

History of standing order 344

Versions of standing order 344

The original version

- 2.1 The House of Representatives has had the equivalent of (former) standing order 344 dealing with visitors to committee hearings since its first standing orders (June 1901). The text was:
341. When a Committee is examining witnesses Strangers may be admitted, but shall be excluded at the request of any Member, or at the discretion of the Chairman of the Committee, and shall always be excluded when the Committee is deliberating.
- 2.2 The essential elements of the first version of the standing order were the same as the version which stood until February 2003.

Origin of the 1901 version

- 2.3 The standing order was modelled on the equivalent South Australian order. The South Australian Legislative Assembly (and some other state legislatures) still have a similar standing order. The text of the South Australian version is:
- “338. Admission of strangers
- When a committee is examining witnesses, persons other than Members of the committee and its advisers may be admitted but are excluded at the request of any Member or at the discretion of

the Chairman of the committee and are always excluded when the committee is deliberating.”

House of Commons precedent not authoritative

- 2.4 Because the House from its inception has had a version of standing order 344, the saving provision (standing order 1) which, in the absence of a standing order on any issue, provides for the House to have “resort” to the practice of the Commons House of the Parliament, does not apply.

1994 version of standing order 344

- 2.5 The original wording of standing order 344 remained unchanged until the version of the standing orders which applied from 9 November 1994. The changes were stylistic only with capitals being deleted and “Chairman” becoming “chair”. The text of this version was:

337. When a committee is examining witnesses, strangers may be admitted, but shall be excluded at the request of any member, or at the discretion of the chair of the committee, and shall always be excluded when the committee is deliberating.

1998 version of standing order 344

- 2.6 The most recent revision of standing order 344 dates from 1998. The text is set out again for ease of comparison with the 1994 version:

344. When a committee or subcommittee is examining a witness, or engaged in other proceedings for the purpose of gathering information, visitors may be admitted. They shall withdraw if requested by the chair or if any member of the committee or subcommittee asks the chair to request their withdrawal. All visitors must withdraw when the committee or subcommittee is deliberating or taking evidence in camera.

- 2.7 Although the standing order looks different, there is no substantive change to its operation. The word “strangers” is changed to “visitors” and the order is changed in that the chair’s request for withdrawal is placed before reference to “any individual member”. Also, members are to go through the chair in requesting visitors to leave. It is questionable whether there is a discretion for the chair to refuse the request.
- 2.8 For ease of comparison the original version of the standing order, together with the South Australian equivalent, is in Appendix B. The amendments introduced in 1994 and 1998 are also in Appendix B.

Practice in other jurisdictions

- 2.9 This section is for comparative purposes only. Any rules relating to visitors at hearings of House of Representatives committees is, of course, for the House to determine.

Senate practice

- 2.10 The original Senate standing order on the admission of visitors to hearings was in the same terms as the original House standing order (with “any Senator” instead of “any Member”).
- 2.11 The 6th edition of *Odgers’ Senate Practice*, 1991 [p. 764] included the following commentary on Senate standing order 305 (which was in the same terms as the House standing order 344 before the latter was amended in 1994):

It is submitted that this Standing Order should be interpreted as meaning that strangers may be excluded at the request of any Senator, but only following a majority decision of the committee. The Chairman should exercise his discretion to exclude strangers only in case of misconduct. This interpretation of the rule is consistent with the practice of the Senate, upon which committees should model their own procedures.

- 2.12 There is no longer a Senate equivalent to the House of Representatives (and South Australian) provision. The presumption in the Senate is that evidence will be taken in public. Senate standing orders and resolutions make it clear that evidence can be taken *in camera* though the assumption is that the whole committee would determine this (as in the House of Representatives).
- 2.13 The text of the current (equivalent) Senate standing order is:
- 36 Public and private meetings
- Persons other than members and officers of a committee may attend a public meeting of a committee but shall not attend a private meeting except by express invitation of the committee, and shall always be excluded when the committee is deliberating.

Practice in other Australian jurisdictions

New South Wales, South Australian and A.C.T. Legislative Assemblies

- 2.14 New South Wales has a similar provision to that in standing order 344. Its terms are:

335. At a hearing any person may be admitted but may be excluded at the discretion of the Chairman or at the request of any committee member.

- 2.15 As noted in 2.3 above, South Australia also has a similar provision. The A.C.T. Assembly has a similar standing order. [A.C.T. standing order 236.]

Western Australian Legislative Assembly

- 2.16 The Assembly assumes that hearings will be open to the media and public unless the committee determines that evidence will be taken in private session. [standing order 323.]

Tasmanian Legislative Assembly

- 2.17 The relevant Tasmanian standing order is in the same terms as the original House of Representatives, Senate and South Australian Legislative Assembly (see paragraph 2.3 above). [standing order 356.]

Victorian and Queensland Legislative Assemblies

- 2.18 Victorian and Queensland committees admit visitors "at pleasure", that is, as directed by the majority of the committee. The relevant Victorian standing order is:

209. Admission of strangers to Committees.

When a Select Committee is examining witnesses, strangers may be admitted or excluded at pleasure; but shall always be excluded when the committee is deliberating. [Victorian standing orders 1996.]

- 2.19 The equivalent Queensland standing order is identical except that the word "select" is missing. [Queensland Legislative Assembly standing order 200.]

Current United Kingdom House of Commons equivalent

- 2.20 Visitors (strangers) are admitted to House of Commons standing committees while they are taking evidence unless the committee decides otherwise. That is, the presumption is that visitors will be welcome and the committee only needs to take action to prevent visitors attending hearings. In relation to select committees (which have a similar function to our standing committees) the committee has to take the initiative to admit visitors to hearings. The relevant standing orders are:

89 (2) Strangers shall be admitted to a standing committee unless the committee otherwise orders.

125. – (1) A select committee shall have power, if it so orders, to admit strangers during the examination of witnesses.

(2) A subcommittee appointed by such a select committee shall have a like power except as that committee otherwise orders.

- 2.21 Ancient (and continuing) practice in the House of Commons was that decisions regarding the admission of visitors were made by the whole committee (i.e. a majority). There was no right of an individual member (including the chair) to initiate such a result.¹ The current statement expressing the House of Commons procedures is:

Meetings at which evidence is being taken are, by custom, held in public and strangers are admitted. A committee may at any time, however, order that a meeting or part of a meeting be held in private, and strangers are then required to withdraw. Meetings at which committees deliberate are invariably held in private.²

Practice in the Canadian House of Commons

- 2.22 There is no equivalent to standing order 344 in the standing orders of the Canadian House of Commons. The standing order relating to proceedings in committee is:

116. In a standing, special or legislative committee, the Standing Orders shall apply so far as may be applicable, except the Standing Orders as to the election of a Speaker, seconding of motions, limiting the number of times of speaking and the length of speeches.

- 2.23 The Canadian standing orders have no direct reference to the admission of visitors to proceedings except in relation to the removal of any stranger who “misconducts himself or herself, or does not withdraw when strangers are direct to withdraw”. [standing order 158]. Standing order 119(1) addresses “Any committee wishing to have its proceedings televised, other than by means of those facilities provided for that purpose by the House of Commons...” The assumption is that visitors would be welcomed at public hearings of committees and they would withdraw when requested (presumably at the will of the majority of the committee)

¹ See for example Redlich, *the Procedure of the House of Commons*, London 1908, p. 195: “The rules of the House as to the presence of strangers at meetings of committees are very liberal; until the committee withdraws for deliberation, while witnesses or experts are being examined, the proceedings are public.” Redlich also quotes a Speaker’s ruling cited in May, *Parliamentary Practice*, p. 408: “It is open to any select committee to exclude strangers at its own discretion...”.

² May, *Parliamentary Practice*, 22nd edition, p. 618.

or, in the case of misconduct, at the direction of the chair exercising the chair's responsibility for order in the committee.³ The chair would presumably have the support of the committee in exercising his or her responsibility for maintaining order.

Conclusion

- 2.24 Amongst the comparable jurisdictions surveyed there is a variety of provisions relating to visitors at committee hearings. The variation extends to whether visitors have a right to attend unless expressly excluded or whether the committee must initiate the admission of visitors. Once visitors are admitted there appears to be a variety of procedures for causing them to withdraw. In some cases it is clear that the decision is taken by the majority. In others (such as standing order 344) there is a provision for the withdrawal to be initiated by an individual member.
- 2.25 In the absence of examples in which standing order 344 has been applied, it cannot be assumed that a member may initiate the withdrawal of visitors in the absence of majority support. The chair's right to initiate the withdrawal of visitors can be differentiated from the right of any other member because of the chair's duty to maintain order. Presumably the chair, like the Speaker in the chamber, would have the support of the committee in initiating the withdrawal of visitors because of misconduct. Even if the chair's reason for requesting visitors to withdraw were for a reason other than misconduct, presumably the chair would be acting with the support of the majority because of the composition of committees.
- 2.26 One problem with standing order 344 was that it was not clear and its interpretation was untested in practice. Amongst other things, it was unclear whether the chair had any option to heed or not heed the request of any member who chose to initiate a visitor's withdrawal.
- 2.27 Standing order 344 did **not** spell out that generally decisions regarding the admission (or withdrawal) of visitors would be made according to the majority will of the committee. Nevertheless, this is the normal means by which committees make all decisions (including those regarding visitors to hearings). It was also the means by which parliamentary committees had made such decisions over the hundred years of the House's history.

³ Marleau R ed. *House of Commons Procedure and Practice*, p. 835 states "Committee meetings are ordinarily open to the public and the media. Simultaneous interpretation services are offered to committee members, witnesses and members of the public at all committee meetings. Public meetings are broadcast on the House of Commons' internal audio system to all Members of the House and the Parliamentary Press Gallery and may also be publicly televised over the CPcC network".