

RULING BY THE CHAIR

On privilege Motion raised by the Member for Diego Martin West

Hon members, by letter dated 13th November, 2008 addressed to me and read out in this Honourable House on the 14th of November, the Honourable Member for Diego Martin West raised as a matter of privilege statements made by the Honourable Member for San Fernando East and Prime Minister on September 30th, 2008 during the budget debate, on two grounds:

Firstly, that the Honourable Prime Minister mislead this; and

Secondly, that the Honourable Prime Minister imputed improper motives against him in clear contravention of the Standing Orders of this House.

He sought my leave to have these matters referred to the Committee of Privileges.

The Honourable Member for Diego Martin West outlined the details in support of his contention ending with a statement to the effect that the Honourable Prime Minister deliberately mislead the House and as such is in contempt.

We are all familiar with Erskine May's definition of Parliamentary Privilege. It can be found at page seventy five of the 23rd edition. May distinguishes between breach of privileges and contempts in the following way:

“when any of those rights and immunities, both of the members, individually, and of the assembly in its collective capacity, which are known by the general name of privileges are disregarded or attacked by any individual or authority, the offence is called a breach of privilege and is punishable under the laws of Parliament. Each House also claims the right to punish actions, which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its members. Such actions, though often called breaches of privilege are more properly distinguished as contempts. To put it simply, if someone improperly interferes with the parliamentary work

of a member of parliament- i.e. any of the members activities that have a connection with a proceeding in parliament- in such a case that is a matter involving parliamentary privilege. An offence against the authority of the House constitutes contempt”.

Hon. Members, the first ground raised by the Member for Diego Martin West is in the realm of contempt and can be committed by anyone taking part in Parliamentary proceedings. It consists of the conveying of information to the house that is inaccurate in a material particular and which the person conveying the information knew at the time was inaccurate or at least ought to have known was inaccurate. There are three elements to be established when it is alleged that a Member is in contempt by reason of a statement that the Member has made: the statement must have in fact been misleading; it must be established that the Member making the statement knew (or ought to have known) at the time the statement was made that it was incorrect, and in making it, the Member must have intended to mislead the House.

The standard of proof demanded is the civil standard of proof on the balance of probabilities, but given the serious nature of the allegation, proof of a very high order. The need for such a high measure of proof is emphasised by the fact that there is effectively no right of appeal. Even if a Member was rash or negligent in the use of words in debate, this, though reprehensible in itself, falls short of the standard required to hold a Member responsible for deliberately misleading the House. Hon. Members, for a misleading of the House to be deliberate, there must be something in the nature of the incorrect statement that indicates an intention to mislead. Where however the Member can be assumed to have personal knowledge of the facts stated and makes the statement in a situation of some formality, for example by way of personal explanation, a presumption of an intention to mislead the House will more readily arise.

I have carefully examined the contribution of the Honourable Member for San Fernando East and Prime Minister in relation to the complaint and I am not satisfied that the criteria enumerated above have been satisfied in order to establish a prima facie case of Privilege. Having said this, let me also say, that the suggestion that a Member is deliberately misleading the House is not parliamentary and the proper course if such an allegation has been made is to table the appropriate motion.

Hon. Members, I now turn to the second ground of complaint, that of imputing improper motives. The Standing Orders specifically prohibit imputations of improper motives against a Member, offensive references to a Member's private affairs and all personal reflections.

Imputations of improper motives cover allegations of any form of corruption. Members have a duty to expose anything in the nature of bribery or corruption on the part of other Members, but they must not do this by making veiled suggestions in the course of debate. Such allegations must be brought forward by giving notice of motion charging the Member unequivocally with impropriety.

Offensive words may not be used against any member and all imputations of improper motives and all personal reflections on members are considered to be highly disorderly. The practise of the House, based on that of the House of Commons, is that Members can only direct a charge against other Members or reflections upon their character or conduct upon a substantive motion which admits of a distinct vote of the House.

May I point out though that reference to a Member's private affairs is not automatically out of order. They are debarred only if they are strongly undesirable, insulting or offensive. In judging whether something is offensive, the Chair will be guided to some extent by the reaction of the Member to whom the remark is directed. If that Member does not object to it, it will generally be allowed to pass. Personal references may be irrelevant to the question before the House but if relevant, must not be done in an insulting or injurious way. Such references should be discouraged as they tend to reduce the standard of debate.

It is also a well-established rule that Members should not question the conduct or character of another Members spouse except where a Member introduces his or her own spouse's conduct into the debate. However, if a spouse holds political, commercial, or public position separate from the relationship to the member, they may be referred to in debate. It must however be distinguished between the spouse because of the position he or she holds as against him or her in the capacity of their personal relationship to the Member. In each case in which a personal reflection is made, the Speaker will rule it out of order if the Member against whom it is directed objects. Otherwise, it would be ruled out of order only if it was offensive on the face of it.

However, hon. Members, a breach of the standing orders or a failure to follow an established practise would invoke a point of order rather than a question of privilege.

Allegations of fact amounting to allegations that proper procedures were not followed are by their very nature matters of order and even if valid, will not receive priority in debates. A dispute between two members about questions of fact said in debate does not constitute a valid question of privilege because it is a matter of debate.

Honourable Members, it is perhaps an opportune time for me to address you on the parliamentary privilege of freedom of speech generally and as this touches the issues raised by the Honourable Member for Diego Martin West.

Sir Edward Coke reminded the Speaker that:

“Her Majesty granteth you liberal but not licentious speech, liberty therefore but with due limitation. To say yea or no to bills, God forbid that any man should be restrained or afraid to answer according to his best liking which is the very true liberty of the House, not, as some suppose, to speak there of all causes as him listeth. No King fit for his state will suffer such absurdities.”

May states:

“subject to the rules of order in debate, a Member may state whatsoever he thinks 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 libel as well as any other question or molestation.” It further becomes the duty of each Member to refrain from any cause of action prejudicial to the privilege which he enjoys. It is inconsistent with the dignity of the House, with the duty of a Member to his constituents and with the maintenance of the Privilege of freedom of speech for any member of this house to recklessly or intentionally abuse his privilege of freedom of speech. It is the personal responsibility of every Member of Parliament to maintain those standards of conduct which the House and the Electorate are entitled to expect to protect the good name of Parliament and to advance the public interest.”

Enoch Powell in a House of Commons debate on 2nd May 1978 had this to say:

“A privilege which cannot be abused is no privilege, for that which constitutes abuse is a matter of opinion and it is part of the privilege of the House of Commons and individual Members to say in this place not only what they would not say outside without the risk of process but to be able to say that to which grave objection is taken by every other Honourable Member. Unless an Honourable Member can do that, or if it was possible for his doing of it to be somehow undone we would have lost our power to serve those who sent us here.”

Speaker Snedden of Australia had this to say,

“The privileges of the House are precious rights which must be preserved. The collateral obligation to this privilege of freedom of speech in the Parliament and the essential complimentary privileges of the House will be challenged unless all Members exercise the most stringent responsibility in relation to them. Analogous to the point is the obligation on Members not to use the privilege of freedom of speech to be unfairly critical of the character of individuals in debate.”

Speaker Snedden continued,

“In regard to freedom of speech, I think it is important for us to understand that there are occasions on which a Member in this House, exercising the freedom of absolute privilege of what he says in this House, can and does attack persons who are apparently defenceless. This privilege in the past has been used outrageously by individual members. But there is a fundamental sense of justice in a House and if a Member is acting badly, the house will recognise it and treat him accordingly. The public will also recognise it and rob him of his credibility. So I feel that we do not need to invent any rules whereby a Speaker or anybody else should make the judgement as to whether a Member should be allowed to proceed with his privileged attack on an individual. It would not be within the capacity of a Speaker to make a right judgment because he would not have the facts. He would not know. Therefore, the person raising the matter

must bear the consequences himself. But I would not like to see that privilege limited or diminished in any way. All of us can think of not one, but many examples where, if it had not been for the freedom of speech and the attack on an individual in Parliament crime would have gone undetected and unpunished. Some people who were being seriously disadvantaged by rapacious people would not have been protected had it not been for the freedom and absolute privilege that this Chamber has to raise matters and to ventilate them so that inquisitorial efforts could be taken by other people and so that the matter could be circulated with the qualified privilege of the media.”

In the final analysis, however, it is for the member to resolve whether or not it is in the public interest to raise a matter in the House and his or her own actions will be judged accordingly.

It is against this background that I rule that the matters referred to me do not constitute a *prima facie* case of breach of privilege or contempt.

I so rule.

Office of the Speaker
November 28, 2008.