



Speech by

Mr BRUCE LAMING

MEMBER FOR MOOLOOLAH

Hansard 22 July 1999

MR SPEAKER'S RULING Motion of Dissent

Mr LAMING (Mooloolah—LP) (2.40 p.m.): I second the motion of the member for Indooroopilly. One of the great anomalies of our parliamentary system is that our precedents are set as outcomes in the heat of debate. However, that very shortcoming could be one of the strengths of our Westminster system. Be that as it may, we must treat every motion of dissent against a Speaker's or Chairman's ruling with extreme care. It is too easy to take a partisan position and support our Minister, member or, more easily, the Speaker elected from our own side. Similarly, it is predictable that the Government of the day will support the Speaker, win the day, if not the debate, and the Parliament will resume. But a debate on the Speaker's or Chairman's ruling is not part of our Standing Orders merely as an extension of our partisan political debate; it is a mechanism to allow all Parliaments to revisit their procedures and precedents as they have been observed over many years. The outcome of every dissent motion must therefore have as its central purpose to reinforce the huge reservoir of parliamentary correctness that has built up over a number of centuries.

To support my point of view, I quote from page 5 of May which, under the heading "Rulings from the Chair", states—

"The third source of procedure in the House of Commons is to be found in rulings from the Chair ... If ancient usage corresponds to the common law and the standing orders to the statute law, the rulings of the Speaker in the House, and of the Chairman in Committee of the Whole House, afford an obvious parallel to the decisions of judges in the courts. The House of Commons has its own body of case-law. This consists principally of rulings given by Mr Speaker in answer to questions raising points of order on current business. Such rulings are, as stated above, the principal source of modern practice. They are constantly needed for the purpose of applying the Standing Orders to doubtful or new cases; and for harmonizing the standing orders with older practice and with each other ...

The procedure for obtaining a ruling from the Chair is generally as follows. Notice is given to the Speaker by the member who desires to raise a point of order, so that the ruling, publicly delivered in the House, may take account of any relevant precedents and of all the considerations involved. Such a ruling forms a precedent, often fitting into its place in a series of precedents from which a general rule may be eventually drawn for all future practice in a particular range of procedure ..."

Any resolution of this House of a motion of dissent is much more than an expression of disagreement with or support of the current Speaker. Our resolution will reinforce, or be at stark variance with, not just the intent of our Standing Orders; it will reinforce or be at stark variance with over a century of our own Parliament's precedents in this Chamber and many centuries of precedents in the House of Commons. I direct those who feel uncomfortable with even a passing reference to the British institution to Standing Order 333. One could draw a comparison to a doubtful decision of a football referee becoming a correct decision on future occasions merely because a precedent had been set. This would not be acceptable in football and we should be mindful that it does not occur here.

Mr Speaker, having had the privilege of sometimes sitting in the chair you occupy, I am aware of the difficulties in keeping order and am also aware that quite often the genesis of an incident is not

readily apparent. Therefore, I suggest, without any inference or prejudice on the part of the Speaker, that the tone of the day was perhaps set by the Courier-Mail that very morning with its heading No order in the House. The first sign became apparent when the member for Crows Nest was invited to dissent from the Speaker's ruling after an extremely mild exchange of comments.

I now come to the subject matter of the dissent motion against the Speaker's warning of the member for Noosa under Standing Order 124. My grounds are threefold: firstly, I believe that the wrong member was warned; secondly, that no warning of the member for Noosa was warranted; and, thirdly, that the warning, even if it had been warranted, was under the wrong Standing Order.

Government members interjected.

Mr LAMING: If honourable members opposite listen, they might learn something.

Let me now address these points in order. In so doing I am, of course, accepting the written word as it appears in Hansard. The first point was that the wrong member was warned. I direct honourable members to page 2407 of Hansard and acknowledge that the member for Noosa and the Leader of the Opposition were directed to cease interjecting. About half a minute later, the member for Noosa interjected on the Minister for consumer affairs and was warned, yes, but without reference to a particular Standing Order. The Minister continued her speech and the member for Noosa rose to a point of order. At this point, I refer again to May, page 396, which under the heading "Right of Members to Direct the Attention of the Chair to Supposed Breaches of Order" states—

"It is the duty of the Speaker to intervene to preserve order ... If he does not intervene, however, whether for the above reason or because he has not perceived that a breach of order has been committed, it is the right of any Member who thinks that such a breach has been committed to rise in his place, interrupting any Member who may be speaking, and direct the attention of the Chair to the matter."

The member for Noosa, in spite of an earlier warning, was exercising his right to call a point of order. Not only did the member for Noosa have the right to do so; the Minister for Consumer Affairs had a clear responsibility also. I refer also to Standing Order 116, which states—

"Upon a question of order being raised, the Member called to order shall resume his/her seat; and after the question of order has been stated to Mr Speaker by the Member raising the question of order, the Speaker shall give his opinion ..."

Did the member observe this rule? No, she ignored the call and continued her speech, ignoring not one question of order, not two, not three but four points of order. The Minister should have resumed her seat immediately and, by not doing so, was clearly in breach of Standing Order 116, and could well have earned a warning herself.

My second point of dissent is that the warning of the member for Noosa under Standing Order 124 was without foundation. All the member was trying to do was to raise a point of order correctly, which was ignored by the Minister, and instead of receiving the protection of the Chair he was interrupted by the Minister. I now refer to a precedent of this House set by Chairman Lickiss, who on 8 December 1971 stated that "a point of order must be heard ... it must be heard without interruption". Standing Order 116 and the precedent just referred to indicate quite clearly that the member for Noosa did not deserve any sort of warning at that time. The very fact that you invited him to state his point of order immediately after presenting him with a warning under Standing Order 124 indicates clearly to the House that he was not out of order. How could a member who is not out of order deserve any warning let alone a warning under Standing Order 124?

That, of course, brings me to my third and final point of dissent. Had the member for Noosa deserved any sort of warning at all, which I dispute, it certainly would not have been under Standing Order 124. Whilst acknowledging the right and the necessity of the Speaker to have some flexibility in the manner in which he or she maintains order, it is extremely important that such efforts be directed within the spirit of the Standing Orders and the precedent of this House and other Houses from which we draw direction. To this end, the Speaker—and indirectly, of course, the members of the House—are afforded protection of order, mainly under two Standing Orders—123A and 124. Standing Order 123A contains significant penalties against a member—after a warning under the specific Standing Order—whose conduct, in the Speaker's opinion, continues to be grossly disorderly.

Mr Speaker, as stated earlier, the member's behaviour could hardly be described as even crossing over this threshold. As for Standing Order 124, this provision is I believe intended to be kept as a reserve power, with a much greater penalty being exacted on the offender by a vote of the House itself for persistently and wilfully obstructing the business of the House. I understand that our Standing Orders are almost identical to those of the House of Commons in respect of this provision. It is certainly true that both sets of Standing Orders refer to disregarding the authority of the Chair, and this is what the Speaker clearly relies on when warning not only the member for Noosa but also the Leader of the Opposition. But "disregarding the authority of the Chair" needs to be taken in its correct context.

The House of Representatives Practice expands on the powers of the Chair to enforce order on page 493, under "Naming of Members", which is the intention of Standing Order 124. It states—

"For example, in regard to conduct towards the Chair, Members have been named for imputing motives to, disobedience to, defying, disregarding the authority of, reflecting upon, insolence to, and using expressions insulting or offensive to, the Chair ..."

I believe that this passage clearly indicates the gravity of the offence that should be reserved for Standing Order 124. I fully support the necessity for the Speaker to maintain order but, in the interests of fairness to the member for Noosa and to jealously guard our precedents for the future, this ruling should be set aside by this House for the three reasons I have stated.
