

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



that I as Speaker give "some strong direction regarding the resolution of this matter." In closing, the Senator made additional references to the statutory authority of the Speaker of the British House of Commons to determine the Official Opposition when the question is in dispute. He then cited the example of the decision by Speaker Parent in the "other place" in 1996 to maintain the status of the Bloc as the Official Opposition on the basis of incumbency in view of the numerical equality between that party and the Reform Party. Before taking his seat, Senator St. Germain made mention of a document that he had already tabled explaining in greater detail the precedents he had noted in his presentation.

By way of rebuttal, Senator Robichaud, the Deputy Leader of the Government, contended that no *prima facie* case had been made to support the allegation of a breach of privilege by Senator St. Germain. The Deputy Leader of the Government denied the Senator's claim to the title of Leader of the Opposition based exclusively on the status of the Canadian Alliance as the Official Opposition in the House of Commons. Senator Robichaud went on to refute the notion that the failure to recognize Senator St. Germain as Leader of the Opposition impairs his ability to function as a Senator and is therefore a breach of parliamentary privilege.

In explaining his position, Senator Robichaud noted that Senator St. Germain's ability to participate in various activities - moving motions or amendments, soliciting information in Question Period, speaking during Senators' Statements, and attending committee meetings - is the same as that of any other Senator. Senator Robichaud went on to state that Senator St. Germain enjoys the benefits of office space, a global budget and access to parlia-

mentary documents and a research fund just like any other Senator.

With respect to the issue of who recognizes the position of Leader of the Opposition as defined in rule 4(d)(i), the Deputy Leader explained that it is the Senate itself that determines the meaning of its own rules. After acknowledging what he described as a longstanding practice to recognize, as the Opposition, the party of the greatest number that is not the Government, Senator Robichaud agreed that it was perhaps time to review the Senate's internal organization and the manner in which parties are recognized. The Senator concluded his intervention by suggesting that the Standing Committee on Privileges, Standing Rules and Orders study this question.

Senator Prud'homme then spoke to the question of the alleged breach of privilege. He proposed that I as Speaker take the necessary time to review this important question carefully. I want all Honourable Senators to know that I have taken this advice seriously. I believe that the issue raised in the question of privilege of Senator St. Germain is very important. In the days since it was first brought up, I have reviewed closely the arguments presented as well as the document that was tabled. I have also studied the relevant precedents of our Parliament as well as those of other Westminster-style Parliaments. I am now prepared to give my decision.

In making my ruling, I want to address three inter-related issues: the question of privilege raised by Senator St. Germain; the role of the Speaker of the Senate in deciding certain questions; and thirdly, possible methods to determine the Leader of the Opposition.

Let me begin with the question of privilege claimed by Senator St. Germain. Rule 43(1) reminds us that

"the preservation of the privileges of the Senate is the duty of every Senator. A violation of the privileges of any one Senator affects those of all Senators and the ability of the Senate to carry out its functions ..." The struggle of Parliament with the Crown for the recognition of its privileges several centuries ago is in fact the history of the rise of parliamentary government and democracy in Great Britain. This history is also a proud part of our Canadian constitutional heritage. The underlying principles of privilege established so long ago still remain important today, although the application of these privileges continues to evolve.

According to the British parliamentary authority, *Erskine May*, "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively ... and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals." The foremost privileges that are exercised by the House collectively are the power to punish for contempt and the power to regulate internal proceedings as a body. Preeminent among the rights enjoyed by Members is freedom of speech. Other rights enjoyed by Members individually include freedom from arrest, hindrance or molestation. These latter privileges remain important, in the words of *Erskine May*, "as a means to the effective discharge of the collective functions of the House ..."

Whether or not a Senator is acknowledged as Leader of the Opposition does not fall within the traditional privileges enjoyed by individual members or even the privileges exercised by the Senate as a whole. It is, therefore, difficult for me to see how the matter of any Senator's recognition in the posi-

tion of Leader of the Opposition could constitute a question of privilege. This view is supported by Joseph Maingot in his book on *Parliamentary Privilege in Canada*. At page 224 of the second edition, he notes that parliamentary privilege applies to members in their capacity as members, not in their capacity as ministers, party leaders, parliamentary secretaries or whips. Accordingly, it is my ruling that no *prima facie* case of a breach of privilege has been established in this case.

There may well be instances, however, where the status of the Leader of the Opposition can give rise to points of order. For example, the *Rules* provide that in most instances, the Leader of the Government and the Leader of the Opposition will be granted unlimited time for debate. An attempt to limit that right could lead to a point of order that could be the subject of a Speaker's ruling. It must be stressed that the protection of these rights does not involve their recognition as parliamentary privileges over and above the privileges accorded to all parliamentarians. It is also necessary to point out that in such a case, as in all matters relating to the enforcement of the *Rules of the Senate*, the ruling itself could be the subject of an appeal to the Senate for confirmation or rejection. This is because the Senate retains for itself the exclusive authority to determine its practices even to the extent of passing judgment on decisions of the Speaker. In this regard, the Senate is quite different from many other parliaments including the United Kingdom and Australia, where the decisions of the Speaker are not subject to appeal.

At this point, I am already well into the second issue that I wished to raise in this ruling - the role of the Speaker of the Senate. That role is, in fact, quite limited. As Speaker, I have an obligation to enforce the

Rules to the best of my ability, but the Senate alone has the ultimate authority to determine its practices, not the Speaker. Precedents, therefore, do not have any binding character. They would, of course, influence the assessment of a situation by a Speaker, but they could not bind the Senate. Under our current practices, the Senate is not constrained by any obligation to follow precedent.

In this particular case, I have looked closely at the precedents mentioned by Senator St. Germain which are also explained more fully in the document that he tabled February 6. It is Senator St. Germain's contention that these precedents are useful and provide guidelines that could influence the outcome in this case. The first example that he referred to in his presentation was that of the British Parliament. The Senator makes the case that in Westminster, the opposition leadership in the House of Lords is determined by reference to the political composition of the House of Commons. I think that this is a correct account of how the system operates in the United Kingdom Parliament.

Should there be any doubt in the United Kingdom as to which party should be recognized as the Official Opposition based on parity, the Speaker of the House of Commons is authorized under statute to make a final and conclusive determination. In all other instances, however, the Speaker has no role to play. Under the same law, the *Ministerial and other Salaries Act*, the Lord Chancellor is given the same authority to determine the Official Opposition in the House of Lords, but this authority must be exercised by way of reference back to the decision made in the House of Commons. These provisions of the Act date back to 1937 and I am unaware of any occasion where the Speaker or the Lord Chancellor had to resort to it; nor

did Senator St. Germain indicate that it had ever been used. In any case, it is the view of the Senator that I as Speaker can exercise the same authority through the provisions of rule 1. I do not accept this proposition. Moreover, my position appears to be shared by my counterpart in the "other place". In a ruling that was made February 26, 1996 dealing with the status of the Bloc Quebecois, Speaker Parent explained that "Unless the House wishes, either in the rules or in legislation, to give the Speaker precise powers and guidelines by which to designate the official opposition, I must state at the outset that I do not feel it is within my power to make such a decision ..." The Speaker went on to acknowledge the *status quo* incumbency of the Bloc Quebecois as the Official Opposition.

In my assessment of the position taken by the Commons Speaker in that instance, this was not a typical ruling at all. In character, it resembled the approach the Speaker would be expected to take in respect of a casting vote which is to keep the question open by opting for the *status quo*. The Speaker simply recognized the *status quo*. Speaker Parent acknowledged that he had no authority to alter the *status quo* and recognize the Reform Party as the Official Opposition. Such a decision, as he explained, "has never been decided on the floor of the House of Commons, and the House has never put in place a procedure for the selection of the official opposition." [...]