
**Extracts from the *Parliamentary Privileges Act 1987*
Standing and other orders of the Senate, November 2004
and
Senate Privilege Resolutions, February 1988**

Extracts from the *Parliamentary Privileges Act 1987*

Essential element of offences

4. Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

Unauthorised disclosure of evidence

13. A person shall not, without the authority of a House or a committee, publish or disclose:

- (a) a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera; or
- (b) any oral evidence taken by a House or a committee in camera, or a report of any such oral evidence,

unless a House or a committee has published, or authorised the publication of, that document or that oral evidence.

Penalty: (a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or
(b) in the case of a corporation, \$25,000.

**Extracts from *Standing Orders and other orders of the Senate*
November 2004**

Standing Order 37 – Disclosure of evidence and documents

- (1) The evidence taken by a committee and documents presented to it, which have not been reported to the Senate, shall not, unless authorised by the Senate or the committee, be disclosed to any person other than a member or officer of the committee.

- (2) A senator who wishes to refer to in camera evidence or unpublished committee documents in a dissenting report shall advise the committee of the evidence or documents concerned, and all reasonable effort shall be made by the committee to reach agreement on the disclosure of the evidence or documents for that purpose. If agreement is not reached, the senator may refer to the in camera evidence or unpublished documents in the dissent only to the extent necessary to support the reasoning of the dissent. Witnesses who gave the evidence or provided the documents in question shall, if practicable, be informed in advance of the proposed disclosure of the evidence or documents and shall be given reasonable opportunity to object to the disclosure and to ask that particular parts of the evidence or documents not be disclosed. The committee shall give careful consideration to any objection by a witness before making its decision. Consideration shall be given to disclosing the evidence or documents in such a way as to conceal the identity of persons who gave the evidence or provided the documents or who are referred to in the evidence or documents.

- (3)
 - (a) The President is authorised to permit any person to examine and copy evidence submitted to, or documents of, committees, which are in the custody of the Senate, which have not already been published by the Senate or its committees, and which have been in the Senate's custody for at least 10 years.

 - (b) If such evidence or documents were taken in camera or submitted on a confidential or restricted basis, disclosure shall not take place unless the evidence or documents have been in the custody of the Senate for at least 30 years, and, in the opinion of the President, it is appropriate that such evidence or documents be disclosed.

 - (c) The President shall report to the Senate the nature of any evidence or documents made available under this standing order and the person or persons to whom they have been made available.

(amended 13 February 1997, 29 April 1999)

Standing Order 38 – Reports

- (1) The chairman of a committee shall prepare a draft report and submit it to the committee.
- (2) After a draft report has been considered and agreed to by a committee, with or without amendment, a minority or dissenting report may be added to the report by any member or group of members, and any member or participating member may attach to the report relevant conclusions and recommendations of that member.
- (3) If any senator other than the chairman submits a draft report to a committee, the committee shall first decide upon which report it will proceed.
- (4) After a draft report has been considered the whole or any part of it may be reconsidered and amended.
- (5) A report of a committee shall be signed and presented to the Senate by the chairman.
- (6) By order of the Senate a committee may report from time to time its proceedings or evidence.
- (7) If the Senate is not sitting when a committee has prepared a report for presentation, the committee may provide the report to the President or, if the President is unable to act, to the Deputy President, or, if the Deputy President is unavailable, to any one of the Temporary Chairmen of Committees, and, on the provision of the report:
 - (a) the report shall be deemed to have been presented to the Senate;
 - (b) the publication of the report is authorised by this standing order;
 - (c) the President, the Deputy President, or the Temporary Chairman of Committees, as the case may be, may give directions for the printing and circulation of the report; and
 - (d) the President shall lay the report upon the table at the next sitting of the Senate.

(amended 24 August 1994, 13 February 1997)

Standing Order 81 – Privilege motions

A matter of privilege, unless suddenly arising in relation to proceedings before the Senate, shall not be brought before the Senate except in accordance with the following procedures:

- (1) A senator intending to raise a matter of privilege shall notify the President, in writing, of the matter.
- (2) The President shall consider the matter and determine, as soon as practicable, whether a motion relating to the matter should have precedence of other business, having regard to the criteria set out in any relevant resolution of the Senate.
- (3) The President's decision shall be communicated to the senator, and, if the President thinks it appropriate, or determines that a motion relating to the matter should have precedence, to the Senate.
- (4) A senator shall not take any action in relation to, or refer to, in the Senate, a matter which is under consideration by the President in accordance with this resolution.
- (5) Where the President determines that a motion relating to a matter should be given precedence of other business, the senator may, at any time when there is no other business before the Senate, give notice of a motion to refer the matter to the Committee of Privileges, and that motion shall take precedence of all other business on the day for which the notice is given.
- (6) A determination by the President that a motion relating to a matter should not have precedence of other business does not prevent a senator in accordance with other procedures taking action in relation to, or referring to, that matter in the Senate, subject to the rules of the Senate.
- (7) Where notice of a motion is given under paragraph (5) and the Senate is not expected to meet within the period of one week occurring immediately after the day on which the notice is given, the motion may be moved on that day.

Procedural Orders of Continuing Effect

3. Unauthorised disclosure of committee proceedings, documents or evidence

The Senate adopts the procedures, as outlined in the 20th report of the Committee of Privileges tabled on 21 December 1989, to be followed by committees in respect of matters on which such committees may wish action to be taken:

- (1)
 - (a) a committee affected by any unauthorised disclosure of proceedings or documents of, or evidence before, that committee shall seek to discover the source of the disclosure, including by the chair of the committee writing to all members and staff asking them if they can explain the disclosure;
 - (b) the committee concerned should come to a conclusion as to whether the disclosure had a tendency substantially to interfere with the work of the committee or of the Senate, or actually caused substantial interference;
 - (c) if the committee concludes that there has been potential or actual substantial interference it shall report to the Senate and the matter may be raised with the President by the chair of the committee, in accordance with standing order 81.
- (2) Nothing in this resolution affects the right of a senator to raise a matter of privilege under standing order 81.
- (3) This order is of continuing effect.

(20 June 1996 J.361)

PARLIAMENTARY PRIVILEGE

RESOLUTIONS AGREED TO BY THE SENATE ON 25 FEBRUARY 1988

3 Criteria to be taken into account when determining matters relating to contempt

The Senate declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of Privileges and whether a contempt has been committed, and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:

- (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 functions, 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.

4 Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business

Notwithstanding anything contained in the standing orders, in determining whether a motion arising from a matter of privilege should have precedence of other business, the President shall have regard only to the following criteria:

- (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 functions, 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; and
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

6 Matters constituting contempts

Without derogating from its power to determine that particular acts constitute contempts, the Senate declares, as a matter of general guidance, that breaches of the following prohibitions, and attempts or conspiracies to do the prohibited acts, may be treated by the Senate as contempts.

Unauthorised disclosure of evidence etc.

(16) A person shall not, without the authority of the Senate or a committee, publish or disclose:

- (a) a document that has been prepared for the purpose of submission, and submitted, to the Senate or a committee and has been directed by the Senate or a committee to be treated as evidence taken in private session or as a document confidential to the Senate or the committee;
- (b) any oral evidence taken by the Senate or a committee in private session, or a report of any such oral evidence; or
- (c) any proceedings in private session of the Senate or a committee or any report of such proceedings,

unless the Senate or a committee has published, or authorised the publication of, that document, that oral evidence or a report of those proceedings.

7 Raising of matters of privilege

Notwithstanding anything contained in the standing orders, a matter of privilege shall not be brought before the Senate except in accordance with the following procedures:

- (1) A senator intending to raise a matter of privilege shall notify the President, in writing, of the matter.
- (2) The President shall consider the matter and determine, as soon as practicable, whether a motion relating to the matter should have precedence of other business, having regard to the criteria set out in any relevant resolution of the Senate. The President's decision shall be communicated to the senator, and, if the President thinks it appropriate, or determines that a motion relating to the matter should have precedence, to the Senate.
- (3) A senator shall not take any action in relation to, or refer to, in the Senate, a matter which is under consideration by the President in accordance with this resolution.
- (4) Where the President determines that a motion relating to a matter should be given precedence of other business, the senator may, at any time when there is no other business before the Senate, give notice of a motion to refer the matter to the Committee of Privileges. Such notice shall take precedence of all other business on the day for which the notice is given.

- (5) A determination by the President that a motion relating to a matter should not have precedence of other business does not prevent a senator in accordance with other procedures taking action in relation to, or referring to, that matter in the Senate, subject to the rules of the Senate.
- (6) Where notice of a motion is given under paragraph (4) and the Senate is not expected to meet within the period of one week occurring immediately after the day on which the notice is given, the motion may be moved on that day.