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COMMITTEE OF PRIVILEGES

Quotation of
Unparliamentary Language in Debate

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COMMITTEE OF PRIVILEGES

REPORT TO THE SENATE

The Committee of Privileges has the honour to report to the Senate, as follows.

Quotation of unparliamentary language in debate

2. On 29 May 1979 the Senate, on the motion of Senator Georges, referred to the Committee the matter of a ruling by the Acting Deputy-President (Senator Townley) during debate on the Appropriation Bill (No. 3) 1979. The record of the debate, which is to be found at page 2262 of *Hansard* of that day, shows that Senator McLaren, during his speech, quoted a newspaper in the following way:

That is a quote from the *Illawarra Mercury*. Let us look at what it says about Mr Howard. Mr Howard is the spokesman for Mr Fraser. What do we see in this Fairfax journal? It states: 'Lies, lies, lies! Tax levy stays, health aid goes'. That is the paper

Upon a Point of Order being raised, the Acting Deputy-President ruled that the Senator was not allowed to use words that are unparliamentary, whether by quoting from a newspaper or by seeking to have those words incorporated in *Hansard*. In repeating his ruling the Acting Deputy-President stated the position in the following terms: 'Under the Standing Orders, it is not permissible for you to use words that are unparliamentary, whether by quoting or by any other means'.

3. A motion for dissent from this ruling was subsequently moved and negatived. Senator Georges then raised the matter as one of privilege. His motion to refer the matter to the Committee of Privileges was agreed to, after debate (*Hansard*, pages 2267-8). The basis of Senator Georges' case was that Senator McLaren's rights had been disadvantaged, as he was limited in what he might say in the Chamber as a Senator, although the same words might be used by others outside the Parliament.

4. On first examination the view that the case is a matter of privilege has some attraction. On further consideration, however, it appears to the Committee that it is essentially a matter of order and not of privilege. It is undeniable that the most basic of freedoms attaching to any parliament and to its members is the freedom of speech, but it is equally undeniable that every parliamentary chamber has its rules of order, including those directed against the use of objectionable, offensive or 'unparliamentary' words and expressions. In the Senate these rules have their basis in section 50 of the Commonwealth Constitution and the Standing Orders made pursuant to that section. Erskine May's *Parliamentary Practice* (19th edition, 1976, p. 78), discussing

this restriction on absolute freedom of speech, quotes Anson's *Law and Custom of the Constitution* as follows:

Restraint on Speech in Parliament. 'Speech and action in Parliament may thus be said to be unquestioned and free. But this freedom from external influence or interference does not involve any unrestrained licence of speech within the walls of the House' (Anson, Vol. 1 (Parliament), p. 170).

May goes on to say:

The cases in which Members have been called to account and punished by the House for offensive words spoken before the House are too numerous to mention. Some have been admonished, others imprisoned, and in the Commons some have been expelled.

and later,

In the House of Commons the disciplinary powers of privilege are reinforced by the summary powers conferred on the chair by Standing Orders.

5. Accepted standards of language and behaviour exist in all parliaments of the world. In the Senate, as elsewhere, the initial responsibility for maintenance of those standards lies with the Presiding Officer and ultimate responsibility lies with the Chamber itself, which may ultimately overturn any decision of the Chair.

6. The particular ruling referred to the Committee was based upon, and completely consistent with, many previous such rulings, the first of which was given by President Gould in 1908. The Committee notes, in passing, that similar rulings have been given as recently as 1972, 1977 and 1978. It is also in accord with the practice in the House of Commons at Westminster, which is referred to in May (p. 430) as follows:

A Member is not allowed to use unparliamentary words by the device of putting them in somebody else's mouth.

7. As indicated above, the Committee considers that the question of the incorporation in *Hansard* of material or words which would not be permitted in debate is not a matter of privilege, upon which this Committee should adjudicate or comment. It is not, however, a question which should be overlooked and the Committee recommends that the Senate consider asking the Standing Orders Committee to give the matter its consideration. The Standing Orders contain the established rules on language, the Presiding Officer has the major active responsibility for the application of those rules, but the Senate itself must bear the ultimate responsibility. If the Senate believes that the possibility or desirability of varying those rules is a matter which merits further examination, it would seem appropriate that such consideration should be undertaken by the Standing Orders Committee.

D. S. JESSOP
Chairman

19 September 1979