

**COURTS LEGISLATION AMENDMENT (JUDICIAL COMPLAINTS) BILL 2012**  
**JUDICIAL MISBEHAVIOUR AND INCAPACITY (PARLIAMENTARY COMMISSIONS) BILL 2012**

**QUESTION ON NOTICE**

**Senator Crossin** asked:

Could you comment on whether Standing Order 193(3) would prevent a Senator from raising the matter of a judge's misbehaviour or incapacity in the Senate for the purposes of moving a motion to establish a Commission under the Parliamentary Commissions Bill?

**Answer**

Standing order 193(3) provides that:

A senator shall not use offensive words against either House of Parliament or of a House of a state or territory parliament, or any member of such House, or against a judicial officer, and all imputations of improper motives and all personal reflections on those Houses, members or officers shall be considered highly disorderly.

It sets the standard for referring to other Houses and their members, and to judicial officers, and underpins the maintenance of comity between Houses of Parliament throughout the nation and between the legislative and judicial branches of government. However, it has been held not to prevent references to such matters in debate where it is necessary to refer to them for the purpose of determining a substantive motion. *Odgers* gives some examples in Chapter 10 under 'Rules of debate':

The rules concerning language in debate may be modified by motions which necessarily require such modification for their determination. Where a motion to censure a minister directly accuses the minister of knowingly giving false information the rule against allegations of lying is not enforced to that extent. Similarly, if a motion were to be moved for an address to remove a judge, it could hardly be expected that the judge would be protected from adverse reflections in debate on the motion.

The example is also given of a resolution calling on the Governor-General to resign, or, if he does not, for the Prime Minister to advise the withdrawal of his commission (which was debated in May 2003).

On these precedents, it is clear that references to matters going to a judge's misbehaviour or incapacity would not be taken to offend standing order 193(3) if made in debate on a substantive motion in relation to the judge's conduct or capacity, including a motion to establish a Commission under the bill.