

## **Chapter 23 Disorder**

### **23.1 Member called to order**

The most common way of dealing with disorder is for the Speaker or other occupant of the Chair to call upon the member being disorderly to obey the rules of the House by desisting from the conduct or by withdrawing words which are complained of as being offensive or disorderly. In the event of a member being called to order more than three times in one sitting for any breach of the rules, the Speaker may direct the member's removal from the Chamber for the remainder of the sitting (S.O. 249).<sup>1</sup> When a member is removed from the Chamber under standing order 249 the member is excluded from not only the House but from the entire Parliamentary precincts as defined in the *Parliamentary Precincts Act 1997* and cannot take part in any proceedings of the House or its committees, even if a committee is meeting outside the precincts.

A sessional order was adopted in April 2012, which enables the Speaker to remove a member for up to three hours, without the need to call a member to order first. The purpose of this standing order is to remove disorderly members for a set time period or a particular item of business such as the remainder of Question Time. Members have been removed under this sessional order until the Minister's reply to the second reading debate on a bill. This has meant that the member is able to return to the Chamber to vote on the bill.<sup>2</sup>

When the House is unruly, the Speaker may deem that all members called to order are on three calls to order<sup>3</sup> and in cases of grave disorder the Speaker may even leave the Chair, resuming the debate at a later stage.<sup>4</sup>

Speakers have also threatened to use other measures to discipline disorderly members. For instance, on one occasion the Speaker, following continued interruptions by members when a Minister was replying to a question, warned all members that if they continued to interrupt that he would direct the questions to be put on the Questions and Answers Paper.<sup>5</sup> On another occasion, the Speaker warned the House that he would refrain from giving the call during Question Time to those members who persistently interrupted proceedings.<sup>6</sup>

### **23.2 Member named**

For more serious disorder, standing order 250 provides that:

"A member may be named by the Speaker, for:

- (1) Persistently and wilfully obstructing the business of the House.
- (2) Being guilty of disorderly conduct.
- (3) Using offensive words, and refusing to withdraw them.

<sup>1</sup> Speakers have at times been willing to consider re-admitting a member to the House after receiving an apology conveyed through the Serjeant-at-Arms e.g. PD 02/08/1939, p. 5675 where the Serjeant-at-Arms having conveyed a message to the Chair that the member in question desired to apologise, the Speaker stated "The Chair never has any personal feelings. The honourable member is prepared to apologise to the Chair and to the House, and that is all the Chair has to consider. All the Chair wishes to maintain is the dignity of Parliament. I therefore accept the apology." Members have also apologized through other members e.g. PD 19/11/1993, pp. 5859 and 5863.

<sup>2</sup> See for example, PD 19/6/2012, 13070

<sup>3</sup> PD 21/04/1994, pp. 1629-30; PD 01/05/1996, p. 656.

<sup>4</sup> PD 23/02/1989, pp. 5183-227; VP 30/11/1994, p. 589; VP 25/03/1958, p. 210.

<sup>5</sup> PD 23/03/1966, p. 4511.

<sup>6</sup> PD 24/08/1966, p. 474.

- (4) Persistently and wilfully refusing to conform to any standing order.
- (5) Persistently and wilfully disregarding the authority of the Chair."

Under standing order 75 a member must refer to other members by their title of office or by the name of their electorate. This is an ancient practice and is intended to reduce the temptation to make personal aspersions. The occupant of the Chair conforms to this practice when naming a member for disorder. The precedent was set in the United Kingdom House of Commons by Speaker Lenthall in 1641 when he found that he needed to go beyond an impersonal call for "Order".<sup>7</sup>

When a member has been "named" the Speaker is required to propose the question "That the member for ... be suspended from the service of the House" forthwith. No debate is allowed on the motion, except for an explanation by the member concerned, limited to five minutes (S.O. 251).<sup>8</sup> On occasion, the Speaker has named a member following their removal from the Chamber. In such cases the Speaker has asked for the member to be returned to the Chamber in order to provide the member with an opportunity to make a statement in explanation.<sup>9</sup>

The duration of a suspension is two sitting (and all intervening) days for the first time the member is suspended that session, four days for the second time and eight days for each subsequent time. The incomplete portion of the sitting day during which the member was suspended counts as one sitting day (S.O. 252). When a member is suspended from the service of the House the member is excluded not only from the Chamber, but from the precincts of the Parliament as defined in the *Parliamentary Precincts Act 1997* and cannot take part in any proceedings in the House or its committees (S.O. 253).<sup>10</sup> On one occasion the motion moved suspending the member from the House required the member to forfeit the relevant daily portion of his base salary for the period of suspension.<sup>11</sup> However, this penalty was not enforced as suspended members do not suffer loss of salary during the period of their suspension due to the fact that they are suspended only from the service of the House and away from the House they continue to represent their electorates.<sup>12</sup>

The Speaker, with the consent of the House, has ruled that a Member's expulsion had concluded after four calendar days of sitting even though only three sitting days had passed as two of those days were not separated by an adjournment as the Speaker had left the Chair until the ringing of a long bell.<sup>13</sup>

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<sup>7</sup> Extract from *Balancing Tradition and Progress, Procedures for the opening of Parliament*, House of Representatives Standing Committee on Procedure, August 2001 p. 5.

<sup>8</sup> The Speaker directed the Serjeant-at-Arms to return a member to the Chamber to be named. The Speaker later made a statement that it was not the practice of the House to force a member to return to the Chamber, VP 22/05/1996, pp. 160-1, PD 27/06/1996, p. 3821; On another occasion the Speaker directed the Serjeant-at-Arms to remove a member from the Chamber. The Speaker then requested that the member be returned to the Chamber so that he could name him. Point of order taken that it was not in order for the Speaker to name a member after he had left the Chamber. However, that was not upheld and the member was named and subsequently suspended from the service of the House for two sitting days, PD 05/12/2001, p. 19590-2.

<sup>9</sup> See for example, PD 21/02/1989, pp. 4914-7.

<sup>10</sup> On one occasion, a member who had been named and suspended for two sitting days had entered the precincts whilst suspended. The Speaker subsequently named the member for this conduct and he was suspended for four sitting days, PD 28/03/1990, p. 1153. On another occasion, the House affirmed that "rooms set aside for the use of members" means the Parliamentary precincts, VP 22/08/1991, pp. 89-91.

<sup>11</sup> PD 22/08/1991, pp. 452-66.

<sup>12</sup> In 1995, the Premier said he was examining a proposal to dock the pay of suspended members, PD 25/05/1995, pp. 260-3. Such a proposal has never been given effect and it could be argued that the House does not possess such power given that it is clear that the House has no punitive power to punish a member. (See section 2.5 of Part Two where it is noted that the House has powers of self-defence but no punitive powers).

<sup>13</sup> VP 19/06/1997, p. 1089.

The Serjeant-at-Arms is directed by the Speaker to remove a member suspended from service. In the event of a member refusing to leave the Chamber, the Serjeant-at-Arms may, by direction of the Speaker, be assisted by the attendants or the police.<sup>14</sup> As with all motions proposed by the Speaker, motions for the suspension of a member from the service of the House can only be withdrawn with the leave of the House (S.O. 144).<sup>15</sup>

During the placing and disposal of business, any notices of motions standing in the name of a member who has been suspended from the service of the House can be postponed by another member on the suspended member's behalf with the written authority of that member under standing order 141. However, if notices of motions standing in the name of a suspended member are called on, and, not moved, withdrawn or postponed, they will lapse in accordance with standing order 99.

#### ***23.2.1 Disorder in former committee of the whole***

The House no longer resolves itself into a committee of the whole to give detailed consideration to a bill or other matter. Rather, the House itself considers matters in detail. This means that the same procedure outlined above occurs when there is disorder in the consideration in detail stage. However, the past practice when disorder occurred in committee did not follow the same procedures and is worthy of note.

The Chairman of Committees could remove a member from the committee but the committee was not able to suspend a member. If the offence took place in committee the Chairman, after naming the member, reported the occurrence to the House and the procedure was then the same as if the offence had taken place in the House.<sup>16</sup> When the matter had been disposed of, the committee resumed.

The Chairman's report was along these lines:

"Mr/Madam Speaker, I have to report that during the proceedings of the committee on the whole on the ABC Bill the member for.... was named by me for... (e.g. using offensive words and refusing to withdraw such words when called upon)."

The Speaker then announced:

"The Chairman reports that during the proceedings of the committee of the whole on the ABC Bill the member for... was named for using offensive words and refusing to withdraw such words when called upon. I now call upon the member to make any explanation the member may think fit."

Immediately the question of disorder was disposed of by the House, the Speaker left the Chair and the committee resumed.

Under the previous standing orders, if sudden disorder arose in committee, the Speaker, of their own initiative, could resume the Chair in the House to deal with the matter, after which the committee proceedings would be resumed. In 1886, the

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<sup>14</sup> VP 19/09/1911, p. 33.

<sup>15</sup> PD 31/05/2000, pp. 6323-5.

<sup>16</sup> VP 26/10/1967, p. 335.

Speaker resumed the Chair on his own initiative without a question being put “having observed that the proceedings...had fallen into grave disorder.”<sup>17</sup>

### **23.3 Expulsion**

Under the provisions of standing order 254, a member adjudged by the House guilty of conduct unworthy of a member of Parliament may be expelled by vote of the House and the member’s seat thereupon declared vacant.<sup>18</sup>

When a member has been expelled, it is necessary for a motion to be moved declaring the member’s seat vacant. It has been ruled that this motion may not be debated.<sup>19</sup> On one occasion, when a motion was moved to declare the seat vacant of a member who had been expelled by the House, a point of order was raised whether such a motion was in order given that the member had sent in his resignation and the Constitution Act in force at the time provided that when the Speaker receives the resignation of a member that the seat became vacant. The Speaker did not agree and decided that the motion was in order.<sup>20</sup>

Four resolutions expelling a member from the Legislative Assembly have been passed, although one of those resolutions was subsequently rescinded. Mr Baker was expelled on 8 November 1881 after the House concluded that evidence produced by a Royal Commission proved that Mr Baker, “by agreeing with others to benefit himself in an improper manner out of a sum of money appropriated by Parliament ... has been guilty of conduct unworthy of a member...”<sup>21</sup> Mr Baker was later brought to court. However, the case was dropped and the House rescinded the resolution passed in November 1881 on 1 May 1883.<sup>22</sup> Mr Baker was re-elected to the Legislative Assembly in November 1884.

In the early hours of 13 November 1890, a resolution expelling Mr Crick was passed after he repeatedly abused members verbally, disobeyed the Chair and resisted removal from the Chamber.<sup>23</sup> Mr Crick was subsequently re-elected in December 1890 and became Minister for Lands in 1901. In 1905, a Royal Commission was appointed to inquire into the administration of the Lands Department which found that Mr Crick had been receiving bribes and he was subsequently charged with conspiracy. The House did not pass a resolution to expel him this time as the Speaker had ruled that the Parliament could not deal with Mr Crick’s conduct whilst the matter was before the Courts. The House did however suspend Mr Crick, which was supported by a standing order of the House that was passed and approved by the Governor on 19 July 1906.<sup>24</sup> The standing order provided that the House could suspend a member until the outcome of a criminal trial was known.<sup>25</sup> Mr Crick resigned his seat in December 1906<sup>26</sup> and the House subsequently passed a resolution on 11 December 1906 which stated that in light of the findings of the

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<sup>17</sup> VP 08/07/1886, p. 379.

<sup>18</sup> Expulsion moved and negated, VP 05/05/1998, p. 542.

<sup>19</sup> PD 17/09/1929, p. 61.

<sup>20</sup> VP 13/11/1890, pp. 431-2.

<sup>21</sup> VP 08/11/1881, p. 277; rescinded VP 01/05/1885, p. 280.

<sup>22</sup> VP 01/05/1883, p. 280.

<sup>23</sup> VP 13/11/1890, p. 430.

<sup>24</sup> VP 19/07/1906, pp. 62-3.

<sup>25</sup> This is now covered by standing order 255 of the Legislative Assembly.

<sup>26</sup> See VP 06/12/1906, p. 373 where the Speaker informed the House that Mr Crick had resigned.

Report of the Royal Commissioner that Mr Crick "...is adjudged guilty of conduct which should render him ineligible to sit as a Member of this Assembly."<sup>27</sup>

On 17 October 1917, motions were passed charging Mr Price with conduct unworthy of a member, expelling him from the House and declaring his seat vacant after a Royal Commission found him to have "wantonly and recklessly" made allegations against a Minister.<sup>28</sup> He was subsequently re-elected.<sup>29</sup>

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<sup>27</sup> VP 11/12/1906, p. 382.

<sup>28</sup> VP 18/10/1917, p. 128.

<sup>29</sup> For further information on the expulsion of members see the NSW Parliamentary Library Briefing Paper No. 17/2003, *Expulsion of Members of the NSW Parliament*, by Gareth Griffith, August 2003.