

this morning's sitting which, as the Chair understands it, amounted to a repeat of yesterday's incident on the lawn of the Legislative Assembly. As a result of this last-mentioned incident, the Speaker has issued instructions to the Sergeant-at-Arms that neither he, nor any of his staff, are to become involved in the

forcible removal of persons or articles from the grounds of the Legislative Building. These instructions will remain in place until the Chair has been given different instructions by this House, or by a duly constituted Board of Internal Economy. Let me emphasize, this in no way derogates

from the Chair's acknowledged responsibility for security matters within the walls of the Legislative Building, which will continue in accordance with the Standing Orders of this House and well-established custom and usage.

Protection of Members Against Civil Actions, Speaker David Carter, Legislative Assembly of Alberta, May 4, 1987

Background: On April 30, 1987, the Minister of Career Development and Employment (Mr. Orman) and the Provincial Treasurer (Mr. Johnson) were served with statements of claim by the Member for Calgary Buffalo (Mr. Chumir) and signed by the three other members of the Liberal caucus. The plaintiffs charged that the ministers were acting contrary to law in failing to cause some \$110,000,000 in monies held by the Western Canadian Lottery Corporation to be placed into the General Revenue Fund. The ministers argued that service of such a notice in the legislature constituted a breach of the traditional privileges and immunities accorded to members in civil proceedings. They claimed the subject had been discussed in committee and on the floor of the Assembly and the government had responded. The attempt to focus debate in another place i.e. the courts was a breach of the privileges of the entire Assembly.

Mr. Chumir said he had looked in vain for anything in the primary authorities governing the rules of the House which suggest that the manner of service or the statement of claim itself violated any of the privileges of the House. He quoted Section 66 of *Beauchesne* which states that "neither the House nor its members have ever made any specific claim to be free from the service or process within the precincts..."

The Speaker had to decide if the action constituted a *prima facie* case of privilege.

The Ruling (Speaker David Carter):

A number of comments would be made by the Chair. First, I would deal with a comment that was made that the strongest authority is *Beauchesne*. One really needs to keep in perspective that the strongest authority really should be the Standing Orders of this House or the *Legislative Assembly Act* as it deals with this particular Assembly. So while some reference had indeed been made to *Beauchesne*, that should be kept in a certain perspective. The perspective certainly would be along this line to a section of the *Legislative Assembly Act* which has not been quoted this afternoon. It's section (9)(1), privileges, immunities, and powers generally, and I quote:

"In addition to the privileges, immunities and powers respectively conferred on them by this Act, the Assembly and its Members, and the committees of the Assembly and their members, have the same privileges, immunities and powers as those held respectively by the United Kingdom, the members of that House, the committees of that House and the members of committees of that House at the time of the passing of the *Constitution Act, 1867*."

Now, the Chair reads that into the record because additional references have been made throughout the

course of the afternoon with respect to the whole tradition of parliamentary practice and in particular *Erskine May*. The 20th edition, chapter 7 in particular, is one which forms most of the parameters for the discussion, with some references perhaps occurring in chapter 8.

The Chair would also read into the record a passage which occurs in chapter 7 of *Erskine May* under the heading "Origin and Scope of the Privilege." I'll proceed this way in quoting it:

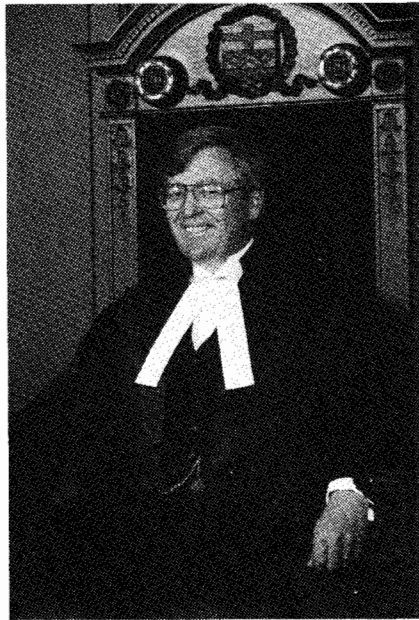
It has been stated ... that parliamentary privilege originated in the King's protection of his servants but is now claimed as an independent right. The privilege of freedom from arrest or molestation of Members of Parliament, which is of great antiquity, was of proved indispensability, first to the service of the Crown, and subsequently to the functioning of each House.

I pause here because the word "molestation" indeed may well be necessary of further definition with respect to the matter of privileges raised today.

I also go on to quote further, "The principal reason for the privilege has also been well expressed in a passage by Hatsell", so this takes us to yet another parliamentary source. The quote follows, and this is page 97 of *Erskine May*, 20th edition.

"As it is an essential part of the constitution of every court of judicature, and absolutely necessary for the due execution of its powers, that persons resorting to such courts, whether as judges or as parties, should be entitled to certain privileges to secure them from molestation during their attendance; it is more peculiarly essential to the Court of Parliament, the first and highest court in the Kingdom, that the Members, who compose it, should not be prevented by trifling interruptions from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call, not so immediately necessary for the great services of the nation; it has been therefore, upon these principles, always claimed and allowed, that the Members of both Houses should be, during their attendance in Parliament, exempted from several duties, and not considered as liable to some legal processes, to which other citizens, not intrusted with this most valuable franchise, are by law obliged to pay obedience".

Now, the Chair underlines *and not considered as liable to some legal processes*. The difficulty, of course, that has been raised is with respect



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to the serving of notice and then whether or not the place of notice came into effect and whether or not molestation means a physical assault upon a person's person or whether

impeding of progress is indeed a form of molestation.

Another matter was raised, that I would quote no precedent in this House, and the Chair agrees. There has indeed been no precedent of this nature in this House and perhaps because of the seriousness of the actions which have taken place.

With respect to the matter at issue, the disbursement or the discussion of lottery funds, indeed, with regard to the statement of claim as served, there obviously is indeed another way of access to the courts, which the Chair is quite certain the Member for Calgary Buffalo is entirely familiar with, so that the statement of claim could indeed be processed but indeed via another route rather than the one that was taken.

So it is that having listened carefully, the Chair decides that indeed there is a *prima facie* case of privilege involved here, as raised. The Chair also takes note that the Provincial Treasurer gave notice that a motion would be forthcoming in the very near future.

Motions to Supersede Routine Proceedings, Ruling by Speaker John Fraser, House of Commons, April 14, 1987

Background: In recent years, regardless of the government in office, opposition parties have resorted more and more to procedural devices to block debate. Most of these occur during routine proceedings such as petitions, tabling of documents, reports of committees etc. A motion to supersede routine proceedings represents an opportunity for the government to avoid many potential pitfalls. The decision to allow such a motion poses great difficulty for the Chair. On April 13 the Parliamentary Secretary to the President of the Privy Council, Doug Lewis, moved a motion to supersede routine proceedings and move to government debate of Bill C-22, an amendment to the *Patent Drug Act* which had been before the House for many months. After listening to arguments over the admissibility of the Motion the Speaker reserved his decision until the following day.

The Ruling (Speaker John Fraser): A number of Hon. Members dealt with the importance of protecting the fundamental rights Members have under Routine Proceedings. However, the fundamental rights of Members can be violated by the tactics of obstruction as well as by the unreasonable restriction of debate. The Hon. Member for Cochrane-Superior (Mr. Penner) went to the heart of the matter when he stated that the procedural tactics which the House has witnessed have little to do with the content of Bill C-22. As I made clear yesterday, the Chair is not the least bit interested in the content of the Bill. The Chair is, however, gravely concerned with the effect of these tactics by either side on the well-being of the House of Commons.

The House has had before it for almost six months a highly controversial piece of legislation, namely, Bill C-22, an *Act to amend the*

Patent Act. This is not the first time the House has had to deal with controversial legislation, neither will it be the last. It is essential to our democratic system that controversial issues should be debated at reasonable length so that every reasonable opportunity shall be available to hear the arguments pro and con and that reasonable delaying tactics should be permissible to enable opponents of a measure to enlist public support for their point of view. Sooner or later every issue must be decided and the decision will be taken by a majority. Rules of procedure protect both the minority and the majority. They are designed to allow the full expression of views on both sides of an issue. They provide the Opposition with a means to delay a decision. They also provide the majority with a means of limiting debate in order to arrive at a decision. This is the kind of balance essential to the procedure of a democratic assembly. Our rules were