



**PARLIAMENT
OF THE
REPUBLIC OF TRINIDAD AND TOBAGO
[2009 SESSION]**

**SECOND REPORT
OF THE
COMMITTEE OF PRIVILEGES
OF THE SENATE**

**TOGETHER WITH THE MINUTES OF PROCEEDINGS
AND
RECORDS OF EVIDENCE**

Ordered to be printed by the Senate

SENATE PAPER NO: / 2009

MP PARL: NO. 14/2/1

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INTRODUCTION

1.1 Standing Order 67(1) provides that **“There shall be referred to the Committee of Privileges any matter which appears to affect the powers or privileges of the Senate, and it shall be the duty of the Committee to consider any matter so referred and to report thereon to the Senate”.**

MEMBERSHIP

2.1 Pursuant to Standing Order 64(2), the following Senators were appointed to serve on the Committee of Privileges for the 2009 Session on **Tuesday January 20, 2009:**

- | | | |
|---|---|----------|
| ▪ Mr. Danny Montano | - | Chairman |
| ▪ Mr. Jerry Narace | - | Member |
| ▪ Mr. Linus Rogers | - | Member |
| ▪ Miss Dana Seetahal S.C. | - | Member |
| ▪ Mr. Mohammed Faisal Rahman ¹ | - | Member |

THE REFERENCE

3.1 On Tuesday October 06, 2009, the President of the Senate referred the following matter to the Committee of Privileges for its consideration and report:

“An allegation of contempt of the Senate by Senator Wade Mark in that he deliberately misled the Senate by statements made during the debate of Thursday October 01, 2009”.

¹ Mr. Mohammed Faisal Rahman was appointed w.e.f. April 24, 2009 due to the revocation of the appointment of Mr. Carson Charles.

THE ALLEGATIONS

4.1 On Monday October 05, 2009, Senator Linus Rogers referred to the following statements made by Senator Mark during his contribution on Thursday October 01, 2009:

“Mr. President, I understand that the bank of Belize is opening shop here. Lord Ashcroft 'does' buy political parties. He bought some in Australia and in England. There is a 'fella' called Mr. Forrester who is the general manager of that group, and he was a director of a company called Johnston Construction Limited. They got a tender, without any competition, from Mr. Calder Hart and UDeCott for \$130 million to build the Chancery Lane project.”

4.2 Senator Rogers contended that Senator Mark knew, or ought to have known, that his statements were untrue, since the information on the process for the award of the contract for the Chancery Lane Project was disclosed in the House of Representatives on September 14, 2009.

4.3 On this ground, Senator Rogers charged that Senator Mark had deliberately misled the Senate.

SECRETARIAT

5.1 Secretariat support for your Committee was provided by:

- Mrs. Nataki Atiba-Dilchan - Secretary
- Mrs. Jacqueline-Phillip-Stoute- Assistant Secretary
- Ms. Khisha Peterkin- Assistant Secretary.

MEETINGS

6.1 Your Committee held two (2) meetings for the consideration of this matter on

Wednesday October 14, 2009 and on Wednesday December 09, 2009. The Minutes of these meetings are at **Appendix I**.

CONSIDERATION OF THE MATTER

7.1 Your Committee noted from the onset, that at the sitting of the Senate held on Tuesday October 13, 2009, Senator Mark had made the following apology with regard to his statements of Thursday October 01, 2009:

“Mr. President, on Thursday, October 01, 2009, during my contribution on the Commissions of Enquiry (Validation and Immunity from Proceedings) Bill, 2009, I told the Senate that a company called Johnston Construction Limited was awarded a tender by UDeCOTT without any competition.

At the time I made this statement, I genuinely believed that the information was reliable and true. I was unaware that the issue was explained in the other place. Since that time and more particularly, since Monday, October 05, 2009, it has been brought to my attention that this information was, in fact, erroneous.

I wish to unreservedly apologize to you and this honourable Senate for the inaccurate information conveyed to you. Rest assured that it was never my intention, and is never at any time my intention, to mislead this august House.

I thank you.”

7.2 Your Committee, nevertheless, considered that there was still the duty of fully examining the matter referred to it, as well as, any possible implications for the future practices and procedures of the Senate.

7.3 In approaching the matter before it, your Committee identified the following, as essential questions which needed to be addressed:

- What is the nature of the contempt of “deliberately misleading the House”?

- Did the statements of Senator Mark satisfy the necessary criteria?
- Could inaccurate statements made by a Senator fit the definition of “reckless”?
- Are there parameters to the privilege of freedom of speech in the House?

Deliberately misleading the House

7.4 In addressing this question, your Committee was guided by the interpretation of this particular contempt as provided by Mc Gee in his text on Parliamentary Privilege in New Zealand.

7.5 Your Committee agreed that three elements were necessary in a finding of contempt of “deliberately misleading”. These are:

- i. the statement made was not true.
- ii. the Member knew or ought to have known that the statement was not true.
- iii. the Member intended to mislead the House.

The statements of Senator Mark

i. the statement made was not true

7.6 Your Committee agreed that by his apology, Senator Mark had admitted that his statements were untrue. As such, the first element for deliberately misleading was satisfied.

ii. the Member knew or ought to have known that the statement was not true

7.7 The finding of “ought to have known” was extensively discussed, with reference to legal definitions of the term. Your Committee noted that knowledge, intelligence, and expertise were factors to be considered in determining whether an individual “ought to have known”.

7.8 Your Committee agreed that given Senator Mark's "*position, circumstances, character and intelligence*", he ought to have been aware, at the time of making the statements, that they were inaccurate. There was therefore the possibility for meeting the second element in the charge of "deliberately misleading".

iii the Member intended to mislead the House

7.9 The content of the statement offered by Senator Mark to the Senate, on Tuesday October 13, 2009 was carefully examined. Your Committee acknowledged Senator Mark's clear statement that it was not his intention to mislead the Senate, and his unreserved apology.

7.10 In such a circumstance, the necessary element of "deliberateness" could not be evidenced and Senator Mark cannot be held to have intentionally misled the Senate.

Freedom of speech

7.11 Nonetheless, your Committee was concerned, that in the instant case, misleading did occur, and therefore gave consideration to the question of reconciling "reckless" statements with the privilege of freedom of speech.

7.12 Your Committee compared the ordinary English Language meaning of the word "reckless" with legal definitions, and agreed that the term was pertinent to the Senate when statements were made without care for their veracity or accuracy.

7.13 In looking at the question of freedom of speech, your Committee considered the learning of Erskine May which states that "*subject to the rules of order in debate, a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings or injurious to the character of individuals; and he is protected by his privilege from any action for lie, as well as from any other question of molestation.*"

7.14 Your Committee noted that May's comments on free speech were directed at the question of protection from civil suit.

7.15 Other Commonwealth sources on parliamentary practice were also referenced and these seemed to substantiate the view that the only limits that can be plausibly placed on the freedom of speech of a Member of Parliament are those defined by the rules of debate established by the House, and this privilege may only be questioned in and by the House.

7.16 Your Committee agrees that undoubtedly, the privilege of freedom of speech is the most precious of all the rights and privileges of any parliamentary democracy. This right was well fought for during the formative era of the British Parliament and it remains a central element in the working of the legislative institution. Certainly, it is the right of every Member to say what he pleases under privilege, subject only to the rules and practices of the House. Absolute privilege enables Members to comment on the activities of individuals, interest groups, representative bodies, companies and anyone else without fear of actions for defamation. This right guarantees to Members protection from attempts by external parties to control what they choose to say in the House while in the performance of their duty.

7.17 While your Committee fully accepts that the privilege of free speech, within the House, means freedom from challenge in a judicial forum, your Committee does not accept that free speech means freedom from responsible speech. Irresponsible or reckless use of speech can cause serious harm to outside individuals who enjoy no legal redress. As such, privilege carries with it certain obligations.

7.18 The 1969 ruling of Speaker Ellis of New South Wales aptly expressed the perspective of your Committee on this question. Speaker Ellis advised: *"It is the right of every Member to say what he likes under privilege in Parliament, subject only to the observance of the forms and practice of the House itself. He does so at his own risk in incurring the displeasure of the public and possibly the censure of the House itself. The right of free speech is something that the Speaker is bound to safeguard and protect, and just as it is the right of all members to*

use, equally it is a right that members should not abuse. Any abuse of the right of free speech in Parliament is a reflection upon the honourable member concerned. The right should always be exercised with restraint, particularly when referring to persons who have no right of audience in this Parliament and are, therefore, defenceless in the face of any irresponsibility.

In my opinion an honourable member should not reflect on private citizens unless he is satisfied that there are compelling considerations of public interest requiring him to do so. If he wishes to make a serious charge against a member of the public, in my view he should normally do so by moving a substantive motion framed in precise terms and capable of being answered by any honourable member choosing to defend the person under attack."

7.19 Your Committee concurs that, if a Member is of the belief that it is in the public interest to disclose certain information about private citizens, it is incumbent upon that Member to make all reasonable inquiries to ascertain the truth of his information, and to the reliability of his source before making declarations to the House. Anything less is to be considered irresponsible and abusive of privilege.

Consequences

8.1 Having agreed that the irresponsible use of free speech is unacceptable, your Committee turned its attention to the question of what were the options for the sanctioning of Members who insisted on this course of action.

8.2 Your Committee identified three options for censure which were within the remit of the Senate. These were (i) the request for an apology (ii) oral reprimand and (iii) suspension. These can be recommended by the Committee either singularly or in combination.

8.3 The Records of Evidence are at **Appendix II.**

CONCLUSION

9.1 Your Committee was asked to consider whether on Thursday October 01, 2009

during his debate contribution, Senator Mark made statements with the intent of misleading the Senate.

9.2 Given the elements which constitute the contempt of misleading, your Committee has found that while the first two elements have been met, the third requirement of intent was not satisfied. Therefore, Senator Mark is guilty of misleading the Senate on the date in question, but the charge of “deliberately” misleading the Senate cannot be sustained.

9.3 Nevertheless, your Committee wishes to highlight that through his apology Senator Mark has given credence to the raising of this matter by Senator Rogers, and the referral of this matter has given your Committee the opportunity to ponder on the question of the responsibilities that are concomitant with the right of free speech.

9.4 Your Committee agrees that while Senator Mark took the proper action in apologizing for the misinformation he had presented to the Senate, it does not negate the fact that he was reckless and irresponsible at the time of making his statements. Your Committee wishes to express its condemnation of the occasions on which Members refuse to act with the necessary sense of responsibility, by verifying information and the circumstances under which documents “arrive in their mailboxes”.

9.5 Your Committee wishes to advance the idea that acceptable standards of behavior for Senators can only be set and maintained by the Senate itself. As said by Speaker Ellis, the freedom of speech of a Member is subject only to the forms and practice of the House, and when they are careless and irresponsible in their declarations the Member could incur the censure of the House.

9.6 The privilege of freedom of speech must be treated with the utmost respect, and Members are called upon to act in such manner that befits the dignity of the House. While it can be argued that any abuse of the right of free speech is a reflection upon the Member concerned and ultimately will bring public condemnation, it is equally true that as part of its membership, any digression in the conduct of a Member can be a negative

reflection upon on the House.

9.7 Your Committee therefore wishes to encourage Senators to speak and act in accordance with the highest of standards of eloquence and decorum.

RECOMMENDATIONS

10.1 Accordingly, your Committee recommends that this Senate express its strong disapproval and condemnation of the action of Senator Mark in recklessly and irresponsibly misleading the Senate.

10.2 Given the aforesaid, and the apology offered by Senator Mark for his reckless and irresponsible statements, your Committee wishes to recommend that, in this instance, no further action be taken by the Senate.

Respectfully submitted,

Sen. the Hon. Danny Montano
Chairman

December 14, 2009

MINUTES OF PROCEEDINGS

**MINUTES OF THE SIXTH MEETING OF THE COMMITTEE OF
PRIVILEGES OF THE SENATE, SECOND SESSION (2009), HELD IN
COMMITTEE ROOM NO. 2, OFFICE OF THE PARLIAMENT, THE RED
HOUSE, ABERCROMBY STREET, PORT OF SPAIN ON WEDNESDAY
OCTOBER 14, 2009 AT 10:00 A.M.**

PRESENT

Mr. Danny Montano	-	Chairman
Mr. Jerry Narace	-	Member
Ms. Laurel Lezama	-	Member
Mr. Mohammed Faisal Rahman	-	Member
Mrs. Nataki Atiba-Dilchan	-	Secretary
Ms. Jacqueline Phillip-Stoute	-	Asst. Secretary
Ms. Khisha Peterkin	-	Asst. Secretary

ABSENT

Ms. Dana Seetahal, S.C.	-	Member
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INTRODUCTION

1.1 The Chairman called the Meeting to order at 10:16 a.m. and thanked Members for attending.

1.2 The Chairman reminded Members of the need for confidentiality in matters dealt with *in camera*. He also drew Members' attention to *Standing Order 74 which deals with "Premature Publication of Evidence"*.

1.3 The Chairman added that it would be out of order for any discussion to take place outside this forum on the matter before the Committee.

CONSIDERATION OF MATTER REFERRED TO THE COMMITTEE

2.1 The Chairman reminded Members of the matter referred to the committee for its consideration and quoted from Hansard the statements made by Senator Wade Mark during the debate on October 05, 2009.

2.2 Members also acknowledged that on October 13, 2009, at a sitting of the Senate, Senator Mark had made a personal explanation during which he offered an apology for the statements made and indicated that it was never his intention to mislead the Senate.

2.3 The attention of Members was drawn to an Opinion which was prepared by the Clerk of the House on the issue of “deliberately misleading” and the definition of the term “ought to have known.”

2.4 The Chairman indicated to Members that in order to prove that a Member had deliberately misled the House the following three factors have to be clearly established:

- i. the statement made was not true.
- ii. the Member knew or ought to have known that the statement was not true.
- iii. the Member intended to mislead the House.

2.5 Members agreed that by virtue of his apology in the Senate, Senator Mark had admitted that his statements were untrue and as such, the first criteria had been satisfied.

2.6 The Committee proceeded to discuss the meaning of the term ‘***ought to have known***’. Paragraphs 11 and 12 of the Opinion were deemed important points of reference.

2.7 One Member voiced the opinion that given Senator Mark’s “*position, circumstances, character and intelligence*”, he should have known that the statement he made was untrue at the time of making it.

2.8 Another Member noted that at the sitting in question, the statement made by Senator Mark was not challenged, and that while Senator Mark may have spoken intemperately, he was not guilty of any greater crime and as such his apology should be accepted.

2.9 The Chairman reminded Members that it was the duty of the Committee to ventilate the issue and to set standards if necessary. He asked that Members consider the purpose of privilege of freedom of speech and whether the Senate should accept reckless use of speech. He also questioned whether reckless disregard for the truth could be aligned to imputing improper motives and an intent to mislead.

OTHER BUSINESS

3.0 The Chairman directed the Secretariat to circulate the Minutes and Verbatim Notes to Members as soon as possible and to prepare an Opinion on the term “*reckless disregard for the truth*” in relation to misleading the House.

ADJOURNMENT

4.1 There being no other business, the Chairman thanked Members for their attendance and adjourned the meeting to Tuesday October 20, 2009 at 10:30 am.

4.2 The adjournment was taken at 11:03 am

We certify that the above minutes are true and correct.

Chairman

Secretary

October 16, 2009

**MINUTES OF THE NINTH MEETING OF THE COMMITTEE OF
PRIVILEGES OF THE SENATE, SECOND SESSION (2009), HELD IN
COMMITTEE ROOM NO. 2, OFFICE OF THE PARLIAMENT, THE RED
HOUSE, ABERCROMBY STREET, PORT OF SPAIN ON WEDNESDAY
DECEMBER 09, 2009 AT 10:00 A.M.**

PRESENT

Mr. Danny Montano	-	Chairman
Mr. Jerry Narace	-	Member
Ms. Laurel Lezama	-	Member
Mr. Mohammed Faisal Rahman	-	Member
Mrs. Nataki Atiba-Dilchan	-	Secretary
Ms. Jacqueline Phillip-Stoute	-	Asst. Secretary
Ms. Khisha Peterkin	-	Asst. Secretary

ABSENT

Ms. Dana Seetahal, S.C.	-	Member
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INTRODUCTION

1.2 The Chairman called the Meeting to order at 10:10 a.m. and thanked Members for attending.

CONSIDERATION OF MINUTES – October 14, 2009

2.1 The Chairman referred to the Minutes of the Sixth Meeting held on Wednesday October 14, 2009, and enquired whether there were any corrections or omissions.

2.2. There being no amendments, the motion for the confirmation of the Minutes was moved by Mr. Rahman and seconded by Ms. Lezama.

2.3 The Minutes of the Sixth Meeting were thereby confirmed.

MATTERS ARISING FROM THE MINUTES

3.1 Mr. Rahman sought comments from the Chairman regarding the meaning of premature disclosure in relation to the information obtained at a recent CPA Workshop.

3.2 The Chairman explained that from his readings, he garnered that the premature publication rules were clear and were applied in the strictest sense in the UK. However,

practice in Trinidad and Tobago recognizes that Members operate along party lines, and as such, discussions with the party caucus would occur even though, strictly, that is against the rule. He emphasized, however, that should there be any leak of proceedings, the person held culpable would be the Committee member.

CONSIDERATION OF MATTER REFERRED

4.1 The Chairman drew the attention of Members to a document prepared by the Secretariat on the topic of recklessness and freedom of speech. He made the point that while Parliaments are careful about limiting the freedom of speech, the rights of individuals must also be considered. He highlighted the 1969 statements of Speaker Ellis of New South Wales as representative of his views.

4.2 Discussions ensued on the irresponsible behavior of Members and its effect on private citizens. The point was made that standards must be set, in the Senate, for the next session.

4.3 The Chairman indicated that while, in the instant case, the actions of Senator Mark were reckless and irresponsible, his sincere apology was the correct and proper course to take, thereafter.

4.4 Concerns were expressed that there was no real contrition by offenders and that weekly apologies could become the norm.

4.5 The point was made that there was no apparent malice on the part of Senator Mark

4.6 After further discourse, it was agreed that a Draft Report would be prepared which would highlight the issues of freedom of speech versus reckless speech. Senator Mark would be reprimanded, in the Report, for reckless and irresponsible behavior but in light of his apology, the Committee would recommend that no further be taken by the Senate in the matter.

4.7 Mr. Rahaman indicated his intention to prepare and submit a minority report.

4.8 The Chairman expressed his disappointment at this chosen course of action.

ADJOURNMENT

5.1 There being no other business, the Chairman thanked Members for their attendance and adjourned the meeting.

5.2 The adjournment was taken at 11:05 a.m.

We certify that the above minutes are true and correct.

Chairman

Secretary

December 10, 2009

RECORDS OF EVIDENCE

**VERBATIM NOTES OF THE SIXTH MEETING OF THE COMMITTEE OF
PRIVILEGES OF THE SENATE SECOND SESSION (2009) HELD IN COMMITTEE
ROOM NO. 2, THE RED HOUSE, ABERCROMBY STREET, PORT OF SPAIN, ON
WEDNESDAY, OCTOBER 14, 2009 AT 10.15 A.M.**

Present

Mr. Danny Montano	Chairman
Mr. Jerry Narace	Member
Miss Laurel Lezama	Member
Mr. Mohammed F. Rahman	Member
Mrs. Nataki Atiba-Dilchan	Secretary
Mrs. Jacqui Stoute	Asst. Secretary
Miss Khisha Peterkin	Asst. Secretary

Absent

Miss Dana Seetahal SC	Member
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Mr. Chairman: I call the meeting to order. The matter before us is a matter of privilege concerning Sen. Wade Mark with a statement that he made in the Senate on Wednesday October 14, 2009. Before we get into any of the details, let me just remind Members of their obligations under Standing Order 74, that is the premature publication of evidence. You may not talk about this outside of this room.

The matter before us is quite simple. Sen. Mark has been called to account for a statement that he made concerning the Chancery Lane project. I have a copy of the *Hansard*. Sen. Linus Rogers filed the complaint against Sen. Mark saying:

"There is a 'fella' called Mr. Forrester who is the general manager of that group, and he was a director of a company called Johnston Construction Limited. They got a tender, without any competition, from Mr. Calder Hart and UDeCott for \$130 million to build the Chancery Lane project."

As it turns out that statement was not true. It was not accurate. Sen. Mark has acknowledged that this statement is not true and has apologized to the Senate for making this statement. There are a number of issues I wish to highlight so we can

clarify our thinking in this matter. In order to establish that a Member is misleading the House you must establish three things.

One is that the statement he made is in fact not true. Secondly, we need to establish that he either knew or ought to have known that the statement was not true and thirdly, he intentionally misled the House. He had a guilty mind that he intended to mislead the House.

We have a situation where he has admitted that he misled the House. The first issue we accept is that that has been satisfied. The fact of his apology impacts on the decisions that would be made here in the sense that, the committee may find that he intended to mislead in which case he can still be held guilty in that use of the term, but may decide that because he has apologized, that is a punishment that the committee may have called for in any event and no further punishment is required, or you can decide to punish him in some other way.

We still need to establish, if we wish to proceed, that he either knew or ought to have known at the time and he deliberately intended to mislead. In other words, notwithstanding his statement that he did not know and did not intend to mislead, the committee could still find an adverse finding on those two issues.

Mr. Narace: Mr. Chairman, on the question of ought to have known, there is a precedent authority that was circulated. It says:

What is meant by the expression ought to have known. There are only two references to this phrase. Definitions are drawn from statutory references in the laws of Australia and New Zealand. The criminal code S1571C and the Companies Act 1955 S1C respectively. The phrase came before the court for consideration in the Australian case of *Bogey v The Queen* 1986, 161CLR10 where it was established that when the prosecution relies on they ought to have known limb of the statute, the Crown was proved that the accused and not some hypothetical person ought to have known if he or she had thought about it.

The knowledge laid at the door of the accused is not to be accessed by reference to the notional knowledge and capacity of some hypothetical person. The starting point of the enquiry is the knowledge, the intelligence and where relevant the expertise which a particular case actually possesses.

I am aware and we are all aware that Sen. Mark claims to be one of the longest serving and most experienced Senators. He comes to Parliament very well prepared. That debate was in the public domain, the Channel and the news from the Lower House. What is also more interesting is that while he was making the statement, Mr. President, you cautioned him on several occasions and even with your caution he went on to make those remarks.

Mr. Chairman: If you could hold your fire for a moment, what you read there that was proved beyond a reasonable doubt is the standard for a criminal case. That standard is a higher standard than would exist in a civil matter.

Turn to page 3, paragraph 9 talks about the New Zealand Companies Act, the phrase "ought to know" conveys that what the person ought to know is determined by his or her position or relationship to the company.

In paragraph 10 it says in common law the phrase "ought to have known" has been considered to be synonymous with "should have known" and must be taken to know.

When you read further, the question of proximity to the situation becomes very relevant. The question here is: Is Sen. Mark's proximity to the Lower House and the proceedings of Parliament so close as to make it so that we can take it that he did not know. That is the standard. It is slightly different from beyond reasonable doubt. Beyond reasonable doubt would be very difficult to prove in these circumstances.

Mr. Narace: Thank you, Mr. Chairman, you are absolutely correct. In coming to that area of civil law, we know how political parties operate. We know that usually they have a caucus. If you are speaking in a debate and that Bill is being debated in the Lower House, even if you did not look at the debate, normally, you would get the main facts of the debate. I find it hard to believe that in using proximity and should have known, Sen. Mark would not have known that in the Lower House this matter was treated with.

I come back to the point when he was warned by you. He continued to make the point. He appeared to be very much in the know. Therefore, I do not think that there can be any doubt that based on the civil law ingredients for ought to have known, that one can prove that he does not satisfy should have known.

Mr. Chairman: For the record let me restate that the issue under discussion here is

paragraph 3(b) of this opinion that was circulated to all the committee's Members. The issue that we are discussing is whether the Senator ought to have known. The second requirement is that we must establish that the Senator knew that the statement was wrong. Knew in that context means ought to have known.

Paragraph 11 talks about three things, actual knowledge, shutting with one's eyes to an obvious means of knowledge and constructive knowledge. What we are talking about is constructive knowledge.

I want to take you to paragraph 11 on page 4. The Lord Chief Justice said was:

The respondent deliberately refrained from making enquiries, the results of which he might not care to have.

That statement would be very important when we discuss the third issue.

The third set of knowledge is what is generally known in law as constructive knowledge. It is what is encompassed by the words ought to have known in the phrase knew or ought to have known.

That is the charge against Sen. Mark. He knew or ought to have known. It does not mean actual knowledge at all. It means that the defendant had in effect, the means of knowledge.

Paragraph 12, the term constructive knowledge is an equitable doctrine of which the standard for application is quite high. The court applies this doctrine where he has not actual notice he ought not to be treated as if he had not noticed unless the circumstances are such as to enable the court to say not only that he might have acquired but also that he ought to have acquired the notice with which it is sought to affect him, that he would have acquired it but for his gross negligence in the conduct of the business in question.

Negligence refers to the particular case involved.

Paragraph 13, in the circumstances a claimant would be regarded despite his protestation of ignorance to be fixed with constructive knowledge of all the relevant facts.

Paragraph 15, there are therefore a range of opinions both judicial and academic, but regrettably not enough authority on the meaning of this term. It is also clear that whenever the common law or equity imputes to a person's knowledge it only does so

upon a presumption founded on very high evidence beyond a reasonable doubt that the person had the means of knowing. Beyond reasonable doubt refers to the means of knowing not to the knowing.

Evidence that establishes proximity sufficient to have put the person upon further enquiry may be considered irrelevant.

The last paragraph says that Lord Justice Smith recommended that with respect to constructive knowledge the approach is to determine what the plaintiff should have realized or obtained, asking no more of him than is reasonable, taking into account his position, circumstances, character and intelligence.

His position and circumstances are what have to be measured here. This is what we need to consider, whether we can or we should deem it that Senator Mark did have constructive knowledge of the fact that he claims he did not know.

Before we come to any conclusion, Sen. Seetahal SC is not here. I move on the next statement.

Regardless of what you find there, the next issue is that the third requirement is that we must establish that the Member intended to deliberately mislead the House. I want to put something to the committee and this we would not be able to decide because we have no authority or precedent for it as yet. That standard that the Member must have intended to mislead the House would in most circumstances be a difficult standard to apply and achieve.

The question is: Can we say and should we say—on the subject for research, we need some opinions on this—that the Member had sufficient reckless disregard for the truth, so as to impute an improper motive with respect to the veracity of the statement? In other words, if he did not care whether or not what he was saying is true. Can we therefore impute an improper motive if he had constructive knowledge of the matter and he then had sufficient disregard for the truth and therefore is an intent to mislead? We have no authority before us to guide us at this moment on whether that reckless disregard, if we can say that it applies to this case, can be interpreted as the same as intent to mislead. All three things are necessary.

Mr. Narace: Mr. Chairman, I think that we have established (e) quite clearly. We are looking at paragraphs 11 and 12. First of all the respondent deliberately refrained from

making enquiries, the results of which he might not care to have.

Mr. Chairman: That refers to the question of reckless disregard for the truth. That goes to the route of that.

Mr. Narace: I will prove that to you just now. I will also prove to you. Let me make the point whenever the common law imputes to a person it only does so upon a presumption founded on high evidence that the person had the means of knowing. We start off with the results of which he might not care to have for that statement. Then, we go to that the person had the means of knowing. He had the means of knowing. We make the point that he should have realized or obtained asking him of the reason taking into account his position, circumstances, character and intelligence.

If you look at the conversation or debate you would see that you said to him before:

"Mr. President: Before you resume, Senator, just answer me this. This information which you just released about properties in the Cayman Islands--"
He jumped in clearly not allowing you to finish.

"Sen. W. Mark: I have been informed. I do not have the evidence. I have been informed and I have asked the Attorney General to investigate it for me."

In these two sentences you can establish that he did not care to check. He is declaring that he had the information. We bear in mind, taking into account his position, circumstances, character and intelligence, longest serving Senator and more so, we also know that the information was on the channels available. The information from the Lower House made the news and there was sufficient opportunity for him to get that information. His party raised that in the Lower House. He is a member of the caucus. The caucus should have and more than likely would have discussed that. The information was available to him and should have been discussed in the caucus. If his caucus runs anything like our caucus, we will say our points are and it works like that. Look at the conversation that went on.

"Sen. Dr. Saith: Why do you not send it to him?"

Sen. W. Mark: No, that is my point of view. I have asked him to investigate it for me.

Mr. President: Have you done anything about this? Have you written to

the Commissioner...

Sen. W. Mark: No, I am going to write the Attorney General now about it.."

He is saying that because he did not care to have the truth in this matter.

"I have to write him about it because I only get the information today,"

He is making a sort of excuse. In other words he came to present a position that he is claiming that he only – which was in the public domain long before that.

"Mr. President: Senator, let me caution you."

The President of the Senate is cautioning this experienced person with his position as leader, the circumstances, character and intelligence.

"Mr. President: You are a Senator; Senator is a very high office."

You reminded him of this.

"With great authority and rank, comes great responsibility, "

You cautioned him in this regard. You said,

"...I would ask you to act in as a responsible manner as possible. If you have not, and have not yet stood by the strength of your allegations, by making reports to the competent authorities---

He went on regardless of all that and said that he asked his colleague and dismissed that. You went on another occasion and said:

"—then I ask you only, to be cautious about how you make these statements."

You asked him to be cautious in the way he presented it. He went on:

"All right. Yes. Okay, Mr. President I thank you very much, but I think it is my duty and my responsibility to ask the Attorney General of this country that in the Turks and Caicos,"

He is constructing it in a way to be evasive as if to put some level of defence.

"this gentleman has properties, and next to the property, you have a "fella" called Forrester who also has property there. So, Mr. Calder Hart has a property and this chap has a property, so they are good friends. Do you know what the end result is, hon. Attorney General, through you, Mr. President? They got a tender an award for a contract, worth \$124 million, it is now running over

\$700 million and counting. I believe that is what is called "money laundering,"

He went on to refer to it as money laundering "but we would talk about that on Monday" which means that he had other plans for this subject. Then he went on to sensationalize it not against it that the process might have been flawed or something corrupt about it. He went on to sensationalize it in the context of hospital care, beds to sleep, water, transport, roads, food prices and "fellas" in high office committing white-collar criminal offences. All this time he was being cautioned by the President of the Senate to take certain responsibility as is contained in all these precedent authorities and other pieces of information with which we have been furnished here.

I contend that he ought to have known and on both counts that he intended to mislead the House, they have been very clearly established.

Mr. Rahman: I believe that a case is being made out that is not relevant to the issue before us. All the other statements that Sen. Mark allegedly made according to the *Hansard* and the sensationalism have anything to do with the particular point of where he misled the Senate. All that is to colour our minds to feel that because he is such a sensational person and he had been saying things under caution, he is guilty on this particular point. With all respect, I do not think that that follows.

Mr. Chairman: Let us deal with that issue. The point that the Minister was making was that the question of whether he intended to mislead the Senate is not what is being complained of. The Minister is talking about the Senator's frame of mind and his approach to these issues in a generic sense. He is saying that here is a situation that happened during the same contribution.

Mr. Rahman: You are not permitting me to make my case, Sir. The point I made is that that has to relevance to this particular issue. Let me now deal with the other aspects that you are trying to address.

10.45 a.m.

Mr. Rahman: What I was discussing in the other place on September 14, that was in the budget debate, I indicated that at that time Sen. Mark made the statement at the sixth or seventh sitting of the Senate, the stress of was very — People were not really functioning in a completely free atmosphere in the later days. I say that without any aspersions against your chairmanship. When Sen. Mark made the statement nobody, even though

that information was in the public domain—*[Interruption]*

Mr. Narace: On a point of order.

Mr. Chairman: Let him finish.

Mr. Rahman: After all. Listen, do not let me lose my train of thought or maybe that is what you are trying to do. When Sen. Mark made the statement in the other Upper House nobody got up to challenge him officially and say: Sen. Mark, you are wrong. In other words, although the statement was made on September 14, it was one issue in a whole budget debate and six debates had followed after that. Nobody said: Sen. Mark, you are wrong. Sen. Mark said something for which he has apologized. This is what he thought it to be. Since nobody challenged him to say: You are wrong about that matter of the tenders and you are wrong about that matter of no competition. He did not, in that case say: I know better than you, that it is not so. There was no question of that. Sen. Mark made a statement and everybody, with the full knowledge of this matter being in the public domain, was inclined to accept what he was saying until further investigation afterwards. If nobody could have remembered with clarity whether he was right or wrong, how can we impute that Sen. Mark willfully knew and deliberately sought to mislead? Sen. Mark was saying what at the time would have escaped him and he would have thought. He is making a statement and nobody challenged him.

There are other issues to this matter. Even in the worse of circumstances, the infraction that we are dealing with here is an extremely minor one. This is not a John Profumo Affair, where national security is compromised. This is a small matter and the worse we can do is reprimand Sen. Mark, even if we found him collectively guilty of the highest level of misleading the Senate on this non-issue.

I would like to submit, Sir that in the circumstances of the non-importance of this matter, we simply say: Okay, so he did speak intemperately; the fact that Sen. Mark always sounds off and gets on very outrageously. I say this as his colleague and everybody knows that. He would be the first to admit it. That does not mean that he is guilty of a greater crime, simply because he has made a simple statement. I am putting it to us here, Sir that with all of the bloodlust for pillaring Sen. Mark, which I see coming here this morning, I would like to suggest that we would be redeeming ourselves and behaving much more nobly than we are being asked to and say: Okay, Sen. Mark has

behaved like a gentleman. He has apologized and we will reprimand him and we will say that the matter is done. This is my submission, Sir. Thank you very much.

Mr. Chairman: I think you have put your finger on the point. You have described the circumstances very accurately. However, the committee has a duty and an obligation to ventilate the matter properly and it is also an opportunity for the committee to deal with this issue in a generic sense, so that certain standards can be set in the Senate, so for the future we know what you can say, how you can say it and what you must do before you say it. I think that is the opportunity that we must take and, therefore, that is why I am taking this opportunity to belabour these issues, so that we understand clearly what the responsibility of Senators will be in the Senate. That is really what is going on here.

Mr. Narace: Mr. Chairman, thank you so kindly for that comment. This Senate is referred to as the Upper House and if we look at the tradition of Senates over the years, it is a place of nobility. If we look at this whole concept of privilege, many times people conclude that privilege ought to be continued and allowed because people would expect that people who are called honourable and people who sit in this honourable House ought to conduct themselves in a manner befitting the term "honourable". Therefore, I think I would be more than happy to listen to whether we just hit him a small tap on the wrist or nothing more.

I would be more than happy to listen to that. I would want clearly to establish that you are so correct, that in the future, people will understand that you do not just get up and make statements without checking your statements and without knowing the validity and the truth.

We have seen, not just in this House but the other House, that people have been destroyed because some Parliamentarian got up and made a statement that was totally inaccurate. I am sure the information that is available in here did not happen by accident; all these things where we speak to people, in particular people of his position, circumstances, character and intelligence, I think in particular. As I saw it, the task at hand this morning was to satisfy three elements: the statement has been misleading; to establish he ought to have known and to establish he intended deliberately to mislead the House.

Mr. Chairman, I would be willing to listen to anybody saying maybe we should

hit him a slap on the wrist, but in terms of establishing it, I think the pain that you as President went through in talking to him to try to get him to recognize the seriousness of the statement he was making — *[Interruption]* The point I am making is that it established this as the character.

At any rate, even Sen. Rahman agrees that, to use his words, given that he is guilty is not a serious issue. If that is what we want to look at, let us look at that, but let us at least agree that we have satisfied A, B and C and then we could take it.

Depending on how this committee conducts itself, you are absolutely correct, you made a point that if we were to treat with it in a particular way it might send a certain signal, all of it must be adhered to.

Mr. Chairman: Yes, what the Minister has said is again also spot on. I am very happy to see that there is an approach in a meeting of the minds, in terms of the outcome as to where this thing might ultimately go.

Just to clarify what the Minister is saying, there are two distinct issues here when it comes to (the freedom of speech in the Parliament). There are two distinct issues that often get confused, I think. This is where, I think, we in the Senate can distinguish ourselves slightly from other practices. Within the Parliament, of which the Senate is a part, there is freedom from prosecution and from civil legal suit. You have absolute freedom of speech. That means you can come into the Senate and say anything about anybody and nobody can sue you. That is separate and apart from the Senate accepting that type of behaviour, where there is no justification for doing it and where citizens are damaged, hurt and vilified for no purpose, without sufficient basis.

Mr. Narace: Mr. Chairman, can I add one thing? If they took out an ad trying to correct the circumstances, they can be brought before the Privileges Committee for harassing a Senator, so they do not have the right to respond. I just wanted to add that.

Mr. Rahman: I do think if they brought out a proper ad without offending, they do not have that resort. I disagree with you there. The issue that Sen. Mark was making when he made that incorrect statement was the horrendous cost overruns of the very same project that he was addressing. It seems almost as if this charge is a red herring over that cost overrun, which is the major issue.

Here we have Sen. Mark zeroing in on a cost overrun that is 600 per cent and we

are taking up an issue and making what he was —

Mr. Chairman: I take your point.

Mr. Rahman: No, a further point, Sir.

Mr. Chairman: Your point is that a mountain is being made out of a molehill.

Mr. Rahman: Yes, but further. On the Turks and Caicos issue, knowledge is not evidence. He is asking the Attorney General in the full glare to force his hand to investigate a matter of which I have had rumours. If the rumours turn out to be wrong then the newspapers says that Sen. Mark is more often wrong than right, he would be further castigated. He has simply exposed himself to the bona fides of his sources of information. If he wants to hang himself, why should we be too bothered about it? The fact of the matter is if what he said was correct and the Attorney General investigates it and it is found to be correct, then a lot of trouble is going to face the entire government procedures.

Not only are we making a mountain out of a molehill, we are disregarding the mountains that are all around and zeroing in on a non-issue. I want to repeat: zeroing in on a non-issue.

I find that the Minister of Health has a crusading zeal today to crucify Sen. Mark. Overruns like this and all the other issues — [Interruption]

Mr. Narace: On a point of order. I made it very clear that on the question of privilege, the entitlement of the words “honourable Senate” and “honourable Senator” were things that came from nobility, that people who could not represent themselves in the Senate and their families were being hurt in particular. I think this is one in the front pages that came out in the newspaper. I need not repeat what they said. If we do not set a standard and if we do not protect the citizens who have put us in this honourable Chamber we would be failing in our duty. [Interruption]

Mr. Chairman: Wait a minute. The Minister is not only right, but I was about to interrupt you when the Minister interrupted you. You may not in a committee, like in the Senate, impute an improper motive to a fellow Senator. You cannot say he is on a witch hunt to prosecute Sen. Mark.

Mr. Rahman: I did not say he is on a witch hunt, he is filled with zeal to —

Mr. Chairman: We can ask the *Hansard*, but your language was highly inappropriate

and improper and you –

Mr. Rahman: I withdraw and apologize. When we expect a standard of behaviour from Members of the Lower and Upper House, we would expect a standard of behaviour on the part of the authorities and the administration that is responsible for safeguarding the country's interest.

Talking about front page, so much has come on the front page from the Uff Commission and none of that is being said.

Mr. Chairman: Senator, with all due respect, this committee cannot concern itself with whether or not the Attorney General did or will would not investigate the business that Sen. Mark raised. That is not before us.

Mr. Rahman: It is on the front page.

Mr. Chairman: That is not the issue here. The only issue here is the conduct of Sen. Mark, with respect to his language and what he said, whether it is true or not true and whether he intended to mislead the Senate.

Mr. Rahman: Not the Turks and Caicos matter?

Mr. Chairman: No, the only issue is whether he intended to mislead the House.

Mr. Rahman: And nobody else.

Mr. Chairman: What I would like to do is, I would like to wrap up this meeting and I want to have just one other meeting where we will resolve all of the issues, but I am deferring a decision on this to give us all time to consider what has been said Re: this opinion that I circulated to you and to get another opinion on the question of whether reckless disregard for the facts and the truth can impute an intent to mislead. That is what I need to know. I need to understand how that could fit into the context here.

I think that the best thing that can come out of this meeting or issue is to establish some clear guidelines for Senators as they speak in the Senate. I think that is the best thing that we can do; set it down once and for all. In other words, because where I would like to take this, I would like to be in a position to tell Senators: Look, you can say what you want and you are protected by a matter of privilege that no one can sue you, but you are shielded by the Parliament, but insofar as you speak in this Chamber, you must do what a reasonable man would do and that is to make every effort to verify your facts before you say them. If it turns out that you are wrong, all well and done, but you

must make every effort. That is where I think we should go, but let us see where we are before we can say that. I do not know that we will in fact be able to say that. We need to be able to look at the precedence in other jurisdictions as well. That is where we ought to go.

This, as the Minister says, is the Senate and, therefore, we must always take the high road. We must not take the easy way.

Mr. Rahman: There is a new irony here, Sir, in that while one must be cautious and careful as to what he says, when we are cautious and careful about how we bring matters of privilege to the House, we are told that we come too late and it has to be done at the very next sitting. We have a dilemma here. Sometimes you are required to speak, strike while the iron is hot and bring the issue to the public's knowledge or the Attorney General's knowledge. It is not always that you can have the luxury of considering. If the building is on fire you do not go and investigate to make sure before you tell the people to get out. There are times when, with the greatest of respect, with the best intentions, Senators may find it necessary to give the information that has come to them.

Mr. Chairman: Well, let us see where we are, okay. If I could get—I would like the Secretariat to do two things. One is to circulate the minutes and the *Hansard* of this meeting as early as possible, because Sen. Seetahal SC is not here and I would like her to at least have the opportunity to see it at the earliest opportunity and to get us an opinion with respect to this reckless disregard for the truth. It is a phrase that haunts me from my days at law school. I would like to know how it fits in exactly to this issue.

Can we meet next week Wednesday, because I would like to put this to bed?

[*Crosstalk*] Okay, next week Tuesday morning before, say 10.30 a. m. Okay, thank you.

11.03 a.m.: *Meeting adjourned.*

**VERBATIM NOTES OF THE NINTH MEETING OF THE COMMITTEE OF
PRIVILEGES OF THE SENATE SECOND SESSION (2009) HELD IN COMMITTEE
ROOM NO. 3, THE RED HOUSE, ABERCROMBY STREET, PORT OF SPAIN, ON
WEDNESDAY, DECEMBER 09, 2009 AT 10.12 A.M.**

Present

Mr. Danny Montano	Chairman
Mr. Jerry Narace	Member
Miss Laurel Lezama	Member
Mr. Mohammed F. Rahman	Member
Mrs. Nataki Atiba-Dilchan	Secretary
Miss Khisha Peterkin	Asst. Procedural Clerk

Absent

Dr. Emily Dick-Forde	Member
Mr. Linus Rogers	Member
Miss Dana Seetahal SC	Member

Mr. Chairman: Members, I spoke to Sen. Seetahal SC yesterday and she indicated that she was not likely to be able to make it on time this morning.

The first thing we need to do is to go through the Minutes from the last occasion.
Page 1? Page 2? Page 3? Can I have someone move to adopt the Minutes?

[Confirmed by Mr. Rahman]

[Seconded by Ms. Lezama]

Mr. Chairman: Matters Arising. Page 1?

Mr. Rahman: I would like to raise a point here. Under Introduction, 1.2:

"The Chairman reminded Members..." – which deals with premature publication of evidence.

I would like, Sir, for you to explain this matter in light of what we were told at the last CPA Conference regarding what really refers to publication, because members of these committees have been very hard-pressed discussing matters with colleagues in the party for direction. This matter of publication has been taken to mean even talking to yourself on the corridor, which I think is very onerous. I would like for you to clarify this matter

and have it on the record, please.

Mr. Chairman: From my reading on this issue, it is a rule that can be applied pretty strictly. Certainly in the Westminster jurisdiction it tends to be applied fairly strictly. However, as a matter of practice, it is known and understood that Members often will seek guidance from their party caucus. The idea of a committee like this is that they are not supposed to. Members are supposed to act independently when they come to the committee. The reality is that they do not. People act in accordance with their party directives.

The fact of the matter is that the rule is observed in the breach more frequently than anything else; so the rule does stand, and it does stand as an absolute rule. However, I think everybody is aware of the fact that these matters are discussed behind closed doors. The long and short of it though is that if you do take the risk, if you discuss it among your party members or whatever, and somebody releases it and the information is published beyond the confines of the Parliament, you are the one responsible, not them.

Mr. Rahman: What you are telling me is a little different to what we heard at CPA. The point is you are saying that the law is strict and specific. We must establish our own parameters here. Members are appointed to committees for various reasons. I am delighted to be on the Committee of Privileges; I am serving a purpose, but, at the same time, I am a new members to my party and, at the same time further, I am not a know-all on anything. So I cannot come to a Committee of Privileges meeting and not seek and find some information from people who are not necessarily members of my caucus. I may want to know from a former Senator or parliamentarian what the procedure is and so on. I would like for us to establish that as long as it is not put into print or media, we are free, within our personal discretion, to discuss these matters.

To go further, I am speaking of a next issue here, but it is in the context of the same matter of the availability of information. We had the situation where Sen. Mark, in the other matter in which he was charged, has actually been denied information that pertains to him. It was made very clear to us that he was entitled to information as the person against whom charges were brought, and when he did not attend that meeting, it was made specifically clear that he was supposed to even get copies of the Minutes of

the meeting and he was not supposed to know of any decisions taken against him. Now it is being carried to the ridiculous.

I will like for you to establish our norms and parameters here. As I said in the other investigation, it is justice denied. You are denying Sen. Mark natural justice, to prevent him from hearing what has gone on about himself.

Mr. Chairman: You want me to answer a number of questions. Let me answer the first one. I think I made it clear enough as to what the rules are. The fact of the matter is that the rule is pretty strict, but it is generally understood that Members act in a particular way. The fact that you go and talk to your party leaders or party colleagues, whatever it is, about the matter in front of the committee, if nobody knows about it, what is there to be done about it; so there is a certain practical issue as a question to what the rule is. I made it clear what the rule is, but there are certain practical considerations. I put the caveat that if it gets out beyond that point, you are the person who is responsible, not the person who would have leaked it anywhere else. So you are cautioned in that regard; I cannot make it any clearer than that, other than to repeat what I said before.

Insofar as the information to Sen. Mark, again, technically he is not entitled to the information here. In any committee like this, the subject of the committee is not entitled to the information. The workings of the committee are supposed to be in camera and are supposed to be kept confidential. If you go and tell him what is going on, how are we going to know about it? If we do get to know about it, then we can do something about it, but if we do not know about it, then there is nothing that can be done.

Mr. Rahman: But in the other matter he was brought and it was established that he was —

Mr. Chairman: I cannot pass judgment on a matter that I do not have any evidence on. I am only dealing with a theoretical issue here, because I cannot deal with "he say, they say".

I am telling you that evidence which comes before the committee cannot be released to the subject of the committee. If you go and tell him, there is nothing the Chairman can do about it, because the Chairman would not know; but if it turns out that the Chairman finds out, then he could do something about it at that point; so just be advised. .

There was a third issue that you raised, sort of in mid sentence. You spoke about speaking to former Senators about the procedure of committees. That is entirely possible, because that is not the proceedings of the committee. If you want to talk about how the committee works, what is the committee supposed to do and not do, yes, that is not a secret; that is in the Standing Orders; that is not a secret.

Mr. Narace: For ease, one is process, the other is testimony.

Mr. Chairman: Thank you; it says it exactly.

Anything on page 2? I had something done which I believe has been circulated to you. It is this document labelled: "Committee of Privileges—Senate".

Question: Can inaccurate statements made by a Senator during a debate be adjudged "reckless indifference to the truth", and is this acceptable within the parameters of the privilege of freedom of speech?

The document which was prepared by Nataki is pretty good and pretty well says everything that needs to be said on the matter. Basically, in summary, it says that Parliaments have got to be extremely careful about limiting this so-called freedom of speech. But again I want to focus on the issue of freedom of speech and being unfettered from civil suit. For that, of course, we intend no harm and we intend not to impinge or encroach on that freedom at all.

The question really comes about in terms of recklessly misleading the Senate and saying things that you do not know are true, do not care if they are true, they may be damaging or whatever. The question is whether the rights of individuals ought to be protected and whether the integrity of fellow Senators ought to be considered; in the sense that, could you just tell them any reckless, crazy thing and they have to take that. That really is the issue.

I think that the best thing here is the ruling by Speaker Ellis of New South Wales on page 6 paragraph 17. Let me just run it through with you:

17. Across the Commonwealth, we can find numerous examples of rulings, by Presiding Officers, on the question of the abuse of the privilege of freedom of speech. One such instance is the 1969 ruling of Speaker Ellis of New South Wales.

18. He advised the Legislative Assembly: "It is the right of every Member to

say what he likes under privilege or Parliament, subject only to the observance of the forms and practice of the House itself. He does so at his own risk in incurring the displeasure of the public and possibly the censure of the House itself.

That is an important statement.

The right of free speech is something that the Speaker is bound to safeguard and protect, and just as it is the right of all Members to use, equally it is a right that Members should not abuse. Any abuse of the right of free speech in Parliament is a reflection upon the honourable Member concerned. The right should always be exercised with restraint, particularly when referring to persons who have no right of audience in this Parliament and are, therefore, defenceless in the face of any irresponsibility.

That is exactly the circumstances we are talking about.

In my opinion, an honourable Member should not reflect on private citizens unless he is satisfied that there are compelling considerations of public interest requiring him to do so. If he wishes to make a serious charge against a member of the public, in my view he should normally do so by moving a substantive motion framed in precise terms and capable of being answered by any honourable Member choosing to defend the person under attack.

That pretty well reflects my own thinking. So if we read that and we read the prior sentence I drew your attention to, possibly the censure of the House itself, then I think that sought of puts us right.

Mr. Narace: Chairman, could you just elaborate on the censure of the House itself.

Mr. Chairman: I was coming to that. What does censure involve? Censure can involve anything; a slap on the wrist; it may involve the suspension of the Member—I supposed it can—or calling him to apologize.

Mr. Narace: Chairman, let me just say one thing. You see these precedent authorities as they were, that we are discussing today, that is the result of honourable people giving decisions over time and building a culture as well as precedent authorities that we rely

on to guide us into the future.

Chairman, I think that we all know—and I would not restrict it to any Member, but there are Members who would not only make statements—and I have evidence of this. I do not wish to go into it, but I have evidence of it. I will not disclose it, because media personnel have this privilege/right where they do not wish that they be put in the public domain, but where they are set up prior to the statement being made. So it is a most deliberate, and he speaks about deliberateness here of the whole act and it is really to make a political, strategic intervention, one using communication and department. What is worst, even in this case, is that the person ought to have known. In fact, we discussed that whole matter already.

We have to be mindful that there is a requirement for us to build the culture that we would want to bequeath to future Senators, future generations and our future societies. Therefore, I want us to really focus on this issue within the parameters that we are so entitled to do.

Mr. Chairman: I quite agree, and that really is the reason for this whole thing. I have gone around in my mind exactly where we are in this matter. We can certainly blend in the next matter and that is consideration of the matter that is before us.

Coming out of this meeting, I think it is important that we set the standard on this issue, once and for all, and the sooner we do it the better. We need to sort of wipe—in fact, the slate is clean. There is nothing that really has been said in this jurisdiction on this matter. The result is that historically this so-called right has been the subject of serious abuse and it is time that we say something serious about it.

The report that we built, within the next day or so I could circulate a draft report for you; it will really revolve around exactly what Speaker Ellis has said. I do not think it is appropriate for Members to say things such as— especially things that are damaging to citizens outside—"Well somebody drop this in my post box." It has to be something that the speaker is reasonably confident in its veracity, is very confident, in the language of Speaker Ellis, that there are already compelling considerations of public interest requiring him to disclose the information. It cannot just be frivolous information and you malign persons all over the place. That would be wrong.

We have been allowing this to happen without any basic rules of fair play. I

have said, on more than one occasion, that persons of great authority must act with great responsibility. That puts under right where we are. We must act responsibly at all times, recognizing that Members of Parliament have an absolute right to say what they genuinely believe is important.

There is no hard and fast line, but the point of the matter is we can lift the frivolity out of this occasion and make it a far more serious situation, and that is where I want to take this. I want this report to be submitted by next week Tuesday, so that when we start the next session, we are starting with a fresh rule book, so we understand exactly where we are going.

These are my own sentiments on this matter and, again, it is for us to set an example to set a standard. In the instant case, my own opinion is that Sen. Mark was reckless, irresponsible and should not have done or said anything of that kind at all, and we must say so. However, once the error of his information was pointed out, he immediately apologized, which is the correct and proper thing to do. In the eyes of the public at least the proper thing has been done. It maintains the integrity of the Senate as a whole and the integrity of all of us who take part in this process; therefore, that that must be recognized.

The censure that I would recommend in this case is that we hold him guilty certainly, we censure him orally and we note his apology with no further sanctions and we set the rule once and for all.

Miss Lezama: I understand and I agree with you, I am not disagreeing at all. My major concern is whether it is going to be that every time somebody makes a reckless statement they could come the next week and apologize and then all we do is give them an oral reprehension.

Mr. Chairman: I do not think. It is not the practice in the Westminster Parliament that every time an apology is made it is just blindly accepted and all is forgiven. I think we are setting a new paradigm here. We are saying that under the circumstances, because of the discussions I had with the Senator involved—I said, "Listen, what you are doing has to stop; this is not right; we are going to set a new standard; I think what you need to do is apologize and if you do not apologize the committee is going to come down pretty hard on you." He understood and I think, based on discussions which were

around this, he said, "Fine, fine, fine", and he apologized quickly and, I think, sincerely. Let us now close the book, as far as I am concerned, on this matter, and start again, but we are starting now with a clear set of rules; as far as I am concerned, with a clear set of rules.

Now if any Senator decides to venture into the dark, well, they would have to deal with the committee based on our understanding of how we want affairs in the Senate to be managed.

Miss Lezama: I just wanted to confirm that in the record for future reference.

Mr. Chairman: No, no; at no time is it the practice in the UK that every time you apologize you are forgiven. The apology may be taken, but still he is still censured one way or the other. It really depends on the seriousness of the breach.

In the instant case, I think it was not as serious as some of the other infractions that I have seen and, under the circumstances, I am willing to say, "Very well, let us start afresh with a new set of ground rules, which we all understand and all agree to." I want a report with this information to go to it and have it adopted unanimously by the Senate, so we start with a new rule book. That would be the standard.

Mr. Rahman: In principle I agree with what you said, but I would like to examine this instant case a little more closely.

Number one, the infraction that Sen. Mark apologized for was the matter of the grant of a tender that was without competition. That sounds like a reckless statement in hindsight, because as it turned out they declared that there had been competitive tendering. But we have to look at this in the context of what has been occurring as a habitual norm in Trinidad and Tobago. When procurement policies have not been adhered to and not even been published, and with a record of contracts being given in very strange circumstances to relatives to relatives and friends and advances of hundreds of millions of dollars given to contractors. All sorts of things have been happening in the society that would cause someone, especially in the horrendous overrun as has occurred, to say, "They could not have gotten a tender for that."

In a situation of a reckless statement, one has to consider also the question of malice; the question of the existence or nonexistence of malice. If I make a reckless statement in a matter that I feel may be so, and you actually seeking to elicit a

response—sometimes the police will ask a criminal a question as if they already know the facts and present him with information that they do not have. Then he comes out and says, "No, it was not so", and he implicates himself further.

I am saying, Sir, that with this particular instance with Sen. Mark— whenever judges sit in judgment, they must divest their minds of all the prior infractions of the accused at the time. You cannot say that because he used to steal every day that he intended to steal on this particular occasion. As one lawyer said, a man who is a habitual liar can sometimes speak the truth. So it is the instant cases that we have to look at and in the context of what has been happening in Trinidad and Tobago, and particularly with the situation that has occurred—neighbours in a foreign land getting together—I mean, it was not a farfetched concept, particularly with the Uff Commission going on now and having so many other irregularities.

I would want to think that in this present context, Sen. Mark really was not reckless nor was he malicious, and the specific thing for which he instantly apologized and for which we have already established nobody else was aware of at the time, I believe that that this particular instant case does not justify—although I do not disagree with wiping the clean slate even cleaner and starting with a more clear direction as to where we should go—I still cannot see this instant case justifying that.

Mr. Narace: Chairman, can I just say something. I was minded to go along with you before Mr. Rahman spoke. Whilst I said I would go along with you, I decided that I would be guided by your wisdom and experience, but I had this residual fear that is how the culture is built. There is absolutely no contrition, there is absolutely no sense of wrongdoing, there is absolutely no sense of responsibility.

What does it say here:

"He does so at his own risk incurring the displeasure of the public and possibly the censure of the House itself."

The public will only come to respond to what is in the public domain. In the end it would have appeared that the person who brought this Senator to the Committee of Privileges would have erred, would have been malicious, would have been wrongful in right and that was my residual fear.

I was about to agree with you, but I am now of the view that maybe we need to

do both. Maybe we need to say that this is the new standard and let us start it from today; even if it is a one or two-day suspension. Mr. Rahman has just explained very clearly, the residual fear I had. If you look at this society, if you look at what is going on, on the radio, if you look at the English grammar, if you look at all that is happening, any responsible person would say, "My God, who is in charge?" We are charged with a very important duty today, the duty to decide how innocent citizens –

Let me tell you why I am going to say that. While I am not referring to any previous incidents for the purpose of your ruling on this matter—I want to make it absolutely clear—the very Senator made a statement about a man who serve as Leader of the Senate, a man who was the a minister of government, a man who enjoys great respect today. When a very irresponsible allegation was made in that Senate, the man called me the next morning and said, "You know, I have to leave this country; I have served, I have given, I have done right and I have had to face my granddaughter saying to me this morning, 'Grand daddy, I am no longer coming to see you; I never knew you were such an evil man.'" It was a complete falsehood that made a front page, and it had to do with cocaine, as a matter of fact.

I am saying that maybe we need to do both. If I had any doubt in any mind, you have now removed it completely. What we need to do, Chairman, is to decide if it is a one or two-day ban, we need to have some kind of penalty; unless I could be absolutely assured that there was contrition in this matter, unless I could be absolutely assured that we are looking to start to build a new culture and we are starting to build an environment that would produce a public who would understand what is right, what is wrong and that the information coming to them would be reflective of what this gentleman, Speaker Ellis of New South Wales, was trying to convey. I really think we ought properly to consider that.

Mr. Chairman: I want to respond at this point. Allow me to say, Minister, that I share your concerns absolutely. Your thinking is very, very close to mine. I would only want to point out though that there are three methods of censure: One is that we could demand an apology; two, we could reprimand with very strong language in the report or three we could suspend, or any combination of those three.

In the instant case, effectively the perpetrator has in fact apologized already. My

proposal is a very strong reprimand. I do not think that under the existing situation suspension is necessary. I will tell you why. I am satisfied that on the part of the person who was involved in this matter—notwithstanding the comments of Mr. Rahman—who we are discussing here, has taken very seriously the comments that I have made to him.

When this report is completed and he is publicly reprimanded in the Senate, because the report would be read out in full; it may be debated, I am not sure—it would be in full—then there will be a measure of public censure as a result of that, that I do not think we should underestimate. I do not think that we necessarily need to use our strongest weapon in our arsenal on the first occasion. I think that it is appropriate that we censure in some very strong language—and believe me I will find it. We are saying, "Once is enough."

I would respond to Mr. Rahman simply by saying that I have spoken my peace here. This is what I understand and what I believe. If you feel that the bar should be lowered, you act according to your conscience and the Senate would act according to its collective conscience. You run that risk.

Now just let me tell you that what is lacking in this Senate, and I have been in the Senate a long time, is debating skill. There are ways to say things that people do not know how to do. They say it brutally, in a brutish way, clumsily, with awkward language, running afoul of the common sensibility of the Senate. Let me assure you, there are things that I could say about issues that you want to talk, that you could never bring me in front of a committee like this, because I could find a way to say it. If you cannot find it, that is a matter for you. If you go this way, you will run afoul of the sensibilities and the collective judgment of the Senate. Just let me warn you there.

On that score, I am totally in agreement with Minister Narace, in complete agreement. We do not want to compromise our standards here at all. What we have a duty to do, in my opinion, is to elevate a standard of debate in the Senate. The Senate must become the Senate. With all due respect to the other place, the quality and standard of debate in the Senate ought to be of the highest calibre. We ought not to be setting a standard of gutter politics. We ought to be setting a standard that is comparable to the House of Lords.

People look up to Senators and must respect us for what we say in the Senate.

That is the only thing that they can judge us by, by what we say. Therefore, what we say is important.

I do not want to criticize anybody, but I am sure I know that your heart is in the right place. You and I have had conversations and I know your heart is in the right place. I do know that you will do everything to support the general sentiment of the Senate to elevate standards in the Parliament. I have no doubt about that. I do not think we need to argue any further. If we are in agreement, we can proceed.

Mr. Rahman: This is not meant to argue, but to broaden the focus of the search light. First of all, let me make a point that I wanted to make earlier. This does not mean that we should be free to do it, but anyone in the public who is maligned in the Senate or the Parliament unjustly has a the very fortunate recourse of writing a letter and asking the President to read it out in the Senate, so he has some sort of voice heard mitigating whatever might have been done to him. He has that right and I really applaud that.

To come back to the other matter now; first of all, we appeared to have lost sight of one point which I had made earlier, which you had accepted but seemed to have gotten swept away. The fact of the matter is that when Sen. Mark made that statement which others maintained that he ought to have known, I pointed out that nobody challenged him. I believe that cleared the matter of any malice or any requirement for him to have known, because he was unchallenged. Now we are taking the position that he is guilty of something, of malice, which I cannot agree with.

The other issue which I wanted to touch on here is a very interesting one, which has broader ramifications and a whole new spectrum to the matter. While I agree with you that the House of Lords should have the highest bar, it happens that we as a Senate, while it is patterned in terms of structure to the Commons and the House of Lords, we have a totally different situation in Trinidad, in that, first of all, there is no qualification for sitting in the Senate other than age. Anybody, whether it is the Government or Opposition Leader, appoints a Senator for utilitarian purposes, not for gentlemanliness or panache or anything else. He is appointed to serve a purpose.

From time to time, as a policy, the Opposition under Mr. Panday appoints people from the grassroots. You remember the lady who was appointed as a Senator, I forgot her name. In recent times we had Mr. Tambie and Mr. Seereeram who have come in as

experts in their area, totally unschooled in the fine point of the Senate and who may run afoul. I am saying here publicly, and this could be reported anywhere, I am not a university graduate. If I have a capability, it is by the grace of God. I did not study. I did not become qualified in debate.

I get the point you are making and I am for the areas where I could say, just like you, the most vicious thing in the most refined language; and I do it and I have fun. But the fact of the matter is we cannot expect that the people who are placed in the Senate would automatically possess these qualities, so that we would all be as refined.

Here is where the President of the Senate has to guide, and you did guide me early o'clock when something happened and you said to me, "Well, this is not the procedure", and I have learned my lessons. I now can say things without imputing improper motives and I now know how to bring about my points without running afoul. The fact of the matter is that what we are striving here for is an impossibility, because this is not the aristocracy that is appointed to the Senate; it could very well be the grass roots. I think that you are attempting to create a mold that cannot be filled, and I say this most respectfully.

Mr. Chairman: Just allow me to clarify one thing that you just said or seemed to suggest. My comments are not class based; they are intellectually based. I think that every person in this country, regardless of where they come from, can rise to the occasion. This is a country where it does not matter where you come from, you could be the President of the Republic, you could be the Prime Minister; so anybody can be a Senator and conform to the rules and standards of the Senate. I have no doubt in my mind. As far as I am concerned, it is just a non-issue.

Mr. Narace: Mr. Chairman, I remain in your guidance, but I think the point is not being missed. There is a deliberate effort that if you destroy all the institutions— I want to be careful how I make that statement—it appears to me, that would be a political strategy. I am very, very concerned. You see that whole thing about the right should be exercised with restraint, I think that the Senator ought to know by writing a letter to the President does not guarantee any apology or any pronouncement by the Presiding Officer. As well as, if that person sent out a release to the newspaper, there is no guarantee that the newspaper would correct their own statement, because they are operating under

privilege.

If that person would have taken out a paid advertisement, that person would be held in contempt of the Parliament. So understand, that person's hands and feet are both tied behind his back and someone is free to come and destroy his family, destroy his life and then say, "Look at what going on in the country." Up to now, I am seeing no contrition, none at all from Mr. Rahman.

I am sorry, Mr. Chairman. I believe that you are well intentioned. I believe that you are going about it the right way, but I do not think that you would get the right result. If I was satisfied that Mr. Rahman would say, "Well, okay, let us give this a try, because we really want a different Parliament; we really want to do our jobs". We were not put on this committee because of any other reason than we are charged with a very serious responsibility.

He is not saying, "Let us examine the facts; let us examine the consequences of our action; let us examine what we are likely to create." He is saying, "Look at what going on in de country." So he is looking at something completely differently. I know intent is very critical in this matter. Speaker Ellis put it correctly when he spoke about persons who did not have the right, private citizens who did not have a right to be heard. He even said that if you wanted to do it properly, you should bring a motion and if a Member decided to defend that person, fine. So he outlined a process. Even if you were not sure, he outlined a process.

We know that week in week out—in fact, you read, "He come to buss a mark"; or "Somebody come to buss a mark." The Parliament should not be a place where you "bussing mark". The Parliament should be a place where we are doing the country's business.

I will go along with you, Chairman, but I want to be assured that we are taking the right decision. I can see it the week after you take this position, there would be a position coming out, "Well, the fella who moved that Motion erred and he this and he that." Of course, it would all become convoluted and somebody would say something on the radio, and it would be a whole different thing. Exactly the culture that we are trying to build, or the proper environment that we are trying to develop, the society we are trying to develop, is going to be even further damaged. I am just drawing that to

your attention.

Mr. Chairman: I share your concern. Fortunately, Mr. Rahman is not the subject of this; therefore, his view remains his view.

Mr. Rahman: Thank you so much. [*Laughter*]

Mr. Chairman: The report will result in sanction on Sen. Mark. It will end there; so the person who filed the complaint will not be ridiculed or be subject to ridicule in any way, shape or form. There will be sanction.

Mr. Narace: Could we comment? I do not what is right or wrong. Could we comment on the fact that his Motion was properly founded and give credence to his Motion? Can we do that?

Mr. Chairman: Yes, because what we would effectively adjudicate on is the fact that the House was mislead and improperly so.

Mr. Narace: In the report we can say that very clearly.

Miss Lezama: Can I make one quick comment? I want to remind Mr. Rahman of something. When he said that Sen. Mark made his statement—and I am going back to the actual issue at hand— and nobody corrected him. According to the *Hansard* record you stood and guided him. It was after you guided him that he went on to further say damaging things. I just want to remind Mr. Rahman of that minor, but very important detail.

Mr. Chairman: I think we will have a new paradigm as we go forward. We can look forward to the cooperation of all. I can say, with some assurance, that insofar as my conduct of the Senate is concerned I do get the cooperation of all Members. Once I make a ruling on something, I do get the cooperation. This is one area for which there has been no formal platform.

Mr. Narace: Chairman, just give me one more minute. I just want to make it clear.

I am entirely of your thinking. I recognize that what you are trying to do is to say, "Let us wipe the slate clean folks; let us assume you did not know in the past; you did not know what we were trying to do." I am entirely of your thinking, because that is what I want to see. The only way we could really move towards building the society that we envisage, is by being as magnanimous in those circumstances and all of that. Therefore, I do not want it to be thought that I have any other preference, but I want to

make sure that your magnanimity and efforts to create the environment that we so much desire, is not lost and taken for weakness.

Mr. Chairman: I am not being magnanimous at all. I am just trying to be fair under the circumstances. The committee needs to be fair. Sen. Mark has apologized, which is embarrassing on its own, a form of sanction in its own, and he will be sanctioned again on the floor of the Senate. Under the circumstances, that will be punishment enough under this situation. I know I would not want to be there myself. This is what we should do and move forward.

Very well; I will draft the report and have it circulated as soon as I can, because I would really like to present this on Tuesday.

Mr. Rahman: Since I do not entirely go along with the thing, I would like to right write my own.

Mr. Chairman: Of course; you are free.

Mr. Rahman: In the best language possible. [*Laughter*]

Mr. Chairman: Allow me to say, however, that it would be a disappointment to me if you did that.

Mr. Rahman: Well, you have not heard what I am going to say. You would have to hear what I am going to say.

Mr. Chairman: The mere fact that you break away from the report of the committee would be a disappointment, because under the circumstances, based on the discussions—and let me just add, for the sake of the record, that I have not breached any of the confidences of this committee. I only had discussions of what was in my mind with the person involved. If anything he and I are very much on the same thinking.

11.02 a.m.: *Meeting adjourned.*

**MINORITY
REPORT
SUBMITTED BY
SENATOR M.F. RAHMAN**

**First Minority Report of the Committee of Privileges of the Senate
(2009 – 2010 Session) submitted by:
SENATOR MOHAMMED FAISAL RAHMAN**

REPORT

When your Committee met on Wednesday December 9th, 2009 to consider an allegation that Senator Wade Mark had deliberately misled the Senate at a sitting held on October 1st, 2009 the Chairman opined: "The matter before us is quite simple. Senator Mark has been called to account for a statement that he made concerning the Chancery Lane Project."

Unfortunately, the simplicity of the matter has been lost in the various procedural points that arose in the minds of some Committee members.

The single allegation was that Senator Mark deliberately misled the Senate on October 1st, 2009 since he knew or ought to have known that his remarks concerning the lack of competitive tenders in the Chancery Lane Project were untrue.

After the correct information was brought to his attention on Monday October 5th, 2009, Senator Mark apologized to the Senate at a sitting held on October 13th, 2009 for the unintended inaccuracy which he believed at the material time to be true.

At its first sitting your Committee accepted that the truth of the information that Senator Mark gave concerning the Chancery Lane Project was not widely known and as such it remained unchallenged in the Senate at that sitting.

The point was also made that on October 1st, 2009 Senator Mark's real issue was the 600% cost overrun of the Chancery Lane Project.

However, by broadening the mandate of the Committee to infuse a greater sense of responsibility in Members of the Senate's contributions, the simplicity of the original charge had been lost. Certain members of your Committee appeared determined to set an example, by punishing Senator Mark, even though the basic criteria for determining the allegation had not been met.

My own observations have been seen as impenitent by some members of your committee and therefore Senator Mark should be made to pay for my apparent lack of contrition.

For all of the above reasons, I reject that Senator Mark should be deemed guilty of any offense and that rather an apology should be made to him by the mover of this Privileges Motion.

RECOMMENDATION

I therefore recommend that Senator Wade Mark be adjudged not guilty of deliberately misleading the Senate and that no further action be taken on this matter.



Senator Mohammed Faisal Rahman

11/12/09

