

SELECT COMMITTEE OF PRIVILEGE

Motion

Resumed from 28 September on the following motion by Hon Adele Farina —

That a select committee be appointed to inquire into a breach of parliamentary privilege by Hon Helen Morton on 21 September 2011.

Ruling by President

THE PRESIDENT (Hon Barry House): Members, I have a ruling on a matter from yesterday. Hon Adele Farina yesterday raised a matter alleging a breach of privilege regarding an answer provided by the Minister for Mental Health representing the Minister for Health to question without notice 790. By way of background, the relevant part of the question and the answer given was —

- (2) If growth funding is yet to be determined —
...
 - (b) what action is the minister taking to ensure all children and adolescents with mental health problems are able to access South West CAMHS for assessment and appropriate treatment?
- (3) What is the current wait time for assessment by South West CAMHS?
- (4) How many children and adolescents are on the wait list for assessment by South West CAMHS?

The Minister for Mental Health answered question (2)(b) to (4) as follows —

These questions need to be addressed to the Minister for Mental Health. However, I am aware that I have already provided that information to the member, and I ask her to look at answer 714.

The member alleges parts (3) and (4) of question without notice 790 do not form part of question without notice 714 and no answer to these parts was provided by the minister's answer to question without notice 714, and therefore the minister has misled the house.

Standing order 155 requires the President to rule whether the matter is one affecting the privileges of the house under the Parliamentary Privileges Act 1891. The parliamentary privileges of this house are those of the House of Commons as at 1 January 1989. Erskine May's *Parliamentary Practice*, twenty-first edition, at page 119 states —

The Commons **may** treat the making of a **deliberately** misleading statement as a contempt.

Before I rule on this matter, I think I should give some guidance to the house when considering the matter. In 1999, the then President—from *Hansard* at page 837 on 8 September—when speaking to standing order 155, in part, stated —

Although it is not part of my ruling, I should say something about the nature of the contempt under debate and the standard of proof required to prove it. Unlike some contempts, where a particular state of mind is irrelevant, two elements must be proved before it can be said that a member deliberately misled the House. First, the statement must, as a fact, have been misleading. Second, the member must have known at the time of making the statement that it was misleading and intended that it be so.

The parliamentary authorities state that the requirement to prove the case is to be on the balance of probabilities, illustrating the high standard of proof required. They make the point that recklessness alone is not sufficient to sustain such a charge. The member must have had, and be shown to have had, the intent to mislead the House.

Before proceeding with matters of privilege, members might wish to consider the Senate's criteria used in deciding whether it will send a matter to its privileges committee —

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their duties, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and

- (c) whether a person who committed any act which may be held to be a contempt —
 - (i) knowingly committed that act, or
 - (ii) had any reasonable excuse for the commission of that act.

Standing order 155 does not require the President to find the contempt has been committed, rather to determine if the alleged matter is one that affects the privileges of the house. I do not in this case and leave it to the house to decide if it wants the Standing Committee on Procedure and Privileges to examine this allegation. I rule the matter is one that affects the privileges of the house.

I now give the call to the acting Leader of the House to move the order of the day forthwith as per standing order 155, but as the ruling is lengthy, can I suggest the order of the day be adjourned to a later stage of this day's sitting in order to allow members to consider the ruling, which will be distributed immediately.

Adjournment of Debate

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [10.06 am]: Mr President, on behalf of the house I thank you for your ruling and your suggestion. Accordingly, I think it would be prudent if I were to now move the motion suggested. I move —

That debate on this matter be adjourned to a later stage of this day's sitting.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [10.07 am]: The standing orders say that debate on a matter such as this shall be for an hour. I appreciate the offer of the President to consider it later in the day. I would make this point: the matter was put before the house yesterday, and we have certainly prepared. Either the President was going to rule one way and we were not going to have a debate, or the President was going to rule another way and we had to be ready to have the debate this morning. We have prepared to have a debate this morning. I am relaxed about what time of day it happens. Obviously there needs to be enough time for us to have the hour that is allocated to debate such matters.

The PRESIDENT: Mine was just a suggestion; that is all. Standing order 155 says that the matter be taken forthwith, but the house is the master of its own destiny and can decide if that debate is taken at another stage of today's sitting. That is the motion before the house.

Question put and passed.

[Continued on page 7980.]