

to do so. But I feel that it is 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.”

My own personal concern about the information before me is quite simple, and perhaps I am being too obvious about this, but let me say it anyway. Publicly funded websites as opposed to politically funded websites should be used to communicate with the public in a fair, reasonable and meaningful way. A line is crossed when a government uses a website, or for that matter any publicly funded mechanism as a vehicle to launch a provocative attack on any Member of this House.

And so, while a *prima facie* case of privilege has not been made out, in my view this is an inappropriate use of government websites, and I hope that all Members clearly understand the difference between what is a publicly funded and what is a politically funded communication, and that they will use each accordingly when communicating to Ontarians.

Postscript (Norman Sterling, Government House Leader): I heard your ruling with regard to there not being a formal breach of privilege. I do want to apologize on behalf of those ministers who had Web sites which appeared to be politically motivated press releases which were reproduced on those Web sites. This will not happen in the future. We agree with your synopsis with regard to the use of this kind of material. It should be on our party Web site and it should not be on our provincial ministry Web sites.



Format of the Estimates, April 4, 2000, Speaker Bev Harrison, Legislative Assembly of New Brunswick



Background: On March 29, 2000, Bernard Richard raised a point of privilege claiming that the Main Estimates introduced by the Government along with the Budget, lacked the traditional comparative data respecting previous years expenditures and essential comparative data for full-time equivalent positions.

Ruling(Speaker Bev Harrison): Standing Rule 9 (2) states that the Speaker shall not accept such a motion unless satisfied that there is a *prima facie* case that a breach of privilege has been committed and that the matter is being raised at the earliest opportunity. To satisfy the “earliest opportunity requirement”, a question of privilege must be raised at the time the event occurred or the next sitting day. The Main Estimates were tabled in the House last Tuesday and the Member rose on the question of privilege the next sitting day which, in my view, was the earliest opportunity.

Before proceeding to the substance of the question of privilege, I wish to comment briefly on the points of order raised when I sought the advice of other Members. It is

important to explain the process which I attempted to follow and which previous Speakers of this House and other jurisdictions consistently follow. When a Member rises on a matter of privilege, the Chair hears the complaint, which should be stated concisely and briefly. If another Member is directly implicated in this matter of privilege, the Chair may permit that Member to make a comment. The role of the Speaker is to determine whether there is a *prima facie* case of privilege, i.e., whether the matter should have priority of debate (or consideration). The Speaker may seek the advice of other Members on the matter, to assist in determining whether the complaint infringed on the Members’ ability to perform their parliamentary duties. However, other Members may only speak on the question with the leave of the Chair. I thank the Members for their comments.

At this stage, it may be useful to review the nature of parliamentary privilege. Parliamentary privilege relates to the rights and immunities that belong to Parliament, its Members and others, which are essential for the operation of Parliament. These rights and immunities allow the Legislature to meet and carry out its proper constitutional role, allow Members to discharge their responsibilities to their constituents and allow others involved in the parliamentary process to carry out their duties and responsibilities without obstruction or fear of prosecution.

Privileges are generally categorized under five headings which are: freedom of speech, freedom from arrest in civil actions, exemptions from jury duty, exemptions from attendance as a witness, and freedom from molestation.

Breaches of privilege involve the protection of the Members from impediments to their functioning as Members of the House.

I cannot find that any of the aforementioned privileges have been affected in the situation described.

Contempts, on the other hand, cannot be enumerated or categorized. Contempts are offences against the authority or dignity of the House. They include situations which cannot specifically be claimed as breaches of the privileges of the House. Contempt is defined in the 22nd edition of *Erskine May, Parliamentary Practice*, at page 108:

Any act or omission which obstructs or impedes either House 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 impossible to categorize what may fall under the definition of a contempt. Generally speaking, actions which, while not breaches of any specific privilege, are offences against the authority or dignity of the House, such as disobedience of its legitimate commands, or libels upon itself, its officers or its Members.

The basis of the Member's complaint on which I have been asked to rule is the omission of certain financial information which was traditionally contained in the Main Estimates and, which the Member claims, is absolutely necessary for a full and complete debate. The matter relates to the financial procedures of the House and the business of supply.

The financial procedures followed in the Legislative Assembly derive from the British Parliamen-

tary system. Under this system, the government is assigned the responsibility for preparing a comprehensive budget, proposing how funds shall be spent, and actually handling the use of funds. However, only Parliament, on the recommendation of the Crown, can impose taxes or authorize the spending of public money. All legislation sanctioning expenditure or initiating taxation must be given the fullest possible discussion, both in the House and in committee. This is one of the primary functions of the Legislative Assembly.

The Crown, on the advice of its Ministers, makes the financial requirements of the government known to the House by tabling the Main Estimates, which set out in detail the government's projected expenditures for the upcoming fiscal year. In this regard, the Crown, subject to any legislative requirements, controls the form in which Estimates are presented to the House. This principle is enunciated in *Erskine May's Parliamentary Practice* at page 744:

As the Sovereign is responsible for the presentation of the Estimates, the Crown, acting through its Ministers, controls, subject to the requirements of the Exchequer and Audit Departments Act 1866, the form in which they are presented. That role has devolved on the treasury as the chief financial department, responsible under section 23 of the 1866 Act for the form of the accounts of each spending department...

The Main Estimates provide a detailed listing of the resources required by individual departments and agencies for the upcoming fiscal year in order to deliver the programs for which they are responsible. The document identifies the spending authorities (votes) and the amounts to be included in subsequent Appropriation Bills that

the Legislature will be asked to approve to enable the government to proceed with its spending plans.

Marleau and Montpetit's *House of Commons Procedure and Practice, Edition 2000*, describes the essential elements of the Main Estimates at page 728:

The Main Estimates provide a breakdown, by department and agency, of planned government spending for the coming fiscal year. The Estimates are expressed as a series of "Votes", or resolutions, which summarize the estimated financial requirements in a particular expenditure category, such as operations, capital or grants. The Votes are expressed in dollars amounts, the total of which, once agreed to, should satisfy all the budgetary requirements of a department or agency in that category, with the exception of any expenditures provided for under statutory authority. Each budgetary item, or Vote, has two essential components: an amount of money and a destination (a description of what the money will be used for). Should the government wish to change the approved amount or destination of a Vote, it must do so either by way of a "supplementary" Estimate or by way of new or amending legislation.

According to Marleau and Montpetit, the form and content of the Main Estimates in the Canadian House of Commons have been modified on only four occasions since Confederation: in 1938, 1970, 1981 and, most recently in 1997. In each instance, the impetus behind the reforms was a desire to improve the quality and utility of the information provided to Members of Parliament.

In New Brunswick, the form and content of the Main estimates has remained relatively consistent over the years. The comparative data which is not found in the present set

of estimates, has traditionally been provided in one form or another since at least the early 1950s.

However, the essential elements that must be contained in the Estimates, namely, the amount of money required for each program or "Vote" and a destination – a description of what the money will be used for – can be found in the 2000-2001 Main Estimates.

The omission of comparative data from the Main Estimates document may constitute a legitimate grievance on the part of Members. However, I do not find that such information constitutes an essential component without which the Members could not carry out their parliamentary duty. Although such information undoubtedly proves valuable in assisting Members to understand and consider the expenditures they are being asked to support, such information can be obtained by other means.

As all Members are aware, there will be a full and open discussion of the estimates in the Committee of Supply, with ample opportunity for all Members to ask detailed questions of Ministers. The comparative and other information that is not contained in the Main Estimates could be requested at that time. In addition, members are free to file a tabling motion in the House.

Accordingly, I find that the matter raised fails to establish a *prima facie* case of breach of privilege which would merit the setting aside of the regular business on the Order and Notice Paper.

My ruling, however, does not prevent the Member from presenting this matter as a Private Member's Notice of Motion.

Recognition of the Leader of the Opposition, Speaker Dan Hays, February 6, 2001, the Senate



Background: On February 6, Senator St. Germain filed a notice with the Clerk of the Senate of his intention to raise a question of privilege. This notification came within hours of the Speaker receiving a letter from Mr. Day, M.P., Leader of the Canadian Alliance and Leader of the Opposition in the House of Commons, advising him that he had nominated Senator St. Germain, the only Senate member of the party, to be the Leader of the Opposition in the Senate.

The Ruling (Speaker Dan Hays): The breach of privilege alleged by Senator St. Germain, as I understand it, is that he is entitled to the position and rank of the Leader of the Opposition. A failure to recognize his claim to this position, he argued, is a denial of precedent and tradition. It also constitutes a breach of privilege because it prevents him from fulfilling all of his duties.

The substance of the presentation made by Senator St. Germain involves a complex set of issues. The Senator began with an acknowledgement that the current situation is "so new and unusual that it begs for resolution." It is his contention

that no Senate precedent exists to guide this House to properly identify the Leader of the Opposition. Senator St. Germain then made reference to rule 1 of the *Rules of the Senate* that sanctions recourse to the practices of other parliaments in all unprovided cases. Senator St. Germain then cited the British House of Lords and the Australian Senate as sources for guiding precedents. According to the Senator, the practice in both Parliaments would appear to be that the political leadership in the Lower House is mirrored in the Upper House. That is to say, there is a direct correlation in the recognized leadership of the Official Opposition in the Upper House with that of the Lower House. Indeed, evidence would suggest that they are almost always of the same party affiliation, notwithstanding the relative numerical strength of party membership in the Upper House.

Following this review of practices in the United Kingdom and Australia, Senator St. Germain continued with an assessment of what occurred here in the Senate in 1994. At the outset of the 35th Parliament, the party representing the Official Opposition in the House of Commons, the Bloc Quebecois, had no membership in the Senate. The Opposition in the Senate was provided by the Progressive Conservative Party. In the view of the Senator, this outcome has no real bearing on the merits of the case he is making with respect to his alleged question of privilege and is not relevant as a precedent.

Finally, Senator St. Germain argued for the need to recognize, as he put it, the "changing nature of Canada's political landscape." He urged the Senate to accept this reality, whatever the outcome of the ruling in this case. He also proposed