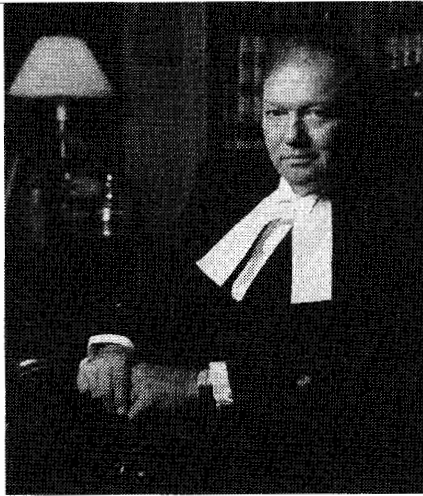


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## *Speakers Ruling*

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### **Question of privilege about government advertising relating to proposed goods and services tax**

**Speaker John Fraser, House of Commons,  
October 10, 1989.**

From the very outset, I wish to state emphatically that the Chair has no intention of dealing with the relative merits or limitations of the proposed tax; the Chair has absolutely no role to play in such political matters. The Chair's sole responsibility in this instance is to determine whether the matter raised by the Leader of the Opposition warrants setting aside the regular business of the House.

It has often been laid down that the Speaker's function in ruling on a claim of breach of privilege is limited to deciding the formal question, whether the case conforms with the conditions which alone entitle it to take precedence over the notices of motions and Orders of the Day standing on the Order Paper; and does not extend to deciding the question of substance, whether a breach of privilege has in fact been committed—a question which can only be decided by the House itself. (*Beauchesne's Rules and Forms of the House of Commons*, 5th edition, citation 84(2)).

The Speaker does not rule on whether a breach of privilege or a contempt has in fact been committed. The Speaker only determines whether an application based on a claim of contempt or breach of privilege is, on first impression, of sufficient importance to set aside the regular business of the House and go forward for a decision by the House. That is the narrow point that the Chair must decide.

It might be appropriate to first review some of the facts surrounding the present case. On August 26, 1989, the Department of Finance published in newspapers across the country an advertisement which stated, "On January 1, 1991, Canada's Federal Sales Tax System will change. Please save this notice. It explains the changes and the reasons for them."

I point out that this ad was a full-page ad and the letters were very large indeed. In French the ad went perhaps even further than what was implied in the English. "Le 1<sup>er</sup> janvier 1991, le

régime de la taxe fédérale de vente connaîtra des modifications. Veuillez conserver cet avis. Il explique les modifications apportées et les raisons qui y président".

The advertisement went on to explain that the Goods and Services Tax "will replace the existing Federal Sales Tax" and it outlined very specific proposed changes. It is true that in the ad some of those changes were set out under the heading "Proposed Changes".

In the interventions on September 25, the Hon. Member for Parkdale-High Park (Mr. Flis) pointed out that these ads also appeared in many ethnocultural newspapers across Canada. At the invitation of the Hon. Member, I examined a number of the newspapers in question, and found that most of these advertisements were published in early September, and that some of them were printed in Italian and Lithuanian.

The Hon. Member for Ottawa-Vanier (Mr. Gauthier), in his intervention, laid stress on the fact that in the French text,

the wording of the advertisement suggests that the changes have already been made or adopted in so much that the ad uses a "participe passé" namely the word "adoptés".

In presenting his case for a breach of privilege, the Leader of the Opposition dealt with a number of serious issues. If I may be permitted to summarize his arguments, he makes two basic claims: first, that the advertisement prejudices the future proceedings of the House and of the Finance Committee which has undertaken an examination of a technical paper on the subject; and second, that the advertisement is a contempt of Parliament because it leaves readers to infer that the House has no role in the passage of the tax, thus misleading the Canadian public concerning the procedures employed by Parliament in adopting such legislation. To quote from the Rt. Hon. Member at pages 3809-10 of *Hansard*: "The wording 'Please Save This Notice', followed by chapter and verse of the alleged tax changes, constitutes a basis for a question of privilege."

At least this is the argument of the Right Hon. Leader of the Opposition. He continued:

Those words "Please Save This Notice" constitute a contempt of Parliament, constitute an intimidation of Parliament, because the only inference to be drawn from the words "Please Save This Notice" is that it does not matter what Members of Parliament do in dealing with these taxes. It does not matter what the committee on finance does with respect to these taxes. ...

These advertisements violate our parliamentary tradition in two more ways. They prejudice the proceedings that are now before the Standing Committee on Finance as well as prejudicing future proceedings of the House itself.

The Hon. Member for Oshawa and Leader of the New Democratic Party (Mr. Broadbent) spoke in support of the claims made by the Leader of the Opposition. In addition, he raised the

issue of the propriety of a government using public funds to advertise its position on a debate which has yet to be held in Parliament. On this specific point, I would like to immediately refer to the ruling of Speaker Sauvé:

The fact that certain members feel they are disadvantaged by not having the same funds to advertise as does the government, which could possibly be a point of debate, as a matter of impropriety or under any other heading, does not constitute a *prima facie* case of privilege ... (*Hansard*, October 17, 1980, p. 3781)

I feel, just as Speaker Sauvé concluded, that this is an important issue which merits consideration, but it should not take place under the aegis of privilege.

To continue with the arguments presented to the Chair on the question of privilege, the Minister of Justice (Mr. Lewis) rose to make three basic points for rejecting this application as a breach of privilege or contempt of the House. He referred to the fact that the Finance Committee itself unanimously recommended that if the government were to proceed with the value-added tax it should publicize the details of that tax. He also explained that in the Budget which was approved by the House, the government had indicated that the Goods and Services Tax would be implemented on January 1, 1991. Finally, since the Committee is presently studying the issue, he suggested that no case can be made for the claim that the Committee's work is being impeded.

The Chair has also considered the arguments made by the Hon. Member for Windsor West, (Mr. Gray), the Hon. Member for Kamloops (Mr. Riis), and the Hon. Member for Peace River (Mr. Cooper) and I would like to thank them for their interventions in this serious matter.

In the present case, the Chair must address a number of issues. I intend to first deal with the issue of whether or not

there has been a breach of privilege insofar as the advertisement prejudices the work of the House or the Committee. I will then deal with the claim that the advertisement is a contempt of Parliament because it infers that the House does not have any role to play in the passage of the tax, and that it misrepresents to the Canadian public the procedures employed by Parliament in adopting legislation.

Before proceeding with the first issue, the Chair feels it might be useful to offer Members a short explanation of the difference between what constitutes a contempt of the House, and what constitutes a breach of privilege.

The privileges extended to members individually and to the House as a collectivity are finite. They are generally categorized under five headings which are: freedom of speech, freedom from arrest in civil actions, exemption from jury duty, exemption from attendance as a witness, and freedom from molestation.

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers". They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity. (*Erskine May*, 20th edition, pp. 70-71)

As a result, when Members claim that a certain action constitutes a breach of privilege, they must specify which privilege is affected.

Contempts, on the other hand, cannot be enumerated or categorized. As Speaker Sauvé explained:

...while our privileges are defined, contempt of the House has no limits. When new ways are found to interfere with our proceedings, so too will the House, in appropriate cases, be able to find that a contempt of the House has occurred. (*Hansard*, October 29, 1980, p. 4214)

Broadly speaking, contempts are offences against the authority or the dignity of the House of Commons. They include situations which cannot specifically be claimed as breaches of the privileges of the House.

Each House also claims the right to punish actions, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its Members. Such actions, though often called "breaches of privilege", are more properly distinguished as "contempts".

It would be vain to attempt an enumeration of every act which might be construed into a contempt, the power to punish for contempt being in its nature discretionary.... It may be stated generally that 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 offence. (*Erskine May*, 20th edition, p. 71 and p. 143)

As already mentioned, it is not possible to categorize or to delineate what may fall under the definition of a contempt. It is not even possible to categorize the "severity" of a contempt.

Contempts of Parliament may, however, vary greatly in nature and their gravity. At one extreme they may consist in little more than vulgar and irresponsible abuse; at the other they may constitute grave attacks undermining the very institution of Parliament itself. (*Practice and Procedure of Parliament*, Lok Sabha, p. 209)

In summary, all breaches of privileges are contempts of the House, but not all contempts are necessarily breaches of privilege. A contempt may be an act or an omission; it does not have to actually obstruct or impede the House or a Member, it merely has to have the tendency to produce such results.

Matters ranging from minor breaches of decorum to grave attacks against the authority of Parliament may be considered as contempts.

In the present case, the Leader of the Opposition (Mr. Turner) contends that the advertisement by the Department of Finance prejudices the future proceedings of the House and the Finance Committee.

The Chair must determine which of the specific privileges of the House have been breached.

Certainly, freedom of speech has not been affected. The Committee is continuing its deliberations and the House will no doubt be debating the several issues surrounding the proposed Goods and Services Tax, either through question period or on the report of the Finance Committee which will be presented to the House no later than November 28, 1989. The House will also have the opportunity to debate any Bills that the government may propose to the House and will also have an opportunity to vote on any Ways & Means motions which necessarily precede the introduction of any such Bills. The opportunity for debate and amendment are too numerous to list. Suffice it to say that those opportunities have not been diminished.

Now, has the House or have any Members been obstructed in the performance of their duties? In order for an obstruction to take place, there would have had to be some action which prevented the House or Members from attending to their duties, or which cast such serious reflections on a Member that he or she was not able to fulfill his or her responsibilities. I would submit that this is not the case in the present situation.

I would also like to point out that the House and its committees do not work in a vacuum. Members are constantly aware of outside factors and pressures. Since no threats or bribes have been made, it is difficult to see how the work of the House or the Finance Committee

has been prejudiced or which specific privilege has been breached.

On this issue, I cannot find that any privilege has been breached.

In the present case, does the advertisement of the Department of Finance amount to a contempt of the House of Commons? The Right Hon. Leader of the Opposition argues that the advertisement in question is misleading in that it gives the general public the impression that this proposed change to the taxation system is a *fait accompli* and that Parliament has no role to play in examining and approving the changes. The effect of this may tend to diminish the authority of the House in the eyes of the public.

In reply, the Minister of Justice stated: "The ads were for proposed changes. They were for informational purposes. In fact they have done their job and we have hundreds of thousands of requests for information. We are trying to inform people." (*Hansard*, p. 3821)

The Justice Minister explains that it was never the government's intention to suggest that legislation would not be submitted to Parliament for debate. During question period on September 25, the Minister of Finance also stated that the purpose of the ad was to inform and in keeping with other documents of the spring budget.

Should the Chair accept the government's explanation and rule that no deliberate contempt was made? At this point it may be useful to quote from a Canadian authority on privilege, Joseph Maingot:

There are actions which, while not directly ... obstructing the House of Commons or the member, nevertheless obstruct the House in the performance of its functions by diminishing the respect due it. As in the case of a court of law, the House of Commons is entitled to the utmost respect.... (*Parliamentary Privilege in Canada*, p. 213)

Does the advertisement diminish the respect due to the House? The Hon.

Member for Windsor West (Mr. Gray) puts forward the following argument:

When this advertisement ... says in effect there will be a new tax on January 1, 1991, ... the advertisement is intended to convey the idea that Parliament has acted on it because that is, I am sure, the ordinary understanding of Canadians about how a tax like this is finally adopted and comes into effect. That being the case, it is clearly a contempt of Parliament because it amounts to a misrepresentation of the role of this House. (*Hansard* p. 3823)

The Chair is in a quandary. The arguments on both sides of the question are very strong. To add to the Chair's difficulties, procedural authorities also point out that precedents cannot be relied upon to determine if a contempt exists. In contrast, the Chair can more easily determine when a privilege has been breached because the categories are finite and rulings can be based on precedents and authorities. This case is certainly unique. Analogies can be made to the decision rendered by Speaker Sauvé on October 17, 1980, but at that time the issue centred on the propriety of the government to advertise in advance of a debate taking place in the House. The issue was not whether the dignity of the House had been affected.

Under these conditions, the Chair feels it must exercise extreme caution against unduly restricting the authority of the House to deal with a perceived contempt, especially given the arguments which have been presented.

I must confess that I have certain doubts regarding this case. Normally in cases of doubt, it has been the practice for Speakers to allow an appropriate motion to go forward for a decision of the House. To this effect, I would like to read from a ruling of Speaker Jerome where he quotes from a report of the United Kingdom Select Committee on Parliamentary Privileges:

...it might be inferred that the test applied by the Speaker in deciding whether to give precedence over the

orders of the day to a complaint of breach of privilege ... is, Does the act complained of appear to me at first sight to be a breach of privilege? Rigorously applied, it would mean that no complaint of breach of privilege could ever be entertained unless the Speaker was of opinion that the act or conduct complained of was a breach of privilege.... Borderline cases and arguable ones would be excluded automatically because in such cases the Speaker could not say that he was of the opinion that the act or conduct which was the subject of the complaint *prima facie* constituted a breach of privilege.

In my submission the question which the Speaker should ask himself ... should be ... has the Member an arguable point? If the Speaker feels any doubt on the question, he should ... leave it to the House. (*Hansard*, March 21, 1978, p. 3975)

In order to clarify my thoughts on the issue of *prima facie* and to dispel the doubts that I have referred to, the Chair has pondered the intent of the offending advertisement as compared to its contents. I can express my own opinion that the content was obviously drafted in a cavalier manner; there is an element of confidence, if not a boldness, in the use of a phrase as definitive as "save this ad!"

The Ministers of Justice and of Finance have said to the House that the intent of the ad was to inform Canadians. Members are well aware of our practice of accepting the word of an hon. Member of the House. In accepting the Ministers' explanations, the question of intent is answered and accordingly some of the Chair's doubts are also dispelled. If the intent of the ad was not to diminish the dignity of the House. It is difficult to find *prima facie* contempt.

However, I want the House to understand very clearly that if your Speaker ever has to consider a situation like this again, the Chair will not be as generous. This is a case which, in my opinion, should never recur. I expect the Department of Finance and other departments to study this ruling

carefully and remind everyone within the Public Service that we are a parliamentary democracy, not a so-called executive democracy nor a so-called administrative democracy.

In order that all hon. members know exactly what the procedure is, and in order that members of the public who are watching and listening understand clearly what the procedure is, let me return to what I said before, that if I had decided that this matter ought to go to the House, it would be followed, or could be followed, by a debate and a vote.

I believe it is in the interest of our parliamentary system of government to have a clear statement from the Speaker which cannot be misinterpreted either in debate or by a vote. A vote on this issue might not support the very important message which your Speaker wishes to convey and which, I hope, will be well considered in the future by governments, departmental officials, and advertisement agencies retained by them. This advertisement may not be a contempt of the House in the narrow confines of a procedural definition, but it is, in my opinion, ill-conceived, and it does a great disservice to the great traditions of this place. If we do not preserve these great traditions, our freedoms are at peril and our conventions become a mockery. I insist, and I believe I am supported by the majority of moderate and responsible members on both sides of the House, that this ad is objectionable and should never be repeated.

I have deliberately made this ruling with great care in order that if ever this issue has to be debated and considered by this House again, these comments will serve to guide the House in its deliberations.

