

Speaker's Ruling

*Limitation of Speaker's jurisdiction over committee proceedings,
Speaker Denis Rocan, Manitoba Legislative Assembly, June 2, 1989.*

Background: At 8 pm on May 1, 1989 the Manitoba Standing Committee on Economic Development convened to hear testimony from the Minister of Finance (Clayton Manness) concerning the Annual Report of Manitoba Forest Industries Limited and in particular an agreement concerning the divestiture of the pulp and paper company to Repap Enterprises Corporation Inc. The proceedings continued into the wee hours of the morning on May 2 when the Minister moved a motion that the committee now rise. The motion was defeated by the opposition who wished to continue the meeting. At this point the government members left and the meeting ended amidst some confusion upon being recessed by the Chairman. The member for St. Norbert (John Angus) subsequently asked the Speaker of the legislature to decide whether the government members and the Chairman had acted in contempt of the Standing Committee.

Ruling (Speaker Denis Rocan): I have a ruling for the House, but before delivering it I wish to inform the House that in my rulings from now on references to Beauchesne will be to the 6th edition, unless otherwise indicated

As is required by our practices, the Honourable Member did raise this matter at the earliest opportunity. As I understand the matter raised by the Honourable Member, it consists of three principal elements:

- the alleged contempt of the Standing Committee on Economic Development by its Government Members who rose and left the meeting im-



mediately following the defeat of an adjournment motion;

- the alleged contempt of the same Committee by the Chairman who recessed the meeting in the early hours of May 2nd and did not resume or reconvene it; and
- the failure of the Government Members of the Committee and of the Chairman to comply with Manitoba Rule 11 which requires the attendance of members in the service of the House and its Committees unless granted leave of absence by the House.

As all Honourable Members know, privilege and contempt are very serious matters. This particular case is one which may be without precedent in the Commonwealth. Therefore I have reviewed with special care the advice provided by Honourable Members on May 19th. I have had extensive research and consultation undertaken with respect to our own practices and those of the House of Commons of Canada. Consultation has also been un-

dertaken with the Ontario Legislative Assembly

Although privilege and contempt are closely related and are generally raised and considered in an identical manner and often, at least in this House, under the heading of privilege, there are certain differences. Maingot's *Parliamentary Privilege in Canada* explains that privileges are enumerated and known, whereas contempts are not. Privilege is defined by Beauchesne citation 24 as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions."

The same citation also points out that "the privileges of Parliament are rights which are absolutely necessary for the due execution of its powers." The principal privileges of a legislature are: the freedom of speech; the freedom from arrest; the power to discipline; the right to have the attendance and service of members; and the right to regulate its internal affairs. Erskine May on p. 143 defines contempt in the following words, "Any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offense." To state it more simply, Speaker Brand of the United Kingdom House of Commons

ruled on July 25, 1877 that, "any Member wilfully and persistently obstructing public business, without just and reasonable cause, is guilty of a contempt of this House."

There are certain matters regarding the references by Honourable Members to Manitoba Rule 11, and to the privilege of a legislature to have the attendance and service of its members, which I would like to point out to the House. Research has indicated that our Rule 11 has generally fallen into disuse. Our records do not identify any matter of privilege in this House as having been based on a contravention of Rule 11. The corresponding Canadian House of Commons provision (S.O. 15) has not been applied since 1878 and is generally considered to be obsolete. Speakers of that House in more recent times have generally discouraged any reference to this provision.

Both the Honourable Member for St. Norbert and the Honourable Government House Leader addressed some of their remarks to a question of order, in that the matter was being raised directly in the House instead of by a report from the Committee. First of all I believe that, as Speaker, I have an obligation to point out to the House that under our Rules the Speaker is required at all times to "enforce the Rules" and "decide all questions of order." Our own Rules, just referred to, are reinforced by Beauchesne citation 171, which states in part that "the Speaker has the duty to maintain an orderly conduct of debate by repressing disorder when it arises, by refusing to propose the question upon motions and amendments which are irregular ..."

The Honourable Government House Leader supported his contention that the matter was improperly before the House by reference to certain citations in Beauchesne's 5th edition and to specific Speakers' rulings in Manitoba

and in Ottawa. The research which was undertaken revealed the following additional references relevant to the question of whether or not this matter is properly before the House. Erskine May on p. 235 states that "the opinion of the Speaker cannot be sought in the House about any matter arising or likely to arise in a Committee." Beauchesne citation 760(3) reads "the Speaker has ruled on many occasions that it is not competent for the Speaker to exercise procedural control over the Committees. Committees are and must remain masters of their own procedure." Beauchesne citation 107 states, in part that "Breaches of privilege in Committee may be dealt with only by the House itself on report from the Committee."

A review of the relevant pages in Erskine May indicates that the Canadian practice outlined in Beauchesne citation 107 also applies in the United Kingdom Parliament. On November 26, 1987, Speaker Fraser of the Canadian House of Commons ruled on an alleged matter of privilege, which had not been brought to the attention of the House by a report, respecting the impeding of a Committee "that there is no *prima facie* case of privilege as Committees are in control of their own procedure and it is not competent for the Speaker to exercise procedural control over Committees."

When this matter was raised in the House, the Committee had not met since it was recessed on May 1st and therefore had had no opportunity to consider and agree upon a report to the House. Understandably, the Honourable Member for St. Norbert may have been concerned that raising the issue in the procedurally correct manner could lead to a decision that the matter had not been raised at the earliest opportunity and therefore could not be considered.

In conclusion, firstly, there is no doubt that the charges which have been brought before the House are very serious ones. Secondly, I do understand the circumstances which led the Honourable Member for St. Norbert to believe that proceeding in the manner in which he did may have been the only course open to him if the matter was to be brought to the attention of the House and given the consideration which he felt was necessary.

Nevertheless, based on the authorities to which I have referred earlier and the specific extracts which I have quoted, it is my opinion that to be handled in accordance with long established practices and procedures this issue would have to be brought to the attention of this House by a report considered and agreed upon by the Standing Committee on Economic Development and presented to the House. To do otherwise would run the risk of establishing a precedent which could lead to an increasing involvement of the House in the affairs of the Committees which must, as indicated by the authorities, be masters of their own procedure.

The Standing Committee is now able to meet and could be called, at which time it could consider the matter raised by the Honourable Member for St. Norbert and could decide whether or not to report the matter to the House. That, however, is something which only the Committee is competent to address and which it may wish to examine.

With great respect to the Honourable Member for St. Norbert and to all Honourable members, my ruling, based on the precedents and authorities cited, is that the matter is out of order as a matter of privilege. This does not preclude the matter from being raised in another manner. ■