

INQUIRY INTO RULES FOR NOTICES OF MOTIONS

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Date received: 7 March 2017



LEGISLATIVE ASSEMBLY

**SUBMISSION TO THE LEGISLATIVE COUNCIL
PROCEDURE COMMITTEE
INQUIRY INTO RULES FOR NOTICES OF MOTIONS**

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23 FEBRUARY 2017

Introduction

The Legislative Council Procedure Committee report "Notices of Motions" together with a paper titled "Notices and Motions and the Law of Unintended Consequences", prepared for and presented to the 2014 general meeting of the Society of the Clerks-at-the-Table by the Deputy Clerk of the Legislative Council, provide a context for the nature of the issues to be addressed in the terms of reference. This submission is also informed by the issues faced by the Legislative Assembly as its practice in relation to notices of motions has evolved.

Notices of Motions

The purpose of a motion is to call for some action or express the will of the House. As *Erskine May* expresses it, "A motion is a proposal made for the purpose of eliciting a decision of the House".¹ Motions are the means by which the House transacts the vast majority of its business.

Further, Robert Marleau, a former Clerk of the House of Commons Canada, has written in *House of Commons Procedure and Practice* in the context of government business:

"...debate in the House is necessary, but it should lead to a decision in a reasonable time."

These twin principles are also applicable to general business. That is, debate enables the House to be better informed when voting on any particular proposition and, that the propositions contained in notices are put to the House in reasonable time after the notice has been given. Timeliness in considering a proposition ensures the relevance of the debate to the House.

Contextual Observations

I make the following observations on issues in relation to the use of general business notices of motions (general notices) in the Legislative Assembly. I suspect many of these issues are similar to issues being addressed by the Legislative Council:

- Members are giving many more notices than can be possibly considered by the House. Currently, there are between 16 to 20 notices given each sitting day. However, only two such notices of motions are debated in the time set aside for General Business – General Notices each sitting week.
- The more general notices given, the lower the probability of any one motion being moved and debated.
- Members, understandably, may get frustrated that it is very unlikely their motions will ever get to be debated.
- Thus, some Members generally tend to put lots of detail in to a motion to convey their debating points.
- Compounding the delay in debate are Members giving notices on the same substantive matter with slightly different points.
- Conversely, some Members don't bother to give any notices as by the time a notice might come on for debate it will be six months out of date.

¹ *Erskine May* (24th edition) at p.392. See also *Parliamentary Practice in New Zealand* at p.132 "If adopted by the House [a notice] would express the House's will or opinion on a subject".

- This reflects the reality that for some time there is very little chance that a general business notice of motion will ever be debated in the Legislative Assembly, and if it does it will have likely lost immediacy.
- Notices have become overwhelming prefaced with the terms "That this House notes". This then forms the preamble for a definitive statement rather than framing a proposal for debate - thus the element of the proposition, inherent to a motion, is lost. This has been exacerbated by the turning of notice of motions into mini-speeches or editorial comments. As a result many notices are argumentative in nature and require editing under the Speaker's authority.
- Members have, on occasion, used notices as a vehicle to perpetuate a running argument with other Members. Here, there may be an element of members recognising that an opportunity to debate the issue in the near future is unlikely, if at all, and therefore the notice becomes an end in itself, as an opportunity to swiftly address the House on the issue rather than as the procedural means for having issues placed on the *Business Paper*.
- When a notice gets to the top of the queue with the very real prospect that it will be debated there are many instances where Members have deliberately postponed their notice in the full knowledge that it would lapse before the next general business day.
- Many notices are so narrow or local in nature, such as a grant to refurbish the shed of the small local sailing club, that they do not lend themselves to a substantive debate.

In some senses general business notices of motions (general notices) have become comparable with Early Day Motions in the House of Commons, where no day is fixed for debate, are often a means by which some backbenchers draw attention to a matter of concern within the 250 word limit without any expectation of debate.

Your Terms of Reference

1. That the following proposed variations to the rules applying to notices of motions be referred to the Procedure Committee for inquiry and report:
 - (a) a notice of motion must not contain statements, quotations, lists of names or details or other matter not strictly necessary to make the proposed resolution or order intelligible,
 - (b) a notice of motion must not contain argument or debating points,
 - (c) a notice of motion must be clear in its purpose, concise and relate to a matter within the competency of the House,
 - (d) a notice of motion should not exceed 250 words, unless it relates to the business of the House, matters of privilege, or the establishment of committees,
 - (e) a member may not give more than three notices of motions each sitting day, and
 - (f) a notice of motion which is contrary to these rules or the standing orders will be amended before it appears on the Notice Paper, and
2. That the committee consider other matters related to the giving of notices of motions.

For Terms of Reference: (1) (a), (b), (c)

Standing Order 137 governs the content of notices of motions in the Legislative Assembly.

"137. "Notices of Motions - argument or unbecoming expressions

A notice containing argument, unbecoming expressions or otherwise not conforming with the practice of the House may:

- (1) Under the authority of the Speaker, be amended by the Clerk or Member
- (2) Be ordered not to be printed by the Speaker, or removed from the Business Paper."

Unlike the relevant Legislative Council, this standing order provides the Clerks-at-the-Table with the delegated authority to review, vet and edit notices of motions once given in the House and prior to appearing in the *Business Paper*.

Applying Standing order 137 to notices of motions is not an exact science. The key elements of the standing order are "argument", "unbecoming expressions" and "not conforming with the practice of the House". This leaves wide scope for interpreting how the standing order is applied. The interpretation is left to the Clerks in the first instance, for later consultation with the Member concerned, and has from time to time been an ardent issue with all Members.

However, rulings given by numerous Speakers over many years provide good guidance to fill out some of the detail in the application of the broad elements of standing order 137. They are summarised in *Legislative Assembly Practice, Procedure and Privilege* (at pages 144 & 145):

"Motions must put a concise proposition upon which the House may vote. On one occasion the Speaker noted that a notice of motion should be termed so as to give a precise proposition for determination by the House. He went on to emphasise that the giving of a notice of motion is not intended as an opportunity to make a long argument or convey the substance of a proposition nor are they to be "tendered in the spirit of mockery or designed merely to give annoyance." The Speaker then advised the House that the Clerks would, under his authority, eliminate any unnecessary statements or arguments from notices prior to their publication in the business paper."; and

"Notices of motions and motions have been ruled out of order for:

- Being given in a spirit of mockery;
- Being argumentative and ironical;
- Being too long;
- Requiring debate on non-existent, hypothetical or uncertain circumstances.
- Being incapable of being actioned;
- Being vague, non-specific and unparliamentary;
- Being the same in substance as a question already resolved by the House that session;

- The oral version differing to the notice of motion lodged with the Clerk;
- A paragraph of the motion not being in accordance with the facts;
- Posing too many questions or placing too complex a question before the House."

Rather than having specific provisions to preclude the matters in the terms of reference (1) (a), (b), (c), Legislative Assembly practice under Standing Order 137 might be applied as follows:

(a) a notice of motion must not contain statements, quotations, lists of names or details or other matter not strictly necessary to make the proposed resolution or order intelligible

The rulings above would be used as the authority to vet and edit notices to not print statements, exclude quotes, lists of names, excessive information and for the motion to make grammatical sense.

(b) a notice of motion must not contain argument or debating points

Again, on the basis of rulings, argument and debating points would be vetted and edited.

(c) a notice of motion must be clear in its purpose, concise and relate to a matter within the competency of the House

The Legislative Assembly has rulings and statements from Speakers regarding the length and verbosity of notices. The Legislative Assembly also has rulings that it is competent for the House to express an opinion upon any matter at all.

A key guiding principle for Clerks is that as the Standing Order is interpretative the Member is advised and the reasons for changes are explained. A second guiding principle is that the essence of the motion is retained. This is done by judicious editing.

For Terms of Reference: (1) (d), (e), (f)

(d) a notice of motion should not exceed 250 words, unless it relates to the business of the House, matters of privilege, or the establishment of committees

The Legislative Assembly does not have a word limit on notices. However, I am strongly considering a proposal to introduce a limit. One consideration relevant to imposing a word limit is practical. The words of a motion would need to be counted. If for instance if the word count was 253, three words would need to be removed from the notice. A word limit would also restrict the interpretative elements of the Chair's discretion. That is the Chair with no discretion. Rather the test to curtail the length of a notice would be to use the principles highlighted in 1 (a), (b), and (c) as not conforming with the practice of the House.

(e) a member may not give more than three notices of motions each sitting day

The Legislative Assembly does not limit the number of notices a Member may give each sitting day. However, the Legislative Assembly does limit the time for general notices of

motions to 10 minutes within the routine of business at the commencement of each sitting day (i.e. 12 noon on Tuesdays and 10 am on Wednesdays and Thursdays).

(f) a notice of motion which is contrary to these rules or the standing orders will be amended before it appears on the Notice Paper

Such a provision would be comparable to Legislative Assembly standing order 137. Consideration could be given to include "under the authority of the President". In the Legislative Assembly context this is important as in the most infrequent cases that a Clerk and the member cannot agree to a compromise on the wording following vetting and editing the matter is referred to the Speaker for determination.

For Terms of Reference: other matters related to the giving of notices of motions

For comparative purposes the Committee may be interested in other relevant aspects of Legislative Assembly practice.

Notices Given Verbally

Under Standing Order 133 (1) a notice of motion must be given verbally at the time prescribed in the routine of business. There is no provision in the Legislative Assembly for "lengthy notices need not be read, provided a summary of the intent of the notice is indicated to the House."

In 2012, to address the number of notices given in the House, the Legislative Assembly trialled "Community Recognition Notices". These were notices lodged electronically and put *in globo* without debate. The other key elements of the procedure were: such notices could be lodged electronically (not given verbally in the House); the notice was not to have a policy matter subject; not call for action, criticise or reflect negatively on the Government, a member or any other person. The Standing Orders and Procedure Committee was faced the procedural and philosophical question as to how even one word (let alone a motion) not uttered in the House (neither when giving the notice nor when moved) could take up so many pages in *Hansard*. The Standing Orders and Procedure Committee recommended that the procedure be replaced by Community Recognition Statements. They will be outlined later in this submission.

Time Allowed for the Giving of General Notice

The verbal giving of notices of motions lead to a situation in the recent past that at times the House spent up to 30 minutes for the giving of general notices. As a response the Legislative Assembly amended standing order 133 to limit the period for the giving of general notices to a maximum of 10 minutes. It should be noted that the Speaker "has discretion to allow the giving of notices to exceed this 10 minute period". It has only been used to allow a Member who has commenced giving a notice to complete it.

Order of Notices on the Business Paper

Standing Order 136 provides that "Notices of motions are set down on the *Business Paper* in the order in which they are given." This wording has been in operation for a long time. The

practice used to be that the freshest notices were placed at the top of the notices on the *Business Paper*. This meant that older notices were always pushed down the list.

However, during the 50th Parliament the practice was literally turned on its head with the newer notices being placed at the bottom of the list on the *Business Paper*. The original practice meant that the older notices would never get debated and under the current practice when a notice does come on for debate, in most circumstances it will have lost some immediacy.

Impacts on the Business Paper

The number of notices given each day resulted in a voluminous *Business Paper*. This has presented a physical challenge in terms of the bound volumes of Business Papers of the past and in terms of work processes and resourcing. Additional time is required: to vet and edit new notices; to consequently consult with Members; and to format for publication.

To accommodate the increased volume of notices administrative changes have also resulted in changes to the format of the *Business Paper* over time. These were made under the approval of the Speaker at the time. The full text of each notice is not printed in every *Business Paper*. The full text appears in the first paper published after the notice is given and again when the notice gets to the top 20 in the order (i.e. as it gets closer to being debated). Thus for the most part, only the number of and the title of the notice, together with the Member's name will appear in the *Business Paper*.

Lapsing of General Business

The Legislative Assembly has also dealt with some of these challenges formally through sessional order, amendments to the standing orders plus some general rulings regarding prolixity. One initial procedural response to cull the *Business Paper* was to adopt a sessional order for items of general business to lapse if not moved or completed within 12 months. In recent times this period has been reduced to 6 months. Members are free to give a fresh notice of the lapsed item.

Lapsing of general business is in some ways a variation of the previous tradition of an annual prorogation that wiped all business from the *Business Paper*.

Challenges for Members and Staff

The challenge for Members is perhaps being judicious in how they use this form, among the many, of the House. There are a handful of Members on both sides who give multiple notices just about every sitting day, some pick and choose to give some notices over a few days and then do not use the procedure for some time, whilst others do not give notices at all preferring to make a private members' statements or community recognition statements instead.

Whilst Members do not automatically place the same notice back on the paper once it has lapsed, Members have regularly given multiple versions of notices on the same substantive subject. The slight variations highlight a different aspect of the broader issue. Perhaps these notices are given on the basis that the more times the subject matter is placed on the *Business Paper* the greater the chance of the subject being debated. The challenge is that

such notices risk infringing the same question rule but then only if they ever get debated in the first instance. This has yet to occur.

Alternatively, as editing and vetting is more an art than an absolute science, Members should not be frustrated in the way they use the procedures of the House. For instance, with some ingenuity and judicious editing, notices can be framed in such a way as to accord with the custom and practice of the House for publication. In such cases, Members should be consulted before publication.

Formal Business

The Legislative Assembly no longer provides for the taking of formal business. Such a procedure is therefore not available for Members to deal with general notices.

Community Recognition Statements

As described above one response to the growing number of general notices and their evolution in length, editorial and argumentative in nature or in the case of those with a community subject very narrow was to have sessional to provide for a category of business called Community Recognition Notices. After review, and from 2013, they were replaced by the procedure for Community Recognition Statements.

Community Recognition Statements are provided for twice a sitting week within the routine of business: 20 minutes on Wednesdays and 30 minutes on Thursdays. During these times Members have the opportunity to make a statement of up to 60 seconds within the same constraints as community recognition notices. This procedure is not dissimilar to the 90 second statements procedure used by the House of Representatives.

This procedure is very popular with many Members. For those Members it provides an outlet to acknowledge local community persons, clubs, organisations and their activities as an alternative to giving a notice of motion.

Conclusion

It ^{is} now well accepted that there will always be more notices given than can ever be debated. At one extreme, the view could be taken that the giving of so many notices is an abuse of process (if there is a strict interpretation of the purpose of giving a notice is to have a subsequent debate on the motion). However, all Members that give general notices utilise the procedure to highlight issues of concern and generally the profiles of their electorates. This is a legitimate goal for any Member.

Given that there is only ten minutes for the giving of notices of motions Members are encouraged to self-regulate by giving short and concise notices, as the shorter each notice is, the more Members that can avail themselves of the opportunity to give a notice of motion.

The amount of detail contained in some notices leads to longer notices, posing the question of the extent to which they should be vetted and edited for publication on the *Business Paper*. The application of Standing Order 137 to ensure notices conform with the practice of the House, in particular in relation to length, has been effective in relation to publication.

This includes: tidying up grammar; setting out the words so as to form a motion as opposed to a statement; checking the spelling of names, titles, the proper names of organisations, schools and places and even technical terms.

The significantly greater number of notices given, as well as the other consequences, means there has been a resultant shift in the custom and "practice of the House" (to use the phrase in the standing orders). The trend of Members promoting their electorates by the procedure of general notices is appropriate. In terms of Members having ownership of the practice and custom of their House, Members of the Legislative Assembly have enthusiastically embraced the use of general notices. However, it is recognised that the Legislative Assembly has the advantage of the interpretative elements of standing order 137, the time limit of 10 minutes for giving notices and regular removal of notices from the *Business Paper* through the provision for the lapsing of notices after six months.