



# Speakers' Rulings

## Question of privilege regarding failure of government to return House Orders, Nova Scotia, April 16, 1984



Arthur Donahoe (N.S. Government Services Information Division)

**Background:** On April 3 the member for Cape Breton South (Vincent MacLean) charged that the government was in contempt of the Legislature for failing to return House Orders duly passed by the Legislature in the previous session. Of the 166 orders issued Mr. MacLean indicated that 69 had not been responded to as of April 3, 1984. The Speaker took the question under advisement and made his ruling as to whether this constituted a *prima facie* case of privilege.

**The Ruling (Speaker Arthur Donahoe):** Our Rules with respect to the tabling of returns to orders of the House are silent and I am therefore required by Rule 2 of our Rules and Forms of Procedure to decide the matter by reference to the usages and precedence of this House in the first instance and, secondly, to the standing and sessional orders and forms of the House of Commons of Canada...

...In decisions of my own of February 25, 1981 and April 20, 1982, I have dealt with matters relating to returns to House Orders. These decisions, while not directly on point, indicate that the matter of returns to House Orders had been a vexacious one for some considerable time.

Information available to me indicates that failure to file returns to House Orders is not a new phenomenon. The number of House Orders carried in each session from 1976-77 to 1982 ranges from a low of 57 in 1977-78 to a high of 234 in 1982. In terms of the percentage of those returned 50.9 per cent were returned from among those passed during 1977-78; 55.1 per cent of those passed during the 1982 session were returned; and the high point was reached in 1978-79 when 88.7 per cent of those House Orders passed by the House were, in fact, returned.

Thus it can be seen that under neither of the two most recent administrations has complete compliance been made to the Orders of the House for returns. To say this does not make the situation correct. I take very seriously the matter of responses to orders made by the House. In the 5th Edition of Beauchesne, at Page 138, general principles governing Notices of Motions for production of papers which apply to the House of Commons are set forth. To enable members of Parliament to secure factual information about the operations of government, to carry out their parliamentary duties, and to make public as much factual information as possible, consistent with effective administration, the protection of the security of the state, rights to privacy and such other matters, government papers, documents, and consultant reports

should be produced on Notice of Motion for the production of papers unless falling within certain categories outlined in which an exemption can be claimed from production.

The purpose of these motions is similar in our House. I would point out that, once adopted, the Order becomes an Order of the House. It is an Order of the legislative branch of government directing the executive branch to lay on the table certain returns. One cannot close his eyes to the fact that the government, through its majority in the House, can vote down such a motion. Nevertheless, the Order when passed, is an indication that the government should be willing to make the information public by tabling a response to the Order, otherwise it would not have or should not have acquiesced in its passage.

In the House of Commons, Standing Order 79 provides that a prorogation of the House shall not have the effect of nullifying an order or address of the House for returns or papers, but all papers and returns ordered at one session of the House, if not complied with during the session, shall be brought down during the following session without renewal of the Order. I am advised by the Clerks at our Table that they are not aware of any customs or usages in the Nova Scotia House which have any direct relevance other than, in the past, many returns have been made following adjournment of a session and, to a lesser degree, following prorogation of a session.

There appears to be no custom or usage as to the length of time allowed for compliance, however, the indications are that there is a very reasonable amount of

flexibility. We are still in the course of the session following the one in which the orders about which the honourable member for Cape Breton South complains were passed. I am struck by the fact that at no time has the government, or any minister, declined to comply with the orders. The government has to date, in many cases, failed to table the returns, but the government is still in a position to comply with them. We have not had a dissolution of the House and it is still open to the government to respond during this session.

I wish to conclude by reference to a situation which occurred during the session of 1975. On Wednesday, February 5, 1975, the honourable member for Lunenburg East moved for an Order directing the Clerk of the House to table a report listing the House Orders to which no replies had been received between May 23, 1974 and the date of the return. The then Premier rose on a point of order to object to the notice on the basis that it referred to House Orders of previous sessions and stated that it is not part of the work of the current session. The then Leader of the Opposition, who is now the Premier, pointed out that it was an order for the present session and that it asked the government or the minister to whom the orders of the last session were directed that they now make returns in this current session.

Mr. Speaker MacLean indicated that he would rule on the point when it appeared

on the order paper. On Tuesday, February 11, 1975, the House Order was moved, indicating, in my view, that Mr. Speaker MacLean found that it was in order, although no direct ruling on this point was made. Further, on Thursday, February 13, 1975, Mr. Speaker MacLean said the following: "On a previous day, the Honourable Member for Lunenburg East presented a House Order, seconded by the Honourable Member for Cumberland West, requesting the Clerk of the House to report a listing of the House Orders for which no replies have been received between May 23, 1974 and the date of this return. The return, as directed by the House, has been tabled by the Clerk and is presently on his Table. I would direct also for the Clerk to send a copy of this particular return to each of the Ministers involved, so that the returns can be submitted to the House when they are completed."

This procedure commends itself to me as the appropriate one to follow. I would have no hesitation in ruling in order a motion which seeks to elicit information concerning the orders which have not been responded to should such a motion be forthcoming in the usual manner from any member of the House.

Now, from the length of this decision, and the material I have cited and reviewed, it will be obvious to honourable members

that under our present Rules, this is a very grey area. I am certainly very much attracted to the suggestion made by the Chairman of the Management Board in his contribution on April 3rd that this whole situation be reviewed by the Special Committee on Rules and Procedures and I have no hesitation in stating as Chairman of that Committee that the matter will be added to its agenda.

Meanwhile, based on the precedents and practices of our House, I am not convinced that the honourable member for Cape Breton South has made out a *prima facie* case, as he is required to do, and I am therefore ruling the motion out of order, without prejudice to the right of any honourable member to raise the issue again, if compliance with the Orders of the House is not made within a reasonable period of time following the introduction and passage of a motion directing that the Clerk report a listing of House Orders for which returns have not been tabled.

**Editor's Note:** The following day the House passed an order directing the Clerk to table a report listing the House Orders, (both by title, member moving, department involved, and number accorded by staff) to which no replies have been received between January 1, 1982 to the date of this return.

#### Question of privilege relating to civil action against a member of the Legislature, Saskatchewan, April 26, 1984



Herb Swan

**Background:** On April 25, 1984, the member for Regina Centre, Mr. Ned Shillington, after having given proper notice, rose on a point of privilege. He reported to the Legislative Assembly that he had received a letter from a Regina law firm which stated that their clients had commenced a court action claiming damages for remarks made by Mr. Shillington in the Legislative Assembly. The remarks in question were suggesting improprieties on the part of the people who bought the old Saskatchewan Government Insurance building from the Government of Saskatchewan.

The member also received a statement of claim issued out of the Court of Queen's Bench for Saskatchewan. The

plaintiffs (the purchasers of the building) claimed economic loss due to words said by Mr. Shillington.

Mr. Shillington argued that this constituted an attempt to intimidate him in the exercise of his responsibilities and therefore were a violation of his privileges and those of the legislature.

**The Ruling (Speaker Herb Swan):** Privilege is one of the most important procedural points in Parliament. A breach of the privileges of Parliament affects all members and Parliament itself.

I refer all Honourable Members to *Erskine May's Parliamentary Practice*, Twentieth Edition, p. 70, for a general defini-