Speaker's Ruling

Ruling on Government Advertising

Speaker Chris Stockwell, Ontario Legislative Assembly, January 22, 1997.

Background: On January 14 and 15, 1997, the member for Algoma (Mr Wildman) and the member for Oakwood (Mr Colle) rose on separate questions of privilege to express concerns about the government's recent use of electronic and print media to communicate its agenda and about its use of public funds to do so. Specifically the member for Algoma expressed concerns about television commercials in which the Premier spoke to the government's forthcoming reform agenda. The member for Oakwood was concerned about a pamphlet issued by the Minister of Municipal Affairs and Housing. The pamphlet dealt with the government's program for reforming municipal governance in Metropolitan Toronto. Both members indicated that the advertising occurred in advance of consideration by the House of legislative measures that would be necessary to implement the reform agenda and in advance of public hearings on these measures. They asked the Speaker to determine whether this advertising affected members' privileges and whether it was contempt. Further, on January 20, 1997, the member for Algoma raised a separate but related concern. According to the member, the Minister of Municipal Affairs and Housing had issued a press release on the previous Monday announcing the government's intention to realign the responsibilities of provincial and municipal governments. The member submitted that the wording of the press release had the effect of relating the television advertisements to the legislation that the minister was introducing.

The Ruling (Speaker Chris Stockwell): Let me begin my response to these concerns by referring to the relevant parliamentary authorities on privilege. Standing order 21(a) provides that "Privileges are the rights enjoyed by the House collectively and by the members of the House individually conferred by the Legislative Assembly Act and other statutes, or by practice, precedent, usage and custom." Examples of individual privilege are freedom of speech, freedom from arrest in civil actions, exemption from jury duty, exemption from attendance as a witness and freedom from molestation.

Although it is not clear from the submissions made by the member for Algoma and the member for Oakwood which specific head of privilege they felt was being breached, I indicated last week that

I would look into the matter. In my researches I found an October 29, 1980, ruling by Speaker Sauvé of the Canadian House of Commons, a ruling that dealt with concerns about the propriety of an advertising campaign initiated by the government of Canada. In ruling that there was no *prima facie* case of privilege, Speaker Sauvé stated: "There must...be some connection between the material alleged to contain the interference and the parliamentary proceeding. In this regard, there is little, if any, evidence before me relating either the documents or the advertising campaign to a parliamentary proceeding."[1]

In light of Speaker Sauvé's ruling, and after examining all the circumstances, I find that a *prima facie* case of privilege has not been made out with respect to the concerns raised by the member for Algoma and the member for Oakwood. The television commercials, the ministry pamphlet and the ministry press release do not attempt by improper means to influence members in their parliamentary conduct and do not impede freedom of speech in this place, nor do they relate to a parliamentary proceeding.

The member for Algoma and the member for Oakwood also asked the Speaker to determine whether the same circumstances amounted to contempt. Erskine May explains the concept of contempt in the following terms:

> Generally speaking, 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 contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary....
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> Indignities offered to the House by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them....Other acts besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly or by bringing such House into odium, contempt or ridicule or by lowering its authorities may constitute contempts.[2]

I want to say to members that I have also reviewed two important rulings mentioned by the member for Algoma last week. The first ruling was by Speaker Fraser in the Canadian House of Commons on October 10, 1989.

The situation that Speaker Fraser was faced with was as follows: The Department of Finance had caused to be published an advertisement that stated that "on January 1, 1991, Canada's federal sales tax system will change" and that a goods and services tax "will replace the existing federal sales tax." The advertisement then outlined specific proposed changes.

After assessing the situation from the perspective of privilege, Speaker Fraser proceeded to assess it from the perspective of contempt. In the course of ruling that there was no *prima facie* case for breach of privilege or for contempt, he identified the differences between the two in the following terms:

> All breaches of privilege 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.[3]

In ruling that there was no case for contempt, Speaker Fraser appears to have accepted the submissions of government ministers that the government had never intended the advertisements in question to be anything more than "informational" and that it had never been the government's intention to suggest that legislation would not be submitted to Parliament for debate.".

The member for Algoma also referred to a March 28, 1994, ruling of Speaker Warner in our own House. In that case, the government had caused an open letter to be published in newspapers in the Ottawa-Carleton area. The letter, which appeared under the signature of the Minister of Municipal Affairs, could be interpreted as suggesting that a bill that had only received first reading would become law by a specified time. After reviewing Speaker Fraser's ruling and two precedents from our own House, Speaker Warner indicated that a *prima facie* case had not been established.

Let me now turn to the application of these authorities to the impugned advertising. With respect to the television commercial and the ministry press release mentioned by the member for Algoma, I am of the view that they do not raise a *prima facie* case of contempt. On the contrary, the commercial does nothing more than explain in a simple and general way the government's philosophy and its broad reform agenda. As for the press release, it is worded in an innocuous way.

However, I am very concerned by the ministry pamphlet, which was worded more definitely than the commercial and the press release. To name but a few examples, the brochure claims that "new city wards will be created," that "work on building the new city will start in 1997," and that "the new city of Toronto will reduce the number of municipal politicians."

How is one to interpret such unqualified claims? In my opinion, they convey the impression that the passage of the requisite legislation was not necessary or was a foregone conclusion, or that the assembly and the Legislature had a *pro forma*, tangential, even inferior role in the legislative and lawmaking process, and in doing so, they appear to diminish the respect that is due to this House. I would not have come to this view had these claims or proposals – and that is all they are – been qualified by a statement that they would only become law if and when the Legislature gave its stamp of approval to them.

In the two rulings I have referred to, Speaker Fraser in Ottawa and Speaker Warner in our own House had some strong words for ministers or the government of the day on the subject of government advertising.

Speaker Fraser stated he would not be as generous in future in a similar situation and that, "we are a parliamentary democracy, not a so-called executive democracy, nor a so-called administrative democracy." Speaker Warner stated "that this action has come very close to contempt, and in the future the minister should exercise more caution and exhibit greater respect for the proprieties of this House."

Considering the fact that Speaker Warner issued this very stern warning to the very ministry that I am dealing with today, I would consider this ministry to have been given fair warning.

It is not enough for yet another Speaker to issue yet another warning or caution in circumstances where the wording and circulation of the pamphlet appear on their face to cross the line. I say in all candour that a reader of that document could be left with an incorrect impression about how parliamentary democracy works in Ontario, an impression that undermines respect for our parliamentary institutions.

For these reasons then, I find that a *prima facie* case of contempt has been established. At the end of this ruling, I will entertain a motion with respect to the matter of the ministry pamphlet raised by the member for Oakwood.

On a separate but related matter, the member for St. Catharines (Mr Bradley) expressed concerns on Tuesday of last week about the unequal access to advertising resources as between the government and the opposition. He asked whether the Speaker had any jurisdiction to restrict the government from disseminating allegedly self-serving, partisan advertising.

At this point in my ruling, I want to express some personal concerns about the propriety of public funds being used to advocate, through advertising, a particular position on a matter that is before the House. Let me be clear: I am not speaking here about politically paid for advertising, but rather about funds that are contributed to by every Ontarian, regardless of his or her political view. Personally, I would find it offensive if taxpayer dollars were being used to convey a political or partisan message. There is nothing wrong with members debating an issue and influencing public opinion; in fact, it is part of our parliamentary tradition to do so. But I feel that it's wrong for a government to attempt to influence public opinion through advertising that is paid for with public funds which, I might add, are not available to the opposition – instead of through debate in the House.As I say, these are my personal views. While I sympathize with the member for St. Catharines, I do not have the jurisdiction to examine the propriety of such campaigns unless they raise a matter of privilege or contempt, a subject I have already addressed.

In his submission, the member for St. Catharines also made mention of the Board of Internal Economy. If the member wishes to place some kind of request before the board, he is free to do so and the board can address such of his concerns as fall within its jurisdiction.

Notes

1. House of Commons, *Debates*, October 29, 1980, pp. 4213-14.

2. See Erskine May, *The Law, Privileges, Proceedings and Usages of Parliament*, 21st Edition (London: Buttterworths, 1985), pp. 115, 121, 124-5.

3. House of Commons, *Debates*, October 10, 1989, pp. 4457-4461.