

CHECKS ON ATTENDANCE OF MEMBERS

Topical discussion

Extract of the minutes of the Spring Session (Managua April 1987)

Mr. Lussier (Canada) referred to his introductory note which had been circulated at the meeting (see page 23). In it he described the procedures in the Canadian Parliament for checking the attendance of Members and the consequences of non-attendance. Some Senators and Members of Parliament were offended about these checks on their attendance but, as the introductory note made clear, these procedures were rarely invoked. He was interested to know what the practice was in other countries. Before departing Mr. Hjordtal had told him that in Denmark the attendance of Members was a matter of confidence for the individual; Members of the Folketing were not required to attend the meetings and there were not any financial implications or penalties for non-attendance. He had also been told by Mr. Jacobson that in Israel Members pressed buttons to record their presence in their Knesset. This caused technical problems if all Members pressed their buttons at the same time. If the computer had no record of a Member's attendance and no valid reason was given, then no salary would be paid to the Member for that day's sitting.

Mr. Davies (United Kingdom) said that the House of Lords had recorded attendance of Members for hundreds of years, back to the fifteenth century. He did not know why this was the case. With attendance of 20 to 30 in early years the task of recording would have been simple. The list of attendance was not published in the daily minutes and formally appeared only in the House's Journals which were not very readily available. Peers signed 'presence sheets' which were available around the Chamber. There were nearly 1 200 Members of the House of Lords, many of whom were not regular attenders. Since 1957, Peers had been paid a daily expenses allowance to cover subsistence and travel. Entitlement for the allowance was dependent on the signing of the presence sheets. If a Peer claimed that he had been present even though his signature did not appear on a presence sheet, his word was accepted and he was paid the allowance. The Division Lists (record of votes) was also taken into account to make a complete list for the purpose of paying the expenses claims and recording attendance in the Journals. There was no expectation that Members should attend sittings and, indeed, the facilities would not be able to cope with full attendance. Peers could register for leave of absence for an individual session or for a whole parliamentary term. A Member who had leave of absence in this way, and then decided to attend, had to give one month's notice.

Mr. Hadjioannou (Cyprus) said that the rules provided for the Cleric to maintain a list of attendance. A book of attendance had to be signed by Members before each meeting. There seemed to be no objection to this practice. The names of Members present at a sitting was published in the minutes. In committees the attendance list was signed by the Chairman and published with the committee's

report. Absence without cause from committee or plenary sittings led to a loss of a Member's monthly representation allowance. For instance, the whole allowance would be lost if a Member was absent from 3 consecutive sittings of the House or 4 of a committee; half the allowance would be lost if he was absent for 2 meetings of the House or 3 of a committee; and a third of the allowance would be lost if his absence from 2 consecutive meetings of a committee. A special committee considered absences to decide if they were justified or not, but it had not been convened since the Rules were adopted. Advance notice of absence and the reason for it had to be given to the President. Among the acceptable reasons were ill health, death or illness of a family member, travel abroad for public purposes or reasonable private visits abroad.

Mr. Stramacci (Italy) said that in the Italian Chamber of Deputies, the presence of Members could only be checked when recorded votes such as secret ballots or roll-call votes were held. In effect, these 2 types of voting recorded those who took part in the vote and the number of votes cast. (This occurred when votes were held by electronic means or by the more traditional methods such as putting a ballot paper or ball in the voting urn for a secret ballot or replying orally "Yes" or "No" in a roll-call vote.) During debates, or in votes by show of hands, the presence of Members of Parliament was not checked, assuming a quorum was present. The Rules provided for a minimum of 20 deputies to call for a quorum to be checked before a vote was held by show of hands. It was evident that in this case, the presence of Members could be established by checking the quorum. The arrangements in committees were similar. There were no other ways of checking the presence of Members. As far as the level of attendance was concerned, it varied considerably, according to the circumstances and above all according to the political importance of the sitting. Anyway, the requirements of the quorum (half plus one of the Members of the Chamber) meant that votes were organised to take place on certain days of the week (usually Wednesday and Thursday). This was to ensure the presence of the largest possible number of Members at the votes themselves and to avoid as far as possible, votes in the chamber and meetings of committees taking place at the same time.

In general, the level of attendance could be considered satisfactory and it was rare for the quorum not to be reached. If the Chamber or a committee lacked a quorum, the President or Chairman could delay the sitting for an hour. If after that time the quorum was still not achieved, the President could delay the sitting for another hour or adjourn the meeting. In this latter case, the Chamber or the committee was convened with the same agenda on the following working day at the same time as the original meeting.

Mr. Sauvant (Switzerland) said that the Rules of the two Chambers in Switzerland, required Members to attend all sittings and to sign the list of attendance. The minutes recorded those absent from a sitting. Members were paid according to the list of attendance. A Member who had to be absent, could send his reasons for absence to the Secretary General in advance of the meeting, if possible. A roll-call vote was held at the opening of the sitting to establish the presence of the quorum, if the quorum was achieved at the start of the sitting, it was deemed to continue during the sitting. The President had sometimes to consider whether the number of Members present meant the Council could continue properly to debate a matter. Although the Constitution provided that a Council could not deliberate

when there were less than an absolute majority of Members present, this strict rule was not in practice enforced.

Mr. Anderson (United States of America) said that Rule 2 of the House of Representatives required Members to attend and vote at every session. The House had been reluctant to enforce this, in the light of the conflicting commitments Members faced. A Member's application for leave of absence was usually presented by his party leader and required unanimous consent. It was rarely questioned or objected to. The usual reasons for absence were official business (of the House of Representatives), illness or family illness. Leave of absence could be granted for a specific or for an indefinite period and could be rescinded. The Rules provided for a fine for unreasonable absence but this has only been invoked once in the last 28 years. In practice, the Whips only compelled attendance when significant party votes were to be held. There was no signing on procedure. A roll-call vote was held at the start of each day's business to approve the previous day's Journal. This was used by the leadership of both sides to establish which of their Members were present on key days. Informal agreements were reached between the parties about the timing of votes to accommodate the travelling time from far away districts. Thus votes were rarely held on Mondays or early on Tuesdays. The Clerk of the House of Representatives was not involved in the payment of Members' salaries. It was rare for a Member to drop below an attendance record of 90% on quorum calls and roll-call votes. Some Members had 100% record and one had a 27-year 100% record. This Member had passed his 10 000th vote and was well on his way to achieving 14 000 votes. If illness prevented him from attending a vote, he would rather resign his seat than miss the vote.

Mr. Zvoma (Zimbabwe) said that the Constitution provided, in Article 41, that a Member who was absent for 21 or more consecutive sittings would have his seat declared vacant by simple majority vote. The Serjeant at Arms in each Chamber kept a list of attendance and gave it to the accounts office. Anyone who did not go into the Chamber would miss his daily allowance. Leave of absence could be given or applied for on behalf of someone who was abroad. In practice, such leave was always granted and the reasons were not questioned. Members were not required to attend all committee meetings, but there was a \$20 fine for absence from a committee held while the House itself was not sitting. No fine was imposed if the House was sitting. Since 1980 3 motions to declare seats vacant for absence of Members have been debated and 2 were passed. In the third case, the Member showed a good reason for his absence.

Mrs. Do Carmo Romao (Portugal) said that in the Portuguese Parliament, the attendance list had to be signed by Members. Their presence was monitored by the Bureau. The list of those present appeared in the minutes. A Member could be absent, according to the Rules of Procedure, for 5 consecutive sittings without giving any reason. After that, he would lose his seat. There were deductions from Members' pay for short periods of absence unless it was for reasons of illness, political work or visits abroad. There were also attendance lists for committees, and absence from committee meetings led to a loss of special committee pay.

Mr. Seneviratne (Sri Lanka) said that the Serjeant at Arms kept a record of attendance. Members had only to walk into the Chamber to qualify for their daily stipend. In some cases, a Member whose presence had not been noted by the

Serjeant would claim to have been present. The possibility of introducing an attendance list was being considered. Members were allowed to be absent for up to 3 months without reason given. After that period, the Clerk would write to the election commission inviting them to declare the seat vacant. The parties tended to keep a record of their Members' attendance. Only on 2 occasions had absence led to the loss of a seat.

Mr. Pacha (Tunisia) said that after the election of the President and two Vice-Presidents of the Chamber, three Members were appointed to check on the attendance of other Members. The list was kept by the Secretary General. The President had the right to give leave of absence for a limited period, but he could only allow absence for an unlimited period in case of sick leave. If a Member was absent without leave, the Chamber was notified and any unjustifiable absence led to the loss of the monthly parliamentary allowance.

If a Member was absent without reason for three consecutive months, the President took steps to have his allowance withdrawn for the whole of the period and proposed to the Assembly that he lose his seat. In this case, the decision was taken by secret ballot.

A simple majority of Members was required for the passage of ordinary bills, but a two-thirds majority was required for the passage of organic law (Article 28 of the Constitution, and Article 44 of the Standing Orders). Voting was normally public by show of hands and if there was any doubt a roll-call vote was held (Article 19 of the Standing Orders).

Sir Kenneth Bradshaw (U.K.) said that, listening to the practice in other countries, he realised how relaxed the procedures of the House of Commons were. There were no rules governing Members' attendance, no record of presence was kept, no allowances were dependent on attendance, and there were no penalties for non-attendance. A former procedure for applying for leave of absence had become obsolescent, and was only used for formal delegations. There was no longer a quorum necessary for the House to sit and a quorum of only 40 out of 650 Members was required for a decision to be reached on a matter. If a vote showed that less than 40 were present the matter was deferred. The attendance of Members was left entirely to the party whips. Only a very bad case of neglect of duties would cause the House itself to take action. One Member had, in the 1970s, disappeared from a beach in Miami and turned up 5 months later in Australia, saying he was intending to settle there. He did come back to England, and a committee recommended that he be expelled for neglecting his duties to the House. Such expulsion was not necessary because he was convicted of a criminal offence, relating to theft, and on being sent to prison he resigned.

Mr. Seneviratne asked if there was no rule requiring a Member to be present, were there any grounds for recommending that someone be expelled for the neglect of his duties.

Sir Kenneth Bradshaw said that this was normally dealt with by the party whips who had their own disciplinary methods which were normally sufficient. But this particular case had been extraordinary and fell into the special category of bringing the House into disrepute. Action had to be taken. It was difficult to say what was an acceptable period for absence.

Mr. Khair (Jordan) said that the Secretary General was responsible for listing absent Members. If a Member had been absent for more than a month, the

Speaker would write to him asking for his attendance. If he was still absent after three months, the Secretary General could draw the matter urgently to the attention of the President and both Chambers of Parliament would be notified. If there was no reason for the absence, a Member would be suspended for the rest of the session.

Mr. Lussier said the discussion had been very valuable in giving him information on the varied practices in different countries. He hoped that other Secretaries General would write to him with information on the arrangements in their parliaments. If the Canadian Senate set up a special committee to investigate this matter, he would ask members of the Association to give evidence to it.

Introductory note by Mr. Lussier (Canada) for the topical discussion on checks on the attendance of members of parliaments

1. *The Senate of Canada*

Article 31 (1) of the Constitution Act 1867 states that the Senator's seat will become vacant if, among other reasons, the Senator "does not attend sittings of the Senate for two consecutive parliamentary sessions".

Article 113 of the Rules of the Senate provided that, when a Senator has not attended the Senate for two consecutive sessions, the Clerk of the Senate is required to report the fact to the Senate and the Senate has to investigate, with due diligence, the issue of declaring the seat vacant.

The "forms and procedure" annexed to the Rules of the Senate specify (on page 72) that a report made under article 113 of the Rules is sent directly to the Privileges Committees. Such a committee does not figure in the list of permanent committees given in article 67; the only mention of it in the Rules of the Senate is in article 7 (2) which says that on the first day of a Session, after the formal presentation of a bill, the speaker of the Senate reports the Speech from the Throne, and then a Privileges Committee is appointed "Comprising all the Senators present for the Session to study the use and practices of the Senate and the privileges of parliament."

In practice, following the "forms and procedure", the Privileges Committee instructs the Clerk of the Senate to inform the Senator concerned of the action taken in the Senate and to ask him if he knows a reason why the Committee should not recommend to the Senate that his seat be declared vacant. In the absence of any reply, the Committee recommends, in a report to the Senate, that the seat be declared vacant. On consideration of such a report by the Senate, the Government leader in the Senate proposes that the seat be declared vacant in accordance with the Constitutional provision referred to above. When the motion is agreed to, the Government leader proposes that a copy of it be presented to the Governor-General by the Senators who are members of the Privy Council.

The name of every Senator present at a sitting is recorded on the first page of the minutes for the sitting, and this has been the practice for a very long time. The Gentleman Usher of the Black Rod is responsible for this task. This practice is drawn directly from the customs of the House of Lords of the United Kingdom and has been followed by the Senate since 1867.

According to F. A. Kunz the provisions of article 113 have only been put into effect on one occasion. On 15 January 1957, the Clerk drew the President's attention to the fact that Senator Duffus had not attended the Senate during the last two Sessions. A motion to refer the Clerk's report to the Standing Orders Committee was adopted, but the individual concerned died a few days later and the motion was rescinded.

2. *The House of Commons*

Unlike Senators, Members of the House of Commons are not subject to any constitutional requirement that would make their seat vacant in the event of prolonged absence. It is possible that the sanctions imposed by the electorate were considered sufficient to deter any offending members, while Senators were not susceptible to such considerations because (initially) they were appointed for life.

Article 9 of the Rules of the House of Commons provides that "Except otherwise specified in the Rules, every member must attend sittings of the House, unless he has been given leave of absence.

In his book on the procedure of the House, Senator John Stewart commented on this rule in the following terms:

"What we have here is an indicative statement disguised as an order. It is true, of course, (...) that membership in the House is not similar to membership in a club. Unfortunately the standing order, while valid with this meaning, is misleading: It seems to imply the attendance in the Chamber whenever the House is sitting is a Member's most important obligation. Obviously this is not true for ministers; and given the functions of the House and the range of public demands on their time, it is not true for private members either. Members will be away from the Chamber, and at times, they will be away from Ottawa; therefore, means other than a standing order such as [S.O. 8] are needed to assure that all the members are not away at once. Nowadays the parties especially the ministerial part and the official opposition, undertake "to keep" a House".

The Rules do not provide for any recording of the attendance of members by officials of the House, with one specific and limited exception. When the Speaker declares the House adjourned in the absence of a quorum, the time of the adjournment is recorded in the Journal, together with the names of the members still present. This occurs very rarely.

The Rule in Article 8 was applied during the first ten years of the existence of the Chamber. A Member who wanted to be away from Ottawa sought permission, from the House through a colleague. In 1873, Sir John A. McDonald, having himself omitted to make such a request, was required to appear at the Bar of the House to explain himself and owed his survival to a medical certificate conveniently produced by one of his colleagues in the Cabinet. W. F. Dawson claimed in 1962 that this rule had not been applied since 1877.

On 16 June 1970, a Member made use of this Article (by now numbered 5) to denounce the absence of a Minister from the Chamber. Speaker Lamoureux replied in terms which confirmed the obsolence of the rule:

"The Member cannot be serious when he asks for a detailed official check to be made of each day's absence by a Member. Article 5 applies not just to Ministers but to all Members. The point has been revised from time to time. I know the article exists. I think that the Procedure Committee ought to look at article 5. I have mentioned it before but for some reason or other, the members of the Committee have judged it better not to change this article and to leave it as it stands. According to my information, this article has not been invoked since 1875. After the passage of so many years, I do not believe that it should be invoked to draw attention to the absence of a particular Member. I do not think it is still relevant."

The official procedural guide of the House confirms the absence of any record by staff of the attendance of Members:

"Currently it is the task of the different parties (for whom it is a major responsibility) to ensure the attendance of members in the House. The Whips undertake responsibility for ensuring that their political groups are adequately represented at important votes. The record of votes published in the *Journal* or *Debates* gives each Member, because it shows his name, the opportunity of demonstrating his presence."

A relatively recent study of the role of whips in Canada confirms that they carry out such a role. Among their duties are the "supervision of the assiduity of Members in the House of Commons and the establishment of a level of attendance of Members to ensure the quorum is reached." It went on: "the Whip's office draw attention to cases of negligence of parliamentary duties, failure to attend party caucus meetings or absence from the Chambers without permission from the Whip."

The most serious indication about the compilation by the Whips of a private and secret list of attendance in the House is found in the study:

"Control of members activities for some years the Whips of three parties carried out a check on appearance of Members at party groups meetings; their staff kept a register of the votes of members and of their attendance in the Chamber and Committees; but the liberals and the New Democrats have a more detailed record than the Conservatives. In the case of the NPD, the figures on attendance and votes of a member of the party group are distributed by the Whip to all his colleagues. In the last year, the Chief Government Whip produced an analysis each week for the Prime Minister as well as for local Ministers."

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A simple compilation of statistics, without any explanation, can often be misleading and gives a false impression of the performance of a Member. Despite that, the more current Whips have said that they have met no opposition from their parliamentary colleagues about these disclosures. A large number of members of party groups see eventual advantages in this practice in that it gives party leader more complete and reliable information than in the past about the performance of each Member.

3. *Common arrangements in both Chambers*

Article 37 of the Senate and House of Commons Act 1970 provides for a deduction of \$60.00 from the salary of a Senator or a Member for each day of absence over 21 days. But the only check on this seems to be the requirement that each Member should give the Clerk of his Chamber, at the end of each month and of each session, a signed record of the number of days for which he or she has been present during that period.