



## LEGISLATIVE COUNCIL FACT SHEETS

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### FACT SHEET 23: UNPARLIAMENTARY (OFFENSIVE) LANGUAGE

In most Parliaments, the rules of order prohibit members from using offensive, or unparliamentary language.

In the Council offensive language is governed by standing order 91(3), which provides that a member may not use offensive words against either House of the legislature, or any member of any House. The practice today usually calls for a withdrawal of the remark or an apology from the member.

Exactly what constitutes an offensive remark is left to the determination of the Chair. However, offensive language usually includes:

- imputation of false or unavowed motives;
- misrepresentation of the language of another and the accusation of misrepresentation;
- charges of uttering a deliberate falsehood;
- abusive and insulting language of a nature likely to create disorder.<sup>1</sup>

When an instance of this type of disorder arises in debate, the practice for the Chair is to intervene in the debate and call for the offensive remark to be withdrawn.

In 1987 President Johnson ruled:

If the Chair is of the opinion that words complained of are offensive or disorderly, the member concerned will be called upon to conform to the rules of the House and retract the offensive expression and, in a serious case, make an apology to the House if required by the Chair.<sup>2</sup>

When judging what constitutes an offensive remark, President Johnson ruled that the offence must be personal rather than political:

I consider that the following should be a useful guide. Offensive words must be offensive in the generally accepted meaning of that word. When a person is in political life it is not offensive that things are said about him or her politically. Offensive means offensive in some personal way.

The same view should be applied to the meaning of 'improper motives' and 'personal reflections' as used in the standing order ... There may be occasions in which remarks offensive to an identifiable member may not be regarded as unparliamentary when applied to a group where members cannot be identified.<sup>3</sup>

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<sup>1</sup> McKay W (ed), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn, LexisNexis, UK, 2004, pp 386-387.

<sup>2</sup> *LC Debates* (31/3/1987) 9586-9587.

<sup>3</sup> *LC Debates* (31/3/1987) 9586.

President Willis also adopted the principle in ruling under former standing order 80 (now standing order 91(3)) that offensive words should refer to the specific rather than the general. For instance, he ruled ‘the expression “mafia” is not unparliamentary because it refers to the general and not the particular, which is the basis upon which members may take objection’.<sup>4</sup> As well, various rulings in the Council support the view that the context of a specific debate is important in determining what is offensive and that the Chair must take this into account when deciding that a particular word or expression is offensive.

Objection to any words used in debate must be made when spoken, that is at once, and not some time afterwards. If a member states that they did not say what is alleged the member’s word must be accepted.

There are no standing orders which govern reference in debate to members of the public. Under the protection offered by the doctrine of freedom of speech, members are able to debate matters in the House which might otherwise attract action under the laws of defamation.

Nonetheless, the House expects that members will exercise their freedom of speech responsibly and with due care. A person’s reputation may be seriously affected by matters raised in Parliament, with sometimes devastating effects for the person concerned. For this reason, the Council has adopted a procedure which permits a citizen to request a citizen’s right of reply to statements made in the Council by members (SOs 202 and 203).

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<sup>4</sup> *LC Debates* (12/4/1994) 1022.