



Parliamentary Potpourri

Note Taking in the Public Galleries

Graham White

Visitors to the public galleries of Canadian legislatures are often taken aback, indeed dismayed or outraged, on finding that they are not permitted to take notes. The Senate, the House of Commons and most provincial houses – Alberta is one exception – follow the Westminster practice of prohibiting strangers from writing while seated in the public galleries. At first blush, it seems slightly perverse that citizens who come to observe their representative assemblies are forbidden to record their observations or take notes of the debates. An appreciation of the historical roots of this practice renders the present-day ban comprehensible, if not always agreeable.

The prohibition against taking notes in the public gallery is inextricably bound up with the admission of strangers to the House and the reporting of parliamentary proceedings. In turn, both these matters have historically been linked to the fundamentally important principle of parliamentary independence. To be sure, it may be as much as two centuries since the presence of strangers or publicizing parliamentary debate has been of real relevance to the constitutional position of parliament – even in the United Kingdom, let alone Canada.

For hundreds of years after its emergence, towards the end of the 13th century, Parliament's history was one of constant struggle against the Crown. Individually, members faced the threat of imprisonment or of physical harm, while Parliament collectively faced strong impediments to its law making and tax raising powers. Accordingly, as Josef Redlich wrote in his famous *Procedure in the House of Commons*, "the opposition between Crown and Commons in the sixteenth and seventeenth centuries made secrecy a maxim of political prudence."¹ Secrecy of course implied that "strangers" –

anyone other than members and officers of the House – were dangerous as potential spies. During the reign of James I, for example, strangers found in the House were taken into custody by the Sergeant-at-Arms and forced to swear at the bar of the House not to disclose what they had heard in the Chamber.²

Although the Standing Orders summarily excluded strangers from the House until 1845, strangers were in fact regularly admitted to what were becoming, in effect, public galleries throughout the 18th century. It was not uncommon, however, for the galleries to be cleared for any number of reasons, and until 1853, the galleries were always cleared during divisions – and not always re-opened quickly afterwards. Until 1875, when the Prince of Wales was among those removed from the gallery, it was only necessary for members to draw the Speaker's attention to the presence of strangers and the gallery was automatically cleared.

The House's prohibition against publishing its proceedings was more rigorously enforced and lasted longer than the rules proscribing strangers. This is hardly surprising since the strangers were excluded lest they publicize, not to say publish, what they had observed in the House. For a time even the Clerk of the House was forbidden from taking notes other than as directed by the House, and instances were recorded of members being punished by Parliament for publishing their own speeches in pamphlet form.

Paradoxical as it might first appear, Parliament's obsession with secrecy and its arbitrary, even tyrannical actions against those who could violate it, were essential to the growth of constitutional freedom. For "it must be remembered that members had, at different times, sound reasons to fear the vengeance of an overbearing Sovereign or of the capricious London mob."³

As early as 1641, the House took limited steps towards printing particular de-

cisions it had taken, but it was clear that such publication was entirely to be on Parliament's terms. With the rise of newspapers in the eighteenth century, Parliament engaged in a vain rearguard action to prevent reporting of its debates. In the early 1770s, the inevitable victory of the press to report on Parliament occurred, though Parliament continued to reaffirm that publication of its proceedings constituted "a high indignity and notorious breach of Privilege". Significantly, however, no one in the galleries, even reporters, was permitted to take notes. One newsman who reported the debates in the 1780s recalled:

To use a pen or pencil... was deemed a high contempt, so much so that I once saw a gentleman taken into custody and turned indignantly out, merely for taking down a figure or two with his pencil when Lord North was opening his budget. We were obliged, therefore to depend on memory alone...⁴

Within a few years, reporters – but only reporters – were allowed to take notes at their places in the public gallery. This, incidentally, gives the lie to the wide-held misconception that reporters are permitted to take notes since the Press Galleries in Westminster, Ottawa and several provincial chambers are now located behind the Speaker, out of his field of vision and thus ignored for convenience sake. Until 1971, it technically remained a breach of privilege, punishable by the House of Commons, for any newspaper to report the debates at Westminster.

For some two centuries, of course, the Commons' concern lay not with the publication of its proceedings as with misrepresentation of members' remarks. Nonetheless, it is of interest that as late as the 1830s, MPs were expressing the view that situations could conceivably arise in which the independence of Parliament

might require that no one betray to the King what had transpired in the House.⁵

In Canada, the early years of parliamentary life were marked by suspicion of strangers, and unwillingness to permit full disclosure or publication of parliamentary proceedings. In 1808, by way of illustration, a motion in the Upper Canada Legislative Assembly to permit members free access to the Journals of the House and to take abstracts from them was defeated.⁶ In the same year, the King's Printer was granted permission to publish the debates, but was not granted access to the Journals.⁷ A few years later, the House voted down a motion to give a person jailed for breach of privilege a copy of the House proceedings relating to his arrest.⁸ Instances were recorded of the House closing its doors and evicting strangers during certain proceedings.⁹ In 1818, one Bartimus Ferguson, the editor of the *Niagara Spectator* was prosecuted for seditious libel for his reports of the proceedings in the Assembly.¹⁰ It is fair to add that such occurrences owed more to the political squabbles of the day than to any great constitutional principle, yet the implications for public and press access to Parliament were no less profound.

As parliamentary reporting became more regular and professional during the nineteenth century, and as matters of privilege and parliamentary independence came to rise above partisan considerations, Canada's Parliament became more accessible to the people and to the press. Still, the control of Parliament over publishing its proceedings is absolute as is its ability to order strangers to withdraw. The House of Commons for some years after Confederation regularly passed a motion forbidding anyone not appointed by the Speaker to publish the *Votes and Proceedings*. In 1960 a company was judged by the House to have breached parliamentary privilege for having published a portion of Hansard for advertising purposes.¹¹ Technically, it remains a breach of privilege in Canada for anyone, including a member, to publish parliamentary debates.¹²

It might well be asked whether long-settled constitutional battles are sufficient justification for a prohibition against taking notes in the public galleries today. Municipal councils permit spectators not only to take notes, but also to applaud and to heckle during debates — also strictly forbidden in Parliament. Although removal of the ban against writing in the public galleries would hardly constitute a major change in our system of parliamentary government, three reasons may be cited for maintaining the

practice even today: First, given its origins in the power of Parliament to exclude strangers and to prohibit publication of its proceedings, it serves as an important reminder of the awesome, near-absolute power possessed by Parliament. Secondly, by comparison with the forbearance shown of reporters in the Press Gallery to take notes, it recalls the trials and tribulations of early reporters who were fined and imprisoned for publicizing what was transpiring in Parliament, and thus emphasizes that freedom of the press was not easily won and is not to be lightly regarded. Finally to cite the practice in the Australian House of Representatives, "Admission to the galleries is a privilege extended by the House and people attending must conform with established forms of behaviour. People visiting the House are presumed to do so to listen to debates, and it is considered discourteous for them not to devote their attention to the proceedings. Thus photographs are not permitted to be taken in the Chamber and visitors are required to refrain from writing, conversing, applauding and so on".¹³

NOTES

¹Josef Redlich, *The Procedure of the House of Commons* Archibald Constable and Co. Ltd., London, 1908, vol. II, p. 36.

²Strathearn Gordon, *Our Parliament*, Hansard Society, London, 1963, revised and enlarged edition, p. 130.

³*Ibid.*, p. 129

⁴Quoted in A. Aspinall, "The Reporting and Publishing of the House of Commons Debates 1771-1834," in Richard Pares and A. J. P. Taylor eds., *Essays Presented to Sir Lewis Namier*, Macmillan, London, 1956, p. 237.

⁵*Ibid.*, p. 227.

⁶Assembly of Upper Canada, *Journals*, 1808, p. 198.

⁷*Ibid.*, p. 203.

⁸*Ibid.*, 1812, p. 78.

⁹*Ibid.*, 1816, p. 260.

¹⁰John Ward, *The Hansard Chronicles*, Deneau and Greenberg, Ottawa, 1980, p. 36.

¹¹Alistair Fraser, G. A. Birch and W. F. Dawson, *Beauchesne's Rules and Forms of the House of Commons of Canada* 5th Edition Carswell, Toronto, 1978, p. 17.

¹²Joseph Maignot, *Parliamentary Privilege in Canada*, Butterworths, Toronto, 1982, p. 36.

¹³J. A. Pettifer, ed., *House of Representatives Practice*, Australian Government Publishing Service, Canberra, 1981, p. 146.

A Little Known Aspect of Parliamentary Immunity

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To carry out their duties federal and provincial legislators enjoy a number of rights and immunities known as "privileges". In some legislatures these are spelled out in legislation or standing orders while in others they are left to custom. Perhaps the best known parliamentary privilege is immunity from prosecution for anything a member says in the House. Related to this, but less well known, even among parliamentarians, is that a member cannot be expelled from a private club or union for statements or actions in the course of duties in the House. An example of this privilege came to light recently in Quebec.

In January 1983, the *Syndicat des travailleurs de l'enseignement de la Haute-Yamaska* decided to expel from its ranks Jacques Beauséjour, the Parti québécois member for Iberville. One of the reasons given by the head of the Union for Mr. Beauséjour's expulsion was that he had voted repeatedly in support of Bills 62, 70 and 105 relating to wage cutbacks in the public sector.¹ However, according to a ruling of the Court of King's Bench dating back to June 21, 1917, an organization does not have the right to expel from its ranks a member on account of opinions expressed by him in the Assembly. The case, outlined below, illustrates this little known aspect of parliamentary privilege.

On January 13, 1916, during the debate on the Speech from the Throne, Armand Lavergne, a Nationalist member of the Quebec Legislative Assembly for Montmagny, spoke out passionately in the Assembly against the participation of French Canadians in the First World War.² In defending his stand, Lavergne even went so far as to say that he was prepared to set aside his parliamentary immunity and the government could arrest him for high treason if they wanted to.³

A few days later the members of the *Club de la garnison de Québec* lodged a verbal complaint with their secretary, asking for Lavergne's expulsion from the club. On February 25, a written complaint signed by sixteen club members was forwarded to the committee and a special meeting of all club members was convened for March 13. The majority of club members supported the following resolution: "That the committee be instructed to request Mr. Lavergne to resign as a member of the club, and in default of his resigning within ten days