

Pepper v hart

[Law](#), [Justice](#)



Hansard is the official daily report of parliamentary debates and the record of what was said during the introduction of legislation. As one of the external aids, referencing to Hansard can help the courts to discover how Parliament intended the law to apply and put that into practice. Initially such documents could not be consulted for the purpose of statutory interpretation. In 1992 the House of Lords delivered a blockbuster in the case of *Pepper v Hart* [1992], which overturned the rule against consulting Hansard.

However, more and more people argue that its drawbacks outweigh its advantages. The case of *Pepper v Hart* was between teachers at a fee-paying school and the Inland Revenue, and concerned the tax which employees should have to pay on perks. The school allowed its teachers to send their sons there for one-fifth of the usual fee. Since the amount paid by teachers covered only the extra cost rather than the school's fixed costs, the perk cost the school little or nothing, and so they maintained that they should not have to pay tax on it.

Nonetheless the Inland Revenue disagreed and argued that according to tax law the perk should be taxed on the basis of the amount it saved the teachers on the real cost of sending their children to the school. The reason why the issue of consulting parliamentary debates arose was that, during the passing of the Finance Act 1976, the then Secretary to the Treasury, Robert Sheldon, had specifically mentioned the kind of situation that arose in *Pepper v Hart*. He had stated that where the cost to an employer of a perk was minimal, employees should not have to pay tax on the full cost of it.

By a six to one majority the House of Lords decided to allow reference to be made to Hansard. The permission was made in limited circumstances. First, <https://assignbuster.com/pepper-v-hart/>

legislation is ambiguous, or leads to an absurdity; Second, the material relied upon consists of statements by a minister or other promoter of the Bill. Third, the statements relied upon are clear. The main advantage of referencing Hansard is it can help to prevent the absurdity and injustice caused by the literal rule. When interpreting a statute the courts can consult Hansard to see what a Minister had said about a piece of legislation in order to decide what Parliament had intended. This permission causes the effect that the literal meaning of the statute is not followed, which may help the courts to present more proper statutory interpretation. However, many people hold opposite opinion on the use of this source. A practical objection by the dissenting justice Lord Mackay was the expense both in terms of time and money will add to litigation.

If debates were to be used, there was a danger that the lawyers arguing a case would devote too much time and attention to ministerial statement. Lord Steyn (2001) criticized that the counsel were expected to read all the debates in Hansard, which would add greatly to the time and expense involved in preparing cases. He suggests that much of the work of the courts is now concerned with the interpretation of documents such as statutes rather than the examination of precedents. The evidence in Hansard may be lack of clarity.

The House of Lords directed that the evidence provided by the parliamentary debates might not be reliable and contain 'conducive to a clear and unbiased explanation of the meaning of statutory language.' Moreover, it is difficult to discover the nature of parliamentary from the Hansard. Pepper v Hart seems to confuse the statement made by a minister or promoter of the

bill with the intention of the legislature. Lord Steyn points to the nature of the parliamentary process: there are not ideal conditions for the making of authoritative statements about the meaning of a clause in a Bill.

In truth a Minister speaks for the Government and not for Parliament. The statements of a Minister are no more than indications of what the Government would like the law to be. ' Nowadays there is a trend that reference to Hansard can be found in every other case involving interpretation and construction of enactments often without any serious application of mind concerning their relevance or conformity with the aid down in Pepper v Hart. The advancement in technology is definitely a major factor contributing to this trend as it makes referencing much easier.

However, electronic access relates only to recent years; for any other research one has to overcome the appalling indexing for Hansard. Due to its drawback, there is a trend that the courts are reluctant to allow references to Hansard without a fair bit of persuasion. Many restrictions are placed to prevent the overuse of Hansard. In 2003, the House of Lords restated the scope of Pepper v Hart that the court is called upon to evaluate the proportionality of the legislation, not the minister's exploration of the policy options or his explanations to Parliament.

The latter would contravene article 9 of the Bill of Rights. Overall, though allowing references to Hansard has an additional aid to interpretation is welcome, references to Hansard can give rise to further ambiguity i. e. legislation being found to be incorrect. Also, it is very costly in time and money. Since it is arguable that its drawbacks outweigh its advantages,

more strict guidelines should be adopted to prevent its overuse in order to maintain the efficiency of the legal system.