

SPEAKER'S RULING
QUESTION OF PRIVILEGE
REMARKS DURING DEBATE

Honourable Senators,

On April 1, Senator Harb rose on a question of privilege to complain of words spoken the previous day in debate, while he was speaking to an inquiry on the cessation of the commercial seal hunt. These remarks are to be found at page 560 of the *Debates of the Senate* of March 31. They were made following Senator Harb's confirmation that the International Fund for Animal Welfare had taken him to view the seal hunt. An unidentified senator had called out "bought and sold." Senator Manning also made some comments. Senator Harb felt that these interventions amounted to an inappropriate attempt to silence him. He indicated that in accepting the opportunity to observe the seal hunt he had followed relevant rules and made the proper declarations. A press release had even been issued. On this basis, Senator Harb asserted that he had acted correctly, and had in no way sought to hide his actions.

Senator Harb referred to rule 43(1), explaining how he felt he had met the criteria for establishing a prima facie question of privilege. He also referred to rule 51, which prohibits "personal, sharp or taxing speeches," and rule 52, which allows "A Senator considering himself or herself offended or injured in the Senate, in a committee room, or in any of the rooms belonging to the Senate [to] appeal to the Senate for redress." Finally, he mentioned rule 53, which deals with exceptional words and their retraction.

Senator Stratton then rose to argue that Senator Harb should have fulfilled the written and oral notice requirements of rule 43, since the complaint involved remarks made the previous day. As such, he saw a difference between Senator Harb's alleged question of privilege and the one raised by Senator Wallin earlier that day. Senator Harb could have given notice, Senator Wallin could not have done so.

Senator Manning then spoke. While recognizing that the exchange on March 31 had been heated, he denied having said that Senator Harb had been "bought and sold." After this, Senator Fraser intervened, emphasising the need for moderation when senators engage in heckling, but also challenging Senator Stratton's assertion that Senator Harb should have complied with rule 43, since rule 59(10) allows a question of privilege to be raised without notice, without restriction. Finally, Senator Milne confirmed that she was the one who had uttered the words "bought and sold," and then retracted them for the record.

Honourable Senators, before dealing with the particular matter of this question of privilege, the Chair would again urge all colleagues to use temperate language to help maintain order and decorum. Senators should avoid unnecessarily impugning the motives of colleagues. With respect to the issue of receiving support from outside bodies, processes exist to address any concerns that may arise, and they should be followed, if required and if appropriate.

Turning now to the specifics of this case, there is the initial and critical issue of whether Senator Harb should have provided notice under rule 43. In the two recent instances when rule 59(10) was invoked — the March 26 case raised by the Leader of the Opposition and the April 1 case raised by Senator Wallin — there was a justification provided as to why notice under rule 43 was not given. Having given this explanation, the usual process for establishing whether there was a prima facie question of privilege was followed. With respect to Senator Harb’s question of privilege, however, there was no stated reason why rule 59(10) was used, instead of giving notice under rule 43. Since the matter involved an incident that had occurred the previous day, Senator Harb should have availed himself of rule 43.

Honourable Senators, rule 43 details a process for written and oral notice to properly raise a question of privilege. All of these are imperative, and are meant to be used. Unless the Senate makes a deliberate decision to change rule 43, rule 59(10) will only remain available for questions of privilege that arise out of circumstances that prevent a senator from providing the notices required under rule 43. To do otherwise would render the rule meaningless. Such a reversal of the clear obligations contained in the rules requires a deliberate and positive decision of the Senate.

With respect to the substantive matter of the question of privilege, the Speaker’s role is to review the case and determine whether there is a prima facie case for a question of privilege, guided, *inter alia*, by the four criteria identified in rule 43(1). The first criterion is that the matter must be raised at the earliest opportunity. On this point, it may be reasonable to assume that Senator Harb wished to consult the Debates to ensure that he had indeed heard the remarks in question.

On the second criterion, that the matter must directly concern privilege, Senator Harb felt that the remarks affected him personally, seeing them as an attempt to silence him. In point of fact, however, nothing actually prevented the Senator from continuing to speak in debate. If there was any problem with the remarks, it was more as to whether they were “personal, sharp or taxing,” to use the language of rule 51. As such, the issue may have been one of order, but was certainly not one of privilege.

Since this issue did not involve privilege, it is unnecessary to review the third or fourth criteria, and the ruling is that no prima facie case for a question of privilege has been established.