

## *Control and conduct of debate*

The term ‘debate’ is a technical one meaning the argument for and against a question. In practice, the proceedings between a Member moving a motion (including the moving of the motion)<sup>1</sup> and the ascertainment by the Chair of the decision of the House constitute a debate. A decision may be reached without debate. In addition, many speeches by Members which are part of the normal routine of the House are excluded from the definition of debate, because there is no motion before the House. These include the asking and answering of questions, ministerial statements, matters of public importance, Members’ statements and personal explanations. However, the word ‘debate’ is often used more loosely, to cover all words spoken by Members during House proceedings.

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 has been seen as very much dependent on the principle of freedom of speech. Freedom of speech in the Parliament is guaranteed by the Constitution,<sup>3</sup> and derives ultimately from the United Kingdom Bill of Rights of 1688.<sup>4</sup> The privilege of freedom of speech was won by the British Parliament only 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>5</sup>

The Speaker plays an important role in the control and conduct of debate through the power and responsibilities vested in the Chair by the House in its rules and practice. The difficulties of maintaining control of debate, and reconciling the need for order with the rights of Members, ‘requires a conduct, on the part of the Speaker, full of resolution, yet of delicacy ...’<sup>6</sup>

1 That is, when the standing orders set a time for a whole debate the duration is measured from the time the mover of the motion starts speaking.

2 Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, vol. III, pp. 42–3.

3 Constitution, s. 49, (that is, unless Parliament ‘otherwise provides’).

4 For further discussion of the privilege of freedom of speech see Ch. on ‘Parliamentary privilege’.

5 Redlich, vol. III, p. 49.

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

## MANNER AND RIGHT OF SPEECH

### When Members may speak

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, and when moving an amendment.

A Member may speak during a discussion of a matter of public importance; he or she may make a statement to the House on the presentation of a committee or delegation report, and during the periods for Members' 90 second statements and three minute constituency statements.

A Member may also speak when asking or answering a question, when raising a point of order or on a matter of privilege, to explain matters of a personal nature, to explain some material part of his or her speech which has been misquoted or misunderstood, when granted leave of the House to make a statement, and by indulgence of the Chair.

### *Matters not open to debate*

Pursuant to standing order 78, the following questions and motions are not open to debate, must be moved without comment and must be put immediately and resolved without amendment:

- motion that a Member's time be extended (S.O. 1);
- motion that the business of the day be called on (S.O. 46(e));
- motion that a Member be heard now (S.O. 65(c));
- motion that a Member be further heard (S.O. 75(b));
- motion that debate be adjourned (S.O. 79);
- motion that a Member be no longer heard (S.O. 80);
- motion that the question be now put (S.O. 81);
- question that the bill or motion be considered urgent, following a declaration of urgency (S.O.s 82–83);
- motion that a Member be suspended (S.O. 94);
- question that amendments made by the Federation Chamber be agreed to (S.O. 153);
- question that a bill reported from the Federation Chamber be agreed to (S.O. 153);
- motion that further proceedings on a bill be conducted in the House (S.O. 197); and
- question in the Federation Chamber that a bill be reported to the House (S.O. 198).

In addition:

- if required by a Minister, the question for the adjournment of the House under the automatic adjournment provisions must be put immediately and without debate (S.O. 31(c)); and
- if required by a Member, the question for the adjournment of the Federation Chamber must be put immediately and without debate (S.O. 191(b)).

### *General rule—a Member may speak once to each question*

Generally, each Member is entitled to speak once to each question before the House. However a Member is permitted to speak a second or further time:

- during consideration in detail of a bill;
- during consideration of amendments to a bill made or requested by the Senate;

- having moved a substantive motion or the second or third reading of a bill, the Member is allowed a reply confined to matters raised during the debate;
- having moved and spoken to the second reading of a private Member's bill, the Member may speak for 5 minutes in continuation on the resumption of debate;
- during an adjournment debate, if no other Member rises; or
- to explain some material part of his or her speech which has been misquoted or misunderstood. In making this explanation the Member may not interrupt another Member addressing the House, debate the matter, or introduce any new matter.<sup>7</sup>

Members may speak for an unlimited number of periods during consideration in detail of a bill or consideration of Senate amendments and requests.<sup>8</sup> In special circumstances, a Member may speak again by leave—see 'Leave to speak again' at page 496.

### *Moving and seconding motions*

The moving of a motion is regarded as speaking to the question (that is about to be proposed). Consequently, having moved a motion which is open to debate, a Member may speak to the motion but loses the right to speak to it, except in reply, if he or she does not speak immediately.

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> It is common practice for seconders not wishing to speak immediately to state that they reserve the right to speak later. However, such action does not ensure that a Member will be able to speak later in the debate (if, for example, the debate is limited by time, or curtailed by the closure).

### *Moving and speaking to amendments*

The general rule that each Member may speak only once to each question places the following restrictions on Members moving and speaking to amendments (other than during consideration in detail or consideration of Senate amendments and requests):

- A Member who moves an amendment must speak to it immediately, if wishing to speak to it at all.
- A Member who speaks to a question and then sits without moving an amendment that he or she intended to propose cannot subsequently move the amendment, having already spoken to the question before the House.
- If a Member has already spoken to a question, or has moved an amendment to it, the Member may not be called to move a further amendment or the adjournment of the debate, but may speak to any further amendment which is proposed by another Member.
- A Member who moves or seconds an amendment cannot speak again on the original question after the amendment has been disposed of, because he or she has already spoken while the original question was before the Chair and before the question on the amendment has been proposed.
- When an amendment has been moved, and the question on the amendment proposed by the Chair, any Member speaking subsequently is considered to be speaking to both the original question and the amendment and cannot speak again to the original question after the amendment has been disposed of.

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<sup>7</sup> S.O. 69.

<sup>8</sup> S.O. 1.

<sup>9</sup> S.O. 70.

- A Member who has already spoken to the original question prior to the moving of an amendment may speak to the question on the amendment, but the remarks must be confined to the amendment.<sup>10</sup>
- A Member who has spoken to neither the motion nor the amendment may speak to the original question after the amendment has been disposed of.
- A Member who has spoken to the original question and the amendment may speak to the question on a further amendment, but must confine any remarks to the further amendment.<sup>11</sup>

### *Leave to speak again*

In special circumstances, a Member may be granted leave to speak again.<sup>12</sup> This most frequently occurs in a situation where a Member has moved but not spoken to a motion, but wishes to speak at a later time without closing the debate.<sup>13</sup> A similar situation sometimes occurs when a Member's earlier speech has been interrupted and he or she has not been present to continue the speech when the debate has been resumed. Leave to speak again in such cases in effect restores a lost opportunity rather than provides an additional one.<sup>14</sup> The granting of leave to speak again in other circumstances is highly unusual. (See also 'Leave to continue remarks' at page 531.)

### *Speaking in reply*

The mover of a substantive motion or the second or third reading of a bill may speak on a second occasion in reply, but must confine any remarks to matters raised during the debate.<sup>15</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 of the original question may speak to any amendment without closing the debate, but these remarks must be confined to the amendment.<sup>16</sup> A Member closing the debate by reply cannot propose an amendment.<sup>17</sup> An amendment should be moved before the mover of the motion replies.<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 a motion is not entitled to the call to close the debate while any other Member is seeking the call.<sup>21</sup> When a mover received the call and stated that he was not speaking to an amendment before the House but to the motion generally and wished to close debate, he was directed by the Chair to speak to the amendment only, in order that the rights of others to be heard were not interfered with.<sup>22</sup> In the absence of such

10 E.g. H.R. Deb. (6.5.1920) 1881; H.R. Deb. (22.6.2009) 6696.

11 H.R. Deb. (13.7.1922) 443–4.

12 E.g. VP 1974–75/874 (27.8.1975); VP 1993–96/2668 (29.11.1995); VP 1996–98/281 (20.6.1996) (Main Committee); VP 2002–04/213 (29.5.2002) (Main Committee).

13 E.g. H.R. Deb. (3.12.2003) 23732; H.R. Deb. (24.6.2009) 7111.

14 Leave has been given for a third opportunity to speak when the second opportunity has also been interrupted. The clock is set so that the total time for the interrupted speeches equals the normal limit for a single speech.

15 S.O. 69(c).

16 H.R. Deb. (11.11.1920) 6418.

17 H.R. Deb. (19.10.1905) 3813.

18 H.R. Deb. (19.11.1914) 841.

19 VP 1908/54 (21.10.1908); H.R. Deb. (21.10.1908) 1402.

20 H.R. Deb. (14.3.1950) 685.

21 H.R. Deb. (21.8.1923) 3133; H.R. Deb. (19.9.1924) 4569.

22 H.R. Deb. (28.5.1914) 1637

circumstances a Minister speaking after an amendment has been proposed closes the debate.<sup>23</sup>

The speech of a Minister acting on behalf of the mover of the original motion does not close the debate.<sup>24</sup> The mover of a motion may speak a second time but avoid closing the debate by seeking ‘leave to speak again without closing the debate’<sup>25</sup> (*see above* ‘Leave to speak again’). Such action is most appropriate in relation to a motion to take note of a document, which is moved as a vehicle to enable debate rather than with the intention of putting a matter to the House for decision.

### *Misrepresentation of a speech*

A Member may speak again to explain some material part of his or her speech which has been misquoted or misunderstood. In making this explanation the Member may not interrupt another Member addressing the House, debate the matter, or introduce any new matter.<sup>26</sup> No debate may arise following such an explanation. The correct procedure to be followed by a Member is to rise after the Member speaking has concluded and to inform the Chair that he or she has been misrepresented. The Chair will then permit the Member to proceed with the explanation. It helps in the conduct of the proceedings if Members notify the Chair in advance that they intend to rise to make an explanation. The Chair will seek to ensure that the Member confines himself or herself to correcting any misrepresentation and will not allow wider matters to be canvassed.

### *Personal explanations*

Pursuant to standing order 68, a Member may explain how he or she has been misrepresented or explain another matter of a personal nature whether or not there is a question before the House. The Member seeking to make an explanation must rise and seek permission from the Speaker, must not interrupt another Member who is addressing the House, and the matter must not be debated

Although in practice the Speaker’s permission is freely given, Members have no right to expect it to be granted automatically.<sup>27</sup> It is the practice of the House that any Member wishing to make a personal explanation should inform the Speaker beforehand.<sup>28</sup> The Speaker has refused to allow a Member to make a personal explanation when prior notice has not been given.<sup>29</sup>

Personal explanations may be made at any time with the permission of the Chair, provided that no other Member is addressing the House.<sup>30</sup> However, recent practice has been for them to be made soon after Question Time.<sup>31</sup> Personal explanations claiming misrepresentation may arise from reports in the media, Senate debates, the preceding Question Time, and so on.<sup>32</sup> A Minister has presented a list correcting statements made about him in the Senate, rather than go through all the details orally.<sup>33</sup> One of the reasons for personal explanations being sought soon after Question Time is that, when a personal

23 H.R. Deb. (8.10.2003) 20791–2; H.R. Deb. (24.6.2004) 31605, 11.

24 H.R. Deb. (3.12.1947) 3118.

25 E.g. H.R. Deb. (3.12.2003) 23732.

26 S.O. 69(e).

27 H.R. Deb. (5.5.1992) 2355–8.

28 H.R. Deb. (10.11.1976) 2521–2.

29 H.R. Deb. (3.5.1978) 1699.

30 H.R. Deb. (20.11.1979) 3176; H.R. Deb. (22.8.1996) 3523.

31 H.R. Deb. (13.4.2000) 15963.

32 H.R. Deb. (10.10.1947) 633; H.R. Deb. (11.9.1973) 743; H.R. Deb. (19.9.1996) 4452–3.

33 H.R. Deb. (4.3.2004) 26037.

explanation is made in rebuttal of a statement made in a question or answer, the question and answer are excluded from any rebroadcast of Question Time.<sup>34</sup>

The fact that a Member has made a personal explanation about a matter has not in the past prevented another Member from referring to the matter even if, for example, the Member had refuted views attributed to him or her.<sup>35</sup> However, standing order 68 now provides that if a Member has given a personal explanation to correct a misrepresentation and another Member subsequently repeats the matter complained of, the Speaker may intervene.<sup>36</sup>

In making a personal explanation, a Member must not debate the matter, and may not deal with matters affecting his or her party or, in the case of a Minister, the affairs of the Minister's department—the explanation must be confined to matters affecting the Member personally.<sup>37</sup> A Member cannot make charges or attacks upon another Member under cover of making a personal explanation.<sup>38</sup>

A personal explanation may be made in the Federation Chamber,<sup>39</sup> or it may be made in the House regarding events in the Federation Chamber. In making such an explanation the Member may not reflect on the Chair.<sup>40</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>41</sup> A Member has been permitted to make a personal explanation on behalf of a Member who was absent (being overseas).<sup>42</sup>

A personal explanation is not restricted to matters of misrepresentation. For example, Members have been permitted to use the procedure to explain an action or remark, apologise to the House, clarify a possible misunderstanding, state why they had voted in a particular way, and correct a statement made in debate.<sup>43</sup>

If the Speaker refuses permission to a Member to make a personal explanation, or directs a Member to resume his or her seat during the course of an explanation, a motion 'That the Member be heard now' is not in order, nor may the Member move a motion of dissent from the Speaker's 'ruling' as there is no ruling.<sup>44</sup>

### *Other matters by indulgence of the Chair*

Although the standing orders make provision for Members to speak with permission of the Chair only in respect of a matter of a personal nature (*see above*), the practice of the House is that, from time to time, the Speaker or Chair grants indulgence for Members to deal with a variety of other matters. The term 'indulgence', used to cover the concept of permission or leave from the Chair as distinct from leave of the House,<sup>45</sup> is a reminder that its exercise is completely at the Chair's discretion. It is, as the term suggests, a special concession. Indulgence has been granted, for example, to permit:

34 This exclusion is subject to the discretion the Speaker has to refer a particular case to the Joint Committee on the Broadcasting of Parliamentary Proceedings for decision—*see* 'Radio broadcasts' in Ch. on 'Parliament House and access to proceedings'.

35 E.g. H.R. Deb. (2.6.2004) 29889; *and see* H.R. Deb. (14.9.2005) 87–9.

36 Since 13.11.2013; Speaker's statement on the application of the new provision, H.R. Deb. (4.6.2014) 5526–8.

37 H.R. Deb. (18.10.1983) 1821; H.R. Deb. (22.9.1922) 2621; H.R. Deb. (19.3.1974) 533.

38 H.R. Deb. (30.10.1913) 2716–17.

39 E.g. H.R. Deb. (28.5.2003) 15334 (Main Committee); H.R. Deb. (5.12.2017) 12731.

40 By extension of ruling relating to former committee of the whole. H.R. Deb. (11.11.1904) 6883–4.

41 H.R. Deb. (12.9.1979) 996.

42 H.R. Deb. (19.10.1983) 1924.

43 This list is not exhaustive.

44 H.R. Deb. (1.6.1977) 2280–1.

45 The unqualified use of the term 'leave' may at times lead to confusion—e.g. H.R. Deb. (17.2.1988) 119–33.

- a Minister to correct<sup>46</sup> or add to<sup>47</sup> an earlier answer to a question without notice;
- the Prime Minister to add to an answer given by another Minister to a question without notice;<sup>48</sup>
- the Prime Minister or another Minister to answer a question without notice ruled out of order;<sup>49</sup>
- Members to put their views on a ruling by the Speaker relating to the sub judice convention;<sup>50</sup>
- Members to comment on a privilege matter;<sup>51</sup>
- a Member to seek information on a matter not raised in a second reading speech;<sup>52</sup>
- Members to speak to a document presented by the Speaker;<sup>53</sup>
- a Minister to correct a figure given in an earlier speech;<sup>54</sup>
- a Minister or other Member to comment on or raise a matter concerning the conduct of proceedings or related matters, such as the sitting arrangements;<sup>55</sup>
- the Prime Minister and Leader of the Opposition to congratulate athletes representing Australia;<sup>56</sup>
- the Prime Minister and Leader of the Opposition to welcome visiting foreign dignitaries present in the gallery;<sup>57</sup>
- the Prime Minister and Leader of the Opposition to pay tribute to a retiring Governor-General;<sup>58</sup>
- Members to extend good wishes to persons present in the gallery;<sup>59</sup>
- questions to<sup>60</sup> and statements by<sup>61</sup> the Leader of the House relating to the order of business, the Government's legislative program, etc;
- a Member to ask a question of the Speaker or raise a matter for the Speaker's consideration;<sup>62</sup>
- Members to comment in the House on the operations of the Main Committee (Federation Chamber);<sup>63</sup>
- Members to extend good wishes to a Member about to retire,<sup>64</sup> or to comment on significant achievements by colleagues;<sup>65</sup>
- the Prime Minister and Leader of the Opposition to make valedictory remarks;<sup>66</sup> and

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46 E.g. H.R. Deb. (19.9.1979) 1266.

47 E.g. H.R. Deb. (8.6.1994) 1672–3; H.R. Deb. (19.6.1996) 2273–4; H.R. Deb. (2.6.1999) 5814.

48 E.g. H.R. Deb. (20.9.1979) 1359; H.R. Deb. (25.6.1992) 3948; H.R. Deb. (7.2.1994) 420–1.

49 E.g. H.R. Deb. (6.3.1980) 731.

50 H.R. Deb. (13.11.1979) 2883, 2917, 2926–32.

51 H.R. Deb. (13.9.1979) 1129; H.R. Deb. (23.11.1993) 3401–2; H.R. Deb. (4.4.2000) 15149; H.R. Deb. (2.6.2010) 4995–7.

52 H.R. Deb. (26.11.1980) 85.

53 H.R. Deb. (15.4.1980) 1711.

54 H.R. Deb. (12.9.1979) 995.

55 E.g. H.R. Deb. (10.3.1981) 562; H.R. Deb. (9.5.1985) 1951; H.R. Deb. (20.2.1986) 1009; H.R. Deb. (11.4.1986) 2129; H.R. Deb. (31.1.1995) 1; H.R. Deb. (7.12.1998) 1502; H.R. Deb. (4.12.2008) 12589.

56 H.R. Deb. (18.8.1992) 1.

57 H.R. Deb. (4.5.1992) 2258.

58 H.R. Deb. (28.6.2001) 28868–9; VP 1998–2001/2422 (28.6.2001).

59 H.R. Deb. (24.3.1992) 984.

60 H.R. Deb. (8.5.1991) 3246–8; H.R. Deb. (25.2.1992) 30.

61 H.R. Deb. (17.12.1993) 4335–7; H.R. Deb. (9.12.1999) 13288–9.

62 H.R. Deb. (25.11.1993) 3626–7.

63 H.R. Deb. (30.6.1994) 2429–30; H.R. Deb. (13.10.1994) 2022–3.

64 H.R. Deb. (25.6.1998) 5435–6.

65 H.R. Deb. (29.3.1999) 4571.

66 H.R. Deb. (9.12.1999) 13298, 13301.

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- the Prime Minister and Leader of the Opposition to make statements in relation to natural<sup>67</sup> or other<sup>68</sup> disasters, in tribute to deceased persons,<sup>69</sup> or to speak on matters of significance.<sup>70</sup>

When the Prime Minister makes a statement by indulgence on an issue, the Leader of the Opposition is commonly also granted indulgence to speak on the same matter. On occasion, indulgence may be extended to a series of Members—for example, after a Member has made a statement to the House announcing his intention to resign, other Members have spoken to pay tribute to the Member or offer their best wishes for the future.<sup>71</sup>

### STATEMENTS BY INDULGENCE REFERRED TO FEDERATION CHAMBER

After statements by indulgence have been made and it is recognised that other Members desire to speak on the same matter, the Leader of the House may move ‘That further statements on . . . be referred to the Federation Chamber’.<sup>72</sup>

### STATEMENTS BY INDULGENCE—SPEECH TIME LIMITS

The length of time a Member may speak on a statement by indulgence is at the Speaker’s discretion. If further statements are referred to the Federation Chamber a speech time limit of 10 minutes applies.<sup>73</sup>

### *Statements by leave*

A frequently used practice is to seek the leave of the House—that is, permission without objection from any Member present<sup>74</sup>—to make a statement when there is no question before the House. The standing orders provide occasions for Members to make statements on the presentation of a committee or delegation report (during the periods set aside for that purpose on Mondays<sup>75</sup>), during the periods for Members’ 90 second statements and three minute constituency statements, and when introducing a private Member’s bill. Leave is required for a Member to make a statement at other times.

Members seeking leave to make statements must indicate the subject matter in order that the House can make a judgment as to whether or not to grant leave. When a Member has digressed from the subject for which leave was granted, the Chair has:

- directed the Member to confine himself to the subject for which leave was granted;<sup>76</sup>
- directed the Member to resume his or her seat;<sup>77</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>78</sup>

67 For example, flood or cyclone damage, H.R. Deb. (25.6.1998) 5422; H.R. Deb. (24.3.1999) 4222.

68 For example, deaths and injuries to naval personnel in a shipboard explosion, H.R. Deb. (12.5.1998) 2973–5, VP 1996–98/2975 (12.5.1998).

69 E.g. H.R. Deb. (15.2.2005) 1.

70 E.g. H.R. Deb. (22.11.1999) 12257.

71 E.g. H.R. Deb. (10.2.1994) 770–82; H.R. Deb. (11.2.2016) 1404–23.

72 E.g. VP 2008–10/592–3 (13.10.2008); NP 50 (14.10.2008) 27 (Main Committee). This practice became established in the 42nd Parliament. Previously, a motion to take note of statements had been referred, e.g. VP 2004–07/1401, 1406 (12.9.2006). Initially such further statements were listed as items of business on the Notice Paper but this practice was discontinued in 2013.

73 S.O. 1.

74 S.O. 63.

75 Leave is required for a Member to make a statement when presenting a committee or delegation report outside these periods, S.O. 39(c).

76 H.R. Deb. (21.11.1934) 412.

77 VP 1970–72/514 (7.4.1971); H.R. Deb. (7.4.1971) 1558; H.R. Deb. (16.10.1995) 2110; H.R. Deb. (18.10.1995) 2347.

78 H.R. Deb. (20.10.1949) 1748–9.



If a Member does not indicate the subject matter of a proposed statement when responding to a statement just made, difficulties may arise for the Chair. Greater control over relevancy can be preserved if, when Members rise to seek leave to make further statements, the Chair asks ‘Is the honourable Member seeking leave to make a statement on the same matter?’.

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

If leave is not granted, a Minister or Member, on receiving the call, may move ‘That so much of the standing (and sessional) orders be suspended as would prevent the Minister for . . . [the 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 printed statement may be presented.

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

A Member cannot be given leave to make a statement on the next day of sitting in reply to a statement just made, but must ask for such leave on the next day of sitting.<sup>79</sup> It is not in order for a motion to be moved that a Member ‘have leave to make a statement’,<sup>80</sup> or, when leave to make a statement is refused, to move that the Member ‘be heard now’,<sup>81</sup> as the latter motion can only be moved to challenge the call of the Chair during debate.<sup>82</sup> When a statement is made by leave, there is no time limit on the speech,<sup>83</sup> but a motion may be made at any time that the Member speaking ‘be no longer heard’.<sup>84</sup> Once granted, leave cannot be withdrawn.<sup>85</sup>

#### MINISTERIAL STATEMENTS

The statement by leave procedure is used, in the main, for ministerial statements, that is, for statements to the House by Ministers announcing or reporting on domestic and foreign policies and other actions or decisions of the Government. A period is provided in the order of business for ministerial statements each sitting day (following Question Time on Mondays, and following the discussion of a matter of public importance on other days).<sup>86</sup> However, Ministers may make statements at other times as well<sup>87</sup>—in all cases leave is required (*see below*). In appropriate circumstances a ministerial statement has been made by a Parliamentary Secretary.<sup>88</sup>

In the case of a ministerial statement, it is accepted practice for a copy of the proposed statement to be supplied to the Leader of the Opposition or the appropriate shadow minister some minimum time before the statement is made. At the conclusion of the

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79 H.R. Deb. (22.2.1917) 10574–5.

80 VP 1970–72/21 (5.3.1970); H.R. Deb. (5.3.1970) 99–100.

81 H.R. Deb. (12.10.1971) 2154.

82 S.O. 65(c).

83 S.O. 1.

84 S.O. 80; e.g. VP 1968–69/592 (25.9.1969); VP 2002–04/1102 (20.8.2003).

85 H.R. Deb. (13.3.1953) 1044.

86 S.O. 34 (figure 2).

87 E.g. H.R. Deb. (11.3.2008) 1298.

88 VP 1998–2001/1159 (9.12.1999), H.R. Deb. (9.12.1999) 13323–5 (statement on a session of the UNESCO General Conference; the Parliamentary Secretary had been the leader of the Australian delegation to the conference).

Minister's speech the Leader of the Opposition or Member representing (i.e. the shadow minister) has the opportunity to speak in response to the statement for an equivalent period of time.<sup>89</sup>

#### LEAVE REQUIREMENT FOR MINISTERIAL STATEMENTS

The House has always required Ministers to seek leave to make ministerial statements. 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 however that no Minister had such a right under the standing orders of the House of Representatives.<sup>90</sup>

The requirement for leave has the practical effect noted above, that traditionally an advance copy of a proposed ministerial statement is supplied to the Opposition, allowing its spokesperson time to prepare a considered response. Leave has been denied when this courtesy has not been complied with.<sup>91</sup>

#### *Statements on a topic following suspension of standing orders*

On occasion standing orders have been suspended to provide for a structured period for Members to make statements on a particular topic in the House and/or the Federation Chamber.<sup>92</sup>

#### Allocation of the call

The Member who moved the motion for the adjournment of a debate is entitled to speak first on the resumption of the debate.<sup>93</sup> If the Member does not take up that entitlement on the resumption of the debate, this does not impair his or her right to speak later in the debate.<sup>94</sup> However, when a Member is granted leave to continue his or her remarks and the debate is then adjourned, the Member must take the entitlement to pre-audience on the resumption of the debate, otherwise he or she loses the right to continue.

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

- the Prime Minister or a Minister over other government Members<sup>95</sup> but not if he or she proposes to speak in reply;<sup>96</sup> and
- the leader or deputy leader of opposition parties over other non-government Members.<sup>97</sup>

A Minister (or Assistant Minister/Parliamentary Secretary) in charge of business during the consideration in detail of a bill or consideration of Senate amendments (when any Member may speak as many times as he or she wishes) would usually receive priority over other government Members whenever wishing to speak.<sup>98</sup> This enables the

89 S.O. 63A—the granting of leave to the Minister is deemed to grant leave to the opposition speaker. Before this standing order was introduced in 2015, a motion to suspend standing orders was moved on each occasion to permit and allocate time for the opposition response.

90 H.R. Deb. (14.1.1902) 8738–9; H.R. Deb. (16.1.1902) 8859–60. In the UK House of Commons leave is not required to make a ministerial statement.

91 E.g. H.R. Deb. (27.3.2007) 19, 65–6. Leave has also been denied when the Opposition has been unhappy about statements in the copy provided to them, H.R. Deb. (22.6.2010) 6110.

92 E.g. VP 2010–13/735 (5.7.2011) (5 minute statements on Members' consultations with constituents on views relating to equal treatment for same sex couples); VP 2010–13/960 (11.10.2011) (10 and 5 minute statements on tax reform).

93 S.O. 79(b).

94 H.R. Deb. (19.8.1954) 446.

95 H.R. Deb. (26.2.1953) 415.

96 H.R. Deb. (21.8.1923) 3133.

97 H.R. Deb. (8.3.1932) 775–6.

98 VP 1951–53/703 (6.10.1953); H.R. Deb. (6.10.1953) 1031; H.R. Deb. (25.11.1953) 500–1; H.R. Deb. (22.9.1955) 883.

Minister to explain or comment upon details of the legislation as they arise from time to time in the debate. Speakers have also taken the view that in respect of business such as consideration of Senate messages, the call should, in the first instance, be given to the Minister expected to have responsibility for the matter.<sup>99</sup>

If two or more Members rise to speak, the Speaker calls on the Member who, in the Speaker's opinion, rose first.<sup>100</sup> The Chair's selection may be challenged by a motion that a Member who was not called 'be heard now', and the question must be put immediately and resolved without amendment or debate.<sup>101</sup> A Member may move this motion in respect of himself or herself.<sup>102</sup> It is not in order to challenge the Chair's decision by way of moving that the Member who received the call 'be no longer heard'.<sup>103</sup> A motion of dissent from the Chair's allocation of the call should not be accepted, as the Chair is exercising a discretion, not making a ruling.

Standing order 78 provides, among other things, that if a motion that a Member be heard now is negatived, no similar proposal shall be received 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>104</sup>

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 non-government, alternately. Within this principle minor parties and any independents are given reasonable opportunities to express their views.<sup>105</sup> Because of coalition arrangements between the Liberal and National Parties, the allocation of the call between them has varied—for example, in the 30th Parliament, with the respective party numbers 68 and 23, the call was allocated on the basis of a 3:1 ratio; in the 38th Parliament, with the party numbers 76 and 18, the ratio was 4:1; and in the 41st Parliament, with the party numbers 75 and 12, the ratio was 6:1. Independent Members have been called with regard to their numbers as a proportion of the House. The call is alternated to each side of the Chamber even when government and opposition Members are not on opposing sides of a debate, for example, in cases of a free vote.

When Members are permitted to speak more than once during a debate, the Chair generally gives priority to those who have not yet spoken over those who have already spoken.

### *List of speakers*

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>106</sup>

99 Including cases when the Government indicates (for example, by a Minister seeking the call) that it wishes to take a private Senator's bill as government business, e.g. H.R. Deb. (15.3.2000) 14781.

100 The Speaker calls Members by the name of their electoral division or office, i.e. 'the Member (Minister) for . . . '.

101 S.O. 65(c).

102 VP 1959–60/138 (14.5.1959); VP 1996–98/410 (9.9.1996), 419 (10.9.1996), 461 (12.9.1996).

103 H.R. Deb. (25.11.1953) 500–1.

104 VP 1996–98/462–3 (12.9.1996), the Chair having ruled that a further motion under then S.O. 61 [now 65(c)] was out of order as an abuse of the forms of the House, a motion of dissent was moved. *And see* H.R. Deb. (12.9.1996) 3995–9.

105 H.R. Deb. (17.6.1931) 2744; H.R. Deb. (19.5.1933) 1598–9; H.R. Deb. (18.10.1977) 2103.

106 H.R. Deb. (12.9.1901) 4860.

By the 1950s 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>107</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>108</sup> In essence this continues to be the practice followed by the Chair.

As well as assisting the Chair, speakers lists assist Members in managing their various commitments in the House, Federation Chamber and committees. It is the responsibility of Members listed to speak to follow proceedings in order to ensure that they will be available at the appropriate time. It is discourteous to the Member speaking, and to the Chair and other participants in the debate, for the next speaker to leave his or her entry to the Chamber to the last minute. If no Member rises to speak there can be no pause in proceedings, and the Chair is obliged to put the question before the House to a vote. In practice, the whips or the duty Minister or shadow minister at the Table assume responsibility for following up errant speakers from their respective parties,<sup>109</sup> and alert the Chair to any changes to the list.

## Manner of speech

### *Remarks to be addressed to Chair*

A Member wishing to speak rises and, when recognised by the Speaker, addresses the Speaker.<sup>110</sup> If a Member is unable to rise, he or she is permitted to speak while seated.<sup>111</sup>

As remarks must be addressed to the Chair, Members refer to each other in their speeches in the third person—that is, use ‘he’, ‘she’, and ‘they’, rather than ‘you’. It is regarded as disorderly for a Member to address the House in the second person and Members have often been admonished when they have lapsed into this form of address.<sup>112</sup> (*See also* ‘References to Members’ at page 514.)

It is not in order for a Member to turn his or her back to the Chair and address party colleagues.<sup>113</sup> A Member should not address the listening public while the proceedings of the House are being broadcast.<sup>114</sup>

### *Place of speaking*

Standing order 65(c) provides that when two or more Members rise to speak the Speaker shall call upon the Member who, in the Speaker’s opinion, rose first, and

107 H.R. Deb. (15.5.1952) 410.

108 H.R. Deb. (6.3.1953) 684, 686.

109 Often using the whips’ phones (one on each side of the Chamber) which have a direct line to the whips’ offices.

110 S.O. 65(a). At the election of a Speaker Members address themselves to the Clerk who acts as Chair.

111 S.O. 65(a), e.g. VP 1912/32 (9.7.1912). A Member confined to a wheel chair has addressed the House from the despatch box, e.g. H.R. Deb. (29.11.2006) 64.

112 E.g. H.R. Deb. (18.10.1995) 2407, 2430; H.R. Deb. (19.10.1995) 2473; H.R. Deb. (9.9.1996) 3683; H.R. Deb. (12.4.2000) 15880.

113 H.R. Deb. (5.6.1956) 2773–4.

114 H.R. Deb. (7.5.1952) 108.

standing order 62(a) requires every Member, when in the Chamber, to ‘take his or her seat’. The implication is that Members should address the House from their own places. Ministers and shadow ministers speak from the Table. Assistant Ministers and Parliamentary Secretaries are allowed to speak from the Table when in charge of the business before the House but at other times should speak from their allocated places, although there has been a trend for them to speak from the Table on a wider range of matters. The same practice applies in respect of shadow parliamentary secretaries.<sup>115</sup> An opposition Member who is not a member of the opposition shadow ministry but who is leading for the Opposition in a particular debate, is permitted to speak either from his or her allotted seat or from the Table.<sup>116</sup>

### *Reading of speeches*

There is no longer a prohibition on Members reading their speeches. Until 1965 the standing orders provided that ‘A Member shall not read his speech’. In 1964, the Standing Orders Committee recommended that:

As Parliamentary practice recognizes and accepts that, whenever there is reason for precision of statement such as on the second reading of a bill, particularly those of a complex or technical nature, or in ministerial or other statements, it is reasonable to allow the reading of speeches and, as the difficulty of applying the rule against the reading of speeches is obvious, e.g. “reference to copious notes”, it is proposed to omit the standing order.<sup>117</sup>

The recommendation of the committee was subsequently adopted by the House.<sup>118</sup>

### *Language of debate*

Although there is no specific rule set down by standing order, the House follows the practice of requiring Members’ speeches to be in English. Other Members and those listening to proceedings are entitled to be able to follow the course of a debate, and it is unlikely that the Chair would know whether a speech was in order unless it was delivered in English. It is in order, however, for a Member to use or quote phrases or words in another language during the course of a speech. When a part of a speech has been delivered in another language, Members have also given an English translation.<sup>119</sup>

In 2003 a meeting of the two Houses in the House of Representatives Chamber was addressed by the President of China in Chinese. Members and Senators used headphones to hear the simultaneous translation into English.<sup>120</sup> On a similar occasion in 2007 the Prime Minister of Canada spoke in French during some parts of his address.<sup>121</sup>

There is no requirement that documents tabled in the House be in English.

### *Incorporation of unread material into Hansard*

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

115 H.R. Deb. (10.5.1990) 267.

116 H.R. Deb. (18.10.1979) 2273.

117 Standing Orders Committee, *Report*, PP 129 (1964–66) 6.

118 VP 1964–66/266 (31.3.1965). In 1986 the Procedure Committee recommended that the prohibition on the reading of speeches be reintroduced, with certain exceptions: Standing Committee on Procedure, *Days and hours of sitting and the effective use of the time of the House*, PP 108 (1986) 34. The House did not accept the recommendation.

119 E.g. H.R. Deb. (12.2.2015) 796 (Bahasa Indonesia); H.R. Deb. (24.11.2015) 13578 (Pitjantjatjara); H.R. Deb. (31.8.2016) 163 (Wiradjuri).

120 H.R. Deb. (24.10.2003) 21697–701.

121 H.R. Deb. (11.9.2007) 3–6.

Answers to questions in writing are required to be printed in Hansard<sup>122</sup> and Budget tables were in the past permitted to be included unread in Hansard.<sup>123</sup> The terms of petitions have been incorporated since 1972,<sup>124</sup> and the terms of notices not given orally in the House were included from 1978; in later years all notices were included. The terms of amendments moved are also printed in Hansard, despite the common practice being for Members moving them to refer to previously circulated texts of proposed amendments rather than to read them out in full.

The modern practice of the House on the incorporation of other material, defined by successive Speakers in statements on the practice, is based on the premise that Hansard, as an accurate as possible a record of what is said in the House, should not incorporate unspoken material other than items such as tables which need to be available in visual form for comprehension.<sup>125</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>126</sup> even when they have been prevented from speaking on a question before the House,<sup>127</sup> nor can they have the balance of an unfinished speech incorporated.<sup>128</sup> Ministerial statements may not be incorporated,<sup>129</sup> nor may Ministers' second reading speeches<sup>130</sup> or explanatory memoranda to bills.<sup>131</sup> Matter irrelevant to the question before the House is not permitted to be incorporated.<sup>132</sup>

Underlying the attitude of the Chair and the House over the years has been the consistent aim of keeping the Hansard record as a true record of what is said in the House. Early occupants of the Chair saw the practice of including unread matter in Hansard as fraught with danger<sup>133</sup> and later Speakers have voiced more specific objections.<sup>134</sup> For example, a 'speech' may be lengthened beyond a Member's entitlement under the standing orders, or the incorporated material may contain irrelevant or defamatory matter or unparliamentary language; other Members will not be aware of the contents of the material until production of the daily Hansard next morning when a speech may be discovered to have matter not answered in debate and so appear more authoritative. Similarly, a succeeding Member's speech may appear to be less relevant and informed than it would have been if he or she had known of the unspoken material before speaking.<sup>135</sup> In a more recent statement the Speaker noted that the incorporation of unread speeches would not be consistent with the aims of ensuring

122 S.O. 105(a). This has been a requirement since 1931. The question must also be included with the reply, VP 1929–31/693 (26.6.1931).

123 H.R. Deb. (13.6.1924) 1292–3. The practice was discontinued in 1987 for reasons of economy.

124 Also ministerial responses to petitions since 1992.

125 Speaker Snedden, H.R. Deb. (21.10.1982) 2339–40; Speaker Jenkins, H.R. Deb. (10.5.1983) 341–2.

126 H.R. Deb. (1.3.1917) 10826. This practice has been advocated on at least one occasion, H.R. Deb. (9.9.1909) 3263.

127 H.R. Deb. (8.3.1929) 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. (6–8.12.1933) 5898. A tribute from an absent Member was permitted to be incorporated during a condolence debate, H.R. Deb. (8.4.1986) 1786. Exceptionally, after the second reading debate on a bill had been curtailed, 8 members were given leave to incorporate unread speeches, H.R. Deb. (10.11.2005) 9–37.

128 H.R. Deb. (20.6.1906) 452. Leave granted for Leader of the Opposition to incorporate remainder of statement, H.R. Deb. (19.9.1979) 1294. Leave granted for Minister to incorporate balance of a lengthy answer to question without notice, H.R. Deb. (26.8.1982) 959. Leave granted for incorporation of remainder of Member's valedictory speech, H.R. Deb. (20.9.2007) 64.

129 On one occasion Minister granted leave to incorporate a statement, VP 1951–53/405 (5.9.1952); H.R. Deb. (5.9.1952) 1051–2.

130 For details of cases see footnote under 'Moving and second reading speech' in Chapter on 'Legislation'.

131 Prior to the Standing Orders Committee opposing such action, PP 114 (1970) 9, leave was occasionally granted for the incorporation of explanatory memorandums, VP 1967–68/199 (20.9.1967).

132 H.R. Deb. (3.5.1938) 725.

133 H.R. Deb. (9.8.1910) 1256; H.R. Deb. (4.12.1911) 3638.

134 H.R. Deb. (5.8.1931) 4976–7; H.R. Deb. (15.9.1932) 556.

135 H.R. Deb. (10.5.1983) 341–2.

engagement and exchange in debate, and would totally disadvantage Members who speak from notes or without notes.<sup>136</sup>

Apart from offending against the principle that Hansard is a report of the spoken word, items may also be excluded on technical grounds. Thus, for example, photographs, drawings, tabulated material of excessive length and other documents of a nature or quality not acceptable for printing or which would present technical problems and unduly delay the production of the daily Hansard are not able to be incorporated. In cases where permission has been granted for such an item to be incorporated (usually with the proviso from the Chair that the incorporation would occur only if technically possible), it has been the practice for a note to appear in the Hansard text explaining that the proposed incorporation was omitted for technical reasons. However, in recent years developments in printing technology have made possible the incorporation of a wider range of material—for example, graphs, charts and maps—than was previously the case.

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 or Parliamentary Secretary at the Table, as the case may be,<sup>137</sup> and leave may be refused if this courtesy is not complied with.<sup>138</sup> Members must provide a copy of the material they propose to include at the time leave is sought,<sup>139</sup> and copies of non-read material intended for incorporation must be lodged with Hansard as early as possible.<sup>140</sup>

The general rule is not interpreted inflexibly by the Chair. For example, exceptions have been made to enable schedules showing the progress on government responses to committee reports to be incorporated.<sup>141</sup> Although other exceptions may be made from time to time, this is not a frequent occurrence and it is common practice of the Chair in such circumstances to remark on, and justify, the departure from the general rule, or to stress that the action should not be regarded as a precedent. The main category of such exceptions in recent years has been in relation to documents whose incorporation has provided information from the Government to the House.<sup>142</sup> Other exceptions have been made to facilitate business of the House,<sup>143</sup> or to allow the incorporation of material which in other circumstances could have been incorporated as a matter of routine.<sup>144</sup> The contents of a letter stick from Aboriginal peoples of the Northern Territory have been incorporated.<sup>145</sup>

The House has ordered that matter be incorporated.<sup>146</sup> Matter has been authorised to be incorporated by a motion moved pursuant to contingent notice, after leave for

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136 H.R. Deb. (11.2.2010) 1218–9.

137 PP 129 (1964–66) 3.

138 H.R. Deb. (24.8.1984) 368.

139 H.R. Deb. (9.5.1973) 1860–1.

140 VP 1974–75/157 (17.9.1974).

141 H.R. Deb. (9.5.1996) 763–7.

142 E.g. government guidelines for official witnesses before parliamentary committees, H.R. Deb. (23.8.1984) 290–6; Prime Minister's comments in response to a royal commission report, H.R. Deb. (6.12.1983) 3251–70; the terms of reference of a royal commission, H.R. Deb. (17.5.1983) 598.

143 E.g. lists of names of members of parliamentary committees, H.R. Deb. (8.10.1987) 995–6; H.R. Deb. (29.5.1996) 1767–8.

144 Proposed opposition amendments to a bill which were not moved because bill was under guillotine which had expired, e.g. H.R. Deb. (11.4.1986) 2129; H.R. Deb. (15.5.1997) 3737–42; H.R. Deb. (5.6.1997) 5123. Answers to questions in writing which had been withdrawn from the Notice Paper, H.R. Deb. (15.4.1986) 2319–20. Proposed amendment to motion (amendment could not be moved because another had been moved and the question stated in the form 'That the words stand'), H.R. Deb. (8.10.2003) 20792.

145 H.R. Deb. (28.10.1996) 5908.

146 Record of proceedings of the presentation of a resolution of thanks of the House to representatives of the Armed Forces, VP 1920–21/184 (20.5.1920). Report of the proceedings on the occasion of the presentation of the Speaker's Chair, VP 1926–28/343 (24.3.1927).

incorporation had been refused.<sup>147</sup> A motion to allow incorporation has also been moved and agreed to following suspension of standing orders.<sup>148</sup>

On two occasions in 1979 standing orders were suspended to enable certain documents to be incorporated in Hansard, after leave had been refused.<sup>149</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 incorporation of matter in Hansard.

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

### *Display of articles to illustrate speeches*

Members have been permitted to display articles to illustrate speeches. The Chair has been of the opinion that unless the matter in question had some relation to disloyalty or was against the standing orders the Chair was not in a position to act but hoped that Members would use some judgment and responsibility in their actions.<sup>150</sup> However, the general attitude from the Chair has been that visual props are ‘tolerated but not encouraged’.<sup>151</sup> An important distinction is made between Members displaying articles to illustrate a point being made in a speech and the display of articles or signs by Members who do not have the call.<sup>152</sup> The former is often acceptable to the Chair; the latter is not.

The wide range of items which have been allowed to be displayed to illustrate a speech has included items as diverse as a flag,<sup>153</sup> photographs and journals,<sup>154</sup> plants,<sup>155</sup> a gold nugget,<sup>156</sup> a bionic ear,<sup>157</sup> a silicon chip,<sup>158</sup> a flashing marker for air/sea rescue,<sup>159</sup> a synthetic quartz crystal,<sup>160</sup> superconducting ceramic,<sup>161</sup> hemp fibres,<sup>162</sup> a heroin ‘cap’,<sup>163</sup> a gynaecological instrument,<sup>164</sup> a sporting trophy,<sup>165</sup> ugh boots,<sup>166</sup> mouse pads,<sup>167</sup> a lump of coal and a solar panel.<sup>168</sup>

147 H.R. Deb. (28.9.1988) 1011.

148 H.R. Deb. (21.9.1977) 1418–19. However, because of technical difficulties the matter was not in fact incorporated.

149 VP 1978–80/875–6 (6.6.1979); H.R. Deb. (6.6.1979) 2972–7; VP 1978–80/986–7 (13.9.1979); H.R. Deb. (13.9.1979) 1080–4.

150 H.R. Deb. (25.9.1970) 1698.

151 E.g. H.R. Deb. (20.6.2002) 4065. *And see* H.R. Deb. (28.5.2009) 4755–6.

152 E.g. H.R. Deb. (31.10.2006) 20–21.

153 H.R. Deb. (25.9.1970) 1697. The flag was exhibited in support of the allegation that the staff was for use as a weapon.

154 H.R. Deb. (17.9.1964) 1283–5.

155 H.R. Deb. (25.11.1965) 3168; H.R. Deb. (16.9.1981) 1437; H.R. Deb. (1.5.1986) 2949–50.

156 H.R. Deb. (20.10.1981) 2250.

157 H.R. Deb. (25.5.1983) 934.

158 H.R. Deb. (2.11.1983) 2195.

159 H.R. Deb. (19.8.1982) 687–8.

160 H.R. Deb. (1.12.1983) 3166.

161 H.R. Deb. (8.10.1987) 985.

162 H.R. Deb. (19.6.1995) 1771–2.

163 H.R. Deb. (2.6.1997) 4577.

164 H.R. Deb. (8.12.1999) 13148.

165 H.R. Deb. (14.10.2003) 21389–90.

166 H.R. Deb. (12.8.2004) 32977–8.

167 H.R. Deb. (19.2.2008) 674–5.

168 H.R. Deb. (9.2.2017) 536 and H.R. Deb. (13.2.2017) 729, after these incidents the Speaker warned against the display of undesirable props.



Although newspaper headlines have been displayed for the purpose of illustrating a speech (but not if they contain unparliamentary language),<sup>169</sup> more recent practice has been not to permit this, and Members, although having the call, have been ordered to put down items they have displayed.<sup>170</sup> The Speaker has ordered a Member to remove two petrol cans he had brought into the Chamber for the purpose of illustrating his speech.<sup>171</sup> It is not in order to display a weapon<sup>172</sup> or play a tape recorder.<sup>173</sup> A Minister answering a question has been cautioned ‘on the overuse of props’ (a series of photos).<sup>174</sup> The Speaker has ruled the action of a Member asking a question in seeking to display a multi-page chart, which needed the assistance of other Members to hold up, to be out of order, but permitted the Member to display pages of the chart individually.<sup>175</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>176</sup> Since then the Chair has more than once ruled that the displaying of signs was not permitted.<sup>177</sup> A Member has been named when he interjected after having displayed a sign and having been ordered to leave the House.<sup>178</sup> In response to the coordinated holding up of placards by Members the Speaker has warned that action would be taken against offending Members without further warning.<sup>179</sup> In similar circumstances Speakers have instructed attendants to collect items that were being displayed.<sup>180</sup> Scorecards held up following a Member’s speech have been ordered to be removed.<sup>181</sup> Other items ordered to be removed which have been displayed by Members not having the call have included a toy chicken<sup>182</sup> and a life-size cardboard cut-out of the Prime Minister.<sup>183</sup> Disorder has been associated with the use of such items.

In 2015 a Member who had displayed bottles of bunker fuel in the Federation Chamber, and spilled the oil onto the desk and floor, was called on to apologise to the House for his reckless and highly disorderly actions, and after he had done so, was named and suspended.<sup>184</sup>

The Procedure Committee has distinguished between legitimate visual aids and ‘stunts’:

Members may have cause to use ‘legitimate’ visual aids during speeches to provide audiences with a greater understanding of the message being conveyed. Legitimate visual aids are usually referred to incidentally in a Member’s speech.

. . . In other cases, articles are displayed by Members in a way that could reasonably be interpreted as being for dramatic effect or to make a political point. In contrast to legitimate visual aids, ‘stunts’ have a tendency to disrupt proceedings and may have a negative impact on the public’s perception of the House.

169 H.R. Deb. (20.2.1986) 996–7, 1009. For later practice see H.R. Deb. (18.6.1996) 2061; (19.6.1996) 2243.

170 E.g. H.R. Deb. (13.3.2008) 1750.

171 H.R. Deb. (16.5.1985) 2547.

172 Private ruling by Speaker Halverson. However, deactivated land mines have been displayed, H.R. Deb. (25.11.1998) 653. See *also May*, 24th edn, p. 448.

173 H.R. Deb. (13.11.1974) 3503.

174 H.R. Deb. (25.5.2009) 4073.

175 H.R. Deb. (28.5.2009) 4761.

176 H.R. Deb. (21.8.1980) 582.

177 E.g. H.R. Deb. (6.9.1983) 435; H.R. Deb. (19.3.1985) 466; H.R. Deb. (26.8.2008) 6187.

178 H.R. Deb. (18.6.2009) 6582.

179 H.R. Deb. (31.10.2006) 20–21.

180 E.g. H.R. Deb. (29.10.2014), VP 2013–16/ 945 (29.10.2014)—Members resisting the instruction were directed to leave the Chamber under S.O. 94(a) for disorderly conduct; H.R. Deb. (2.2.2016) 44–5.

181 H.R. Deb. (13.11.1986) 3036–7.

182 H.R. Deb. (9.8.2006) 69–70.

183 H.R. Deb. (22.2.2008) 1282.

184 H.R. Deb. (24.3.2015) 3328; H.R. Deb. (25.3.2015) 3429.

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. . . There is no precise demarcation between legitimate visual aids and stunts. What might be considered perfectly legitimate in one context could be inflammatory in another.<sup>185</sup>

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

If a Minister quotes from a document relating to public affairs, a Member may ask for it to be presented to the House. The document must be presented unless the Minister states that it is of a confidential nature.<sup>186</sup> This 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>187</sup> It is not in order to quote words debarred by the rules of the House.<sup>188</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>189</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>190</sup> It is not necessary for a Member to disclose the source of a quotation<sup>191</sup> or the name of the author of a letter from which he or she has quoted.<sup>192</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 or she is unsure, the responsibility rests with the Member.<sup>193</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 to use material in his or her possession.<sup>194</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>195</sup>

## 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 a Member should speak only on the subject matter of a question under discussion.<sup>196</sup> At the same time the standing orders and practice of the House make provision for some major exceptions to this principle when debates of a general nature may take place. These exceptions are:

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185 Standing Committee on Procedure, *The display of articles: an examination of the practice of the House of Representatives*, PP 201 (2009) 3, 5, 6.

186 S.O. 201—for more detail see Ch. on ‘Documents’.

187 H.R. Deb. (29.5.1931) 2446.

188 H.R. Deb. (20.9.1922) 2488; H.R. Deb. (10.9.1925) 2415.

189 H.R. Deb. (17.11.1920) 6584.

190 H.R. Deb. (27.9.1979) 1635.

191 H.R. Deb. (12.5.1932) 671.

192 H.R. Deb. (28.5.1931) 2399.

193 H.R. Deb. (25.11.1953) 472–3; H.R. Deb. (26.9.1979) 1550–1.

194 H.R. Deb. (2.5.1957) 1000–1; VP 1964–66/597 (11.5.1966); H.R. Deb. (10.5.1966) 1601; H.R. Deb. (11.5.1966) 1673.

195 H.R. Deb. (20.5.1942) 1440–1; see also H.R. Deb. (28.3.1973) 767–8, H.R. Deb. (9.5.1973) 1854–5, NP 80 (13.12.1973) 3480, and VP 1973–74/365–6 (20.9.1973) for other references relating to this question.

196 S.O. 76. See also Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, v. III, p. 56.

- on the question for the adjournment of the House to end the sitting, or for the adjournment of the Federation Chamber;<sup>197</sup>
- on the debate of the address in reply to the Governor-General's speech;<sup>198</sup>
- on the motion for the second reading of the main appropriation bill, and appropriation or supply bills for the ordinary annual services of government, when public affairs may be debated;<sup>199</sup> and
- on the question that grievances be noted, a wide debate is permitted.<sup>200</sup>

The scope of a debate may also be widened by means of an amendment. There may also be a digression from the rule of relevancy during a cognate debate, when two or more items are debated together even though technically only one of the items is the subject of the question before the House.

### *Cognate debate*

When two or more orders of the day are related,<sup>201</sup> it frequently meets the convenience of the House to debate them together. A cognate debate is an informal practice, not covered by the standing orders, which is arranged behind the scenes by a process of which the Chair has no official knowledge. Cognate debates are usually agreed to by the Government and the Opposition as part of the programming process and the orders of the day then linked accordingly on the Daily Program. The Chair formally seeks the agreement of the House to the proposal when the first of the orders so linked is called on for debate.<sup>202</sup> If there is no objection the Chair then allows the debate of the first of the orders to refer to the other related orders—thus in effect enabling a single debate. 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.

Almost all cognate debates occur on bills—for further discussion of cognate debate in relation to bills *see* Chapter on 'Legislation'. However, motions are on occasion debated cognately. A bill has been debated cognately with a motion to take note of documents on a related subject.<sup>203</sup> A cognate debate has taken place on three committee reports on unrelated subjects (by the same committee).<sup>204</sup>

The purpose of a cognate debate is to save the time of the House, but technically Members may still speak to the questions proposed when the other orders of the day encompassed in the cognate debate are called on.<sup>205</sup> However, this action is contrary to the spirit of a cognate debate and is an undesirable practice except in special circumstances, for example, when a Member desires to move an amendment to one of the later cognate orders.

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197 S.O. 76. *See* Ch. on 'Non-government business'.

198 S.O. 76. *See* Ch. on 'The parliamentary calendar'.

199 S.O. 76. *See* Ch. on 'Financial legislation'.

200 S.O. 192B. *See* Ch. on 'Non-government business'.

201 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 document which had been moved that day, H.R. Deb. (10.4.1978) 1306–7. A cognate debate has also taken place on a notice of motion and an order of the day, H.R. Deb. (10.3.1981) 575.

202 This procedure has not always been followed. For example, before the cognate debate procedure became established the House ordered that debate on certain orders of the day proceed concurrently, VP 1920–21/705 (5.10.1921); and suspended standing orders to allow discussion of certain tariff proposals during debate on a motion to print an associated report, VP 1932–34/101 (8.3.1932). Standing orders have been suspended to enable the scope of the debate on a private Members' business notice to be extended to cover the subject matter of a government business order of the day, VP 1980–83/174 (2.4.1981).

203 Parliamentary Commission of Inquiry (Repeal) Bill 1986 and motion to take note of Parliamentary Commission of Inquiry Special Report and associated documents, H.R. Deb. (20.8.1986) 291.

204 H.R. Deb. (8.12.1994) 4580. *See also* VP 2002–04/1455 (19.2.2004), H.R. Deb. (19.2.2004) 25340–49—in effect a cognate debate (despite no statement by Chair) on two committee reports by same committee which had been presented at the same time but were separate orders of the day, VP 2002–04/1431 (16.2.2004).

205 H.R. Deb. (26.11.1953) 576–7; H.R. Deb. (10.4.1978) 1314.

*Persistent irrelevance or tedious repetition*

Pursuant to standing order 75, the Speaker, after having called attention to the conduct of a Member who has persisted in irrelevance or tedious repetition, either of his or her own arguments or of the arguments used by other Members in debate, may direct the Member to discontinue his or her speech. The Speaker's action may be challenged by the Member concerned who has the right to ask the Speaker to put the question that he or she be further heard. This question must be put immediately and resolved without debate. The action of the Chair in requiring a Member to discontinue a speech cannot be challenged by a motion of dissent from a ruling, as the Chair has not given a ruling but a direction under the standing orders.<sup>206</sup> The Chair is the judge of the relevancy or otherwise of remarks and it is the duty of the Chair to require Members to keep their remarks relevant.<sup>207</sup> Only the Member who has been directed to discontinue a speech has the right to move that he or she be further heard and must do so before the call is given to another Member.<sup>208</sup>

On only two occasions has a Member been directed to discontinue a speech specifically on the ground of tedious repetition<sup>209</sup> but on a number of occasions on the ground of persistent irrelevance.<sup>210</sup> A Member has been directed to discontinue his speech following persistent irrelevance while moving a motion;<sup>211</sup> in the former committee of the whole (although later the Member took his second turn, under the then prevailing standing orders, to speak to the question);<sup>212</sup> and in the Main Committee (Federation Chamber).<sup>213</sup> On two occasions the direction of the Chair has been successfully challenged by a motion that the Member be further heard.<sup>214</sup>

This standing order has not been regarded as applying to a statement being made by leave,<sup>215</sup> or to answers during Question Time.<sup>216</sup>

*Anticipation*

The principle behind the anticipation rule is the orderly management of House business. Its intention is to protect matters which are on the agenda for imminent deliberative consideration and decision from being pre-empted by unscheduled debate.

Standing order 77 provides that 'During a debate, a Member may not anticipate the discussion of a subject listed on the Notice Paper and expected to be debated on the same or next sitting day. In determining whether a discussion is out of order the Speaker should not prevent incidental reference to a subject.'

The rule applies only 'during a debate'—that is, when there is a question before the House. It does not apply to questions and answers, to Members' statements or discussions of matters of public importance. The words 'a subject listed on the Notice Paper' are taken as applying only to the business section of the Notice Paper and not to matters listed elsewhere—for example, under questions in writing or as subjects of committee inquiry.

206 H.R. Deb. (9.11.1904) 6753; H.R. Deb. (6.10.1953) 1051; H.R. Deb. (4.5.1960) 1382.

207 H.R. Deb. (20.11.1935) 1838.

208 H.R. Deb. (6.10.1953) 1051-2.

209 VP 1904/298 (11.11.1904); H.R. Deb. (12.10.1978) 1822.

210 E.g. H.R. Deb. (27.2.2012) 1777; H.R. Deb. (19.3.2012) 3264.

211 H.R. Deb. (2.6.1955) 1360.

212 H.R. Deb. (9.3.1951) 275-7.

213 H.R. Deb. (13.2.2003) 11900.

214 VP 1937-40/413 (8.6.1939), 418 (9.6.1939).

215 H.R. Deb. (31.3.1987) 1765.

216 H.R. Deb. (13.6.2006) 28; H.R. Deb. (18.6.2009) 6570. However, an answer is required to be directly relevant to the question by S.O. 104(a).

The current wording of standing order 77 was recommended by the Procedure Committee in 2005.<sup>217</sup> The anticipation rule was previously more restrictive.<sup>218</sup>

### Allusion to previous debate or proceedings

Unless the reference is relevant to the discussion, a Member must not refer to debates or proceedings of the current session of the House.<sup>219</sup> This rule is not extended to the different stages of a bill. In practice, mere allusion to another debate is rarely objected to. However, debate on a matter already decided by the House should not be reopened. The Chair has stated that 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>220</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>221</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 allusion to previous debate has been allowed,<sup>222</sup> although the Chair has sometimes intervened to prevent it.<sup>223</sup> Members may be able to overcome the restriction by referring to a subject or issue of concern without alluding to any debate which may have taken place on it. The problem of enforcing the standing order is accentuated by the fact that a session may extend over a three year period.

### References to committee proceedings

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 or by the committee or subcommittee.<sup>224</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>225</sup> However, committee chairs and deputy chairs have regular opportunities to make statements to inform the House of matters relating to inquiries,<sup>226</sup> and Members have, from time to time, made statements on the activities of a committee by leave of the House.<sup>227</sup> The Chair has permitted reference in debate to committee proceedings which (although unreported) had been relayed throughout Parliament House on the monitoring system.<sup>228</sup>

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217 Standing Committee on Procedure, *The anticipation rule*, PP 82 (2005). Sessional orders 17.3.2005, adopted permanently 29.11.2006.

218 Discussed in earlier editions.

219 S.O. 73.

220 H.R. Deb. (27.3.1942) 558.

221 H of R 1(1962–63) 19.

222 See Ch. on ‘Non-government business’.

223 E.g. H.R. Deb. (26.5.1987) 3365.

224 S.O. 242. See also Ch. on ‘Committee inquiries’.

225 H.R. Deb. (10.6.1955) 1656.

226 S.O. 39(a).

227 E.g. VP 1977/112 (5.5.1977), 358 (26.10.1977).

228 H.R. Deb. (16.12.1993) 4226.

## References to Members

In the Chamber and the Federation Chamber a Member must not be referred to by name, but only by the name of the Member's electoral division (that is, as 'the Member for . . .' or 'the honourable Member for . . .'), or by the title of his or her parliamentary or ministerial office.<sup>229</sup> This restriction has also been extended to the terms of motions, amendments and matters of public importance.<sup>230</sup> The purpose of this rule, in conjunction with the requirement to address the Chair (*see* page 504), is to make debate less personal and avoid the direct confrontation of Members addressing one another as 'you'.<sup>231</sup> A degree of formality helps the House remain more dignified and tolerant when political views clash and passions may be inflamed. 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 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>232</sup>

The standing orders contain prohibitions against the use of words which are considered to be offensive (the two Houses of the Parliament, Members and Senators and members of the judiciary being specifically protected—*see below*).<sup>233</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 Member is not allowed to use unparliamentary words by the device of putting them in somebody else's mouth,<sup>234</sup> or in the course of a quotation.<sup>235</sup>

It is the duty of the Chair to intervene when offensive or disorderly words are used either by the Member addressing the House or any Member present. When attention is drawn to a Member's conduct (including his or her use of words), the Chair determines whether or not it is offensive or disorderly.<sup>236</sup>

Once the Chair determines that offensive or disorderly words have been used, the Chair asks that the words be withdrawn. It has been considered that a withdrawal implies an apology<sup>237</sup> and need not be followed by an apology unless specifically demanded by the Chair.<sup>238</sup> The Chair may ask the Member concerned to explain the sense in which the words were used and upon such explanation the offensive nature of the words may be removed. If there is some uncertainty as to the words complained of, for the sake of clarity, the Chair may ask exactly what words are being questioned. This action avoids confusion and puts the matter clearly before the Chair and Members involved. On other

229 S.O. 64. The question of using the name of a Member in the House instead of the electorate name was considered by the Standing Orders Committee in its 1972 report. The committee recommended no change to the existing practice. Standing Orders Committee, *Report*, PP 20 (1972).

230 *And see* letter presented by Speaker, VP 2004–07/1648 (7.12.2006).

231 *And see May*, 24th edn, p. 444 ('to guard against all appearance of personality in debate').

232 *May*, 24th edn, p. 444.

233 S.O.s 89, 90.

234 *And see May*, 24th edn, p. 445.

235 H.R. Deb. (5.5.1978) 1894–5.

236 S.O. 92. This provision was introduced (then referring to words rather than conduct) on the recommendation of the Standing Orders Committee, following conflicting rulings on whether remarks regarded as offensive by any Member had to be withdrawn. H of R 1 (1962–63) 20; VP 1962–63/455 (1.5.1963). *See also* statement by Speaker Jenkins, H.R. Deb. (7.5.1984) 1907.

237 H.R. Deb. (22.10.1913) 2377.

238 H.R. Deb. (1.11.1951) 1498.

occasions, although not having heard words objected to, the Speaker has called for their withdrawal.<sup>239</sup>

It always assists the House if a Member withdraws words objected to without waiting for the Speaker's determination, when the Speaker may not have heard words objected to and thus may not be able to make a determination,<sup>240</sup> or when the Chair indicates that it 'would assist the House' if the Member did so.<sup>241</sup>

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 present<sup>242</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 negated a motion of dissent from a ruling that a request for the withdrawal of a remark should be made at the time the remark was made.<sup>243</sup> However, the Speaker has later drawn attention to remarks made and called on a Member to apologise, or to apologise and withdraw.<sup>244</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>245</sup> and must withdraw the remark immediately,<sup>246</sup> in a respectful manner,<sup>247</sup> unreservedly<sup>248</sup> and without conditions<sup>249</sup> or qualifications.<sup>250</sup> Traditionally Members have been expected to rise in their places to withdraw a remark.<sup>251</sup> If a Member refuses to withdraw or prevaricates, the offence is compounded and the Chair may name the Member for disregarding the authority of the Chair.<sup>252</sup> The Speaker has also directed, in special circumstances, that offensive words be omitted from the Hansard record.<sup>253</sup>

The use of offensive gestures has been deprecated by the Speaker. It would be open to the Speaker to direct a Member to leave the Chamber or to name a Member for such behaviour.<sup>254</sup>

## Reflections on Members

Offensive words may not be used against any Member<sup>255</sup> and all imputations of improper motives to a Member and all personal reflections on other Members are considered to be highly disorderly.<sup>256</sup> The practice of the House, based on that of the UK House of Commons,<sup>257</sup> is that Members can only direct a charge against other Members or reflect upon their character or conduct upon a substantive motion which admits of a distinct vote of the House.<sup>258</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

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239 E.g. H.R. Deb. (4.12.2008) 12600.

240 H.R. Deb. (20.10.2010) 949; H.R. Deb. (25.11.2010) 3831.

241 H.R. Deb. (29.9.2010) 205.

242 H.R. Deb. (30.11.1950) 3427.

243 VP 1974/41–2 (12.3.1974).

244 H.R. Deb. (21.4.1955) 70; H.R. Deb. (25.8.1955) 73.

245 H.R. Deb. (22.11.1912) 5883.

246 H.R. Deb. (3.12.1918) 8639.

247 H.R. Deb. (7.12.1911) 3996.

248 H.R. Deb. (15.8.1923) 2776.

249 H.R. Deb. (27.11.1914) 1180.

250 H.R. Deb. (30.11.1950) 3427.

251 H.R. Deb. (26.9.1979) 1569.

252 E.g. VP 2004–07/1163 (31.5.2006); H.R. Deb. (17.8.2005) 101–2 (allegation against group directed to be withdrawn).

253 See 'Hansard' in Ch. on 'Documents'.

254 H.R. Deb. (20.6.2002) 4076, 4080–1. *And see* statement by President of the Senate, S. Deb. (11.8.2005) 78.

255 S.O. 89.

256 S.O. 90.

257 S.O. 100(c), *and see* *May*, 24th edn, pp. 396, 443–4.

258 H.R. Deb. (16.10.1957) 1416; H.R. Deb. (2.3.1972) 478.

reflection a Member may not use unparliamentary words.<sup>259</sup> This practice does not necessarily preclude the House from discussing the activities of any of its Members.<sup>260</sup> It is not in order to use offensive words against, make imputations against, or reflect on another Member by means of a quotation or by putting words in someone else's mouth.

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

... in my interpretation of standing order 418 [similar to House of Representatives standing order 90 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.<sup>261</sup>

It has been regarded as disorderly to refer to the lack of sobriety of a Member,<sup>262</sup> to imitate the voice or manner of a Member<sup>263</sup> and to make certain remarks in regard to a Member's stature<sup>264</sup> or physical attributes.<sup>265</sup> Although former Members are not protected by the standing orders,<sup>266</sup> the Chair has required a statement relating to a former Member to be withdrawn<sup>267</sup> and on another occasion has regarded it as most unfair to import into debate certain actions of a Member then deceased.<sup>268</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>269</sup>

Australian Speakers have followed a similar approach. An accusation that a Member has lied or deliberately misled is clearly an imputation of an improper motive. Such words are ruled out of order and Members making them ordered to withdraw their remarks. The deliberate misleading of the House is a serious matter which could be dealt with as a contempt, and a charge that a Member has done so should only be made by way of a substantive motion.<sup>270</sup>

In accordance with House of Commons practice, for many years it was ruled that remarks which would be held to be offensive, and so required to be withdrawn, when applied to an identifiable Member, did not have to be withdrawn when applied to a group where individual Members could not be identified. This rule was upheld by distinct votes of the House.<sup>271</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

259 H.R. Deb. (25.6.1996) 2641, 2654–5.

260 H.R. Deb. (25.10.1950) 1395.

261 S. Deb. (2.6.1955) 629; *Odgers*, 6th edn, p. 213. *But see* H.R. Deb. (4.9.2006) 44–5 (quotation no longer relied on in the Senate).

262 H.R. Deb. (2.11.1977) 2736.

263 H.R. Deb. (25.9.1908) 403. On another occasion a Member apologised after having imitated another Member's accent, although the Chair had not intervened. H.R. Deb. (11.10.1985) 1907, 1929.

264 H.R. Deb. (9.9.1904) 4508.

265 H.R. Deb. (28.8.1979) 669.

266 H.R. Deb. (5.11.1987) 2093.

267 H.R. Deb. (1.4.1930) 724–5.

268 H.R. Deb. (26.5.1955) 1204.

269 *May*, 24th edn, p. 445.

270 H.R. Deb. (19.6.2003) 17045–6.

271 VP 1968–69/413 (23.4.1969), 499 (13.8.1969); VP 1970–72/43–5 (17.3.1970).



would be unwise to entrust certain unnamed Members with classified information was required to be withdrawn,<sup>272</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>273</sup> Speaker Snedden supported this practice when he required the withdrawal of the term ‘a bunch of traitors’<sup>274</sup> and later extended it:

The consequence is that I have ruled that even though such a remark may not be about any specified person the nature of the language [the Government telling lies] is unparliamentary and should not be used at all.<sup>275</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>276</sup>

This practice has been followed by succeeding Speakers. Remarks that merely offend political sensitivities are not normally required to be withdrawn. However, comments that a group of Members are, for example, traitors, racist or corrupt are treated more seriously.<sup>277</sup>

### Reflections on the House and votes of the House

The standing orders provide that offensive words may not be used against the House of Representatives.<sup>278</sup> It has been considered unbecoming to permit offensive expressions against the character and conduct of the House to be used by a Member without rebuke, as such expressions may serve to degrade the legislature in the eyes of the people. Thus, the use of offensive words against the institution by one of its Members should not be overlooked by the Chair.

A Member must not reflect adversely on a vote of the House, except on a motion that it be rescinded.<sup>279</sup> Under this rule a proposed motion of privilege, in relation to the suspension of two Members from the House in one motion, was ruled out of order as the vote could not be reflected upon except for the purpose of moving a rescission motion.<sup>280</sup> A Member, speaking to the question that a bill be read a third time, has been ordered not to reflect on votes already taken during consideration of the bill,<sup>281</sup> and a Member has been ordered not to canvass decisions of the House of the same session.<sup>282</sup> This rule is not interpreted in such a way as to prevent a reasonable expression of views on matters of public concern.

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272 H.R. Deb. (4.5.1967) 1793–7.

273 PP 153 (1970) 43–8.

274 H.R. Deb. (27.2.1980) 431.

275 H.R. Deb. (10.9.1980) 1076.

276 H.R. Deb. (12.3.1981) 709.

277 E.g. Member named for refusing to withdraw allegations of bribery applied collectively to members of a political party, H.R. Deb. (17.8.2005) 101–2. *See also* letter presented by the Speaker, VP 2004–07/1648 (7.12.2006).

278 S.O. 89; H.R. Deb. (21.8.1973) 23.

279 S.O. 74.

280 VP 1946–48/43 (29.11.1946).

281 H.R. Deb. (13.12.1934) 1217.

282 H.R. Deb. (24.2.1972) 235.

## References to the Senate and Senators

A member of the Senate should be referred to as “Senator . . .” or by the title of his or her office.<sup>283</sup> Offensive words cannot be used against either the Senate or Senators.<sup>284</sup> It is important that the use of offensive words should be immediately reprovved in order to avoid complaints and dissension between the two Houses. Leave has been granted to a Member to make a statement in reply to allegations made in the Senate,<sup>285</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>286</sup>

The former restriction on allusion in debate to proceedings of the Senate<sup>287</sup> was omitted from the revised standing orders in 2004. The Senate had not had an equivalent standing order for many years.<sup>288</sup> As the House Standing Orders Committee observed in 1970, it was probable that the principal reason for the rule was the understanding that the debates of the one House were not known to the other and could therefore not be noticed, but that the daily publication of debates had changed the situation.<sup>289</sup>

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

A Member must not refer disrespectfully to the Queen, the Governor-General, or a State Governor, in debate or for the purpose of influencing the House in its deliberations.<sup>290</sup> According to *May* the reasons for the rule are:

The irregular use of the Queen’s name to influence a decision of the House is unconstitutional in principle and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorized mode of communicating Her Majesty’s recommendation or consent, through one of her Ministers; but Her Majesty cannot be supposed to have a private opinion, apart from that of her responsible advisers; and any attempt to use her name in debate to influence the judgment of Parliament is immediately checked and censured. This rule extends also to other members of the royal family, but it is not strictly applied in cases where one of its members has made a public statement on a matter of current interest so long as comment is made in appropriate terms.<sup>291</sup>

Members have been prevented from introducing the name of the sovereign to influence debate,<sup>292</sup> canvassing what the sovereign may think of legislation introduced in the Parliament<sup>293</sup> and referring to the sovereign in a way intended to influence the reply to a question.<sup>294</sup> The rule does not exclude a statement of facts by a Minister concerning the sovereign,<sup>295</sup> or debate on the constitutional position of the Crown.

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

Some past rulings have been very narrow. It has, for instance, been ruled that the Governor-General must not be either praised or blamed in this chamber and, indeed, that the name of the Governor-

283 E.g. H.R. Deb. (9.3.2010) 2007.

284 S.O. 89.

285 VP 1961/184 (30.8/1961); H.R. Deb. (30.8.1961) 661–3. In this case further statements were made in the House, VP 1961/186 (31.8.1961), 196 (12.9.1961).

286 H.R. Deb. (19.3.1959) 885–7; *see also* VP 1978–80/848, 850 (31.5.1979), when a copy of a personal explanation was sent to the President by the Acting Speaker.

287 Former S.O. 72.

288 Former Senate S.O. 416. *Odgers*, 6th edn, p. 357.

289 *Report from the Standing Orders Committee, together with recommendations*, PP 114 (1970) 2.

290 S.O. 88.

291 *May*, 24th edn, p. 440.

292 H.R. Deb. (24.4.1918) 4120.

293 H.R. Deb. (20.6.1951) 142.

294 H.R. Deb. (24.11.1936) 2170.

295 E.g. VP 1934–37/805–6 (11.12.1936).

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>296</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>297</sup>
- restrictions applying to statements disrespectful to or critical of the conduct of the Governor-General apply equally to the Governor-General designate;<sup>298</sup>
- reflections must not be cast on past occupants of the position or the office as such;<sup>299</sup>
- the Governor-General's name should not be introduced in debate in a manner implying threats;<sup>300</sup>
- statements critical of and reflecting on the Governor-General's role in the selection of a Ministry are out of order;<sup>301</sup> and
- it is considered as undesirable to introduce into debate the names of the Governor-General's household.<sup>302</sup>

Petitions have been presented praying for the House to call on the Governor-General to resign,<sup>303</sup> and remarks critical of a Governor-General made in respect of responsibilities he had held before assuming the office, and matters arising from such responsibilities, have been raised.<sup>304</sup> The Chair has withdrawn the call from a Member who had referred to the Governor-General disrespectfully.<sup>305</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 has intervened to prevent such references being made, on the basis that the House was guided by UK House of Commons usage<sup>306</sup> on the matter.<sup>307</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.<sup>308</sup>

In more recent years the Chair has declined to interfere with the terms of a notice of motion asking the House to censure an ambassador to Australia 'for his arrogant and

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296 H.R. Deb. (19.2.1976) 131.

297 H.R. Deb. (25.2.1969) 5–6, 12–13.

298 H.R. Deb. (26.2.1969) 207. But the rule has been held not to apply to a State Governor-designate, H.R. Deb. (19.8.2003) 18828.

299 H.R. Deb. (1.4.1930) 705–6.

300 H.R. Deb. (10.6.1914) 1982.

301 H.R. Deb. (15.1.1918) 2971, 2992; H.R. Deb. (18.1.1918) 3218; H.R. Deb. (9.7.1919) 10517.

302 H.R. Deb. (14.8.1907) 1870.

303 E.g. VP 1976–77/577 (15.2.1977); and see 'Petitions' in Ch. on 'Documents'.

304 E.g. H.R. Deb. (14.5.2003) 14487–9 (adjournment debate); H.R. Deb. (13.5.2003) 13961–74 (questions without notice).

305 H.R. Deb. (22.11.2011) 13429–30.

306 *May*, 22nd edn, p. 385. The reference was not repeated in the 23rd edn (2004).

307 E.g. VP 1951–53/117 (10.10.1951), 327 (27.5.1952).

308 Standing Orders Committee recommendation, H of R 1 (1962–63) 32; rejected by House, VP 1962–63/455 (1.5.1963); H.R. Deb. (1.5.1963) 896. For later comment see H.R. Deb. (19.8.1976) 368.

contemptuous attitude towards Australia and . . . his provocative public statements'.<sup>309</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>310</sup>

In 1986 the Procedure Committee recommended that restrictions relating to reflections in debate on governments or heads of governments, other than the Queen or her representatives in Australia, be discontinued.<sup>311</sup> In practice, the latitude referred to earlier has continued to be evident. Even though the Procedure Committee recommendation has not been acted upon formally, the attitude of successive Speakers indicates acceptance of its views.

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>312</sup>

### 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 a Member may not use offensive words against a member of the judiciary.<sup>313</sup> This provision was not included in the standing orders until 1950 but prior to then the practice, based on that of the UK House of Commons, was that, unless discussion was based upon a substantive motion, reflections could not be cast in debate upon the conduct, including a charge of a personal character, of a member of the judiciary. This practice still continues. Decisions as to whether words are offensive or cast a reflection rest with the Chair.

Rulings of the Chair have been wide ranging on the matter, perhaps the most representative being one given in 1937 that 'From time immemorial, the practice has been not to allow criticism of the judiciary; the honourable member may discuss the judgments of the court, but not the judges'.<sup>314</sup> In defining members of the judiciary, the Chair has included the following:

- a Public Service Arbitrator;<sup>315</sup>
- an Australian judge who had been appointed to the international judiciary;<sup>316</sup>
- a Conciliation and Arbitration Commissioner;<sup>317</sup> and
- magistrates.

The Chair has also ruled that an electoral distribution commission is not a judicial body and that a judge acting as a commissioner is not acting in a judicial capacity.<sup>318</sup> When judges lead royal commissions or special commissions, they are exercising executive power, not judicial power, and therefore do not attract the protection of standing order 89.<sup>319</sup> The rule has not prevented criticism of the conduct of a person before becoming a judge.<sup>320</sup>

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309 NP 148 (28.2.1980) 8700; H.R. Deb. (4.3.1980) 580.

310 NP 168 (30.4.1980) 10257.

311 Standing Committee on Procedure, *The standing orders and practices which govern the conduct of Question Time*, PP 354 (1986) 32.

312 H.R. Deb. (21.8.1980) 590–1; H.R. Deb. (30.6.1931) 3169; H.R. Deb. (25.9.1918) 6368.

313 S.O. 89.

314 H.R. Deb. (28–9.6.1937) 577; *see also* H.R. Deb. (18.3.1980) 836.

315 H.R. Deb. (7.12.1921) 13924.

316 H.R. Deb. (2.10.1957) 1005.

317 H.R. Deb. (4.6.1952) 1399.

318 H.R. Deb. (24.5.1965) 2076.

319 H.R. Deb. (3.2.2016) 216.

320 E.g. H.R. Deb. (12.4.2000) 15883.

Judges are expected, by convention, to refrain from politically partisan activities and to be careful not to take sides in matters of political controversy. If a judge breaks this convention, a Member may feel under no obligation to remain mute on the matter in the House.<sup>321</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 relating specifically to sub judice matters the House has been guided by its own practice. Regard has also been had to that of the UK House of Commons as declared by resolutions of that House in 1963, 1972 and 2001.<sup>322</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>323</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 basic features of the practice of the House of Representatives are as follows:

- The application of the sub judice convention is subject to the discretion of the Chair at all times. The Chair should always have regard to the basic rights and interests of Members in being able to raise and discuss matters of concern in the House. Regard needs to be had to the interests of persons who may be involved in court proceedings and to the separation of responsibilities between the Parliament and the judiciary.
- As a general rule, matters before the criminal courts should not be referred to from the time a person is charged until a sentence, if any, has been announced; and the restrictions should again apply if an appeal is lodged and remain until the appeal is decided.
- As a general rule, matters before civil courts should not be referred to from the time they are set down for trial or otherwise brought before the court and, similarly, the restriction should again be applied from the time an appeal is lodged until the appeal is decided.
- In making decisions as to whether the convention should be invoked in particular cases, the Chair should have regard to the likelihood of prejudice to proceedings being caused as a result of references in the House.<sup>324</sup>

The convention has also been applied, in some instances, in respect of royal commissions. The key feature is that decisions are made on a case by case basis, in light of the circumstances applying.<sup>325</sup> For further discussion of sub judice in relation to royal commissions and similar bodies *see* page 524.

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321 H.R. Deb. (28.11.1995) 3964.

322 *See May*, 24th edn, pp. 441–3.

323 House of Commons Select Committee on Procedure, *4th report*, HC 298 (1971–72) vii–viii.

324 H.R. Deb. (27.6.1994) 1978–9 (statement by Speaker Martin).

325 H.R. Deb. (18.9.1995) 1049–51.

The sub judice convention can also be invoked in respect of committee inquiries, where sub judice considerations may influence a committee's approach to seeking particular evidence or persuade it to take evidence in private—see 'Sub judice convention' in the Chapter on 'Committee inquiries'.

### *Right to legislate and discuss matters*

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

### *Discretion of the Chair*

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

The question of the *sub judice* rule is difficult. Essentially it remains in the discretion of the presiding officer. Last year I made a statement in which I expanded on the interpretation of the *sub judice* rule which I would adopt. I was determined that this national Parliament would not silence itself on issues which would be quite competent for people to speak about outside the Parliament. On the other hand, I was anxious that there should be no prejudice whatever to persons faced with criminal action. Prejudice can also occur in cases of civil action. But I was not prepared to allow the mere issue of a writ to stop discussion by the national Parliament of any issues. Therefore I adopted a practice that it would not be until a matter was set down for trial that I would regard the *sub judice* rule as having arisen and necessarily stifle speeches in this Parliament. There is a stricter application in the matter of criminal proceedings.<sup>326</sup>

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

The Select Committee on Procedure of the UK 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>327</sup>

It is significant that this view did not include judges but referred only to magistrates, as it could be less likely 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

326 H.R. Deb. (24.3.1977) 558.

327 House of Commons Select Committee on Procedure, *1st report*, HC 156 (1962–63) v.

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>328</sup>

The Chair has permitted comments to be made pertaining to a matter subject to an appeal to the High Court, a decision perhaps reflecting the view that High Court judges would be unlikely to be influenced by references in the House.<sup>329</sup>

The Speaker has allowed a matter of public importance critical of the Government's handling of an extradition process to be discussed, despite objection from the Attorney-General on sub judice grounds, on the basis that Members refrain from any comment as to the guilt or innocence of the person named in the proposed matter.<sup>330</sup>

A matter before the courts has been brought before the House as an item of private Members' business, the Speaker having concluded that the sub judice rule should not be invoked so as to restrict debate.<sup>331</sup> It was noted that the matter was a civil one and that a jury was not involved.

Debate relating to the subject matter of a royal commission has been permitted on the grounds that the commissioner would not be in the least influenced by such remarks<sup>332</sup> (*and see* page 524).

### *Civil or criminal matter*

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

### *Chair's knowledge of the case*

A significant practical difficulty which sometimes faces the Chair when application of the sub judice convention is suggested is a lack of knowledge of the particular court proceeding or at least details of its state of progress. If present in the Chamber, the Attorney-General can sometimes help, but often it is a matter of the Chair using his or

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328 H.R. Deb. (4.6.1976) 3048; *see also* Sir Billy Snedden, 'Sub judice rule', *Report of 6th Conference of Commonwealth Speakers and Presiding Officers*, 1981, Ottawa.

329 H.R. Deb. (25.11.1986) 3618.

330 H.R. Deb. (19.11.1997) 10788-9.

331 H.R. Deb. (22.11.1999) 12277.

332 H.R. Deb. (22.9.1987) 501-2.

her judgment on the reliability of the information given; for example, the Chair has accepted a Minister's assurance that a matter was not before a court.<sup>333</sup>

### *Matters before royal commissions and other bodies*

Although it is clear that royal commissions do not exercise judicial authority, and that persons involved in royal commissions are not on trial in a legal sense, the proceedings have a quasi-judicial character. The findings of a royal commission can have very great significance for individuals, and the view has been taken that in some circumstances the sub judice convention should be applied to royal commissions.

The principal distinctions that have been recognised have been that:

- Matters before royal commissions or other similar bodies which are concerned with the conduct of particular persons should not be referred to in proceedings if, in the opinion of the Chair, there is a likelihood of prejudice being caused as a result of the references in the House.
- Matters before royal commissions or similar bodies dealing with broader issues of national importance should be able to be referred to in proceedings unless, in the opinion of the Chair, there are circumstances which would justify the convention being invoked to restrict reference in the House.<sup>334</sup>

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>335</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.<sup>336</sup> 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. Speaker Smith noted in relation to comment on a royal commission:

... it would be a ridiculous restriction of debate if matters that have been raised in public and reported in the media could not be aired in the national parliament.<sup>337</sup>

However, in 1978 Speaker Snedden drew a Member's attention to the need for restraint in his remarks about the evidence before a royal commission. Debate was centred on a royal commission appointed by the Government to inquire into a sensitive matter relating to an electoral re-distribution in Queensland involving questions of fact and the propriety of actions of Cabinet Ministers and others.<sup>338</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

333 E.g. H.R. Deb. (19.9.1985) 1320.

334 H.R. Deb. (27.6.1994) 1979.

335 H.R. Deb. (12.8.1954) 222.

336 The same rule has been held to apply to judicial inquiries into the actions of specific persons, H.R. Deb. (5.3.1984) 511. *See also* H.R. Deb. (1.12.1988) 3649–50 where the question arose in connection with a State commission of inquiry.

337 H.R. Deb. (13.8.2015) 8322.

338 *See* Ch. on 'Elections and the electoral system'.



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>339</sup>

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

The application of the convention became an issue in 1995 in connection with a royal commission appointed by the Government of Western Australia. In this case, although the terms of reference did not identify persons, the Royal Commissioner subsequently outlined issues which included references to the propriety of the actions of a Minister at the time she had been Premier of Western Australia. In allowing Members to continue to refer to the commission's proceedings, the Speaker noted that the terms of reference did not require the royal commission to inquire into whether there had been any breach of a law of the Commonwealth, that the issues had a highly political element, the publicity already given to the matter and the purpose of the convention. Nevertheless the Speaker rejected the view that the convention should not continue to be applied to royal commissions, and stated that each case should be judged on its merits.<sup>340</sup>

When other bodies have a judicial or quasi-judicial function in relation to specific persons the House needs to be conscious of the possibility of prejudicing, or appearing to prejudice, their case. When the judicial function is wider than this—for example, a matter for arbitration or determination by the Industrial Relations Commission—there would generally be no reason for restraint of comment in the House. Not to allow debate on such issues would be contrary to 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 commissioners, who make their determinations on the facts as placed before them.

The discretion of the Chair, and the need to recognise the competing considerations, is always at the core of these matters.

## INTERRUPTIONS TO MEMBERS SPEAKING

A Member may only interrupt another Member to:

- call attention to a point of order;
- call attention to a matter of privilege suddenly arising;
- call attention to the lack of a quorum;
- call attention to the unwanted presence of visitors;
- move that the Member be no longer heard;
- move that the question be now put;
- move that the business of the day be called on; or
- make an intervention as provided in the standing orders.<sup>341</sup>

Also if the Speaker stands during a debate, any Member then speaking or seeking the call shall sit down and the House shall be silent, so the Speaker may be heard without interruption.<sup>342</sup> A Member has been directed to leave the Chamber for an hour for having

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339 H.R. Deb. (30.5.1978) 2780.

340 H.R. Deb. (18.9.1995) 1049–52.

341 S.O. 66.

342 S.O. 61(a).

interjected a second time after having been reminded that the Speaker had risen.<sup>343</sup> Members may also be interrupted by the Chair on matters of order and at the expiration of time allotted to debate. The Chair may withdraw the call as an action in response to disorder.<sup>344</sup> It is not in order to interrupt another Member to move a motion, except as outlined above.<sup>345</sup>

## Interventions

Historically, it was not the practice of the House for Members to ‘give way’ in debate to allow another Member to intervene.<sup>346</sup> However, following a Procedure Committee recommendation,<sup>347</sup> in September 2002 the House agreed to a trial of a new procedure which permitted Members to intervene in debate in the Main Committee (Federation Chamber) to ask brief questions of the Member speaking.<sup>348</sup> The standing order, later adopted permanently and in 2013 extended to the House, now provides as follows:

**66A** During consideration of any order of the day a Member may rise and, if given the call, ask the Speaker whether the Member speaking is willing to give way. The Member speaking will either indicate his or her:

- (a) refusal and continue speaking, or
- (b) acceptance and allow the other Member to ask a short question or make a brief response immediately relevant to the Member's speech, for a period not exceeding 30 seconds—

Provided that, if, in the opinion of the Speaker, it is an abuse of the orders or forms of the House, the intervention may be denied or curtailed.

The intervention must be immediately relevant to the speech being made. Interventions are not appropriate during Ministers' second reading speeches, because of their significance in terms of statutory interpretation, but could be appropriate during a Minister's summing up.<sup>349</sup> The Deputy Speaker has refused to allow interventions during the budget estimates debates,<sup>350</sup> which already provide question and answer opportunities. Similar considerations could be seen as applying to all consideration in detail proceedings, where multiple speaking opportunities allow Members to respond to each other's speeches.

## Interjections

When a Member is speaking, no Member may converse aloud or make any noise or disturbance to interrupt the Member.<sup>351</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* page 497).

In order to facilitate debate the Chair may regard it as wise not to take note of interjections.<sup>352</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. 66]. 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>353</sup>

343 H.R. Deb. (16.3.2000) 14910 (the Member was then named on further interjecting).

344 E.g. H.R. Deb. (22.11.2011) 13429–30.

345 VP 1974–75/338 (21.11.1974).

346 H.R. Deb. (7.10.1908) 861.

347 Standing Committee on Procedure, *The Second Chamber: enhancing the Main Committee*, PP 158 (2000) 36–8.

348 Sessional order 84A, VP 2002–04/350–1 (22.8.2002). Statement by Deputy Speaker, H.R. Deb. (17.9.2002) 6471. First interventions, H.R. Deb. (17.9.2002) 6475, 6478, 6481.

349 H.R. Deb. (14.5.2003) 14495–6.

350 The detail stage of the main appropriation bill, H.R. Deb. (17.6.2008) 5121.

351 S.O. 65(b).

352 H.R. Deb. (14.8.1903) 3664; H.R. Deb. (16.6.1915) 4014; H.R. Deb. (18.6.1915) 4229–30.

353 H.R. Deb. (14.7.1920) 2707.

The Chair, although recognising all interjections as disorderly, has also been of the opinion that it should not interfere as long as they were short and did not interrupt the thread of the speech being delivered.<sup>354</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>355</sup> and the Chair has suggested that Members refrain from adopting an interrogatory method of speaking which provokes interjections.<sup>356</sup> It is not uncommon for the Chair, when ordering interjectors to desist, to urge the Member speaking to address his or her remarks through the Chair and not to invite or respond to interjections.<sup>357</sup> Interjections which are not replied to by the Member with the call or which do not lead to any action or warning by the Chair are not recorded in Hansard.

It may be accepted that, as the House is a place of thrust and parry, the Chair need not necessarily intervene in the ordinary course of debate when an interjection is made. Intervention would be necessary if interjections were, in the opinion of the Chair, too frequent or such as to interrupt the flow of a Member's speech or were obviously upsetting the Member who had the call. The Chair has a duty to rebuke the person who interjects rather than chastise the Member speaking for replying to an interjection.

## CURTAILMENT OF SPEECHES AND DEBATE

### Curtailement of speeches

A speech is terminated when a Member resumes his or her seat at the conclusion of his or her remarks, when the time allowed for a speech under the standing orders expires, or when the House agrees to the question 'That the Member be no longer 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>358</sup> Following a recommendation from the Standing Orders Committee that the House adopt a specific standing order limiting the time of speeches,<sup>359</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>360</sup> The standing order, as amended, is now standing order 1 and, unless the House otherwise orders, time limits now apply to all speeches with the exceptions of the main appropriation bill for the year, where there is no time limit for the mover of the second reading and for the Leader of the Opposition or one Member deputed by the Leader of the Opposition when speaking to the second reading.

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354 H.R. Deb. (12.9.1901) 4810.

355 H.R. Deb. (28.9.1905) 2986; H.R. Deb. (1.5.1996) 107.

356 H.R. Deb. (1.5.1914) 539.

357 E.g. H.R. Deb. (5.5.1983) 250; H.R. Deb. (10.11.1983) 2630-1; H.R. Deb. (1.5.1996) 107; H.R. Deb. (8.12.1998) 1589.

358 The provisional standing orders adopted on 6 June 1901 only contained time limits for speeches on the motion that later developed into the matter of public importance discussion. The limitations were 30 minutes for the mover and 15 minutes for any other Member speaking.

359 H of R 1 (1912).

360 VP 1912/38 (16.7.1912), 42-5 (17.7.1912). The motion was originally moved by a private Member from the Opposition and it was agreed to by the House with amendments.

The House may agree to vary, for a specific purpose, time limits provided by standing order 1.<sup>361</sup> Time limits have also been varied for debate on a motion to suspend standing orders and other debates.<sup>362</sup>

In relation to committee and private Members' business on Mondays the Selection Committee may allot lesser speaking times than provided by the standing order (*see* Chapter on 'Non-government business'). Time limits do not apply when statements are made by leave of the House.<sup>363</sup> Time limits do not apply during debate on motions of condolence or thanks<sup>364</sup> and, by convention, on valedictory speeches made at the end of a period of sittings and on some other special occasions.<sup>365</sup> The length of other speeches made by indulgence of the Speaker is at the Speaker's discretion; however, a limit of 10 minutes applies if further statements are referred to the Federation Chamber.

The timing clocks are set according to the times prescribed in the standing orders or other orders of the House, even in cases, not uncommon, where informal agreements have been reached between the parties for shorter speaking times for a particular item.<sup>366</sup>

The period of time allotted for a Member's speech is calculated from the moment the Member is given the call<sup>367</sup> (unless the call is disputed by a motion under standing order 65(c)<sup>368</sup>) and includes time taken up by interruptions such as divisions<sup>369</sup> (but not suspensions of Federation Chamber proceedings caused by divisions in the House), quorum calls,<sup>370</sup> points of order<sup>371</sup> (except during Question Time<sup>372</sup>), motions of dissent from rulings of the Chair,<sup>373</sup> and proceedings on the naming and suspension of a Member.<sup>374</sup> The time allotted is not affected by a suspension of the sitting and the clocks are stopped for the duration of the suspension.

### *Extension of time*

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>375</sup> Sometimes in such circumstances a simple motion for extension of time may be more suitable.

After the maximum period allowed for a Member's speech has expired the standing order provides that, on motion determined without debate, the Member may be allowed to continue a speech for one period not exceeding 10 minutes, provided that the extension shall not exceed half of the original period allotted.<sup>376</sup> The motion that a Member's time be extended may be moved without notice by the Member concerned or

361 As examples of variations in time limits for speeches on bills *see* Appropriation Bill (No. 1) 1978–79, VP 1978–80/370 (24.8.1978); and a package of bills considered together in 1998 to provide for new taxation arrangements, VP 1998–2001/207 (9.12.1998).

362 E.g. VP 1998–2001/1347 (4.4.2000); VP 2002–04/1549 (30.3.2004).

363 H.R. Deb. (28.11.1947) 2918; S.O. 1.

364 S.O. 1.

365 During the 44th Parliament (2013–2016) S.O. 1 imposed a limit of 20 minutes on valedictories, but this was not enforced.

366 The Chair has no official knowledge of and cannot enforce such arrangements. However, the Speaker has on occasion directed the Clerks to set the clocks for a shorter time than provided by S.O. 1, assuming this met the convenience of the House, e.g. H.R. Deb. (17.9.2001) 30745–6.

367 H.R. Deb. (14.11.1979) 2970.

368 H.R. Deb. (9.9.1996) 3735.

369 H.R. Deb. (17.11.1920) 6587. This normally includes divisions on motions for the closure of the Member speaking, e.g. H.R. Deb. (18.6.2003) 16799–16802. However, the Speaker has ruled that the clock should be paused if the motion is moved during a question or answer, H.R. Deb. (17.8.2017) 8900.

370 VP 1912/226 (13.11.1912).

371 H.R. Deb. (10.5.1945) 1571.

372 The clock is paused during a point of order made during a question or answer, H.R. Deb. (29.9.2010) 131.

373 H.R. Deb. (1.10.1953) 885. In this case the Member who received the call did not get to speak.

374 H.R. Deb. (8.7.1931) 3561.

375 E.g. VP 1978–80/1602 (28.8.1980), 1690 (18.9.1980); VP 1993–96/2686 (30.11.1995).

376 S.O. 1.

by another Member, and must be put immediately and resolved without amendment.<sup>377</sup> An extension of time for a specified period, less than the time provided by the standing order, has been granted on a motion moved by leave.<sup>378</sup> It has been held that the granting of a second extension requires the suspension of the standing order,<sup>379</sup> but Members have been granted leave to continue a speech in this circumstance.<sup>380</sup> The Federation Chamber cannot suspend standing orders but may grant leave for the length of a speech to be extended.<sup>381</sup> A Member cannot be granted an extension on the question for the adjournment of the House.<sup>382</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>383</sup> Where a Member's time expires during the counting of a quorum, after a quorum has been formed a motion may be moved to grant the Member an extension of time.<sup>384</sup> Where a Member's time has expired during more protracted proceedings, standing orders have been suspended, by leave, to grant additional time.<sup>385</sup>

Despite Selection Committee determinations in relation to private Members' business, Members have spoken again, by leave,<sup>386</sup> or spoken by leave after the time allocated for the debate had expired.<sup>387</sup> Similarly, despite Selection Committee determinations on times for the consideration of committee and delegation business, extensions of time have been granted to Members speaking on these items<sup>388</sup> and Members have also been given leave to speak again.

### *Closure of Member*

With the exceptions stated below, any Member may move at any time that a Member who is speaking 'be no longer heard' and the question must be put immediately and resolved without amendment or debate.<sup>389</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>390</sup>

The motion cannot be moved when a Member is moving the terms of a motion,<sup>391</sup> or when the House has agreed to an extension of time for a speech. If negated, the same motion cannot be moved again if 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>392</sup> A successive closure has also been ruled out of order under the same question rule, the Speaker ruling that by negating the motion when first moved the House had resolved that the Member had the right to be heard.<sup>393</sup>

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377 S.O. 78(a).

378 VP 1976–77/26 (19.2.1976).

379 VP 1970–72/242 (19.8.1970).

380 VP 1970–72/634 (17.8.1971).

381 E.g. H.R. Deb. (21.3.2017) 2659.

382 S.O. 1.

383 H.R. Deb. (9.11.1933) 4356.

384 VP 1985–87/1726 (3.6.1987), H.R. Deb. (3.6.1987) 3909.

385 VP 1993–96/2347 (30.8.1995).

386 E.g. VP 1993–96/1258 (29.8.1994).

387 E.g. VP 1993–96/1617 (5.12.1994).

388 E.g. VP 1993–96/1343 (10.10.1994).

389 S.O. 80. The standing order was first adopted in 1905, VP 1905/181–3 (24.11.1905).

390 H.R. Deb. (24.11.1905) 5762.

391 This provision was included in 1963 following the recommendation of the Standing Orders Committee, H of R 1 (1962–63) 25; VP 1962–63/201 (28.8.1962), 455 (1.5.1963).

392 S.O. 78; e.g. H.R. Deb. (19.10.1977) 2171, VP 2008–10/192 (19.3.2008).

393 H.R. Deb. (26.8.2002) 5654–6.

The motion is not necessarily accepted by the Chair when a Member is speaking with the Chair's indulgence; or when a Member is taking or speaking to a point of order or making a personal explanation, as these matters are within the control of the Chair. In respect of a point of order the matter awaits the Chair's adjudication, and in respect of a personal explanation the Member is speaking with the permission of the Chair under standing order 68. Thus, in both cases the discretion of the Chair may be exercised.<sup>394</sup> The Speaker has declined to accept the motion while a Member who had moved a motion of dissent from the Chair's ruling was speaking, as he desired to hear the basis of the motion of dissent.<sup>395</sup> The Chair is not bound to put the question on the motion if the Member speaking resumes his or her seat having completed the speech, the question having been effectively resolved by that action.<sup>396</sup> A closure of Member motion may be withdrawn, by leave.<sup>397</sup> Where offensive words have been incorporated in such a motion but then accepted by the Chair as having been withdrawn the motion has been regarded as in order.<sup>398</sup> The motion has been moved in respect of a Member making a statement by leave,<sup>399</sup> and in respect of Ministers answering questions.<sup>400</sup>

When the motion has been agreed to, the closed Member has again spoken, by leave.<sup>401</sup> The standing order has been interpreted as applying to the speech currently in progress—a closed Member has not been prevented from speaking again on the same question where the standing orders allow this (for example, during the detail stage of a bill).<sup>402</sup> Notice has been given of a motion to suspend the operation of the standing order for a period except when the motion was moved by a Minister.<sup>403</sup>

## Adjournment and curtailment of debate

### *Motion for adjournment of debate*

Only a Member who has not spoken to the question or who has the right of reply may move the adjournment of a debate. The question must be put immediately and resolved without amendment or debate.<sup>404</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. There is no restriction on the number of times an individual Member may move the motion in the same debate. A motion for the adjournment of the debate on the question 'That the House do now adjourn' is not in order.

Unless a Member requests that separate questions be put, the time for the resumption of the debate may be included in the adjournment question,<sup>405</sup> and when a Member moves the motion 'That the debate be now adjourned' the Chair puts the question in the form 'That the debate be now adjourned and the resumption of the debate be made an order of the day for . . .'. The time fixed for the resumption of debate is 'the next day of sitting', 'a later hour this day', or a specific day. It is only when there is opposition to the adjournment of the debate or to the time for its resumption that the two questions are put

394 Private ruling by Speaker Snedden (17.2.1978).

395 VP 1978–80/572 (21.11.1978); *but see* VP 2002–04/969–70 (18.6.2003).

396 VP 1929–31/484 (5.3.1931), 492 (17.3.1931); VP 1970–72/1060–1 (16.5.1972).

397 VP 1998–2001/1311 (15.3.2000).

398 H.R. Deb. (25.5.2006) 49–58.

399 VP 2002–04/1102 (20.8.2003).

400 *See* 'Length of answers' in Ch. on 'Questions'.

401 H.R. Deb. (4.12.1947) 3213–14, 3264.

402 H.R. Deb. (29.10.1996) 6013–4.

403 E.g. NP (7.12.2000) 8998; NP (19.6.2003) 3846; NP (11.8.2009) 4.

404 S.O. 79(a). A Member who moved a motion to take note of a paper and moved that the debate be adjourned was not regarded as having closed the debate, H.R. Deb. (11.8.2005) 114–6.

405 S.O. 79(a).

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.<sup>406</sup>

If the motion for the adjournment of debate is agreed to, the mover is entitled to speak first when the debate is resumed<sup>407</sup> (see page 502). If the motion is negated, the mover may speak at a later time during the debate<sup>408</sup>—this provision has been interpreted as allowing the Member to speak immediately after a division on the motion for the adjournment.<sup>409</sup> If the motion is negated, 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>410</sup>

If the Selection Committee has determined that consideration of an item of private Members’ business should continue on a future day, at the time set for interruption of the item of business or if debate concludes earlier, the Speaker interrupts proceedings and the matter is listed on the Notice Paper for the next sitting.<sup>411</sup> The Chair will also do this even if the time available has not expired but where there are no other Members wishing to speak.<sup>412</sup>

Standing order 39 allows a Member who has presented a committee or delegation report (after any statements allowed have been made), to move a specific motion in relation to the report. Debate on the question must then be adjourned until a future day.<sup>413</sup>

In the Federation Chamber, if no Member is able to move adjournment of debate, the Chair can announce the adjournment when there is no further debate on a matter, or at the time set for the adjournment of the Federation Chamber.<sup>414</sup> In the House, if there is no Member available qualified to move the motion—that is, when all Members present have already spoken in the debate—the Chair may also, without the motion being moved, simply declare that the debate has been adjourned and that the resumption of the debate will be made an order of the day for the next sitting.<sup>415</sup>

### *Leave to continue remarks*

If a Member speaking to a question asks leave of the House to continue his or her remarks when the debate is resumed, this request is taken to be an indication that the Member wishes the debate to be adjourned.<sup>416</sup> 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>417</sup> If leave is refused, the Member may continue speaking until the expiration of the time allowed.<sup>418</sup> However, refusal is unlikely, as the

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406 VP 1978–80/1473 (13.5.1980).

407 S.O. 79(b).

408 S.O. 79(c).

409 H.R. Deb. (4.9.2000) 20047.

410 S.O. 78(e). 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. (30.6.1949) 1892–3.

411 S.O. 41(a). E.g. VP 1993–96/2080 (29.5.1995); VP 2008–10/1119 (15.6.2009).

412 VP 1993–96/1972 (27.3.1995).

413 VP 1993–96/2107 (5.6.1995); VP 2008–10/1118 (15.6.2009).

414 S.O. 194.

415 This practice is not recognised by the standing orders, but is a pragmatic development (supported by a Speaker’s private ruling) which is recorded as occurring by leave. It is likely to occur towards the end of a lengthy debate, such as the budget debate.

416 As she or he has spoken to the question, the Member is prevented by S.O. 79(a) from moving that the debate be adjourned.

417 VP 1978–80/1663 (16.9.1980); VP 1998–2001/1418 (13.4.2000); VP 2010–13/200 (17.11.2010).

418 VP 1976–77/173 (6.5.1976).

Member's request for leave is generally made to suit the convenience of the House in concluding proceedings on an item of business at a prearranged time.

When a Member's speech is interrupted by the operation of a standing order providing for the interruption of business at a fixed time,<sup>419</sup> leave of the House for the Member to continue the speech when the debate is resumed is implied and automatic. This is so whether or not an announcement noting the leave to continue is made by the Chair.

Leave is necessary because the Member interrupted would otherwise be speaking twice to the same question, in contravention of standing order 69. A Member granted leave to continue his or her remarks is entitled to the first call when the debate is resumed, and may then speak for the remainder of his or her allotted time. If the Member does not speak first when the debate is resumed the entitlement to continue is lost.<sup>420</sup>

### *Closure of question*

After a question has been proposed from the Chair (that is, only after the motion concerned has been moved and, if necessary, seconded) a Member may move 'That the question be now put'. This motion must be moved without comment, be put immediately and resolved without amendment or debate.<sup>421</sup> No notice is required of the motion and it may be moved irrespective of whether or not another Member is addressing the Chair. When the closure is moved, it applies only to the immediate question before the House.

The requirement for the closure motion to be put immediately and resolved without amendment or debate means that, until the question on this motion has been decided, there is no opportunity for a point of order to be raised or a dissent motion to be moved in respect of the putting of the motion. The closure thus takes precedence over other opportunities or rights allowed by the standing orders.<sup>422</sup>

The provision for the closure of a question, commonly known as 'the gag', was incorporated in the standing orders in 1905<sup>423</sup> but was not used until 1909.<sup>424</sup> Since then it has been utilised more frequently.<sup>425</sup> The closure has been moved as many as 41 times in one sitting<sup>426</sup> and 29 times on one bill.<sup>427</sup>

If a motion for the closure is negatived, the Chair shall not receive the same proposal again if of the opinion that it is an abuse of the orders or forms of the House or moved for the purpose of obstructing business.<sup>428</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>429</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

419 Or equivalent situation, for example a speech in the Main Committee (Federation Chamber) interrupted by a division in the House causing the premature adjournment of the Committee, VP 2008–10/1241 (17.8.2009), H.R. Deb. (17.8.2009) 8110. In special circumstances a Member has been granted leave to recommence an interrupted speech from the beginning, H.R. Deb. (5.12.2017) 12539.

420 E.g. VP 1998–2001/1219 (17.2.2000), 1236 (7.3.2000). If the Member wishes to speak later leave is required, e.g. VP 2004–07/677 (12.10.2005)—see 'Leave to speak again' at page 496.

421 S.O. 81.

422 H.R. Deb. (15.3.2000) 14781–9; H.R. Deb. (3.4.2000) 15093.

423 The debate lasted over a week and amendments proposing to give the Chair a discretion not to accept the motion were defeated, VP 1905/167–70 (16.11.1905), 171–2 (21.11.1905), 173–4 (22.11.1905), 175–8 (23.11.1905).

424 VP 1909/105 (7.9.1909).

425 See Appendix 20.

426 VP 1934–37/211–38 (9.4.1935).

427 VP 1923–24/25–48 (27.6.1923).

428 S.O. 78(g); e.g. H.R. Deb. (13.5.1980) 2657.

429 S.O. 85(c).



been included in the allotment of time for the various stages of the bill.<sup>430</sup> The closure cannot be moved on a motion in relation to which the House has adopted the Selection Committee's determination that debate may continue on a future day,<sup>431</sup> as such matters cannot be brought to a vote without the suspension of standing orders.<sup>432</sup> The Chair has declined to accept the closure on a motion of dissent from the Chair's ruling.<sup>433</sup>

If a division on the closure motion is in progress or just completed when the time for the automatic adjournment is reached, and the motion is agreed to, a decision is then taken on the main question(s) before the House before the automatic adjournment procedure is invoked.<sup>434</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>435</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>436</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>437</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>438</sup> Similarly, a motion to suspend standing orders moved during debate of another item of business is superseded by a closure moved before the question on the suspension motion is proposed from the Chair, as the closure applies to the question currently before the House.<sup>439</sup>

Only a Minister may move the closure of the question 'That the House do now adjourn'.<sup>440</sup> Any Member may move the closure of any other question in possession of the House, including a Member who has already spoken to the question.<sup>441</sup> It may be moved by a Member during, or at the conclusion of, his or her speech, but no reasons may be given for so moving,<sup>442</sup> nor may a Member take advantage of the rules for personal explanations to give reasons.<sup>443</sup> If the seconder of a motion has reserved the right to speak, the closure overrides this right.<sup>444</sup>

Notice has been given of a motion to suspend the operation of the standing order for a period except when the motion was moved by a Minister.<sup>445</sup>

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430 VP 1934–37/483 (4.12.1935).

431 H.R. Deb. (9.3.1998) 780–81.

432 VP 1996–98/495 (16.9.1996).

433 H.R. Deb. (16.11.1978) 2893.

434 E.g. H.R. Deb. (4.4.1973) 1102–3; H.R. Deb. (13.10.2005) 96.

435 E.g. VP 1956–57/42 (8.3.1956).

436 A Member has been named and suspended, VP 1954–55/123–4 (27.10.1954); a request has been made for leave to make a statement, VP 1932–34/114 (11.3.1932); the sitting has been suspended for a meal break and on resumption the Speaker has made a statement, VP 1951–53/609 (13.3.1953).

437 E.g. VP 1920–21/260 (19.8.1920); VP 1956–57/74 (12.4.1956); VP 1998–2001/1300 (15.3.2000); H.R. Deb. (21.8.2003) 19205–7; H.R. Deb. (13.10.2005) 93–4.

438 H.R. Deb. (15.5.1980) 2814.

439 H.R. Deb. (12.8.2004) 32954.

440 S.O. 31(c) (since September 2016).

441 VP 1943–44/57 (17.2.1944); H.R. Deb. (17.2.1944) 279, 284; H.R. Deb. (31.3.2004) 27730.

442 H.R. Deb. (20.3.1947) 926–8; H.R. Deb. (27.3.1947) 1229.

443 H.R. Deb. (21.2.1947) 123.

444 H.R. Deb. (26.7.1946) 3203.

445 NP (7.12.2000) 8998; NP (19.6.2003) 3846.

### *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>446</sup> This procedure is described 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<sup>447</sup> apply to debates on:

- the question ‘That the House do now adjourn’ (S.O. 31);
- the question ‘That grievances be noted’ (S.O. 192B);
- a motion for the suspension of standing orders when moved without notice under standing order 47 (S.O. 1);
- a motion for the suspension of standing or other orders on notice relating to the programming of government business under standing order 47 (S.O. 1);
- a motion for allotment of time under the guillotine procedures (S.O. 84);
- proceedings on committee and delegation business and private Members’ business on Mondays (S.O.s 34, 192); and
- matters of public importance (S.O. 46).

A debate (or discussion) may also be concluded:

- at the expiration of the time allotted under the guillotine procedure (S.O. 85(b));
- on withdrawal of a motion relating to a matter of special interest (S.O. 50);
- at the end of the time determined by the Selection Committee (S.O. 222(c));
- by the closure motion ‘That the question be now put’ (S.O. 81);
- by the motion ‘That the business of the day be called on’ in respect of a matter of public importance (S.O. 46(e)); or
- by the motion ‘That the ballot be taken now’ during the election of Speaker or Deputy Speaker (S.O. 11(h)).

A debate may be interrupted:

- by the automatic adjournment (S.O. 31);
- at the time fixed for Members’ 90 second statements (S.O. 43)
- at the time fixed for the beginning of Question Time (S.O. 97(a));
- when the time fixed for the conclusion of certain proceedings under the guillotine procedure has been reached (S.O. 85(a)); or
- at the end of the time determined by the Selection Committee (S.O. 222(c));

In all these cases the standing orders make provision as to how the question before the House is to be disposed of (where necessary).

A debate in the Federation Chamber may be interrupted by:

- the grievance debate;
- the adjournment of the House (S.O. 190(c));
- the motion for the adjournment of the sitting of the Federation Chamber (S.O. 190(e)); or
- the motion that further proceedings be conducted in the House (S.O. 197).

<sup>446</sup> S.O.s 82–85.

<sup>447</sup> Time limits are consolidated in S.O. 1.

The Federation Chamber may resume proceedings at the point at which they were interrupted following any suspension or adjournment (S.O. 196).

## POWERS OF CHAIR TO ENFORCE ORDER

The Speaker or the occupier of the Chair at the time is responsible for the maintenance of order in the House.<sup>448</sup> This responsibility is derived specifically from standing order 60 but also from other standing orders and the practice and traditions of the House.

### Sanctions against disorderly conduct

Under standing order 91, a Member's conduct is considered disorderly if the Member has:

- persistently and wilfully obstructed the House;
- used objectionable words, which he or she has refused to withdraw;
- persistently and wilfully refused to conform to a standing order;
- wilfully disobeyed an order of the House;
- persistently and wilfully disregarded the authority of the Speaker; or
- been considered by the Speaker to have behaved in a disorderly manner.

While specific offences are listed, it is not uncommon for a Member to be disciplined for an offence which is not specifically stated in the terms of the standing order but which is considered to be encompassed within its purview. For example, in regard to conduct towards the Chair, Members have been named for imputing motives to, disobeying, defying, disregarding the authority of, reflecting upon, insolence to, and using expressions insulting or offensive to, the Chair. Since 1905 an unnecessary quorum call has been dealt with as a wilful obstruction of the House.<sup>449</sup>

When the Speaker's attention is drawn to the conduct of a Member, the Speaker determines whether or not it is offensive or disorderly.<sup>450</sup> The standing orders give the Speaker the power to intervene<sup>451</sup> and take action against disorderly conduct by a Member, and to impose a range of sanctions, including directing the Member to leave the Chamber for one hour, or naming the Member.<sup>452</sup>

Before taking such action the Chair will generally first call a Member to order and sometimes warn the Member, but there is no obligation on the Chair to do so.<sup>453</sup> Sometimes the Chair will issue a 'general warning', not aimed at any Member specifically.<sup>454</sup> Members ignoring a warning may invite action by the Chair.

### Direction to leave the Chamber

Pursuant to standing order 94(a), if the Speaker considers a Member's conduct to be disorderly he or she may direct the Member to leave the Chamber<sup>455</sup> for one hour. This

448 See Ch. on 'The Federation Chamber' re order in the Federation Chamber.

449 H.R. Deb. (24.8.1905) 1478. A Member who calls attention to the lack of a quorum when a quorum is present is immediately named by the Chair and a motion moved for the Member's suspension—S.O. 55(e), e.g. VP 1978–80/1277–8 (26.2.1980); VP 1993–96/194 (31.8.1993); H.R. Deb. (9.3.2004) 26264–5.

450 S.O. 92(b).

451 S.O. 92(a).

452 S.O. 94.

453 See H.R. Deb. (5.6.1975) 3404, where a Member was named for disorderly conduct without being called to order or warned; and see statement by Speaker Hawker H.R. Deb. (9.3.2005) 67; and see H.R. Deb. (14.2.2008) 387—statement by Speaker Jenkins.

454 Generally understood as applying to all Members for the remainder of the sitting.

455 Former S.O. 304A used the term 'order the Member to withdraw from the House'.

action is taken as an alternative to naming the Member—the decision as to whether a naming or a direction to leave is more appropriate is a matter for the Speaker’s discretion. The direction to leave is not open to debate or dissent. When so directed, a Member failing to leave the Chamber immediately<sup>456</sup> or continuing to behave in a disorderly manner may be named.<sup>457</sup> In such cases the naming supersedes the direction to leave and the Member concerned is thus able to remain in the Chamber (and vote) until the suspension motion has been agreed to.

To avoid interrupting proceedings—for example, on occasions such as the Treasurer’s Budget speech or Opposition Leader’s speech in reply to the Budget—the Speaker may direct a Member to leave the Chamber by written note, with any further action initiated at the commencement of the next sitting.<sup>458</sup>

Speakers have not proceeded with directions to leave the Chamber after Members concerned have apologised for their actions.<sup>459</sup> Several Ministers have been directed to leave the Chamber under this procedure, including the Leader of the House at the same time as the Manager of Opposition Business.<sup>460</sup> Eighteen Members have been directed to leave on a single day.<sup>461</sup> The mover and seconder of a motion have been ordered to leave the House during the debate that followed the moving of the motion.<sup>462</sup>

This procedure was introduced in 1994 following a recommendation by the Procedure Committee. The committee, noting the seriousness of a suspension and that the process was time-consuming and itself disruptive, considered that order in the House would be better maintained if the Speaker were to have available a disciplinary procedure of lesser gravity, but of greater speed of operation. The committee saw its proposed mechanism as a means of removing a source of disorder rather than as a punishment, enabling a situation to be defused quickly before it deteriorated, and without disrupting proceedings to any great extent.<sup>463</sup> Since the procedure has operated the number of Members named and suspended has declined considerably.

A Member directed to leave the Chamber for an hour is also excluded during that period from the Chamber galleries and the room in which the Federation Chamber is meeting.<sup>464</sup>

Two Senators who disrupted proceedings at a meeting of the House and Senate in the House Chamber were ordered to withdraw from the House for one hour. On their refusing to do so, they were named ‘for continuing to defy the Chair’ and suspended for 24 hours, preventing them from attending a further such meeting the following day.<sup>465</sup>

456 E.g. VP 1996–98/758–9 (31.10.1996), 2461–2 (18.11.1997).

457 E.g. VP 1998–2001/397–8 (11.3.1999), 2052 (7.2.2001), 2126 (1.3.2001); VP 2002–04/1527–8 (24.3.2004); VP 2008–10/1142 (18.6.2009).

458 H.R. Deb. (10.5.2011) 3432.

459 E.g. VP 1998–2001/663 (24.6.1999); VP 2004–07/941 (14.2.2006); H.R. Deb. (5.6.2008) 4717.

460 VP 2008–10/509 (4.9.2008); H.R. Deb. (4.9.2008) 7244.

461 VP 2013–16/1014–6 (27.11.2014).

462 VP 2004–07/1899 (28.5.2007).

463 Standing Committee on Procedure, *About time: bills, questions and working hours*, PP 194 (1993) 28.

464 S.O. 94(e).

465 VP 2002–04/1276 (23.10.2003); J 2002–04/2597 (23.10.2003). Although the motion agreed to took the usual form of suspending the offenders ‘from the service of the House’ they were in effect also barred from a meeting of the Senate. *Odgers* reports that the Speaker ‘purported to eject two Senators from one meeting and exclude them from the other’ (14th edn, p. 184). For other references see ‘Addresses to both Houses by foreign heads of state’ in Ch on ‘Order of business and the sitting day’.

## Naming of Members

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 UK House of Commons was in 1641.<sup>466</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>467</sup> The first recorded suspension was in respect of Mr Catts on 18 August 1910.<sup>468</sup> A Member is usually named by the name of his or her electoral division, the Chair stating ‘I name the honourable Member for . . .’. Office holders have been named by their title.<sup>469</sup> In 1927, when a point of order was raised that the Speaker 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>470</sup>

Office holders named have included Ministers,<sup>471</sup> Leaders of the Opposition<sup>472</sup> and party leaders.<sup>473</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>474</sup> No Member has been named twice on the one occasion, but the Chair has threatened to take this action.<sup>475</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>476</sup> A Member has been named for refusing to withdraw words which the Chair had 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>477</sup>

The Chair has refused to accept a dissent motion to the action of naming a Member on the quite correct ground that, in naming a Member, the Chair has not made a ruling.<sup>478</sup>

## Proceedings following the naming of a Member

Following the naming of a Member, the Speaker must immediately put the question, on a motion being made, ‘That the Member [for . . .] be suspended from the service of the House’. No amendment, adjournment, or debate is allowed on the question.<sup>479</sup>

466 John Hatsell, *Precedents of proceedings in the House of Commons*, 4th edn, London, 1818, vol. II, p. 238; Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, vol. III, p. 72 n 1.

467 H.R. Deb. (21.11.1901) 7654.

468 VP 1910/78 (18.8.1910).

469 E.g. H.R. Deb. (27.2.1975) 824, but the identity of the Minister named is shown in the Votes and Proceedings as ‘the honourable Member for . . .’, VP 1974–75/502 (27.2.1975).

470 H.R. Deb. (1.12.1927) 2397.

471 VP 1929–31/593 (24.4.1931), 828 (18.9.1931); VP 1937–40/135 (15.6.1938) (and suspended); VP 1961/36 (23.3.1961) (and suspended); VP 1974–75/502–3 (27.2.1975) (motion for suspension negatived, leading to resignation of Speaker).

472 VP 1914–17/148 (17.12.1914); VP 1948–49/295–6 (1.6.1949); VP 1985–87/1151 (24.9.1986). On each occasion suspensions followed.

473 E.g. VP 1973–74/404–5 (27.9.1973); VP 1985–87/1081–2 (21.8.1986) (and suspended).

474 VP 1932–34/608–10 (5.4.1933); VP 1973–74/93–5 (5.4.1973); VP 1974–75/1068–9 (29.10.1975). On the occasion when two Members were suspended on one motion an attempt to raise the matter as one of privilege the next day was ruled out of order as the vote could not be reflected upon except on a rescission motion, VP 1946–48/40 (28.11.1946), 43 (29.11.1946).

475 H.R. Deb. (9.10.1975) 1927; while bells were ringing for division on question for suspension, the Member reflected on the Chair.

476 VP 1934–37/361 (21.11.1935); VP 1974–75/154 (17.9.1974). 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.

477 VP 1937/106–7 (10.9.1937).

478 H.R. Deb. (24.9.1986) 1316–18.

479 S.O. 94(b).

Especially before the introduction of standing order 94(a), it was not uncommon for the Chair to withdraw the naming of a Member or for the matter not to be proceeded with after other Members had addressed the Chair on the matter and the offending Member had apologised.<sup>480</sup> Such interventions are usually made by a Minister or a member of the opposition executive before the motion for suspension is moved, as it was put on one occasion ‘to give him a further opportunity to set himself right with the House’.<sup>481</sup> The motion for suspension has not been proceeded with when:

- the Speaker requested that the motion not proceed;<sup>482</sup>
- the Speaker stated that no further action would be taken if the Member (who had left the Chamber) apologised immediately on his return;<sup>483</sup>
- a Member’s explanation was accepted by the Chair;<sup>484</sup>
- the Chair thought it better if the action proposed in naming a Member were forgotten;<sup>485</sup>
- the Chair accepted an assurance by the Leader of the Opposition that the Member named had not interjected;<sup>486</sup>
- the Chair acceded to a request by the Leader of the Opposition not to proceed with the matter;<sup>487</sup>
- the Member withdrew the remark which led to his naming and apologised to the Chair;<sup>488</sup>
- the Member apologised to the Chair;<sup>489</sup>
- the Speaker instead,<sup>490</sup> or having withdrawn the naming,<sup>491</sup> directed the Member to leave the Chamber for one hour.

On one occasion the motion for a Member’s suspension was moved but, with disorder in the House continuing, the Speaker announced that to enable the House to proceed he would not put the question on the motion.<sup>492</sup>

A motion for the 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>493</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 or her suspension,<sup>494</sup> the intention of the standing order, as borne out by practice, is presumably that the matter be proceeded with immediately without extraneous interruption.

480 E.g. H.R. Deb. (29.11.1901) 8056–7; VP 1970–72/1268 (19.10.1972); H.R. Deb. (19.10.1972) 2955; VP 1983–84/916 (4.10.1984); H.R. Deb. (4.10.1984) 1631; VP 1990–93/1899 (24.11.1992).

481 H.R. Deb. (4.7.1919) 10464. On occasions the Chair has, initially at least, declined to allow Members to apologise, H.R. Deb. (1.10.1912) 3622–3, H.R. Deb. (12.12.1912) 6941. On other occasions Members named have been given no opportunity to apologise, H.R. Deb. (27.4.1955) 218–21, 222–3; H.R. Deb. (5.6.1975) 3404; H.R. Deb. (11.9.1980) 1225–6.

482 VP 1937–40/233 (2.11.1938).

483 VP 1973–74/166 (9.5.1973).

484 VP 1974–75/109 (1.8.1974), 256 (23.10.1974). On the latter occasion the motion for the suspension had been moved but the question had not been put, H.R. Deb. (23.10.1974) 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 (24.9.1970). *See also* H.R. Deb. (24.11.1992) 3391, H.R. Deb. (11.8.1999) 8386–8.

485 H.R. Deb. (30.8.1962) 943–4.

486 VP 1964–66/153 (15.9.1964); H.R. Deb. (15.9.1964) 1093.

487 VP 1964–66/626 (23.8.1966); H.R. Deb. (23.8.1966) 307.

488 VP 1978–80/342 (16.8.1978).

489 VP 1983–84/216 (14.9.1983); H.R. Deb. (14.9.1983) 750.

490 VP 1998–2001/2509 (21.8.2001).

491 H.R. Deb. (22.11.2010) 3255.

492 H.R. Deb. (18.2.1982) 321–4, VP 1980–83/720–1 (18.2.1982).

493 VP 1914–17/567 (22.2.1917).

494 H.R. Deb. (16.3.1944) 1473–4.

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>495</sup> and the Chair has seen it as within his or her right at any time to call on the Minister leading the House to give effect to its rules and orders.<sup>496</sup>

The motion for the suspension of a Member has been negated on three occasions. On the first occasion the Government did not have sufficient Members present to ensure that the motion was agreed to.<sup>497</sup> On the second occasion 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 negated. The Speaker resigned on the same day because of this unprecedented lack of support.<sup>498</sup> On the third occasion the minority Government did not obtain sufficient support from crossbench Members to ensure that the motion was agreed to.<sup>499</sup>

During the short-lived experiment with Friday sittings on 22 February 2008, during which any divisions were to be deferred until the next sitting, two Members were named and motions moved that they be suspended. The motions were agreed to when the divisions on them occurred two weeks later.<sup>500</sup>

A suspension on the first occasion is for 24 hours; on the second occasion in the same year, for three consecutive sittings<sup>501</sup>; and on the third and any subsequent occasion in the same year, for seven consecutive sittings.<sup>502</sup> Suspensions for three and seven sittings are exclusive of the day of suspension. A suspension in a previous session or a direction to leave the Chamber for one hour is disregarded and a ‘year’ means a year commencing on 1 January and ending on 31 December.<sup>503</sup> There is only one instance of a Member having been suspended on a third occasion.<sup>504</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>505</sup> 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’. Members have also been suspended for varying periods in other circumstances—that is, not following a naming by the Chair—see ‘Punishment of Members’ in the Chapter on ‘Privilege’.

Once the House has ordered that a Member be suspended he or she must immediately leave the Chamber. If a Member refuses to leave, the Chair may order the Serjeant-at-Arms to remove the Member—see ‘Removal by Serjeant-at-Arms’ at page 541.

A Member suspended from the service of the House is excluded from the Chamber, its galleries and the room in which the Federation Chamber is meeting,<sup>506</sup> and may not

495 The motion has been moved by a Member other than a Minister, VP 1974–75/502 (27.2.1975), VP 1996–98/360 (27.6.1996) (no seconder in either case); and has not been moved when it appeared that the Chair did not wish the Minister to do so, H.R. Deb. (27.4.1955) 223.

496 H.R. Deb. (14.7.1920) 2710; H.R. Deb. (28.7.1920) 3015.

497 VP 1937–40/223 (14.10.1938); H.R. Deb. (14.10.1938) 862.

498 VP 1974–75/502–3 (27.2.1975); for details see ‘Speaker’s authority not supported by the House’ in Ch. on ‘The Speaker, Deputy Speakers and officers’.

499 Following the vote the Speaker announced that he would consider his position. A motion of confidence in the Speaker was immediately moved by the Leader of the Opposition, seconded by the Prime Minister and carried unanimously. VP 2010–13/584 (31.5.2011), H.R. Deb. (31.5.2011) 8284–6.

500 VP 2008–10/120, 122 (22.2.2008), 128–9 (11.3.2008).

501 VP 2013–16/1465P (25.6.2015)—first instance under current provisions.

502 Before February 1994 the penalties were 24 hours, 7 calendar days and 28 calendar days.

503 S.O. 94(d) refers to ‘the same calendar year’.

504 VP 1917–19/506 (28.8.1919)—suspended for one month under the rule then applying (until 1963 the count was not recommenced in each calendar year or each Parliament).

505 VP 1914–17/148 (17.12.1914), 153 (18.12.1914). A letter of apology was submitted and accepted at the next sitting.

506 S.O. 94(e), e.g. H.R. Deb. (1.12.1988) 3667. This standing order (i.e. former S.O. 307) was adopted in the 1963 revision of the standing orders and followed a 1955 resolution to that effect, VP 1962–63/455 (1.5.1963); H of R 1 (1962–63) 55. Prior to this Members under suspension had on occasions been instructed to leave Parliament House.

participate in Chamber related activities. Thus petitions, notices of motion and matters of public importance are not accepted from a Member under suspension. A suspended Member is not otherwise affected in the performance of his or her duties. In earlier years notices of questions have been accepted from a Member after his suspension,<sup>507</sup> although this has not been the recent practice, and notices of motions standing in the name of a suspended Member have been called on, and, not being moved or postponed, have been lost, as have matters of public importance.<sup>508</sup>

Suspension from the service of the House does not exempt a Member from serving on a committee of the House.<sup>509</sup> The payment of a Member's salary and allowances is not affected by a suspension.

Members have been prevented from subsequently raising the subject of a suspension as a matter of privilege as the matter has been seen as one of order, not privilege,<sup>510</sup> and because a vote of the House could not be reflected upon except for the purpose of moving that it be rescinded.<sup>511</sup> Members have also been prevented from subsequently referring to the naming of a Member once the particular incident was closed.<sup>512</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>513</sup> On other occasions Members have returned and apologised following suspension of the standing orders<sup>514</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>515</sup>

### Gross disorder by a Member

If the Speaker determines that there is an urgent need to protect the dignity of the House, he or she can order a grossly disorderly Member to leave the Chamber immediately. When the Member has left, the Speaker must immediately name the Member and put the question for suspension without a motion being necessary. If the question is resolved in the negative, the Member may return to the Chamber.<sup>516</sup>

This standing order has only once been invoked<sup>517</sup> but its pre-1963 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.

507 NP 38 (6.9.1960) 366–7; VP 1960–61/159 (1.9.1960).

508 VP 1974–75/788–90 (5.6.1975); NP 82 (5.6.1975) 8523–4; VP 1987–90/527 (18.5.1988); VP 1987–90/1273 (24.5.1989).

509 Redlich 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'. Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, vol. 1, p. 182. *See also May*, 24th edn, p. 458.

510 VP 1917–19/509 (29.8.1919).

511 VP 1946–48/43 (29.11.1946).

512 H.R. Deb. (13.12.1912) 7032–3.

513 VP 1970–72/327 (24.9.1970).

514 VP 1962–63/461 (2.5.1963); VP 1964–66/98 (14.5.1964).

515 VP 1959–60/15 (18.2.1959). In this case standing orders should have been suspended to enable the motion to be moved.

516 S.O. 94(c).

517 VP 2008–10/120 (22.2.2008).



In addition, provision was made for the House to judge the matter by requiring the Chair to name the Member immediately after he or she had left the Chamber.<sup>518</sup>

### *Removal by Serjeant-at-Arms*

If a Member refuses to follow the Speaker's direction in a case of disorderly conduct, the Speaker may order the Serjeant-at-Arms to remove the Member or take the Member into custody.<sup>519</sup>

No cases have occurred of a Member being taken into custody by the Serjeant-at-Arms. Removal by the Serjeant has usually occurred after a Member has been named and suspended but has refused to leave the Chamber.<sup>520</sup> On one occasion, the Speaker having ordered the Serjeant-at-Arms to direct a suspended Member to leave, 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>521</sup>

A Member has also been escorted from the Chamber by the Serjeant when failing to leave when directed under standing order 94(a).<sup>522</sup>

### *Grave disorder in the House*

In the event of grave disorder occurring in the House, the Speaker, without any question being put, can suspend the sitting and state the time at which he or she will resume the Chair; or adjourn the House to the next sitting.<sup>523</sup> On four occasions when grave disorder has arisen the Chair has adjourned the House until the next sitting.<sup>524</sup> The Chair has also suspended the sitting in such circumstances on nine occasions.<sup>525</sup>

### *Disorder in the Federation Chamber*

Disorder in the Federation Chamber is covered in the Chapter on 'The Federation Chamber'.

### *Other matters of order relating to Members*

The Speaker can intervene to prevent any personal quarrel between Members during proceedings.<sup>526</sup> This standing order has only once been invoked to prevent the prosecution of a quarrel<sup>527</sup> but the Chair has cited the standing order in admonishing Members for constantly interjecting in order to irritate or annoy others.<sup>528</sup>

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518 VP 1962–63/455 (1.5.1963); 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.

519 S.O. 94(i).

520 E.g. VP 1914–17/567 (22.2.1917); VP 1920–21/213–4 (22.7.1920), 258–9 (19.8.1920), 386 (20.10.1920); VP 1923–24/159 (17.8.1923); VP 1990–93/757 (16.5.1991); VP 1996–98/3194–5 (2.7.1998).

521 VP 1970–72/76 (8.4.1970).

522 VP 2008–10/120 (22.2.2008) (following a point of order the Member was subsequently named under S.O. 94(c)).

523 S.O. 95.

524 VP 1954–55/351 (13.10.1955); VP 1956–57/169 (24.5.1956); VP 1973–74/405 (27.9.1973); VP 1985–87/1273 (23.10.1986).

525 VP 1917–19/453 (4.7.1919) (15 minutes); VP 1954–55/184 (3.5.1955) (until 2.30 p.m. the next day); VP 1970–72/76 (8.4.1970) (on two occasions, until the ringing of the bells and until 10.30 a.m. this day); VP 1970–72/209 (11.6.1970), 691 (7.9.1971) (until the ringing of the bells—both occasions followed grave disorder arising in the galleries); VP 2008–10/120, 122 (22.2.2008) (two occasions on the same day, for 15 minutes and until the ringing of the bells); VP/2016–18/419 (30.11.2016) (until the ringing of the bells following disorder in the galleries).

526 S.O. 92(a).

527 VP 1980–83/1118 (20.10.1982); H.R. Deb. (20.10.1982) 2318.

528 H.R. Deb. (27.6.1906) 751.

542 *House of Representatives Practice*

A Member who wilfully disobeys an order of the House may be ordered to attend the House to answer for his or her conduct. A motion to this effect can be moved without notice.<sup>529</sup>

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<sup>529</sup> S.O. 93.