

**Hon. Jack Marshall:** Honourable senators, I have decided to withdraw this motion.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Honourable Senators:** Agreed.

Motion withdrawn.

## QUESTION OF PRIVILEGE

### SPEAKER'S RULING

**The Hon. the Speaker *pro tempore*:** In her submission yesterday, the Honourable Senator Carney rose on a question of privilege. She stated that her privileges were infringed by the publication of certain allegations which were false, and the publication of which was damaging to her reputation.

What the Chair has to decide is whether a *prima facie* case of privilege has been established.

I refer honourable senators to rule 44 of the *Rules of the Senate*. The procedure is succinctly described in *Parliamentary Privilege in Canada* by Joseph Maingot, Q.C. p. 189-190:

A *prima facie* case of privilege in the parliamentary sense is one where the evidence on its face as outlined by the member is sufficiently strong for the House to be asked to send it to a committee to investigate whether the privileges of the House have been breached or a contempt has occurred and report to the House.

While the Speaker may find that a *prima facie* case of privilege exists and give the matter precedence, it is the House alone that decides whether a breach of privilege or a contempt has occurred, for only the House has the power to commit or punish for contempt.

Parliament is an institution where, protected by the Constitution, its members are free to perform their duties without the interference of improper allegations.

The citations in this ruling are from a ruling in the House of Commons. Obviously there are differences in practice between the two chambers. The matter of privilege, however, adheres to members as members of the parliamentary institution of whichever chamber.

In searching for precedents within the Canadian Parliament, I wish to refer Honourable Senators to a ruling of Madam Speaker Sauvé in the House of Commons on March 22, 1983 (*House of Commons Debates* p. 24027):

The effect of parliamentary privilege is to place a Member of Parliament above the law in circumstances where it provides his only protection in the fulfilment of his duties as a Member. It is not designed to create a privileged class of citizens as such. The Member enjoys his privileges on behalf of those he represents, not for his personal advantage. Defamation of a Member of Parliament certainly falls within the ambit of privilege.

Since 1969, at least 7 different occurrences with question of privilege were raised in the Senate with reference to printed allegations.

In this case, the Honourable Senator Carney has asked the Chair for a ruling on a *prima facie* case of privilege so that the matter could, by motion, be referred to a committee of the Senate.

I would like to quote from the previously mentioned ruling:

A reflection upon the reputation of an Hon. Member is a matter of great concern to all Members of the House. It places the entire institution under a cloud, as it suggests that among the Members of the House there are some who are unworthy to sit here. An allegation of dishonourable conduct inevitably affects the Member's ability to function effectively while the matter remains unresolved.

The Speaker also referred to a memorandum submitted by Mr. L.A. Abraham, to the British Select Committee on Parliamentary Privilege in December 1967 and I quote:

The object of an action for defamation is to obtain for the plaintiff compensation for the loss of that esteem in which other people previously held him. But when the House proceeds against a person who has published a libel on a Member in his capacity as a Member it is not moved by concern for the injury to the Member's reputation, nor is its object to secure reparation therefor.

[*Translation*]

No, the reason for treating libels on Members in their capacity as Members as contempts is their tendency to obstruct Members in the performance of their functions by bringing them into hatred, contempt or ridicule...

Bearing in mind the dilatoriness and uncertainty of litigation, the possibility of the defamed Member's succeeding in an action for defamation cannot be regarded as an adequate substitute for the summary infliction of punishment by the House itself as a means of preventing Members from being obstructed in the performance of their functions.