is justified or not. When a Member has digressed from the subject for which he was granted leave, the Chair has:

- directed the Member to resume his seat<sup>46</sup>;
- directed the Member to confine himself to the subject for which he was granted leave<sup>47</sup>, 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.<sup>48</sup>

If a Member does not indicate the subject matter of his 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.<sup>49</sup> The Chair, by ensuring that the Member when he rises seeks leave to make a statement on the same matter, preserves greater control over relevancy.

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.

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

45 S.O. 111.

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

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

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

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

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

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

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

49 H.R. Deb. (18.10.79)2198-9.

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

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 honorable 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 at 10.30 p.m. interrupts the Member's speech, the speech is then terminated unless the adjournment proposal is negated.

A Member cannot be given leave to make a statement on the next day of sitting in reply to a statement just made; he must ask for such leave on the next day of sitting.<sup>50</sup> It is not in order for a motion to be moved that a Member 'have leave to make a statement'<sup>51</sup> or, when leave to make a statement is refused, to move that the Member 'be now heard'<sup>52</sup>, as the latter motion can only be moved to challenge the call of the Chair during debate.<sup>53</sup> 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'.<sup>54</sup> Once granted, leave cannot be withdrawn.<sup>55</sup>

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.<sup>56</sup>

## 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.<sup>57</sup> The resolution arose out of allegations then current that Members who were barristers were being retained by fee by Indian princes 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.<sup>58</sup>

50 H.R. Deb. (22.2.17)10 574-5.

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

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

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

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

57 May, pp. 143-4.

53 S.O. 61.

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

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

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.<sup>59</sup> 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.<sup>60</sup> 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. In his defence 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.<sup>61</sup>

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 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.<sup>62</sup>

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 are silent, 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 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.<sup>63</sup> If the Member does not take up his entitlement on the resumption of the debate, this does not impair his right to speak later in the debate.<sup>64</sup> 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 debate<sup>65</sup> 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 remarks and the debate is then adjourned, the Member must take his entitlement to pre-audience on the resumption of the debate, otherwise he loses his right to continue.

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

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

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

63 S.O. 88.

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

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

65 S.O. 87.

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 Members<sup>66</sup> but not if the Minister proposes to speak in reply<sup>67</sup>, and

- the Leader or Deputy Leader of the Opposition over other members of his party.<sup>68</sup>

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. He usually receives priority of all other Members whenever he wishes to speak.<sup>69</sup> This enables the Minister to explain or comment upon details of the legislation as they arise from time to time in the debate.

The standing orders provide that when 2 or more Members rise together to speak, the Speaker shall call upon the Member who, in his opinion, first rose in his place.<sup>70</sup> The decision of the Chair may be challenged by a motion that any Member who rose 'be now heard' or 'do now speak', and that question must be put forthwith and determined without amendment or debate.<sup>71</sup> A Member may move either of these motions in respect of himself.<sup>72</sup> It is not in order to challenge the Chair's decision by moving that the Member who received the call 'be not further heard'.<sup>73</sup> 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.<sup>74</sup>

Because of the coalition arrangement between the Liberal and National Country Parties, the Chair has allocated the call between these 2 parties in the following way:

- 29th Parliament: 61 opposition Members—40 Liberal Party, 21 National Country Party: Liberals received call on the basis of a 2:1 ratio.
- 30th Parliament: 91 government Members—68 Liberal Party, 23 National Country Party: Liberals received call on the basis of a 3:1 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.<sup>75</sup> 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.<sup>76</sup> The practice was explained

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

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

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

69 VP 1951-53/703; H.R. Deb. (6.10.53)1031; H.R. Deb. (25.11.53)500-01; H.R. Deb. (22.9.55)883.

70 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 2 Members became simultaneously convinced that they had 'caught the Speaker's eye', Marsden, p. 101.

71 S.O. 61.

72 VP 1959-60/138.

73 H.R. Deb. (25.11.53)500-01.

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

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

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

some years later as one in which the Chair noted the names of Members in the order in which they rose in the House<sup>77</sup>, but not all occupants of the Chair maintained such lists.<sup>78</sup>

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.<sup>79</sup> 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.<sup>80</sup> This continues to be the practice followed by the Chair.

## Manner of speech

### *Remarks addressed to Chair*

A Member wishing to speak rises and addresses himself to the Speaker.<sup>81</sup> By the indulgence of the House a Member unable conveniently to stand by reason of sickness or infirmity may be permitted to speak sitting.<sup>82</sup> 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 back to the Chair and address Members of his own party.<sup>83</sup> A Member should not address the listening public while the proceedings of the House are being broadcast.<sup>84</sup>

### *Place of speaking*

Standing order 61 provides that when 2 or more Members rise to speak the Speaker shall call upon the Member who, in his opinion, first rose 'in his place', and standing order 58 requires every Member, when he comes into the Chamber, to 'take his seat'. The implication is that a Member should address the House from his 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 allotted seat or from the Table.<sup>85</sup> 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

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

vacant, Members address themselves to the Clerk who acts as Chairman.

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

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

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

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

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

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

81 S.O. 59. At the election of a Speaker at the meeting of a new Parliament or whenever that office becomes

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

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.<sup>86</sup>

The recommendation of the committee was subsequently adopted by the House.<sup>87</sup>

#### *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 have been considerable variations in practice over the years and the Chair has from time to time expressed unease at the fact that the practice has been allowed and in respect of some of the purposes for which the practice has been used.

Answers to questions on notice are required to be printed in Hansard<sup>88</sup> and Budget tables have always been permitted to be included unread in Hansard.<sup>89</sup> Of the first 3 Speakers of the House, Speakers Holder and McDonald required all other matter, including statistical tables, to be read into the record<sup>90</sup> while Speaker Salmon did allow statistical information that could not advantageously be read to be included unread.<sup>91</sup> Later, Speaker Watt allowed tables to be incorporated but only if officially compiled.<sup>92</sup> The Chair itself used to take responsibility for deciding whether unread matter should be incorporated or not, but by 1924, at the latest, the Chair was of the opinion that the matter was one for the House to decide.<sup>93</sup> The decision, subject to the authority of the Speaker on certain matters, has rested with the House ever since.

Underlying the attitude of the Chair and the House has been the consistent aim of keeping the Hansard record as a true record of what is said in the House. Occupants of the Chair saw the practice of including unread matter in Hansard as fraught with danger.<sup>94</sup> Speaker Makin was more specific in 1931 when he outlined several objections to the practice of inserting matter which had not been read, including relevance, length and decorum of expression.<sup>95</sup> Speaker Mackay saw it as enabling Members to exceed the time allowed for their speeches.<sup>96</sup> In recent years the Chair has stated its position as not encouraging the incorporation of anything in Hansard other than matter such as tables which need to be seen in visual form for comprehension.<sup>97</sup>

It is not in order for Members to hand in their speeches as is done in the Congress of the United States of America<sup>98</sup>, even when they have been prevented from speaking on a question before the House<sup>99</sup>, nor can they have the balance of an incompleted speech incorporated.<sup>100</sup> In 1952, a Minister was granted leave to incorporate a ministerial statement in Hansard and then to move a motion for its printing. The Speaker saw the proposal as unusual and having possible awkward repercussions, and stated that it was not

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

87 VP 1964-66/266.

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

89 H.R. Deb. (13.6.24)1292-3.

90 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)2702-03; H.R. Deb. (22.9.10)3599-600.

91 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.

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

93 H.R. Deb. (13.6.24)1292-3.

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

95 H.R. Deb. (5.8.31)4976-7.

96 H.R. Deb. (15.9.32)556.

97 H.R. Deb. (10.5.78)2131.

98 H.R. Deb. (1.3.17)10 826. 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.

99 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.

100 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.

to be taken as a precedent for the future.<sup>101</sup> When a similar request was made at a later date and the Speaker again raised doubts, leave was refused by the House.<sup>102</sup> Similar views were again expressed by the Chair in 1953 and, in order to specifically test the feeling of the House on the matter, a Minister asked leave of the House to incorporate a statement in Hansard and to move a motion that the paper be printed. Leave was refused.<sup>103</sup>

On 17 September 1964 the Chair pointed out the impracticability of incorporating material such as graphs, maps, and so on, and stated that the incorporation of photographs would be totally unprecedented, the primary purpose of Hansard being to record the spoken word.<sup>104</sup> The Standing Orders Committee subsequently considered the question of incorporation of unread material into Hansard and came to the following conclusion:

The Committee supports proposals for the establishment of a rule to govern the seeking and obtaining of leave to incorporate material in Hansard but is of opinion that this is inappropriate for inclusion in standing orders and can well be left for arrangement through Party channels, with the understanding that, consistent with the principles stated by the Chair on 17th September, 1964, the final decision as [to] the practicability of incorporating material such as graphs, maps, blocks, etc., and incorporating matter of a libellous or improper nature or which is irrelevant shall be made by the Presiding Officer. A suitable arrangement would be that 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 be.<sup>105</sup>

The report was adopted by the House.<sup>106</sup> In 1970, the Standing Orders Committee agreed that there should be no change in the procedure adopted in 1965<sup>107</sup> and these principles have since been followed by the Chair.<sup>108</sup> Members must provide a copy of the material they propose to include at the time leave is sought<sup>109</sup>, and copies of non-read material intended for incorporation must be lodged with Hansard as early as possible.<sup>110</sup>

The Speaker has exercised his final authority in respect of photographs<sup>111</sup>, lengthy tabulated material<sup>112</sup>, when a document has not been of a quality acceptable for printing<sup>113</sup> and when the proposed incorporation would present technical problems and unduly delay the production of the daily Hansard.<sup>114</sup> The Chair has interposed to advise against having a map incorporated and suggested an alternative course<sup>115</sup> and has with considerable reluctance agreed to the incorporation of an explanatory memorandum to a bill which was of considerable length and in a form which did not appropriately form part of a speech, but it was made clear that it should not be taken as a precedent.<sup>116</sup>

In 1970, the Standing Orders Committee considered the question of the incorporation of associated memoranda in the speech of a Minister who moves the second reading of a bill of a markedly technical nature and the instances where the Speaker, as final

<sup>101</sup> VP 1951-53/405; H.R. Deb. (5.9.52)1051-2. At that time the motion to print provided a vehicle for debate.

<sup>102</sup> H.R. Deb. (5.11.52)4272-3.

<sup>103</sup> H.R. Deb. (17.9.53)322-4.

<sup>104</sup> VP 1964-66/164.

<sup>105</sup> PP 129(1964-66)3.

<sup>106</sup> VP 1964-66/266.

<sup>107</sup> PP 114(1970)9.

<sup>108</sup> H.R. Deb. (4.5.76)1881; H.R. Deb. (15.10.73)2059.

<sup>109</sup> H.R. Deb. (9.5.73)1860-1.

<sup>110</sup> VP 1974-75/157.

<sup>111</sup> VP 1964-66/164.

<sup>112</sup> H.R. Deb. (29.10.75)2634.

<sup>113</sup> H.R. Deb. (19.9.79)1270,1298.

<sup>114</sup> H.R. Deb. (22.10.75)2439; H.R. Deb. (30.10.74) 3106.

<sup>115</sup> H.R. Deb. (28.3.46)744.

<sup>116</sup> VP 1967-68/199.

arbiter, had agreed with some reluctance to such incorporations. The committee agreed that there should be no change to the procedures agreed to by the House in 1965 and noted that:

... the purpose of the Member who had raised the question of the incorporation in Hansard of associated memoranda was largely met when Mr Speaker arranged for all explanatory memoranda circulated in the Chamber for the information of Members to be published by the Government Printer and made available for distribution or sale to persons and institutions interested in the Bill.<sup>117</sup>

Unusual material inserted in Hansard has included opposition amendments which had been circulated but not moved, it being seen as an appropriate and convenient way of placing on public record what the Opposition considered to be wrong with a bill<sup>118</sup> and extracts from proceedings of an estimates committee, in the belief that the record of the House was a much more popular publication.<sup>119</sup> A statutory declaration by a private citizen has been incorporated but doubts were expressed at the practice and the Speaker agreed that it should not be taken as a precedent.<sup>120</sup> The Chair has not allowed the incorporation of matter irrelevant to the question before the House.<sup>121</sup>

The House has ordered, by way of a motion, that matter be incorporated. A record of proceedings of the presentation of a resolution of thanks of the House to representatives of the Armed Forces has been so inserted<sup>122</sup> as has the report of the proceedings on the occasion of the presentation of the Speaker's Chair 'with a view to preserving the records ... and as an expression of appreciation on the part of this House'.<sup>123</sup> In 1974, when leave was refused the Prime Minister to incorporate certain papers, a motion was moved, pursuant to contingent notice, to authorise their incorporation. The motion was agreed to.<sup>124</sup> In 1977, standing orders having been suspended, a motion was moved, and agreed to, to allow the incorporation in Hansard of a statement. The statement however could not be incorporated because of technical difficulties.<sup>125</sup>

On 2 occasions in 1979, standing orders were suspended to enable certain papers to be incorporated in Hansard, after leave had been refused.<sup>126</sup> 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 as to the practicability of incorporating material such as graphs, and so on, and incorporating matter of a libellous or improper nature or which is irrelevant, rests with the Speaker.

#### *Display of articles to illustrate speeches*

Members have been permitted to display articles to illustrate speeches but it is not in order to display a weapon<sup>127</sup> or play a tape recorder<sup>128</sup> in the Chamber. Items

117 PP 114(1970)9.

118 H.R. Deb. (9.5.73)1859-60.

119 H.R. Deb. (25.10.79)2551-2.

120 H.R. Deb. (11.10.79)1908-09.

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

122 VP 1920-21/184.

123 VP 1926-28/343.

124 VP 1974-75/422; NP 45(5.12.74)4942.

125 H.R. Deb. (21.9.77)1418-19.

126 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.

127 *May*, p. 433.

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

displayed have been a flag (during questions without notice)<sup>129</sup>, photographs and journals<sup>130</sup>, a circuit panel<sup>131</sup>, a large piece of concrete being part of the foundations of a war service home<sup>132</sup>, and a skeleton weed.<sup>133</sup>

With respect to the display of articles 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.<sup>134</sup> In 1980, the Chair ruled that the display of a handwritten sign containing an unparliamentary word by a seated Member was not permitted.<sup>135</sup>

#### *Citation of documents not before the House*

Although, with certain exceptions, a document relating to public affairs quoted from by a Minister must, if required by any Member, be tabled<sup>136</sup>, and this restraint is 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'<sup>137</sup>, 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.<sup>138</sup> It is not in order to quote from documents when asking a question without notice<sup>139</sup> or to quote words debarred by the rules of the House<sup>140</sup>. It is not necessary for a Member to vouch for the accuracy of a statement in a document quoted from or referred to<sup>141</sup>, 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.<sup>142</sup> It is not necessary for a Member to disclose the source of a quotation<sup>143</sup> or the name of the author of a letter from which he has quoted.<sup>144</sup> 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 is unsure, the responsibility rests with him.<sup>145</sup>

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 he should use material in his possession.<sup>146</sup> However, the Chair has ruled that confidential documents submitted to Cabinet in a previous Government must, in the public interest, remain entirely confidential.<sup>147</sup>

129 H.R. Deb. (25.9.70)1697. In fact the flag was being exhibited in support of an allegation that the staff was for use as a weapon.

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

131 H.R. Deb. (23.10.79)2312.

132 H.R. Deb. (26.10.61)2600.

133 H.R. Deb. (25.11.65)3168.

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

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

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

137 *May*, p. 431.

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

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

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

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

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

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

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

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

146 H.R. Deb. (2.5.57)1000-01; VP 1964-66/597; H.R. Deb. (10.5.66)1601; H.R. Deb. (11.5.66)1673.

147 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.

## 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.<sup>148</sup> At the same time the standing orders and practice of the House make 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 debated<sup>149</sup>;
- 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 debated<sup>150</sup>;
- on the motion that the Address in Reply be agreed to, matters in a wide field may be discussed<sup>151</sup>, and
- on the question that grievances be noted, a wide debate is permitted.<sup>152</sup>

There is also a digression from the rule 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. The scope of a debate may also be widened by means of an amendment.

#### *Cognate debate*

When 2 or more related orders of the day<sup>153</sup> are on the Notice Paper<sup>154</sup>, 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. A proposal for such a debate is usually put to the Speaker by the appropriate Minister, the Speaker then seeks agreement of the House to the proposal and, if there is no objection, he allows that course to be followed.<sup>155</sup> 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 14 bills to be debated on the motion for the second reading of one of those bills.<sup>156</sup>

The purpose of a cognate debate is to save the time of the House, but Members are still permitted to speak to the questions proposed when the other orders of the day encompassed in the cognate debate are called on.<sup>157</sup> However, this action is contrary to

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

149 S.O. 81; *see also* Ch. on 'Business of the House and the sitting day'.

150 S.O. 81.

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

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

153 A cognate debate may also take 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 1980-81/174-5.

154 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)1306-07.

155 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 1980-81/174.

156 H.R. Deb. (10.3.59)440-1.

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

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.

#### *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 own arguments or the arguments used by other Members in debate, may direct him to discontinue his speech. The action of the Chair may be challenged by the Member concerned who has the right to require that the question that he be further heard be put, and thereupon that question must be put forthwith without debate.<sup>158</sup> The action of the Chair in requiring a Member to discontinue his 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.<sup>159</sup> 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.<sup>160</sup> Only the Member who has been directed to discontinue his speech has the right to move that he be further heard and he must do so before the call is given to another Member.<sup>161</sup>

On only 2 occasions has a Member been directed to discontinue his speech on the ground of tedious repetition<sup>162</sup> 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 motion<sup>163</sup>, and in committee of the whole but later took his second turn to speak to the question.<sup>164</sup> On 2 occasions the direction of the Chair has been successfully challenged by a motion that the Member be further heard.<sup>165</sup>

#### **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.<sup>166</sup> 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.<sup>167</sup> The rule has been applied to a personal explanation<sup>168</sup>, a motion of censure or want of confidence<sup>169</sup>, the adjournment debate<sup>170</sup> and grievance debate.<sup>171</sup>

During the course of 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 3 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.<sup>172</sup>

<sup>158</sup> S.O. 85.

<sup>159</sup> H.R. Deb. (9.11.04)6753; H.R. Deb. (6.10.53)1051; H.R. Deb. (4.5.60)1382.

<sup>160</sup> H.R. Deb. (20.11.35)1838.

<sup>161</sup> H.R. Deb. (6.10.53)1051-2.

<sup>162</sup> VP 1904/298; H.R. Deb. (12.10.78)1822.

<sup>163</sup> H.R. Deb. (2.6.55)1360.

<sup>164</sup> H.R. Deb. (9.3.51)275-7.

<sup>165</sup> VP 1937-40/413,418.

<sup>166</sup> S.O. 82.

<sup>167</sup> H.R. Deb. (22.10.08)1455-6.

<sup>168</sup> H.R. Deb. (16.10.13)2178.

<sup>169</sup> H.R. Deb. (28.4.14)369-71; H.R. Deb. (29.4.14)432-3.

<sup>170</sup> H.R. Deb. (22.3.35)305.

<sup>171</sup> H.R. Deb. (23.1.02)9159.

<sup>172</sup> 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.<sup>173</sup> 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.<sup>174</sup> 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'.<sup>175</sup>

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 allowed.<sup>176</sup> The problem of enforcing the standing order is accentuated by the fact that a session may extend over a 3 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**.<sup>177</sup> The Chair has ruled that the standing order extends to the proceedings of a Senate committee.<sup>178</sup>

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 2 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.<sup>179</sup> 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'.<sup>180</sup>

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'<sup>181</sup>, 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.<sup>182</sup>

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 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

<sup>173</sup> S.O. 71.

<sup>178</sup> H.R. Deb. (7.3.51)56.

<sup>174</sup> H.R. Deb. (27.3.42)558.

<sup>179</sup> May, p. 424.

<sup>175</sup> H of R 1(1962-63)19.

<sup>180</sup> Redlich, vol. II, p. 154.

<sup>176</sup> See Chs on 'Business of the House and the sitting day' and 'Private Members' business'.

<sup>181</sup> H.R. Deb. (1.12.16)9357.

<sup>177</sup> S.O. 72.

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

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.<sup>183</sup>

The recommendation was adopted by the House.<sup>184</sup>

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.<sup>185</sup> 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.<sup>186</sup>

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 Senate<sup>187</sup>, 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.<sup>188</sup> 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 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'.<sup>189</sup>

Offensive words cannot be used against either the Senate or Senators.<sup>190</sup> It is important that the use of offensive words should be immediately reprobated in order to avoid complaints and dissension between the 2 Houses. Leave has been granted a

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.

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

190 S.O. 75.

Member to make a statement in reply to allegations made in the Senate<sup>191</sup>, 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.<sup>192</sup>

### 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.<sup>193</sup>

The standing orders contain specific prohibitions against the use of words which may be judged to be offensive or disorderly.<sup>194</sup> 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.<sup>195</sup>

A list of unparliamentary expressions, where withdrawal has been demanded 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 mouth<sup>196</sup>, or in the course of a quotation.<sup>197</sup>

It is the duty of the Chair to intervene where offensive or disorderly words are used either by the Member addressing the House or any Member present.<sup>198</sup> When attention is drawn by a Member to words used, the Chair determines whether or not they are offensive or disorderly.<sup>199</sup> However, because of conflicting rulings which required that remarks regarded by any Member as offensive to be withdrawn, the Standing Orders Committee recommended that it be the Speaker who determines whether words are offensive or disorderly when his attention is drawn to them. The recommendation was adopted by the House.<sup>200</sup>

Once the Chair determines that offensive or disorderly words have been used, the Chair intervenes and asks that the words be withdrawn. It is generally understood that a withdrawal implies an apology<sup>201</sup> and need not be followed by an apology unless specifically demanded by the Chair.<sup>202</sup> The Chair may ask the Member concerned to explain the sense in which he used the words 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 should ask exactly what words are being questioned. This action avoids confusion and puts the matter clearly before the Chair and Members involved.

<sup>191</sup> 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.

<sup>192</sup> 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.

<sup>193</sup> *May*, p. 429.

<sup>194</sup> S.O.s 75, 76.

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

<sup>196</sup> *May*, p. 430.

<sup>197</sup> H.R. Deb. (5.5.78)1894-5.

<sup>198</sup> S.O. 77.

<sup>199</sup> S.O. 78.

<sup>200</sup> H of R 1(1962-63)20; VP 1962-63/455.

<sup>201</sup> H.R. Deb. (22.10.13)2377.

<sup>202</sup> H.R. Deb. (1.11.51)1498.

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 he is present<sup>203</sup> 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 negatived 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.<sup>204</sup> However, the Speaker has later drawn attention to remarks made and called on a Member to apologise.<sup>205</sup> Having been asked to withdraw a remark a Member may not do so ‘in deference to the Chair’, must not leave the Chamber<sup>206</sup> and must withdraw the remark immediately<sup>207</sup>, in a respectful manner<sup>208</sup>, unreservedly<sup>209</sup> and without conditions<sup>210</sup> or qualifications<sup>211</sup>. A Member must rise in his place to withdraw a remark.<sup>212</sup> If a Member refuses to withdraw or prevaricates, the Chair may name him for disregarding the authority of the Chair (*see* p. 474). The Speaker has also directed, in special circumstances, that offensive words be omitted from the Hansard record.<sup>213</sup>

### 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 represents. Certain office holders are referred to by the title of their office.<sup>214</sup> The reason behind this rule is to guard against all appearances of personality in debate.<sup>215</sup> 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.<sup>216</sup> The practice of the House, based on that of the House of Commons, is that a Member cannot direct a charge against another Member nor reflect upon his character or conduct unless he does so upon a substantive motion which admits of a distinct vote of the House.<sup>217</sup> 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.<sup>218</sup>

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 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]<sup>219</sup>

It has also been regarded as disorderly to refer to the lack of sobriety of a Member<sup>220</sup>, to imitate the voice or manner of a Member<sup>221</sup> and to make certain remarks in regard to

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

213 See Ch. on ‘Papers and documents’.

204 VP 1974/41-2.

214 See Ch. on ‘Members’.

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

215 May, p. 429.

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

216 S.O.s 75, 76.

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

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

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

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

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

219 S. Deb. (2.6.55)629; *Odgers*, p. 154.

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

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

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

221 H.R. Deb. (25.9.08)403.

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

a Member's stature<sup>222</sup> or physical attributes.<sup>223</sup> The Chair has required a statement relating to an ex-Member to be withdrawn<sup>224</sup> and on another occasion has regarded it as most unfair to import into debate certain actions of a Member now deceased.<sup>225</sup> Reflections on Members of State Parliaments are not covered by the standing orders.<sup>226</sup>

*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.<sup>227</sup>

In accordance with House of Commons practice it was consistently ruled that remarks which may be offensive when applied to an identifiable Member may not be regarded as unparliamentary when applied to a group where Members cannot be identified. This rule was upheld by distinct votes of the House.<sup>228</sup> 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 has been required to be withdrawn<sup>229</sup>, 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.<sup>230</sup> Speaker Snedden supported this practice when he required the withdrawal of the term 'a bunch of traitors'<sup>231</sup> and later extended the rule:

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.<sup>232</sup>

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 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.<sup>233</sup>

## 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.<sup>234</sup> The reasons for the rule are:

Treasonable or seditious language or a disrespectful use of Her Majesty's name would normally give offence outside of Parliament; and it is only consistent with decency, that a member of the legislature should not be permitted openly to use such language in his place in Parliament . . . The irregular use of the Queen's name to influence a decision of the House

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

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

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

230 PP 153(1970)43-8.

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

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

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

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

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

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

227 *May*, pp. 429-30.

234 S.O. 74.

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

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 would be immediately checked and censured. This rule extends also to other members of the Royal Family.<sup>235</sup>

Members have been prevented from introducing the name of the sovereign to influence debate<sup>236</sup>, canvassing what the sovereign may think of legislation introduced in the Parliament<sup>237</sup> and referring to the sovereign in a way intended to influence the reply to a question.<sup>238</sup> The rule does not exclude a statement of facts by a Minister concerning the sovereign.<sup>239</sup>

In 1976, Speaker Snedden, prohibited in debate any reference to the Governor-General which cast a reflection upon him, 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.<sup>240</sup>

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 conduct<sup>241</sup>;
- restrictions applying to statements disrespectful to or critical of the Governor-General's conduct apply equally to the Governor-General designate<sup>242</sup>;
- reflections must not be cast on past occupants of the position or the office as such<sup>243</sup>;
- the Governor-General's name should not be introduced in debate in a manner implying threats<sup>244</sup>;
- statements critical of and reflecting on the Governor-General's role in the selection of a Ministry are out of order<sup>245</sup>, and
- it is considered as undesirable to introduce into debate the names of the Governor-General's household.<sup>246</sup>

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

235 *May*, pp. 425-6.

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 1934-37/805-06.

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.

243 H.R. Deb. (1.4.30)705-06.

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'.

## 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.<sup>248</sup> 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. Decision as to whether words are offensive or cast a reflection rests with the Chair.<sup>249</sup>

Rulings of the Chair have been broad 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'.<sup>250</sup> In defining members of the judiciary, the Chair has included the following:

- Public Service Arbitrator<sup>251</sup>;
- an Australian judge who had been appointed to the international judiciary<sup>252</sup>;
- judges of the Arbitration Court<sup>253</sup>;
- a Conciliation and Arbitration Commissioner<sup>254</sup>, 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.<sup>255</sup>

## 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.<sup>256</sup> It is obviously unbecoming to permit offensive expressions against the character and conduct of the House to be used by a Member without rebuke, as such expressions are calculated to degrade the legislature in the eyes of the people. Thus, the disrespect for the institution by one of its Members should not be overlooked by the Chair.

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.<sup>257</sup>

No Member may reflect upon any vote of the House except upon a motion that the vote be rescinded.<sup>258</sup> Such reflections not only revive discussion upon questions already decided but are irregular inasmuch as every Member is included in, and bound by, a vote agreed to by a majority.<sup>259</sup> Under this rule a proposed motion of privilege, in relation to the suspension of 2 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.<sup>260</sup> A Member, speaking to the question that a bill be read a third time,

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)13 924.

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.

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

257 *May*, pp. 426-7.

258 S.O. 73.

259 *May*, p. 424.

260 VP 1946-48/43.

has been ordered not to reflect on votes already taken during consideration of the bill<sup>261</sup>, and a Member has been ordered not to canvass decisions of the House of the same session.<sup>262</sup>

### 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 usage<sup>263</sup> on the matter.<sup>264</sup> 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.<sup>265</sup> The House rejected the recommendation.<sup>266</sup>

In more recent years the Chair has declined to interfere in the structure 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'.<sup>267</sup> 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.<sup>268</sup>

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.<sup>269</sup>

### 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.<sup>270</sup>

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.<sup>271</sup> 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

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

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

263 *May*, pp. 428-9.

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)10 257.

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

270 *May*, p. 427.

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

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.<sup>272</sup>

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 legislate on any matter.
- 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.
- Matters awaiting or under adjudication in a civil court shall not be referred to in motions, debate or questions 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 shall not be referred to in motions, debate or questions where the matter enquired into concerns issues of fact or findings relating to the propriety of the actions of specific persons.
- Proceedings before a royal commission, where the matter enquired 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*

The right of the House to legislate on any matter without outside interference or hindrance is self-evident. Circumstances could be such, for example, that the Parliament decided to alter the law to remedy a situation which is before the 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 the truth without hope of favour or fear of retribution. Imposed on this freedom is the voluntary restraint of the sub judice convention; a procedure devised for the simple purpose of ensuring that proceedings before a court are not prejudiced by comment in the House which might influence a jury or prejudice the position of parties and witnesses. It 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

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

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.<sup>273</sup>

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.<sup>274</sup>

It is significant that this view did not include judges but referred only to magistrates, as it is 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.<sup>275</sup>

#### *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 before a criminal court or a civil court. The House of Commons rule, followed by Australia, provides for greater caution in the case of criminal matters. Firstly, there is an earlier time for cutting off 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 to advantage a party by the issue of a 'stop writ' as is often done in defamation cases, namely, a writ the purpose of which is not to bring the matter to trial but to prevent public discussion of the issue. Secondly, there is the greater weight which should be given to

273 H.R. Deb. (24.3.77)558.

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

275 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 (to be published).

criminal rather than civil proceedings. This view stems very largely from 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.

#### *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 the lack of knowledge of the particular court proceeding or at least details of its state of progress. If present in 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.

#### *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.<sup>276</sup> 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. 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 enquire 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.<sup>277</sup> 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.<sup>278</sup>

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 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 standard hours, national wage cases,

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

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

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

the minimum wage, equal pay principles, and so on. The guide 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 arbitral and wage fixing bodies. There has been a large increase in the number and frequency of hearings of the Commission in recent years which put a new emphasis on the work of the Commission in which there is almost always a high degree of public interest. To disallow debate on the issues 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 skilled judges who make their determinations on the facts as placed before them.

### 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 House.<sup>279</sup> Members have thus been prevented from referring to evidence not disclosed to the House or basing statements on matters disclosed to the committee.<sup>280</sup> However, Members have, from time to time, made statements on the activities of a committee by leave of the House.<sup>281</sup>

### 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 discussion of a matter of public importance.<sup>282</sup>

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.<sup>283</sup> 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.<sup>284</sup>

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.<sup>285</sup>

When a Member is speaking, no Member may converse aloud or make any noise or disturbance to interrupt him.<sup>286</sup> 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. 444).

In order to facilitate debate the Chair may regard it as wise not to take note of interjections.<sup>287</sup> 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.<sup>288</sup>

279 S.O. 340.

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

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

286 S.O. 55.

281 e.g. VP 1977/112, 358.

287 H.R. Deb. (14.8.03)3664; H.R. Deb. (16.6.15)4014;

282 S.O. 84.

H.R. Deb. (18.6.15)4229-30.

283 S.O. 53.

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

284 VP 1974-75/338.

The Chair, although recognising all interjections as disorderly, has also been of the opinion that it should not interfere as long as they are short and do not interrupt the thread of the speech being delivered.<sup>289</sup> The fact that an interjection has been directly invited by the remarks of the Member speaking in no way justifies the interruption of a speech<sup>290</sup>, and the Chair has suggested that Members refrain from adopting an interrogatory method of speaking which provokes interjections.<sup>291</sup> Interjections which are not replied to by the Member speaking and which do not cause the Chair to intervene are not recorded in Hansard.

## CURTAILMENT OF SPEECHES AND DEBATE

### Curtailment of speeches

A speech is terminated when a Member resumes his seat at the conclusion of his remarks, when the time allowed for his 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.<sup>292</sup> Following a recommendation from the Standing Orders Committee that the House adopt a specific standing order limiting the time of speeches<sup>293</sup>, the House agreed to a motion that 'in order to secure the despatch of business and the good government of the 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.<sup>294</sup> 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 him 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.<sup>295</sup> Time limits do not apply when statements are made by leave of the House.<sup>296</sup>

The period of time allotted for a Member's speech is calculated from the moment he is given the call<sup>297</sup> and includes time taken up by interruptions such as divisions<sup>298</sup>, quo-

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

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

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

292 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.

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

294 H.R. Deb. (12.9.01)4810. The motion was originally moved

by a private Member from the Opposition and it was agreed to by the House with amendments.

295 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.

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

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

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

rum calls<sup>299</sup>, points of order<sup>300</sup>, motions of dissent from rulings of the Chair<sup>301</sup>, and proceedings on the naming and suspension of a Member.<sup>302</sup> 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.<sup>303</sup>

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.<sup>304</sup> The motion must be determined without amendment or debate.<sup>305</sup> 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.<sup>306</sup> The granting of a second extension requires the suspension of the standing order<sup>307</sup>, but the House has granted leave for a Member to continue his speech in this circumstance.<sup>308</sup> The committee of the whole cannot suspend standing orders but the committee may grant leave for the time of a speech to be extended.<sup>309</sup> A Member cannot be granted an extension after his first speech in committee of the whole or on the question for the adjournment of the House.<sup>310</sup> 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.<sup>311</sup>

As an example of a variation in time limits for speeches on a bill see Appropriation Bill (No. 1) 1978-79.<sup>312</sup>

#### *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.<sup>313</sup> 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.<sup>314</sup>

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 orders<sup>315</sup>, 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.<sup>316</sup>

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

299 VP 1912/226.

309 S.O. 111.

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

310 S.O. 91.

301 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. (9.11.33)4356.

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

312 VP 1978-80/370.

303 VP 1978-80/1602, 1690.

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

304 S.O. 91.

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

305 S.O. 86.

315 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.

306 VP 1976-77/26.

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

307 VP 1970-72/242.

308 VP 1970-72/634.

with the Chair's indulgence under standing order 64. Thus, in both cases the discretion of the Chair may be exercised.<sup>317</sup> The Speaker has declined to accept the motion while a Member who has moved a motion of dissent from the Chair's ruling was speaking, as he desired to hear the basis of the motion of dissent.<sup>318</sup> The Chair is not bound to put the question on the motion if the Member speaking resumes his seat having completed his speech, the question having been effectively resolved by that action.<sup>319</sup> When the motion has been agreed to, the closed Member has again spoken, by leave.<sup>320</sup>

## Curtailment of debate

### *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.<sup>321</sup> 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 debate is agreed to, the Chair must then propose a further question to fix a time for the resumption of the debate.<sup>322</sup> A motion for the adjournment of the debate on the question 'That the House do now adjourn' is not in order.

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 that 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 2 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.<sup>323</sup>

If the motion for the adjournment of debate is agreed to, the mover is entitled to the first call when the debate is resumed<sup>324</sup> (see p. 448). If negated, the mover may address the House at a later period during that debate<sup>325</sup> 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.<sup>326</sup>

If a Member speaking to a question asks leave of the House to continue his 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.<sup>327</sup> If leave is refused, the Member may continue his speech until the expiration of the time allowed to him.<sup>328</sup>

<sup>317</sup> Private ruling by Speaker Snedden (17.2.78).

<sup>318</sup> VP 1978-80/572.

<sup>319</sup> VP 1929-31/484, 492; VP 1970-72/1060-1.

<sup>320</sup> H.R. Deb. (4.12.47)3213-14, 3264.

<sup>321</sup> 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'.

<sup>322</sup> S.O. 87.

<sup>323</sup> VP 1978-80/1473.

<sup>324</sup> S.O. 88.

<sup>325</sup> S.O. 89.

<sup>326</sup> 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.

<sup>327</sup> VP 1978-80/1663.

<sup>328</sup> VP 1976-77/173.

When debate is interrupted at 12.45 p.m. on a general business Thursday, precedence to general business having expired, the Chair announces that the Member speaking will have leave to continue his remarks when the debate is resumed, and that the debate is adjourned to the next sitting.<sup>329</sup>

#### *Closure of question*

After any question has been proposed from the Chair any Member may rise in his 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 another Member is addressing the Chair or not.<sup>330</sup> During debate on the election of Speaker or Chairman of Committees the closure may only be moved by a Minister.<sup>331</sup> 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 1905<sup>332</sup> but was not used until 7 September 1909.<sup>333</sup> Since then it has been utilised more frequently, particularly in recent years.<sup>334</sup> The closure has been moved as many as 41 times in one sitting<sup>335</sup> and 29 times on one bill.<sup>336</sup>

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.<sup>337</sup> The closure of a question cannot be moved in respect of any proceedings for which time has been allotted under the guillotine procedure.<sup>338</sup> 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.<sup>339</sup>

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.<sup>340</sup> From time to time interruptions have occurred between the agreement to the closure and the putting of the question to which the closure related.<sup>341</sup>

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.<sup>342</sup> 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.<sup>343</sup>

The Chair has declined to accept the closure on a motion of dissent from the Chair's ruling.<sup>344</sup>

Any Member may move the closure, including a Member who has already spoken to the question.<sup>345</sup> It may be moved by a Member during, or at the conclusion of, his

<sup>329</sup> VP 1978-80/1455.

<sup>330</sup> S.O. 93.

<sup>331</sup> S.O.s 12(f), 13(f).

<sup>332</sup> 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.

<sup>333</sup> VP 1909/105.

<sup>334</sup> See Appendix 27.

<sup>335</sup> VP 1934-37/211-38.

<sup>336</sup> VP 1923-24/25-48.

<sup>337</sup> S.O. 86; e.g. H.R. Deb. (13.5.80)2657.

<sup>338</sup> S.O. 92(g). See Chs on 'Legislation' and 'Motions'.

<sup>339</sup> VP 1934-37/483.

<sup>340</sup> e.g. VP 1956-57/42.

<sup>341</sup> 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.

<sup>342</sup> VP 1920-21/260; VP 1956-57/74.

<sup>343</sup> H.R. Deb. (15.5.80)2814.

<sup>344</sup> H.R. Deb. (16.11.78)2893.

<sup>345</sup> VP 1943-44/57; H.R. Deb. (17.2.44)279,284.

speech, but no reasons may be given for so moving<sup>346</sup>, nor may a Member take advantage of the rules for personal explanations to give reasons.<sup>347</sup> If the seconder of a motion has reserved his right to speak, the closure overrides this right.<sup>348</sup>

#### *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.<sup>349</sup> This procedure is described in detail in the chapter on 'Legislation'.

#### *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);
- general business notices and orders of the day (S.O.'s 104, 109), and
- matters of public importance (S.O. 91).

A debate may 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 at 10.30 p.m. (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 when precedence to general business notices and orders of the day expires (*see* p. 472).

### **POWERS OF CHAIR TO ENFORCE ORDER**

The Speaker and the Chairman of Committees are responsible for the maintenance of order in the House and 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 he has:

- persistently and wilfully obstructed the business of the House;
- been guilty of disorderly conduct;
- used objectionable words, which he has refused to withdraw;

346 H.R. Deb. (20.3.47)926-8; H.R. Deb. (27.3.47)1229. 348 H.R. Deb. (26.7.46)3203.

347 H.R. Deb. (21.2.47)123. 349 S.O. 92.

- 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.<sup>350</sup> 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.<sup>351</sup> The first recorded suspension was in respect of Mr Catts on 18 August 1910.<sup>352</sup> A Member is usually named by the name of his electoral Division, the Chair stating 'I name the honourable Member for . . .'. Office holders have been named by their title.<sup>353</sup> 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.<sup>354</sup>

Before taking the final step of naming a Member, the Chair will, frequently, first call a Member to order and sometimes warn him.<sup>355</sup>

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 encompassed within its meaning. For example, in regard to conduct towards the Chair, Members have been named for imputing motives to, disobedience to, defying, reflecting upon, insolence to, and using expressions insulting or offensive to, the Chair. Since 1905, an unnecessary quorum call has been seen as a wilful obstruction of the business of the House<sup>356</sup> 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 his suspension.<sup>357</sup>

Office holders have been named, including Ministers<sup>358</sup>, Leaders of the Opposition<sup>359</sup> and a party leader.<sup>360</sup> 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.<sup>361</sup> No Member has been named twice on the one occasion, but the Chair has threatened to take this action.<sup>362</sup>

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 previous sitting of the House.<sup>363</sup> A Member has been named for refusing to withdraw words which the

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

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

352 VP 1910/78.

353 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.

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

355 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.

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

357 VP 1978-80/1277-8.

358 VP 1929-31/593,828; VP 1937-40/135 (and sus-

pended); VP 1961/36 (and suspended); VP 1974-75/502-03.

359 VP 1914-17/148-9; VP 1948-49/295-6. On both occasions suspensions followed.

360 e.g. VP 1973-74/404-05.

361 VP 1932-34/608-10; VP 1973-74/93-5; VP 1974-75/1068-9. On the occasion when 2 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.

362 H.R. Deb. (9.10.75)1927.

363 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.

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.<sup>364</sup>

### 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.

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.<sup>365</sup> Such interventions are usually made by a Minister or a member of the opposition executive before the motion for suspension is moved so as 'to give him a further opportunity to set himself right with the House'.<sup>366</sup> The motion for suspension has not been proceeded with at the request of the Speaker<sup>367</sup>, when the Speaker stated that no further action would be taken if the Member (who had left the Chamber) apologised immediately on his return<sup>368</sup>, when a Member's explanation was accepted by the Chair<sup>369</sup>, when the Chair thought it better if he forgot the action he proposed to take in naming a Member<sup>370</sup>, when the Chair accepted an assurance by the Leader of the Opposition that the Member named had not interjected<sup>371</sup>, when the Chair acceded to a request by the Leader of the Opposition not to proceed with the matter<sup>372</sup>, and when the Member withdrew the remark which led to his naming and apologised to the Chair.<sup>373</sup>

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.<sup>374</sup> 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 suspension<sup>375</sup>, the intention of the standing order, as borne out by practice, is that the matter be proceeded with forthwith.

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 Member<sup>376</sup> 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.<sup>377</sup> The motion for the suspension of a Member has been negatived on 2 occasions, the first

<sup>364</sup> VP 1937/106-07.

<sup>365</sup> H.R. Deb. (29.11.01)8056-7; VP 1970-72/1268; H.R. Deb. (19.10.72)2955.

<sup>366</sup> H.R. Deb. (4.7.19)10 464. 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.

<sup>367</sup> VP 1937-40/233.

<sup>368</sup> VP 1973-74/166.

<sup>369</sup> 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.

<sup>370</sup> H.R. Deb. (30.8.62)943-4.

<sup>371</sup> VP 1964-66/153; H.R. Deb. (15.9.64)1093.

<sup>372</sup> VP 1964-66/626; H.R. Deb. (23.8.66)307.

<sup>373</sup> VP 1978-80/342.

<sup>374</sup> VP 1914-17/567.

<sup>375</sup> H.R. Deb. (16.3.44)1473-4.

<sup>376</sup> 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.

<sup>377</sup> H.R. Deb. (14.7.20)2710; H.R. Deb. (28.7.20)3015.

when the Government did not have sufficient Members present to ensure that the motion was agreed to<sup>378</sup>, 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.<sup>379</sup>

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. Any suspension in a previous session is disregarded and a 'year' means a year commencing on 1 January and ending on 31 December.<sup>380</sup> There is only one instance of a Member having been suspended on a third occasion.<sup>381</sup>

A Member has been suspended from the service of the House 'Until he returns, with the Speaker's consent, and apologises to the Speaker'<sup>382</sup>, 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'.<sup>383</sup> 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 must immediately withdraw from the Chamber. When a Member has refused to withdraw, the Chair has directed the Serjeant-at-Arms to remove him.<sup>384</sup> 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.<sup>385</sup>

A Member suspended from the service of the House is excluded from the Chamber and all its galleries.<sup>386</sup> A suspended Member is not otherwise affected in the performance of his duties. Notices of questions have been accepted from a Member after his suspension<sup>387</sup> 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.<sup>388</sup> Suspension from the service of the House does not exempt a Member from serving upon a committee of the House.<sup>389</sup> The payment of a Member's 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 privilege<sup>390</sup>, and

378 VP 1937-40/223.

379 VP 1974-75/502-03; and see Ch. on 'The Speaker and Officers of the House'.

380 S.O. 305.

381 VP 1917-19/506.

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

383 The suspension did not follow a naming nor 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.

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

385 VP 1970-72/76.

386 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.

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

388 VP 1974-75/788-90; NP 82(5.6.75)8523-4.

389 May, pp.443-4. 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 parliamentary 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'.

390 VP 1917-19/509.

because a vote of the House could not be reflected upon except for the purpose of moving that it be rescinded.<sup>391</sup> Members have also been prevented from subsequently referring to the naming of a Member once the particular incident was closed.<sup>392</sup>

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.<sup>393</sup> On other occasions Members have returned and apologised following suspension of the standing orders<sup>394</sup> 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'.<sup>395</sup>

### 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 he receives from the Chair. When the Member has withdrawn he 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, he may return to the Chamber forthwith.<sup>396</sup> 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 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 withdrawal.<sup>397</sup>

### 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 him.<sup>398</sup> On 3 occasions the Chair has adjourned the House until the next sitting when grave disorder has arisen.<sup>399</sup> The Chair has also suspended the sitting on 6 occasions.<sup>400</sup>

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 report<sup>401</sup> but, if any sudden disorder arises in committee, the Speaker may resume the Chair.<sup>402</sup> On only one occasion has the Chairman suspended proceedings in committee and reported the circumstances to the Speaker.<sup>403</sup>

391 VP 1946-48/43.

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

393 VP 1970-72/327.

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

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

396 S.O. 306.

397 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.

398 S.O. 308.

399 VP 1954-55/351; VP 1956-57/169; VP 1973-74/405.

400 VP 1917-19/453 (15 minutes); VP 1954-55/184 (until 2.30 p.m. the next day); VP 1970-72/76 (on 2 occasions, until the ringing of the bells and until 10.30 a.m. this day); VP 1970-72/209,69 (until the ringing of the bells). The last 2 occasions followed grave disorder arising in the galleries.

401 S.O.s 52, 280.

402 S.O. 282.

403 VP 1926-28/421-2.

### 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 never been invoked to prevent the prosecution of quarrels within or without the Chamber but the Chair has cited the standing order in admonishing Members for constantly interjecting in order to irritate or annoy others.<sup>404</sup>

If a Member wilfully disobeys any order of the House, he may be ordered to attend to answer for his conduct. If he fails to attend, or his explanation is deemed to be unsatisfactory, the House may direct the Serjeant-at-Arms to take the Member into custody.<sup>405</sup>

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.<sup>406</sup>

<sup>404</sup> H.R. Deb. (27.6.06)751.

<sup>405</sup> S.O. 309.

<sup>406</sup> S.O. 311.